

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Union County

Edgar W. Dickson, Circuit Court Judge

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S.C. Supreme Court

LUTHER BERNARD PEARSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001116

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF UNION) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 LUTHER BERNARD PEARSON,) 2007-GS-44-416
SR.,) 2007-GS-44-417
7) FEBRUARY 12, 2008
Defendant.) Union, South Carolina

8
9 (VOLUME I)

10
11 B E F O R E:

12 THE HONORABLE R. KNOX MCMAHON, JUDGE. ; and a jury.
13
14

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

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1 (PROCEEDINGS, February 12, 2008)

2 THE COURT: Solicitor, if you would call your
3 first case for trial.

4 MR. ANTHONY: Yes, sir.

5 Your Honor, the first case for trial is State of
6 South Carolina versus Luther Pearson.

7 These are indictments 2007-GS-44-416 and 417.

8 416 is an indictment for lewd act upon a child.

9 417 is an indictment for criminal sexual conduct
10 with a minor in the second degree.

11 I am handing up the indictments and also handing
12 up a witness list and the State's requested voir dire.

13 THE COURT: Thank you, solicitor.

14 Ladies and gentlemen of the jury panel, if you
15 would please give me your complete and undivided attention.

16 Again, I'll remind you that you are under oath,
17 those of you who were able to take the oath. Any of you who
18 were not, you have affirmed that all your responses will be
19 truthful, correct and complete.

20 The State has called for trial Indictment
21 2007-GS-44-416 and 2007-GS-44-417.

22 416 is a True Billed indictment that reads that on
23 or about February 28th, 2005, the defendant, Luther Bradford
24 Pearson, did commit the crime of lewd act upon a child, and
25 that the defendant, Luther Bradford Pearson, he was over the

1 age of 14 years at the time of the incident, did willfully
2 and lewdly commit or attempt to commit a lewd or lascivious
3 act on or with the body, or any part or member thereof, of
4 the victim Minor [REDACTED] a child under the age of 16 years
5 at the time of the incident, with the intent of arousing,
6 appealing to, or gratifying the lust or passions or sexual
7 desires of the defendant, Luther Bradford Pearson, or of the
8 child victim Minor [REDACTED] in that the defendant, Luther
9 Bradford Pearson, date of birth, February 5, 1966, did rub
10 and/or touch and/or fondle the breast and/or the genital
11 vaginal area and/or buttocks of the minor victim Minor [REDACTED]
12 Eison, date of birth, . Said incident
13 occurred in Union County, South Carolina, all in violation
14 of Section 16-15-140 of the Code of Laws of South Carolina,
15 as amended. That is a True Billed indictment for lewd act
16 upon a child.

17 The next is indictment 417. It reads that on or
18 about February 28th of 2005, the same date as the lewd act
19 indictment, that the defendant, Luther Bradford Pearson, did
20 willfully and unlawfully commit the crime of criminal sexual
21 conduct with a minor in the second degree, in that is the
22 defendant, Luther Bradford Pearson, did engage in a sexual
23 battery with the minor victim, who at the time of the
24 incident was at least 14 years of age, but who was less than
25 16 years of age, to-wit: The defendant, Luther Bradford

1 Pearson, date of birth did commit the
2 sexual battery of sexual intercourse upon and with the minor
3 victim, Minor [REDACTED] date the birth , a
4 minor who was 14 years old at the time of the incident.
5 Said defendant was older than the said victim at the time of
6 the incident. Said incident occurred within Union County,
7 all in violation of 16-3-655(3) of the Code of Laws of South
8 Carolina. It's a True Billed indictment for criminal sexual
9 conduct with a minor, second degree.

10 Now, these indictments, ladies and gentlemen, are
11 not evidence. They are not evidence in any manner. They
12 are not evidence of any of the allegations contained
13 therein. They are merely the formal charging documents by
14 which a defendant is placed on notice of the charge or the
15 charges that have been placed against him or her.

16 Momentarily I'm going to ask you a series of
17 questions about this particular case and determine your
18 qualifications to serve as jurors in this particular case.

19 To begin with, Solicitor Anthony, would you please
20 stand and introduce yourself and any other members of the
21 solicitor's staff that are going to assist you in the
22 prosecution of this case on behalf of the State?

23 MR. ANTHONY: Yes, sir.

24 My name is John Anthony. I'm the deputy solicitor
25 here in Union County.

1 This is Misty Horton. She will be assisting me in
2 the trial of this case.

3 THE COURT: Thank you, solicitor.

4 Is any member of the jury panel related by blood
5 or marriage or close personal friends with either Deputy
6 Solicitor Anthony or Ms. Horton of the Sixteenth Circuit
7 solicitor's office? If so, please stand.

8 Yes, ma'am, your number and name, please?

9 JUROR NUMBER 171: Ms. Rash. Ms. Horton is my
10 niece. I'm juror number 171.

11 THE COURT: 171. Ms. Horton.

12 JUROR NUMBER 171: Ms. Rash. I'm not Ms. Rash.

13 THE COURT: I'm sorry. I thought that you said --
14 I knew that you said Ms. Horton was your niece. I thought
15 you said your name also was Horton. I apologize.

16 The fact that Ms. Horton is your niece, could you
17 still be a fair and impartial juror to both the State and
18 the defense in this case?

19 JUROR NUMBER 171: Yes, sir, I can.

20 THE COURT: Thank you. You may be seated.

21 MR. BRANNON: I don't know if this is the
22 appropriate time, Your Honor, but I would move that she be
23 excused for cause.

24 THE COURT: All right. I would set 171 aside for
25 the trial of this case.

1 Thank you, Mr. Brannon.

2 Yes, sir, your number and name, please?

3 JUROR NUMBER 253: My name is Troy Vaughan, juror
4 253. Ms. Horton is my wife's cousin.

5 THE COURT: She would be your cousin-in-law, is
6 that right?

7 JUROR NUMBER 253: By marriage.

8 THE COURT: And would your wife and Ms. Horton be
9 first cousins?

10 JUROR NUMBER 253: Yes, sir.

11 THE COURT: First cousins.

12 All right. The fact that your wife is first
13 cousins to Assistant Solicitor Horton, could you still be a
14 fair and impartial juror to both the State and the defense?

15 JUROR NUMBER 253: Yes, sir.

16 THE COURT: Thank you.

17 MR. BRANNON: The same motion, Your Honor.

18 THE COURT: You may be seated.

19 MR. BRANNON: We would move for cause.

20 THE COURT: Do y'all have position on that,
21 solicitor?

22 MS. HORTON: Your Honor, I might want to be heard
23 off the record actually on both 171 and Mr. Vaughan.

24 THE COURT: All right. Thank you.

25 Has any member of the jury panel or any member of

1 your immediate family ever been prosecuted by Deputy
2 Solicitor Anthony or Assistant Solicitor Horton? If so,
3 please stand.

4 (No response)

5 THE COURT: Thank you.

6 The defense in this case is represented by Mr.
7 Brannon and Mr. Collins.

8 Mr. Brannon, if you would please stand and
9 introduce yourself and your client and any other individuals
10 that are going to assist you in the defense of this case?
11 Would you do that, please?

12 MR. BRANNON: Thank you.

13 My name is Doug Brannon. I'm an attorney from
14 Spartanburg, South Carolina. I'll be assisted in this case
15 by Mr. David L. Collins.

16 My client today is Luther Pearson. His name is
17 Luther Bernard Pearson.

18 Thank you, Your Honor.

19 THE COURT: Is any member of the jury panel
20 related by blood or marriage or close personal friends with
21 Mr. Brannon, Mr. Collins, or been represented by Mr. Brannon
22 or Mr. Collins? If so, please stand.

23 This is Mr. Knox?

24 JUROR NUMBER 96: Yes, sir.

25 THE COURT: I like your name.

1 What's your number, Mr. Knox?

2 JUROR NUMBER 96: 96.

3 THE COURT: 96. All right. And tell me your
4 situation.

5 JUROR NUMBER 96: Mr. Brannon was a guardian ad
6 litem for a case of mine.

7 THE COURT: And when was that case?

8 JUROR NUMBER 96: Maybe three -- three, four years
9 ago, maybe.

10 THE COURT: Three or four years ago?

11 JUROR NUMBER 96: Yes.

12 THE COURT: The fact that Mr. Brannon served in
13 such a capacity in a case you were involved in, could you
14 still be a fair and impartial juror to both the State and
15 the defense in this case?

16 JUROR NUMBER 96: Yes, sir.

17 THE COURT: Thank you. You may be seated.

18 Is any member of the jury panel related by blood
19 or marriage or close personal friends with the defendant in
20 this case, Luther Pearson?

21 If so, please stand.

22 (No response)

23 THE COURT: Does any member of the jury panel have
24 any knowledge about the facts of this case which allegedly
25 occurred September 28th, I believe it said -- excuse me,

1 February 28th of 2005, in Union County. If you have any
2 knowledge about the facts of this case, if so, please stand.

3 (No response)

4 THE COURT: Does any member of the jury panel have
5 any bias or any prejudice towards the parties, that is,
6 either the State or the defendant, or towards the subject
7 matter involved in this case? If so, please stand.

8 (No response)

9 THE COURT: Has any member of the jury panel heard
10 or know anything about this case from any source whatsoever?
11 If so, please stand.

12 (No response)

13 THE COURT: Has any member of the jury panel or
14 any member of your immediate family or close personal friend
15 ever been charged with any type of sexual offense or child
16 abuse? If so, please stand.

17 Yes, ma'am, your number and name, please?

18 JUROR NUMBER 216: 216, Alice Sorrells.

19 THE COURT: All right, Ms. Sorrells, would you
20 please step down here to the court reporter for me, please?

21 (Whereupon, the following was a bench conference
22 in the presence of the jury panel, but out of the hearing of
23 the jury panel)

24 THE COURT: I was about to say good morning. Tell
25 me your situation.

1 JUROR NUMBER 216: I have a nephew who is serving
2 time for lewd act.

3 THE COURT: Okay. And the fact that you have a
4 nephew serving time for lewd act, could you be fair and
5 impartial to both the State and the defense?

6 JUROR NUMBER 216: Yes, I think I could.

7 THE COURT: All right. Thank you. You may be
8 seated.

9 (Whereupon, Juror Number 216 returned to the jury
10 venire panel)

11 THE COURT: Yes, sir?

12 MR. ANTHONY: As to State's requested voir dire, I
13 would ask that you would ask the same question, but instead
14 of if you would ask if anybody has been a victim of said
15 crime or that type of crime.

16 THE COURT: Okay.

17 MR. ANTHONY: Okay. That's my only request.

18 THE COURT: All right. Tell me your position on
19 Juror 253, Mr. Vaughan, and your cousin.

20 MS. HORTON: Vickie is my aunt on my father's
21 side. I didn't speak to my father for 18 years, nor have
22 much contact with that side of the family. I have not
23 spoken to my father now in five years, so I did not grow up
24 with her. I take less of a position with her being excused
25 because I do know her better than I know Troy. Troy is

1 also -- his wife is also on my father's side. I can't even
2 remember her name, so I don't think there is any familial
3 relationship that would bar him from being fair and
4 impartial. It's not like I grew up with them and all. They
5 weren't around me as a child.

6 THE COURT: You know, State v. Elmore is running
7 around in my mind when Doug made his motion that I think
8 qualified friend of Jones' daughter and my first cousin
9 actually got qualified in a death penalty case that I was
10 prosecuting, which quite frankly worried me, but he got
11 qualified.

12 MS. HORTON: And my response to both, they would
13 be fair and impartial, and they are not -- I don't consider
14 them my true family, and I think they would probably feel
15 the same way.

16 THE COURT: They may.

17 I think under the circumstances with the panel
18 again I think I would excuse them both. I just think that
19 it kind of a blend in something that better off not to be
20 there. I can tell both ways too, quite frankly, and that
21 their reaction being fair and impartial could --

22 MR. BRANNON: Go the other way.

23 THE COURT: -- go the other way, quite frankly.
24 That's my concern about your case.

25 MR. BRANNON: For the solicitor's position, Mr.

1 Knox, I have no recollection of that, but he also used to
2 work in the detention center, so I probably am going to
3 strike him anyway so okay. He's a former detention guard.

4 MR. ANTHONY: There is one down here, number 114,
5 Mr. McAbee. I tried a case here in December and he was the
6 defense witness and I cross-examined him and basically tried
7 to sort of see and wait. The jury -- he was a witness in a
8 sex offender case, so I think he would be prejudiced against
9 the solicitor's office and against me and I think he should
10 be removed for cause.

11 THE COURT: You mean, under those questions here,
12 if he had been a witness in the case? Then if he had been
13 prosecuted? I mean, I hadn't hit any of those questions.

14 MR. ANTHONY: I would add that to what I requested
15 something, that you ask the witnesses in the case.

16 THE COURT: All right.

17 MR. ANTHONY: Thank you.

18 MR. BRANNON: Thank you, Your Honor.

19 MS. HORTON: Thank you, Your Honor.

20 (Whereupon, the bench conference was concluded)

21 THE COURT: Let me ask you the reverse of the last
22 question. Has any member of the jury panel or a member of
23 your immediate family or close personal friend ever been a
24 victim of any type of sexual offense or child abuse? If so,
25 please stand.

1 THE COURT: All right. If y'all would just step
2 down here to the rail, please.

3 (Whereupon, the following were bench conferences,
4 in the presence of the jury venire panel, but out of the
5 hearing of the jury venire panel)

6 THE CLERK: Juror number 166, Ms. Puckett.

7 THE COURT: Good afternoon.

8 JUROR NUMBER 166: Hey, how are you?

9 THE COURT: Fine.

10 Yes, ma'am.

11 JUROR NUMBER 166: My granddaughter was sexually
12 abused when she was about eight, ten years old.

13 THE COURT: And about how long ago was that?

14 JUROR NUMBER 166: Oh, that's been -- she's 22
15 now, so --

16 THE COURT: That's been awhile. 12, 14 years ago?

17 JUROR NUMBER 166: Yes.

18 THE COURT: And the fact that your granddaughter
19 was a victim of abuse -- was it sexual abuse or child abuse
20 or --

21 JUROR NUMBER 166: He made a lewd act on her.

22 THE COURT: The fact that your granddaughter was a
23 victim of those type of acts, could you still be a fair and
24 impartial juror?

25 JUROR NUMBER 166: Yes.

1 THE COURT: To both the State and the defense?

2 JUROR NUMBER 166: Yes.

3 THE COURT: Thank you, ma'am. You may be seated.

4 Juror number 166 is qualified.

5 (Juror Number 166 returned to the jury venire

6 panel)

7 THE CLERK: Juror 110, Mary Jane Long, Your Honor.

8 THE COURT: Ms. Long.

9 JUROR NUMBER 110: Yes.

10 THE COURT: Tell me your situation.

11 JUROR NUMBER 110: October 7, 2004, I was raped in
12 Columbia by Carolina.

13 THE COURT: All right. Then the fact that this
14 occurred to you, could you still be a fair and impartial
15 juror to both the State and the defense in this case?

16 JUROR NUMBER 110: Yes, sir, I could. If you
17 would have asked me that a year ago, I couldn't have been,
18 but I have forgiven my rapist.

19 THE COURT: And if you were selected to service on
20 this jury and you took the oath, you would base whatever
21 verdict that you would reach on what you heard the testimony
22 from the witnesses under oath in this case?

23 JUROR NUMBER 110: Yes, sir.

24 THE COURT: In this courtroom?

25 JUROR NUMBER 110: Yes, sir.

1 THE COURT: And the law as I told you the law was?

2 JUROR NUMBER 110: Yes, sir.

3 THE COURT: Not on the event that occurred in your
4 life in 2004?

5 JUROR NUMBER 110: No, sir.

6 THE COURT: All right. Thank you, ma'am.

7 I think you are qualified. You may be seated.

8 Thank you Ms. Long.

9 (Juror Number 110 returned to the jury venire
10 panel)

11 THE CLERK: Juror number 18, Theresa Cannon, Your
12 Honor.

13 THE COURT: All right. Ms. Cannon.

14 JUROR NUMBER 18: My -- both of my children were
15 victims.

16 THE COURT: And how long ago has that been?

17 JUROR NUMBER 18: About 2002, 2003.

18 THE COURT: Victims of child abuse?

19 JUROR NUMBER 18: Molestation by their cousin.

20 THE COURT: And the fact that both your children
21 were victims of molestation by your cousin --

22 JUROR NUMBER 18: By their cousin.

23 THE COURT: -- could you be a fair and impartial
24 juror?

25 JUROR NUMBER 18: Yes, I think I could.

1 THE COURT: To both the State and defendant in
2 this case?

3 JUROR NUMBER 18: I think so.

4 THE COURT: And I know that's just semantics,
5 maybe, when you say you think so, but could you be fair to
6 the State and the defendant?

7 JUROR NUMBER 18: Yes, sir.

8 THE COURT: Thank you, ma'am. You may be seated.

9 (Juror Number 18 returned to the jury venire
10 panel)

11 THE CLERK: Juror 121, Judson Meador, Your Honor.

12 THE COURT: All right, Mr. Meador?

13 JUROR NUMBER 121: Yes, sir. My daughter was a
14 police officer in Lexington County and she said she was
15 raped by a lady that's going through the court. It hadn't
16 been to trial, and my co-worker and I thought I would just
17 let you know that.

18 THE COURT: All right. So those allegations are
19 pending?

20 JUROR NUMBER 121: Yes, sir.

21 THE COURT: And this is your daughter?

22 JUROR NUMBER 121: Yes, sir.

23 THE COURT: And what age is your daughter?

24 JUROR NUMBER 121: 27.

25 THE COURT: 27. And the fact that your daughter

1 has been a victim of that event, could you still be a fair
2 and impartial juror to both the State and the defense in
3 this case?

4 JUROR NUMBER 121: I think so, yes, sir.

5 THE COURT: And when you say you think so --

6 JUROR NUMBER 121: Yes, sir, I could.

7 THE COURT: All right. Thank you Mr. Meador.

8 (Juror Number 121 returned to the jury venire
9 panel)

10 THE COURT: All right. Thank you.

11 (Whereupon, the bench conferences were concluded)

12 THE COURT: Has any member of the jury panel or
13 any member of your immediate family or a close personal
14 friend ever been charged with a crime by the Union Public
15 Safety Department? If so, please stand.

16 (No response)

17 THE COURT: Have you or any member of your
18 immediate family or any close personal friend ever filed a
19 lawsuit against the Union Public Safety Department? If so,
20 please stand.

21 (No response)

22 THE COURT: Does any member of the jury panel have
23 any religious or moral views that would prevent you from
24 rendering a judgment or a verdict in a criminal case? If
25 so, please stand.

1 (No response)

2 THE COURT: Is any member of the jury panel a
3 member of any organization that does not recognize the
4 Government of the United States or the State of South
5 Carolina as the sovereign governments of our nation and our
6 state? If so, please stand.

7 (No response)

8 THE COURT: I'm going to call out a list of
9 potential witnesses in the trial of this case.

10 The question, of course, is is any of member of
11 the jury panel related by blood or marriage or close
12 personal friends of any of these individuals whose names I
13 have called.

14 If any of them are in the courtroom when I call
15 your name, I would ask you to please stand and face the jury
16 panel, although the jurors are not -- excuse me, although
17 the witnesses are not required to be here at this time.

18 Minor [REDACTED] E-I-S-O-N.

19 Shytyma H. [REDACTED]

20 These two ladies over here. Thank you. You may
21 be seated.

22 Kim Balkum.

23 Jennifer McGee.

24 Gwen Linder.

25 Again, is any member of the jury panel related by

1 blood or marriage or close personal friends with any of
2 those names I just called and who stood before you?

3 Yes, ma'am, your name and number, please?

4 JUROR NUMBER 3: Juror number 3, Kisha Beasley.

5 THE COURT: All right. And Ms. Beasley, are you
6 related or friends?

7 JUROR NUMBER 3: Related to Shytyma H.

8 THE COURT: And what degree of relationship are
9 you to Shytyma H.

10 JUROR NUMBER 3: Her grandfather and grandmother
11 are third cousins.

12 THE COURT: The fact that you are a third cousin
13 to Shytyma H. could you still be a fair and impartial juror
14 to both the State and the defendant in this case?

15 JUROR NUMBER 3: Yes, sir.

16 THE COURT: Thank you. You may be seated.

17 All right. The next five are Mary Garner.

18 Jennifer Kerr.

19 Dr. Elizabeth Patrick.

20 Donald Ray Nix.

21 Cecil Bradstreet employed with SLED.

22 (No response)

23 THE COURT: The next five, Robin Taylor with SLED.

24 And the next individuals I name are all employed
25 with the Union Public Safety Department.

1 Officer Teresa Bowser.

2 Officer Jerome Beatty.

3 Lieutenant Charles Henderson.

4 Captain Freddie Gault.

5 Captain Greg Higgins.

6 Is any member of the jury panel related by blood
7 or marriage, close personal friends with any of those
8 individuals whose name I have just called? If so, please
9 stand.

10 (No response)

11 THE COURT: You have already been introduced to
12 the defendant Luther Pearson.

13 Ms. Delmar Johnson.

14 Tameika Stevens.

15 Sharemia Smith.

16 Trooper Freddie Loftis.

17 Mr. Luther Pearson, Jr..

18 Mr. Lyle P. [REDACTED]

19 Wilson Horne.

20 Francis Cheek.

21 Again, is any member of the jury panel related by
22 blood or marriage or close personal friends with any of
23 those individuals whose names I have just called? If so,
24 please stand.

25 (No response)

1 THE COURT: Has any member of the jury panel been
2 involved as a witness in a criminal trial prosecuted by the
3 Sixteenth Circuit solicitor's office generally, or Deputy
4 Solicitor Anthony or Horton specifically, wherein you were a
5 witness in that case? If so, please stand.

6 (No response)

7 THE COURT: No member of the jury panel -- has any
8 member of the jury panel been a witness in a criminal
9 case -- in Union County, solicitor?

10 MR. ANTHONY: Yes.

11 THE COURT: In Union County? If so, please stand.

12 (No response)

13 THE COURT: Was anybody called to sit on this
14 stand and testify in a trial in Union County in a criminal
15 case? If so, please stand.

16 (No response)

17 MR. BRANNON: Approach, Your Honor?

18 THE COURT: Yes, sir.

19 (Whereupon, the lawyers approached the bench for
20 an off-the-record discussion)

21 THE COURT: All right. Tywana Gray. Ms. Gray,
22 number 49, step down for me, please.

23 (The following was a bench conference in the
24 presence of the jury venire panel, but out of the hearing of
25 the jury venire panel)

1 THE COURT: Good afternoon, Ms. Gray. I just
2 wanted to ask you this question. Do you have some pending
3 charges now?

4 JUROR NUMBER 49: No, sir.

5 THE COURT: You do not?

6 JUROR NUMBER 49: No, sir.

7 THE COURT: All right. Ma'am?

8 JUROR NUMBER 49: Not that I know of.

9 THE COURT: You said number 49?

10 MR. ANTHONY: Yes.

11 THE COURT: Were you charged with a drug charge in
12 '06?

13 JUROR NUMBER 49: Yes, I was. That was thrown
14 out.

15 THE COURT: All right. Thank you. Thank you.
16 You can go back and have a seat.

17 (Juror Number 49 returned to the jury venire
18 panel)

19 THE COURT: Number 114, Mr. McAbee.

20 Mr. McAbee?

21 JUROR NUMBER 114: Yes, sir.

22 THE COURT: Good afternoon. How are you, sir?

23 JUROR NUMBER 114: All right.

24 THE COURT: Have you been in criminal court
25 before?

1 JUROR NUMBER 114: Yes, sir.

2 THE COURT: Have you testified?

3 JUROR NUMBER 114: Yes, sir.

4 THE COURT: When was that?

5 JUROR NUMBER 114: About three months ago.

6 THE COURT: All right. And what type of case was
7 that then?

8 JUROR NUMBER 114: Basically what we are on right
9 now.

10 THE COURT: All right. And who prosecuted it?

11 JUROR NUMBER 114: That guy right there.

12 THE COURT: Mr. Anthony?

13 JUROR NUMBER 114: Yes, sir.

14 THE COURT: All right. Did you hear me ask those
15 questions?

16 JUROR NUMBER 114: Yes, sir. I didn't want -- I
17 tried to forget it and go on in the future.

18 THE COURT: I do know what you mean by going on
19 with the future, but you have to respond to the questions --

20 JUROR NUMBER 114: Yes, sir.

21 THE COURT: -- Mr. McAbee.

22 JUROR NUMBER 114: Yes, sir, I understand.

23 THE COURT: So you didn't respond to my questions
24 to put that behind you and go on with the future?

25 JUROR NUMBER 114: Well, no, sir. I mean, I just

1 try to forget about things in the past and try to live for
2 the future the best way I can.

3 THE COURT: All right. I'm going to set Mr.
4 McAbee aside for the trial of this case.

5 And number 114, you can go back and have a seat.
6 Thank you Mr. McAbee.

7 JUROR NUMBER 114: Thank you.

8 (Juror Number 114 returned to the jury venire
9 panel)

10 THE COURT: Mr. Brannon?

11 MR. BRANNON: Yes, sir.

12 THE COURT: If he doesn't have time to check --
13 Ms. Gray, 49, is that right?

14 MR. ANTHONY: Yes, sir, and all I have got is -- I
15 can just ask my officer to run back there and ask. We
16 just --

17 THE COURT: Thank you.

18 (Whereupon, the bench conferences were concluded)

19 THE COURT: We confirm I have set number 171 aside
20 and number 253, number 114.

21 I do not believe that there were any others that I
22 set aside, is that correct, solicitor?

23 MR. ANTHONY: Yes, sir.

24 THE COURT: Is that correct?

25 MR. BRANNON: Yes, Your Honor.

1 THE COURT: And y'all had any issues besides
2 checking that one administrative matter. Were there any
3 other issues concerning the qualifications of the jury
4 panel, solicitor?

5 MR. ANTHONY: If I could just approach about one
6 thing?

7 THE COURT: All right.

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 THE COURT: All right. Is there any member of the
11 jury panel that knows any reason whatsoever why you feel
12 like you could not be a fair and impartial juror in the case
13 trial of this case to both the State and the defendant? If
14 so, please stand.

15 (No response)

16 THE COURT: Anything further, solicitor?

17 MR. ANTHONY: None, Your Honor. I believe that
18 matter is being checked on.

19 MR. BRANNON: Nothing further.

20 THE COURT: All right. And how long is it going
21 to be checking on that one matter?

22 MR. ANTHONY: I would expect we would have an
23 answer in just any second now.

24 THE COURT: All right. Thank you.

25 (Off the record)

1 (Back on the record)

2 MR. ANTHONY: If we can approach a minute?

3 THE COURT: Yes, sir.

4 (Whereupon, the lawyers approached the bench for
5 an off-the-record discussion)

6 THE COURT: All right. I find the panel is
7 qualified.

8 With that being said, the strikes are ten and
9 five, is that correct?

10 MR. ANTHONY: Yes, sir.

11 THE COURT: Ten and five.

12 Ladies and gentlemen of the jury panel, the clerk
13 will call your name. When he calls your name, they call it
14 randomly, of course, and if you would please come forward
15 all the way up to this microphone up in front of me, turn
16 back around and face out to your peers, back towards the
17 back of the courtroom and the clerk will ask the State what
18 say the State. The State may say present the juror or
19 excuse the juror. If you are excused, the court will
20 instruct you to return to your seat. Please do not be
21 offended if you are excused. The State has five peremptory
22 challenges. Defense has ten.

23 The State says present the juror.

24 It then goes to the defense. The defense will say
25 seat the juror or excuse the juror.

1 If the defense says seat the juror, you will be
2 seated over here to my left and in the jury box. If you are
3 excused, you would return to your seat.

4 Again, please bring all your personal belongings
5 with you, if your name is called.

6 With that being said, Mr. Clerk, if you would give
7 us a jury, please.

8 THE CLERK: Just one more addition. If you are
9 placed in the jury box, this is an old courtroom. Those
10 chairs really recline a lot, so be careful not to lean back
11 too far when you sit down.

12 Number 109, Kathy Littlejohn.

13 THE COURT: If you would come right all the way up
14 here, right there where that microphone is, Ms. Littlejohn,
15 and just turn right back around. Thank you so much, Ms.
16 Littlejohn.

17 THE CLERK: What says the State?

18 MR. ANTHONY: Please present the juror.

19 THE CLERK: Thank you. What says the defense?

20 MR. BRANNON: Please seat the juror.

21 THE CLERK: Number 167, Donna Queen.

22 What says the State?

23 MR. ANTHONY: Please present the juror.

24 THE CLERK: Thank you.

25 What says the defense?

1 MR. BRANNON: Please seat the juror.
2 THE CLERK: Christina Winzenreid, number 287.
3 What says the State?
4 MR. ANTHONY: Please present the juror.
5 THE CLERK: Thank you.
6 What says the defense?
7 MR. BRANNON: Please excuse this juror.
8 THE CLERK: Number 49, Tywana Gray.
9 What says the State?
10 MR. ANTHONY: Please excuse the juror.
11 THE CLERK: Number 257, April Wade.
12 What says the State?
13 MR. ANTHONY: Please present the juror.
14 THE CLERK: Thank you.
15 What says the defense?
16 MR. BRANNON: Please seat the juror.
17 THE CLERK: Thank you.
18 Number 297, Joe Yi.
19 What says the State?
20 MR. ANTHONY: Please present the juror.
21 THE CLERK: Thank you.
22 What says the defense?
23 MR. BRANNON: Please excuse this juror.
24 THE CLERK: You are excused. Just have a seat
25 back with the jury pool.

1 Number 266, Darrell Waters.
2 What says the State?
3 MR. ANTHONY: Please present the juror.
4 THE CLERK: Thank you.
5 What says the defense?
6 MR. BRANNON: Please seat the juror.
7 THE CLERK: Okay.
8 Number 16, William Thomas Calhoun.
9 What says the State?
10 MR. ANTHONY: Please present the juror.
11 THE CLERK: Thank you.
12 What says the defense?
13 MR. BRANNON: Please seat the juror.
14 THE CLERK: Number 136, Kathy Norris.
15 What says the State?
16 MR. ANTHONY: Please present the juror.
17 THE CLERK: Thank you.
18 What says the defense?
19 MR. BRANNON: Please seat this juror.
20 THE CLERK: Thank you.
21 Number 243, Roosevelt Tucker.
22 What says the State?
23 MR. ANTHONY: Please excuse the juror.
24 THE CLERK: Thank you.
25 Number 13, Donald Burgess.

1 What says the State?

2 MR. ANTHONY: Please present the juror.

3 THE CLERK: Thank you.

4 What says the defense?

5 MR. BRANNON: Please seat the juror.

6 THE CLERK: Number 290, Timothy Woodall.

7 What says the State?

8 MR. ANTHONY: Please present the juror.

9 THE CLERK: Thank you.

10 What says the defense?

11 MR. BRANNON: Please excuse this juror.

12 THE CLERK: Thank you.

13 Number 210, Reginald Smith.

14 What says the State?

15 MR. ANTHONY: Please excuse the juror.

16 THE CLERK: Thank you.

17 Number 216, Alice Sorrells.

18 What says the State?

19 MR. ANTHONY: Please present the juror.

20 THE CLERK: Thank you.

21 What says the defense?

22 MR. BRANNON: Please excuse this juror.

23 THE CLERK: Number 48, Stephanie Goings.

24 What says the State?

25 MR. ANTHONY: Please present the juror.

1 MR. BRANNON: What did he say?
2 MR. ANTHONY: Please present the juror.
3 THE CLERK: What says the defense?
4 MR. BRANNON: Please excuse this juror.
5 THE CLERK: Number 248, Kathy Tweed.
6 What says the State?
7 MR. ANTHONY: Please present the juror.
8 THE CLERK: Thank you.
9 What says the defense?
10 MR. BRANNON: Please seat the juror.
11 THE CLERK: Number 2, Sheri Bayne.
12 What says the State?
13 MR. ANTHONY: Please present the juror.
14 THE CLERK: Thank you.
15 What says the defense?
16 MR. BRANNON: Please excuse this juror.
17 THE CLERK: Thank you.
18 Number 275, Gerald White.
19 What says the State?
20 MR. ANTHONY: Please present the juror.
21 THE CLERK: Thank you.
22 What says the defense?
23 MR. BRANNON: Please seat the juror.
24 THE CLERK: Thank you.
25 Number 96, Brian Knox.

1 What says the State?
2 MR. ANTHONY: Please present the juror.
3 THE CLERK: Thank you.
4 What says the defense?
5 MR. BRANNON: Please excuse the juror.
6 THE CLERK: Number 153, Donald Perkins.
7 What says the State?
8 MR. ANTHONY: Please present the juror.
9 THE CLERK: Thank you.
10 What says the defense?
11 MR. BRANNON: Please seat the juror.
12 THE CLERK: Thank you.
13 Number 121, Judson Meador.
14 What says the State?
15 MR. ANTHONY: Please present the juror.
16 THE CLERK: Thank you.
17 What says the defense?
18 MR. BRANNON: Please excuse the juror.
19 THE CLERK: Number 156, Elaine Pettit.
20 What says the State?
21 MR. ANTHONY: Please present the juror.
22 THE CLERK: What says defense?
23 MR. BRANNON: Seat the juror, please.
24 THE CLERK: Thank you.
25 Number 50, Augustus Greer.

1 What says the State?

2 MR. ANTHONY: Please present the juror.

3 THE CLERK: Thank you.

4 What says the defense?

5 MR. BRANNON: Excuse the juror.

6 THE CLERK: Number 117, Crissy McKinney.

7 What says the State?

8 MR. ANTHONY: Please present the juror.

9 THE CLERK: Thank you.

10 What says the defense?

11 MR. BRANNON: Excuse the juror.

12 THE CLERK: Number 158, Pamela Phipps.

13 What says the State?

14 MR. ANTHONY: Please present the juror.

15 THE CLERK: Thank you.

16 What says the defense?

17 MR. BRANNON: Seat the juror.

18 THE COURT: Thank you.

19 THE COURT: All right. Give us two alternates.

20 Strikes are two and one.

21 THE CLERK: Number 220, Robert Sprouse.

22 What says the State?

23 MR. ANTHONY: Please present the juror.

24 THE CLERK: Thank you.

25 What says the defense?

1 MR. BRANNON: Excuse the juror.

2 THE CLERK: Number 88, Susan Justice.

3 What says the State?

4 MR. ANTHONY: Please present the juror.

5 THE CLERK: Thank you.

6 What says defense?

7 MR. BRANNON: Excuse the juror.

8 THE CLERK: Number 119, Jeffrey McNease.

9 What says the State?

10 MR. ANTHONY: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. BRANNON: Seat the juror.

13 THE CLERK: Number 278, Tiffany Whitehead.

14 What says the State?

15 MR. ANTHONY: Please present the juror.

16 THE CLERK: Thank you.

17 What says defense?

18 MR. BRANNON: Seat the juror.

19 THE COURT: All right. Any motions regarding the
20 jury selection process, from the State?

21 MR. ANTHONY: No, Your Honor, not from the State.

22 THE COURT: From the defense?

23 MR. BRANNON: Yes, Your Honor. I ask that a
24 motion be taken up outside the presence of the jury.

25 THE COURT: All right.

1 Ladies and gentlemen of the jury panel, if you
2 would please go with your bailiff. Do not discuss the case
3 amongst yourself during this brief recess.

4 (The following takes place outside the presence of
5 the jury panel)

6 THE COURT: All right. Ladies and gentlemen of
7 the jury panel that were not selected for the trial of this
8 case, I have a motion that I must take up outside of your
9 presence. That would require you to leave the courtroom
10 during that period of time. I would give you a 15 minute
11 recess and ask you to please remain outside of the courtroom
12 during that 15 minute recess and return promptly. Thank you
13 very much. You are now excused for 15 minutes.

14 (The following takes place outside the presence of
15 the jury venire panel)

16 THE COURT: All right, Mr. Brannon?

17 MR. BRANNON: Your Honor, I would move to set
18 aside this jury and allow us to draw another one.

19 Your Honor, throughout the process of selecting
20 this jury, there were four African Americans selected and
21 the State struck three of those. This jury does not
22 represent a cross-section of the Union County population.
23 Mr. Pearson is entitled to a trial by a jury of his peers.
24 Your Honor, I mean, if it -- it became clear, to me anyways,
25 that the African Americans are going to be stricken. Your

1 Honor, I would ask that this jury be set aside and another
2 one be selected.

3 THE COURT: All right. And specifically what
4 numbers are you referring to?

5 MR. BRANNON: Your Honor, well -- thank you, Your
6 Honor.

7 The first juror struck by the State was juror
8 number 49, that being a black female.

9 I would also point out to the court, Your Honor,
10 that is the potential juror that the State called to --
11 asked the judge to call to the front of the courtroom
12 because they had indicated she had pending criminal charges.

13 The second one struck was number 243, that being
14 the black male.

15 And 210 was struck by the State, as a black male.

16 THE COURT: Thank you, Mr. Brannon.

17 Solicitor?

18 MR. ANTHONY: Yes, Your Honor.

19 Number 49, Ms. Gray, aside from the charges that
20 we learned had been dismissed has a criminal record. She
21 has a 2006 conviction for fighting; a 1998 conviction for
22 assault and battery; a 1998 conviction for malicious damage
23 to property; a 1998 conviction for underage in possession;
24 and a 1997 conviction for assault and battery. And the
25 State struck her because of her criminal history.

1 The next strike was number -- the next strikes was
2 number 243. Mr. Tucker, number 243, has a 1987 conviction
3 for prostitution. And had he had a conviction for pretty
4 much anything else that was over 20 years old, we would have
5 probably seated him on the jury, but the State did not
6 believe, given the nature of this charge, that someone with
7 a prostitution conviction, regardless of age, needed to be
8 serving on a criminal sexual conduct jury.

9 The next strike was number 210, Mr. Smith. And
10 Mr. Smith has convictions from 2005, to public disorderly
11 conduct; 2003, for operating an uninsured motor vehicle,
12 DUS, and no vehicular license. He has a conviction in 2001
13 for simple assault and battery. Conviction in 1991 for
14 first offense DUI. And he had a 1985 conviction for driving
15 under the influence. And that was the reason for the strike
16 on number 210, Mr. Smith.

17 THE COURT: All right, solicitor, would you please
18 make the criminal history of Ms. Gray, Mr. Tucker and Mr.
19 Smith Court's Exhibits, copies of those?

20 MR. BRANNON: Your Honor, may I make an additional
21 request?

22 THE COURT: Yes, sir. Just give him one moment.

23 (Criminal Record for Tywana Gray marked as
24 Court's Exhibit No. 1 for identification)

25 (Criminal Record for Reginald Lewis Smith marked

1 as Court's Exhibit No. 2 for identification)

2 (Criminal Record for Roosevelt Tucker, Jr., marked
3 as Court's Exhibit No. 3 for identification)

4 THE COURT: Anything further, solicitor?

5 MR. ANTHONY: No, sir.

6 THE COURT: All right. Thank you.

7 Yes, sir, Mr. Brannon.

8 MR. BRANNON: Your Honor, I would ask that if any
9 of the members of the jury pool that were seated on this
10 jury have criminal records, that those rap sheets also be
11 made a portion of this court's record.

12 THE COURT: All right. Solicitor, are there any
13 members of the jury panel that were not struck by the State
14 that were seated on the jury that have criminal records?

15 MR. ANTHONY: No, sir. There is no one on the
16 jury who -- there is no one on the jury that has a criminal
17 record.

18 THE COURT: All right.

19 MR. BRANNON: Your Honor, I need to -- forgive me.
20 I left -- I would like to know those that were seated, as
21 well as those that were presented by the State to me that I
22 may have instruct.

23 THE COURT: Now, the question is are there any
24 members that were drawn?

25 MR. BRANNON: Any members that were drawn. And

1 when the clerk asked the State, they said present the juror,
2 and then I later struck them.

3 THE COURT: All right. Solicitor?

4 MR. ANTHONY: Yes, there were two of those.

5 THE COURT: All right.

6 MR. ANTHONY: There is juror number 50, Mr. Greer,
7 and I would pull his NCIC.

8 And then there is juror number 117, Ms. Williams.

9 As to Mr. Greer, he had a 1988 conviction for
10 altering electric current, and a 1985 conviction for DUI.

11 As to Ms. -- as to juror number 117, Ms. Williams,
12 she had a 1997 conviction for trespass.

13 And the State sat those two witnesses as opposed
14 to the three we struck, because in the case of Mr. Greer,
15 his convictions -- his most current conviction is 20 years
16 old. And unlike Mr. Tucker's, it's not such a crime of
17 nature which causes us any concerns about his service.

18 And as to Ms. McKinney, she only had one
19 conviction, which compared to Ms. Gray and Ms. Smith, she
20 is -- or Mr. Smith, number 49 and number 210, she is greatly
21 differentiated from them, because they both had lengthy
22 criminal histories.

23 THE COURT: And that's Ms. -- that's number 117,
24 Ms. McKinney, who is now Ms. Williams? Is that my
25 understanding?

1 MR. ANTHONY: Yes, sir.

2 THE COURT: All right.

3 Anything further, Mr. Brannon?

4 MR. BRANNON: Yes, sir, just a point of
5 clarification, Your Honor. There were five potential jurors
6 called that had prior criminal histories. Three of them
7 were struck by the State. All three of them were struck
8 were black. Thank you, Your Honor.

9 THE COURT: All right. And do you have any other
10 argument concerning the Batson issue, Mr. Brannon?

11 MR. BRANNON: No, Your Honor.

12 THE COURT: Okay. All right. I would also point
13 out that the first juror selected, number 109, was Ms.
14 Littlejohn, a member of the African American race that was
15 not struck by the State nor by defense.

16 It was also number 297, Mr. Yi, the only Asian
17 American that was not struck by the State, but was struck by
18 the defense.

19 I would find that the solicitor's explanation for
20 striking 49, 243 and 210 is race neutral and not a mere
21 pretext. Looking at the totality of the circumstances, and
22 even comparing that back to number 50, Mr. Greer and number
23 117 Ms. McKinney, who were members of the Caucasian race,
24 according to my notes, as the solicitor pointed out, Mr.
25 Greer's conviction was about 20 years old. One was 23 years

1 old for diverting electrical current and DUI.

2 Although at first blush I may put him somewhat
3 aligned with Mr. Tucker, number 243. I think in the case
4 such as this, with what the defendant is charged with, that
5 I would find that it's not pretextual to strike any juror to
6 had a prior criminal history for the crime of prostitution.
7 That's my understanding of what that crime was, solicitor?

8 MR. ANTHONY: Yes, sir.

9 THE COURT: And as to Ms. McKinney Williams,
10 number 117, she had a 10 or 11 year old one trespassing
11 conviction.

12 If you compare the number of charges as to number
13 210, Mr. Smith, and number 49, Ms. Gray, it appears Mr.
14 Smith, by my notes, has one, two, three, four, five, six
15 prior criminal convictions; and Ms. Gray has one, two,
16 three, four, five prior criminal convictions. And, of
17 course, those are all being made part of the record.

18 So I would find that the opponent of the strike
19 has failed to carry its burden persuading the court that the
20 solicitor exercised his strikes in a discriminatory manner.

21 Any other motions concerning the jury selection
22 process, Mr. Brannon?

23 MR. BRANNON: None, Your Honor. Thank you.

24 THE COURT: Solicitor?

25 MR. ANTHONY: No, sir.

1 THE COURT: All right. When this panel comes back
2 in, we will release them to call back. I take it -- when
3 would you have them call back, solicitor?

4 MR. ANTHONY: I think the best thing to do is
5 probably call back this evening.

6 THE COURT: This evening?

7 MR. ANTHONY: Yes, sir.

8 THE COURT: Okay. And y'all will generally have
9 them call back after 1800 hours?

10 THE CLERK: Usually after seven.

11 THE COURT: After 1900 hours?

12 THE CLERK: Yes, sir.

13 THE COURT: All right. And then bring this -- let
14 this panel go on to lunch after I release them, release the
15 main panel.

16 All right. Open the flood gates.

17 (Criminal Record for Chrissy McKinney marked as
18 Court's Exhibit No. 4 for identification)

19 (Criminal Record for Augustus Greer marked as
20 Court's Exhibit No. 5 for identification)

21 (The following takes place in the presence of the
22 jury venire panel)

23 THE COURT: All right. Thank you very much,
24 ladies and gentlemen of the jury panel, for your patience
25 and attention this morning. Momentarily I'm going to

1 release you from your jury service for the remainder of the
2 day.

3 I would advise you if you would please call your
4 juror information number in your brochure after seven p.m.
5 tonight, after 1900 hours tonight. You would be known as
6 the balance of the panel.

7 Is that correct, Mr. Clerk?

8 THE CLERK: That's right.

9 THE COURT: Is that you how label them? Balance
10 of the panel, and it will prompt you concerning your jury
11 service for the remainder of the week.

12 Call after seven p.m. tonight, after 1900 hours
13 tonight, the jury number on your brochure to get information
14 concerning your jury service for the remainder of the week.

15 I would advise you that you are excused for the
16 remainder of the afternoon and evening, and it's been my
17 pleasure to be with you this morning, and I hope that you
18 have a pleasant afternoon and evening. With that you are
19 now excused.

20 (Whereupon, the jury venire panel left the
21 courtroom)

22 THE COURT: All right. Anything before we bring
23 in our jury, solicitor?

24 MR. ANTHONY: No, sir.

25 THE COURT: Mr. Brannon?

1 MR. BRANNON: No, Your Honor.

2 THE COURT: All right. Please bring our jury
3 please.

4 (The following takes place in the presence of the
5 jury panel)

6 THE COURT: All right. Ladies and gentlemen of
7 the jury panel, you have now been selected as the trial jury
8 in the trial of this case of the State versus Luther
9 Pearson.

10 Given the hour, momentarily I'm going to release
11 you for your luncheon recess. Several things that I'll need
12 to tell you, and you will be able to tell this back to me
13 before the trial is through, I'm sure. I'll remind you that
14 during this recess or break, whether it's for lunch or break
15 in the morning or afternoon, you are not to discuss the case
16 with anyone. That includes your fellow jurors, your lunch
17 mates, your friends, family, or people involved in the
18 trial, or anyone else. If anyone tries to talk with you
19 about the case, please let me know immediately.

20 I would have no idea if there is any media
21 coverage of this particular trial, but I would remind you do
22 not read, watch, listen to any news report about this trial.
23 Do not do any independent investigation on your own or on
24 the Internet. Remember to keep an open mind about the case
25 until I instruct you to begin your deliberations.

1 Now, when you return I will give you your first
2 assignment as a jury. I would ask -- I need to keep up with
3 three people on the jury. Everyone else can sit wherever
4 they want. I need to keep up with our two alternates over
5 here to my far left. They can always -- whichever chair
6 they get comfortable in, they can take whichever one they
7 want.

8 And then I need to keep up with the foreperson of
9 the jury. And the foreperson would sit where this young
10 lady is sitting closest to the court right now.

11 I would ask the jury upon your return from lunch
12 to select among the members of the twelve primary jurors a
13 foreperson.

14 The foreperson is the spokesperson for the jury in
15 the courtroom. The foreperson is also responsible for
16 writing and signing the verdict. Of course, I will give you
17 more instructions about that later on in the trial.

18 Our two alternates would not be authorized to
19 serve as the foreperson of the jury, although I'm sure
20 either one of them would do a fine job. Their status right
21 now is as alternate jurors. They can, of course, be
22 involved in the selection process, and probably much more
23 relaxed being an alternate than not having to sit, but
24 choose among yourself someone to serve as the foreperson of
25 this jury. Any one of the twelve would be fine selection.

1 With that being said, you are now excused.

2 2:30, solicitor?

3 THE COURT: Mr. Brannon.

4 MR. BRANNON: That's fine, Your Honor.

5 MR. ANTHONY: That's fine with us.

6 THE COURT: All right. I'm now going to excuse
7 you for your luncheon recess with those instructions and ask
8 you to please be back in your new temporary home, your jury
9 room, promptly at 2:30. As soon as you have selected a
10 foreperson, write that name out, knock on the door, give it
11 to our fine bailiff, and he will let us know and we will
12 receive you in the courtroom. Thank you very much and have
13 a pleasant lunch.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: All right. Just a couple of things
17 before we get started. I always have this theory. I
18 figured it out after my children were up and raised. I
19 wished I had figured it out while I was raising them, that I
20 don't like to fuss at people for breaking rules unless I
21 tell them what the rules are. I don't particularly like
22 bench conferences. That doesn't mean that it's absolute
23 never have one. Something can be done quickly, if it's an
24 administrative type matter, I found very little gets on the
25 record from bench conferences, number one.

1 Number two, if you object, you stand, state your
2 objection by rule or by one word, that's fine. I don't like
3 speaking objections. I think there is two parts to a trial.
4 There is presentation of evidence and there is arguments. I
5 think fine attorneys, like yourself, don't step over those
6 lines, but sometime in making objections, some attorneys
7 will argue. And I'm not saying that's an intentional thing,
8 but the arguments get in front of the jury. So if it goes
9 completely over my head, I'll just have the jury step out if
10 I don't think that I know what you are talking about. But
11 if you can do it by way of hearsay, or what have you, I'll
12 just rule on it and we move on.

13 If at any time an issue comes up and you think we
14 need to have a hearing outside the presence of the jury,
15 please tell me. We will send the jury out. I don't
16 consider trials to be judicial marathons. I have tried
17 those in my time when I was a much younger man and they wore
18 me out then. Everybody will have plenty of enough time to
19 try their case.

20 The only other issue I have is the issue y'all
21 brought up in-camera concerning an evidentiary matter,
22 basically a motion in limine concerning the statement to Dr.
23 Patrick?

24 MR. BRANNON: Yes, Your Honor.

25 THE COURT: Do y'all have -- are y'all going to

1 proffer testimony? When will that witness come up,
2 solicitor? When would I need to rule on that?

3 MR. ANTHONY: Well, my understanding from what we
4 were saying in chambers, he wants to ask the victim about it
5 when she testifies. The victim will be our first witness.

6 THE COURT: All right. Well, if she's your first
7 witness, do y'all have any cases that you want me to look at
8 concerning that matter, or --

9 MR. ANTHONY: I don't right now, Your Honor.

10 THE COURT: It's very difficult -- it's very
11 difficult to rule on an evidentiary issue when I haven't
12 heard the actual testimony.

13 MR. BRANNON: Your Honor, forgive me, but the
14 victim is in the courtroom, and I don't -- I don't know if
15 we should make this argument in front of the victim.

16 THE COURT: Well, there is always that balance
17 between the Victim's Bill of Rights and her presence in the
18 courtroom. You know, I think victims and family members
19 have a right under our statutes to be present. I have no
20 objections to her stepping out, if the solicitor has no
21 objections. We haven't talked about it substantively,
22 but --

23 MR. ANTHONY: I don't see any real reason why she
24 can't stay in here, Your Honor.

25 THE COURT: Okay. You know, I try to be very

1 sensitive to the Victim's Bill of Rights and what rights he
2 or she may have, as far as being allowed to remain in the
3 courtroom.

4 MR. BRANNON: Your Honor, I respect -- Your Honor,
5 I respect that Bill of Rights as well. However, I assume
6 that when we break for lunch, you are going to tell anybody,
7 you know, don't talk -- don't discuss your testimony or
8 anything like that. You know, if we make this argument
9 right now, there is going to be an hour to an hour and a
10 half to digest what the argument was and then come in and
11 testify.

12 THE COURT: Well, I'm not going to tell anybody
13 not to discuss their testimony until they get up here on the
14 witness stand to get sworn in, number one.

15 Number two, if you don't want me to hear it, now,
16 that's fine. I don't mind not hearing it. I'm saying if
17 y'all want me -- I'll just wait on the objections. I mean,
18 that's all I'm saying. All right?

19 Anything further?

20 MR. ANTHONY: No, sir. Would the court rather us
21 deal with this when she testifies?

22 THE COURT: Sir?

23 MR. ANTHONY: Is the court saying that you would
24 rather us just deal with this issue when she testifies? I
25 mean, we would like -- if he's going to go into her school

1 records and going to ask her a question about her prior
2 sexual history, the State would just like to have a ruling
3 on whether those questions are admissible outside the
4 presence of the jury.

5 THE COURT: All right.

6 MR. BRANNON: Your Honor, I would be glad to go
7 into it.

8 As far as her school records go, Your Honor, she
9 has a number of disciplinary assessments, if you will;
10 excessive tardies, excessive tardies, bus offense, fighting,
11 disruption, rude, failure to follow instructions,
12 uncooperative, excessive tardies.

13 Your Honor, it's about 15 pages of disciplinary
14 actions at the Union County High School. Your Honor, I
15 believe that it shows a willful disregard for authority,
16 and, Your Honor, that goes to our defense in this case.

17 I certainly don't intend to beat her over the head
18 with her school records, but I would like, and I do believe
19 that I have the opportunity -- that I should have the
20 opportunity to question her about these violations of school
21 rules for which she has been suspended, had in-school
22 suspension and any number of other types of in-school
23 punishment, Your Honor. I believe, Your Honor, that they
24 are significantly probative, inasmuch as they support our
25 defense in this case.

1 THE COURT: Tell me what rule, Mr. Brannon, those
2 would be admissible under. What rule are you proceeding
3 under?

4 MR. BRANNON: Your Honor, it would go to her
5 credibility as a witness. And, again, Your Honor, I'll tell
6 you the rule in a second.

7 Your Honor, I'm looking at Rule 609 -- and
8 these -- it's actually Rule 608, evidence of character,
9 conduct, and bias of a witness, Your Honor. Evidence of
10 truthful character is admissible and character witness
11 truthfulness. Specific instances of conduct.

12 THE COURT: But, you know, a man or a woman can be
13 violent, that doesn't mean they are untruthful. I mean
14 that's the whole issue on Rule 608. That's the -- that's
15 the whole issue is how -- that's the whole issue of 609,
16 too, if you are dealing with crime, which I know that you
17 are not.

18 MR. BRANNON: I'm not.

19 THE COURT: I understand that, but the whole issue
20 is does it go to her credibility or believability as a
21 witness. You are saying someone is a disciplinary problem
22 in school, or in any institution in which a person may have
23 to follow rules and regulations, does not go into that
24 person's truthfulness or untruthfulness, in my
25 understanding, though, of what you are saying.

1 MR. BRANNON: Your Honor, I -- apparently I'm not
2 painting the right picture.

3 Your Honor, one of our defenses in this matter is
4 that there -- I'll stop.

5 THE COURT: All right. Now, that's stopped on the
6 school records. You had another issue also, Mr. Brannon.

7 MR. BRANNON: Your Honor, the other issue was as
8 to a question that she was asked by Dr. Patrick in the
9 emergency room. My only desire, my only -- the only
10 question that I would intend to ask the victim is how did
11 she initially respond to that question. That's the only
12 question that I intend to ask her.

13 THE COURT: All right, solicitor?

14 MR. ANTHONY: Well, that question is not relevant.
15 I mean, I assume the question is something about her is
16 sexually active. I assume that's the question that he's
17 referring to.

18 MR. BRANNON: Yes.

19 MR. ANTHONY: Okay. Well, that question is not
20 relevant. Her response would not be relevant.

21 THE COURT: What are you offering that question
22 for, Mr. Brannon?

23 MR. BRANNON: Credibility, Your Honor. And I
24 can -- I can try to explain to you the circumstances
25 surrounding the question.

1 THE COURT: All right, sir.

2 MR. BRANNON: The doctor asked the alleged victim
3 if she was sexually active. The victim evaded or failed to
4 answer the question or denied sexual activity until someone
5 was made to leave the room or move in a position where the
6 victim couldn't make eye contact. The doctor then asked the
7 question again and said "I'm a doctor. I know what I'm
8 asking. I know why I'm asking it. Now answer the question
9 truthfully." And after that the doctor -- the doctor did
10 get the answer that she already knew the answer to.

11 My question is, "ma'am, when the doctor initially
12 asked you if you were sexually active, how did you respond?"

13 THE COURT: Solicitor?

14 MR. ANTHONY: Once again, this is just not a
15 relevant question. How she responded to that question is
16 not relevant.

17 THE COURT: Well, why -- and, you know, I tried to
18 look at some of these cases. State v. Lange, 403 S.E. 2d
19 677; State v. Grogenstein, 530 S.E. 2d 408.

20 The one I referred to in chambers is State v.
21 Schmidt, S-C-H-M-I-D-T, although it doesn't -- it doesn't
22 refer to the Rape Shield Statute, it does refer to the
23 vendetta evidence. It's kind of a -- I hate to use this
24 term, but it's kind of a first cousin, I guess, to the Rape
25 Shield Statute.

1 You cannot use rape shield evidence, as I
2 understand it, for certain purposes by statute. However, if
3 y'all look at those cases, I think you can use evidence if
4 it goes to credibility. That's kind of the issue. I didn't
5 get a chance to look at all these cases while I was sitting
6 up here, but that's kind of the issue I'm looking at.

7 Look at those cases, solicitor, if you get an
8 opportunity, and --

9 MR. ANTHONY: Can you give me the cite on the
10 Schmidt?

11 THE COURT: Schmidt? I'll try. Try 342 S.E. 2d
12 401. I believe that's the --

13 MR. BRANNON: 401, Your Honor?

14 THE COURT: Yes, sir.

15 MR. BRANNON: Thank you.

16 THE COURT: All right. Anything further?

17 MR. ANTHONY: No, sir, not from the State at this
18 time.

19 THE COURT: Mr. Brannon?

20 MR. BRANNON: Well, yes, sir. There was that
21 search issue as to the DNA. Now, Your Honor, that may have
22 been cleared up, but I have never seen the Schmerber order,
23 so that may have rectified itself.

24 MR. ANTHONY: I have a copy of it. It's in the
25 clerk of court's file. I'll be happy --

1 THE COURT: Can you get him a copy, solicitor?

2 MR. ANTHONY: Yes, sir.

3 MR. BRANNON: All right. And if I have anything
4 further after reviewing that order, I'll bring it to the
5 court's attention.

6 THE COURT: Thank you, Mr. Brannon.

7 Court will be in recess until 2:30.

8 (Whereupon, proceedings were recessed)

9 (Whereupon, proceedings were reconvened)

10 (T-Shirt marked as State's Exhibit No. 1 for
11 identification)

12 (Clothing Evidence marked as State's Exhibit No. 2
13 for identification)

14 (Pajama Bottoms marked as State's Exhibit No. 3
15 for identification)

16 (Clothing Evidence marked as State's Exhibit No. 4
17 for identification)

18 THE COURT: Mr. Brannon, Mr. Pearson has not been
19 arraigned?

20 MR. BRANNON: Yes, Your Honor. There is actually
21 two kind of clerical things that we need to clean up. That
22 would be one of them.

23 Your Honor, I was appointed to represent Mr.
24 Pearson about a month and a half ago, two months ago, and I
25 was appointed to represent him on a CSC first. I was not

1 appointed to represent him on either CSC with a minor or a
2 lewd act. He actually has an attorney, Mr. Albert Smith,
3 who is still shown in the court records as being his
4 attorney of record as those two charges. It's my
5 understanding that Mr. Pearson has released Mr. Smith, and,
6 in fact, I think did so in court on the record. I'm only
7 asking that I be appointed on the two charges the State
8 intends to go forward so that I can get paid.

9 THE COURT: All right. I would so appoint you on
10 2007-GS-44-416 and 2007-GS-44-417.

11 MR. BRANNON: Thank you, Your Honor.

12 The second thing is when my client -- it goes back
13 to what the court initially pointed out. When me client was
14 arrested, he was charged with criminal sexual conduct in the
15 first degree. Your Honor, he was never re-arrested and
16 charged with the CSC with a minor or the lewd act. I
17 believe the only time that he's ever made an appearance in
18 reference to any bond or any type of arraignment possibility
19 would have been at his initial arrest, so I believe that he
20 would have to be arraigned today on the CSC with a minor and
21 the lewd act, Your Honor.

22 THE COURT: All right. Mr. Clerk, can you
23 accomplish that for me?

24 THE CLERK: Yes, sir.

25 MR. BRANNON: Would you like us to approach the

1 bar?

2 THE CLERK: Yes, sir.

3 Mr. Luther Pearson, defendant at the bar, if you
4 answer to the name of Luther Pearson, raise your right hand,
5 please.

6 All right. You stand indicted in this court for
7 the crime of criminal sexual conduct with a minor, second
8 degree, in that this indictment alleges that you did on or
9 about the February 28th, 2005, the defendant Luther Pearson
10 did willfully and unlawfully commit the crime of criminal
11 sexual conduct with a minor in the second degree, in that
12 the defendant Luther B. Pearson did engage in a sexual
13 battery with a minor. The minor victim at the time of the
14 incident was at least 14 years of age, but who was less than
15 16 years of age, to-wit: The defendant Luther Bradford
16 Pearson, date of birth, did commit the
17 sexual battery of sexual intercourse upon and with the minor
18 victim, Minor [REDACTED] date of birth a
19 minor who was 14 years old at the time of the incident.
20 Said defendant was older than said victim at the time of
21 said incident. Said incident occurred within Union County,
22 South Carolina, all in violation of Section 16-3-655(3) of
23 the Code of Laws of South Carolina, 1976, as amended.

24 Also the crime of lewd act upon a child, in that
25 this indictment alleges that on or about February 28th,

1 2005, the defendant, Luther B. Pearson, did commit the crime
2 of lewd act upon the child, in that the defendant, Luther B.
3 Pearson, who was over the age of 14 years old at the time of
4 the incident did willfully and lewdly commit or attempt to
5 commit a lewd or lascivious act upon or with the body, or
6 any part or member thereof, of the victim, Minor [REDACTED] a
7 child under the age of 16 years at the time of the incident
8 with the intent of arousing, appealing to, or gratifying the
9 lust or passions or sexual desires of the defendant, Luther
10 B. Pearson, or of the child, Minor [REDACTED] in that the
11 defendant, Luther Pearson, date of birth
12 did rub and/or touch and/or fondle the breasts and/or the
13 genital vaginal area and/or the buttocks of the minor
14 victim, Minor [REDACTED] date the birth
15 Said incident occurred in Union County, South Carolina, all
16 in violation of the Section 16-15-140, Code of Laws of South
17 Carolina, 1976, as amended.

18 To this indictment how do you plead, guilty or not
19 guilty?

20 THE DEFENDANT: Not guilty.

21 THE CLERK: How will you be tried?

22 THE DEFENDANT: By trial. Jury trial.

23 THE CLERK: May God give you a good deliverance.

24 Are you ready for trial?

25 THE DEFENDANT: Yes, sir.

1 MR. BRANNON: Thank you, sir.

2 Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Clerk.

4 Anything further before we bring the jury out?

5 MR. BRANNON: I'm sorry?

6 MR. ANTHONY: Your Honor, we would just like to be
7 heard a little bit further on what we were talking about
8 before we broke for lunch.

9 THE COURT: All right. You are talking about the
10 statement to Dr. Patrick?

11 MR. ANTHONY: Yes, sir.

12 THE COURT: All right.

13 MR. ANTHONY: As far as the theory that this would
14 come in under, the only rule I could find that might be used
15 to justify this would be Rule 608.

16 I think if you analyze what he apparently wants to
17 ask, he wants to ask the witness "did you tell the doctor
18 that you were sexually active?" And if her answer to that,
19 the witness answer to that is "yes, I told the doctor I was
20 sexually active," the State's argument to that is that just
21 completely shatters what the Rape Shield Law is for, because
22 the Rape Shield Law is designed to make sure that these CSC
23 trials are tried on the facts of that particular incident,
24 and that the victim's sexual history is not something the
25 jury is allowed to find out.

1 If the victim's answer to that question is "no, I
2 didn't tell the doctor I was sexually active," then I'm
3 assuming what the defense is going to do at that point is
4 prove other extrinsic evidence that she did deny that she
5 was sexually active. And I think under 608 that that would
6 not be permissible, because 608 (b) specifically says that
7 you can't prove through extrinsic evidence specific
8 instances of the conduct of a witness to attack the witness'
9 credibility. This is a collateral matter. It's not
10 something that's tied in with this case at all. It's about
11 something completely different from this case.

12 So if she says "well, no, I didn't say that I was
13 sexually active," under 609 (b) he wouldn't be allowed even
14 in that circumstance to ask a doctor "well, didn't she
15 indicate she was sexually active?"

16 So essentially what they are trying to do is
17 basically just -- it's just irrelevant, Your Honor. It
18 doesn't have anything to do with this incident and it
19 essentially is -- it's just going to gut the whole idea
20 behind the rape shield law. The idea behind the rape shield
21 law is a victim's sexual history isn't supposed to be an
22 issue in a case. And the fact that a doctor asked her about
23 it, that doesn't by itself make it an issue.

24 And one other thing I would point out, Rule 609 --
25 or Rule 608 says that instances of untruthfulness can be

1 inquired into on cross-examination of the witness, but the
2 rule doesn't make it discretionary with the court. And our
3 argument would be that since you have this statute where the
4 legislature has said that these issues are not supposed to
5 be gone into at a trial, we would argue that the proper
6 exercise in the court's discretion in this circumstance
7 would be to exclude that question, because it just
8 doesn't -- it just doesn't take us anywhere. It doesn't
9 take us anywhere that the rule allows the defense to go.

10 THE COURT: Thank you, solicitor.

11 Mr. Brannon?

12 MR. BRANNON: I'll make it real short and sweet,
13 Your Honor.

14 First off, the question asked by Dr. Patrick of
15 the victim was asked during the test being done for the
16 sexual assault kit.

17 The question that I intended to ask the victim,
18 Your Honor, was based on the timing of the question when
19 asked of the doctor, and it goes directly to her character
20 and her propensity to tell the truth or not. However, I'm
21 going to make it real easy. I'm not going to ask the
22 question.

23 THE COURT: Thank you. All right, well, that
24 resolves that issue, solicitor.

25 Anything further, Mr. Brannon, before we bring in

1 the jury?

2 MR. BRANNON: Your Honor, only for the record I
3 would renew my objection to the makeup of the jury.

4 With that, Your Honor, I'm ready to go.

5 THE COURT: All right. And I would renew my
6 pretrial ruling.

7 Anything further, solicitor?

8 MR. ANTHONY: I have provided Mr. Brannon a copy
9 of a juvenile history for the victim.

10 MR. BRANNON: Yes.

11 MR. ANTHONY: And I would just -- we would just
12 have, along the lines of our motions this morning, inquire
13 if he has any intention of asking her anything about
14 anything on that juvenile history?

15 MR. BRANNON: Well, Your Honor, there was only one
16 instance of what I would call moral turpitude, and that case
17 was dismissed. So, no, Your Honor, I don't think there was
18 anything other that I could bring before the jury.

19 THE COURT: All right. Thank you, Mr. Brannon.

20 MR. BRANNON: Your Honor, I still think I have
21 got -- I have been told twice now that I was going to get a
22 copy of the Schmerber order.

23 MR. ANTHONY: I have it right here.

24 MR. BRANNON: Okay.

25 MR. ANTHONY: So I need to make a copy -- have a

1 copy made for you, but I have a -- I have it right here. If
2 I can just have somebody -- could you maybe just run back
3 there?

4 THE CLERK: Just one copy?

5 MR. ANTHONY: Yeah.

6 MR. BRANNON: Your Honor, forgive me. I really
7 think that that issue, even though there is a Schmerber
8 order, needs a little more -- a little more inquiry, if the
9 court is ready.

10 THE COURT: Yes, sir.

11 MR. BRANNON: All right. Your Honor, on or about
12 July 28th, 2005, the State secured a search warrant for the
13 person of Luther Pearson, and that was for the purpose of
14 drawing his blood.

15 On August the 1st of 2005, two vials of blood were
16 withdrawn from the person of Luther Pearson. That blood was
17 sent to SLED for analysis. And, Your Honor, we have the
18 SLED evidence inventory sheet. It's dated 8-5-2005.

19 We then have -- we have got the chain
20 documentation to go along with that.

21 We then get some results back from SLED, dated
22 January the 6th, 2006. And on there, the last page, Your
23 Honor, it indicates "any remaining evidence and/or packaging
24 will be returned to the requesting agency."

25 So, Your Honor, we can trace it from the body of

1 Luther Pearson through the City of Union to SLED and then
2 back to union.

3 We then have another DNA analysis, dated June
4 15th, 2007. I have no trail from my client's body through
5 the City of Union to SLED for testing, and back. And, Your
6 Honor, I'm going to assume that the Schmerber order is in
7 line, but, Your Honor, I still need the trail from his body
8 to SLED for testing which resulted in the DNA analysis,
9 dated February 15th, 2007.

10 THE COURT: And where is --

11 MR. BRANNON: February 15th, 2007. Your Honor,
12 the first tests were returned to Union with the evidence on
13 January the 6th, 2006. There is no trail from that date
14 until January 15, 2007. So how did we come up with the 2007
15 DNA test, is what I'm asking?

16 THE COURT: All right.

17 MS. HORTON: Your Honor, if I may, I'm going to
18 address the first part of this issue. I was at the
19 solicitor's office back in 2006-2007, when this case was
20 originally being prosecuted. Mr. Pearson at that time was
21 represented by Albert Smith. I noticed Mr. Smith and Denise
22 Morrow, the co-counsel for trial. And in preparing the case
23 for trial I realized that the original blood collection was
24 done by a search warrant, which I thought was not the proper
25 way to do it and it was not done in a manner that I was sure

1 would get past the trial instead of the evidence would be
2 admitted at trial. We noticed Ms. Morrow and Mr. Smith that
3 we were going to have a Schmerber hearing. Mr. Pearson was
4 noticed. He and Denise Morrow, his counsel, were here at
5 the time. We had a hearing in front of Judge Alford, where
6 we did give testimony on the issue, and Judge Alford signed
7 an order requiring Mr. Pearson to give a second sample of
8 blood so that that could be sent to SLED to be analyzed with
9 the DNA sample from Minor [REDACTED] and the evidence that
10 were collected from the scene.

11 THE COURT: All right.

12 MR. ANTHONY: And, Your Honor, just as to the
13 changing aspect of this, I would just point out that Mr.
14 Brannon, at page 37 of discovery, which is chain of custody
15 form from Wallace Thompson, where Mr. Pearson's blood was
16 drawn on September 14th, 2006, which was the day after the
17 Schmerber order was issued.

18 And then also page 36 -- page 35 and 36 of the
19 discovery for the forensic services request document
20 investigator with the city police taking that blood to SLED
21 and requesting a DNA analysis. And that's -- that is all
22 the paperwork that I possess, as far as there actually be a
23 blood draw and the blood being sent to the State Law
24 Enforcement Division. That's been turned over to Mr.
25 Brannon.

1 MR. BRANNON: Your Honor, I don't have anything
2 further.

3 THE COURT: All right.

4 All right, I give a brief pretrial outline to the
5 jury and then we will have openings.

6 Anything further before we bring in our jury,
7 solicitor?

8 MR. ANTHONY: No, sir, I think we are ready to go.

9 THE COURT: Mr. Brannon?

10 MR. BRANNON: Ready, Your Honor.

11 THE COURT: All right.

12 (The following takes place in the presence of the
13 jury panel)

14 THE COURT: Good afternoon, ladies and gentlemen
15 of the jury.

16 Mr. Clerk, if would you please swear our jury.

17 THE CLERK: If I could get y'all to please stand
18 and raise your right hand for me.

19 You shall well and truly try the issues in this
20 case in the State versus Luther Pearson and a true verdict
21 give according to the law and evidence, so help you God.
22 All affirm by saying I will.

23 THE JURY: (Collectively said I will)

24 THE CLERK: All affirmed, Your Honor.

25 THE COURT: Thank you. You may be seated.

1 Mr. Foreman, ladies and gentlemen of the jury, the
2 case we are about to try is the case of the State versus
3 Luther Pearson, the defendant.

4 What I will now say is intended to serve as an
5 introduction to the trial of this case. These remarks are
6 not a charge on the law in this case. I will instruct you
7 on the law applicable to this case at the end of the trial
8 before you retire to consider your verdict. This is merely
9 an explanation of the procedure that we will follow.

10 The defendant is charged by two indictments filed
11 in this court: One with the crime of lewd act upon a minor
12 child; the other, criminal sexual conduct with a minor,
13 second degree, the elements of which will be explained to
14 you later.

15 Again, these indictments are simply the charge by
16 which the case is brought into court and they may not in any
17 sense and they are not in any sense evidence of any of the
18 allegations contained therein.

19 The defendant, Mr. Pearson, has pled not guilty to
20 these indictments. The State, therefore, has the burden of
21 proving each of the elements of the indictments beyond a
22 reasonable doubt. And it will be your duty, ladies and
23 gentlemen, to decide whether the State has met that burden.

24 Your purpose as jurors is to find and determine
25 the facts. You are the sole judge of the facts. If at any

1 time I make any comment regarding the facts, you must
2 disregard it. You are to determine the facts from the
3 testimony you hear and the other evidence introduced in
4 court. It is up to you to determine the inferences which
5 you feel may properly be drawn from the evidence.

6 It is especially important that you perform your
7 duty of determining the facts diligently and
8 conscientiously, because ordinarily there is no way to
9 correct an erroneous determination of the facts by a jury.

10 On the other hand, and with equal emphasis, the
11 same law that makes you the judges of the facts make me the
12 judge of the law. The law as given by the court is the only
13 law that you may consider. You must accept and follow it,
14 even though you may disagree with it.

15 I cannot tell you what the facts are and you
16 cannot disagree with me about what the law is or should be.
17 Your job is to take the law as I give it to you and apply it
18 to the facts as you find them from the testimony of the
19 witnesses and any other evidence that is introduced. After
20 doing that, you will render your verdict - a true and just
21 verdict - under the solemn oath that you just took as
22 jurors.

23 Until I advise you to begin your deliberations,
24 you must not discuss this case with anyone, including your
25 fellow jurors, friends, family members, and anyone involved

1 in this case.

2 After the case is submitted to you, you must
3 discuss it only in the jury room with your fellow jurors.
4 The attorneys, the parties in this case, have been advised
5 that they are not to talk to you at all. So if you see
6 anyone involved in this case and they do not even say hello,
7 they are not being unfriendly or rude. They are merely
8 following my instructions.

9 During the trial do not read, listen to or watch
10 any news reports about this case. This includes anything
11 that may be in the newspapers or on the Internet, radio, or
12 television. You must not consider anything that you may
13 have read or heard about the case outside of the courtroom,
14 whether before or during the trial.

15 It is important that you keep an open mind and not
16 decide any issue in the case until all of the evidence has
17 been presented, the parties have made their closing
18 arguments and I have instructed you on the law in this case.

19 It is your solemn responsibility to determine the
20 guilt or innocence of the defendant and your verdict must be
21 based solely on the evidence as it is presented to you in
22 this trial and on the law as I instruct it to you during and
23 at the close of the trial.

24 In just a moment the solicitor will make what is
25 called an option statement, which the solicitor will explain

1 to you the issues in the case, or at least what the
2 solicitor thinks the issues are.

3 Mr. Brannon, the attorney for the defendant, may
4 also make an opening statement, although he is not required
5 to do so.

6 What the attorneys tell you during their openings
7 is not evidence in the case. It is only their contention as
8 to what the issues are.

9 The evidence in the case will be presented to you
10 by testimony of sworn witnesses from this witness stand
11 and/or by any exhibits that may be introduced into evidence.

12 From time to time during the trial you may hear
13 one of the attorneys say something like Your Honor, I
14 believe we have a question of law, or a matter of law, or
15 may we approach the bench; or sometime I myself might find
16 it necessary to excuse you from the courtroom for a short
17 while so that the attorneys and I can discuss a matter of
18 law. The reason for this is because you are the judges of
19 the facts in the case and sometimes when I am discussing
20 matters of law with the attorneys, it may be necessary for
21 me to make some comment as to the fact in connection with
22 ruling whether or not a particular law applies. I'm not
23 supposed to tell you what I think the facts are, so I will
24 excuse you from the courtroom while these discussions take
25 place, so that in no way will you be influenced by anything

1 that I might say or do in connection with the facts.

2 In determining what the true facts are in this
3 case, you must decide whether or not the testimony of the
4 witnesses is believable.

5 It will be my responsibility to rule as a matter
6 of law as to whether certain testimony is admissible at all
7 or not. But once the testimony is admitted, whether or not
8 you believe it is solely for you to determine.

9 In deciding whether to believe a witness, you have
10 the right to consider the interest of any witness, the bias
11 of any witness, the prejudice of any witness, the
12 opportunity for the witness to have seen the matters and
13 things about which the witness may testify, and the way the
14 witness acts on the witness stand. You have the right to
15 consider anything that is in the record that will help you
16 evaluate the testimony of the witnesses. That means that it
17 will be your duty to pay close attention to these witnesses,
18 to observe these witnesses, to listen to the witnesses and
19 to pay close attention to the attorneys and to the court.
20 Don't let your thoughts wander, but give strict attention to
21 the testimony in this case, so that at the end of the
22 testimony, after the arguments of counsel and the charge on
23 the law by the court, you will then be in a position to
24 determine what the true facts are and to apply the law to
25 those facts, and, thus, render a true and just verdict.

1 It will be your added duty, Mr. Foreman, to
2 preside in the jury room and be the jury spokesperson here
3 in court. It will also be your duty to write the verdict,
4 but I will give you further instructions about that at the
5 conclusion of the case.

6 Several just housekeeping things. I tell jurors
7 that if I want to take a break, we take a break. The same
8 goes for y'all. If you sit out here too long, you get
9 squirming, your thoughts will wander. If you need a break,
10 just please raise your hand. This is not some type of
11 judicial marathon. Y'all will take y'all's breaks. We will
12 take our break. Please, don't sit out here so long to where
13 you are unable to focus and listen very clearly and
14 intently.

15 I don't know what evidence may be presented. Many
16 times it could be diagrams, charts, photographs. I have no
17 idea. Sometime it would be introduced while you are in the
18 courtroom and it would be handed to the foreperson to be
19 passed among the jurors while you are out here in the
20 courtroom. If it's introduced into evidence and accepted
21 into evidence, you will have it in your jury room with you
22 at the time that you deliberate. I tell you that so that
23 you don't think that when it's passed among you in the jury
24 room, if there is any evidence such as that that you have to
25 memorize it or that that would be the only time that you

1 will see a particular item or object. If it's introduced, I
2 allow it into evidence, you will also have that document,
3 that exhibit, in the jury room with you.

4 Also, ladies and gentlemen, if you can't hear, you
5 can't determine what the true facts are, particularly our
6 jurors down towards the end further from the witness stand.
7 If you cannot hear, just please raise your hand, cup your
8 ear, get my attention, the attention of one of these fine
9 bailiffs and we will make arrangements to have the witnesses
10 and/or the attorneys or myself speak up.

11 All right. With that being said, in order to
12 preserve everyone's rights, I'll give these parties an
13 opportunity to object to anything that I have said.

14 Any exception from the State?

15 MR. ANTHONY: No, sir.

16 THE COURT: From the defense?

17 MR. BRANNON: No, Your Honor.

18 There is one -- Your Honor, there is one --
19 forgive me for not doing this ahead of time. I would ask to
20 sequester any witnesses at this time, Your Honor. I don't
21 know if there is any in the courtroom, but I would ask that.

22 THE COURT: All right. Solicitor, do you want to
23 be heard on that?

24 MR. ANTHONY: We would ask that the victim be
25 allowed to remain in the courtroom under the Victims Rights.

1 We would ask that Captain Gault be allowed to remain in the
2 courtroom as the representative of the public safety
3 department. Other than that, we don't object, but we would
4 ask that it be reciprocal.

5 THE COURT: All right.

6 MR. BRANNON: Your Honor, I told those that I
7 subpoenaed to stay out, and I would have no objection to
8 these that they have asked to stay in.

9 THE COURT: All right. And that's Captain Gault,
10 did you say?

11 MR. ANTHONY: Yes, sir.

12 THE COURT: And have I pronounced this correctly,
13 solicitor, ^{Minor} [REDACTED]

14 MR. ANTHONY: Yes.

15 THE COURT: Did I pronounce that correctly?

16 MR. ANTHONY: Yes.

17 THE COURT: She may remain.

18 I will leave the policing of the witnesses up to
19 y'all, because obviously I do not know them.

20 MR. ANTHONY: Well, I can -- if the court would
21 like, I can just ask the ones that are seated in the back to
22 stand out in the hall or have a seat.

23 THE COURT: Yes, sir, that would be fine.

24 MR. ANTHONY: Ms. Balkum, Officer Bowser, Ms.

25 Henry and Ms. Linder, if you would, please just wait outside

1 until you are called. Thank you.

2 THE COURT: Thank you, solicitor.

3 All right. With that being said, solicitor, you
4 may address the jury, and I would ask the jurors to please
5 give the solicitor and all these parties your complete and
6 undivided attention.

7 Solicitor.

8 MR. ANTHONY: Thank you, Your Honor.

9 Good afternoon. My name is John Anthony. I'm the
10 deputy solicitor here in Union. This is Misty Horton.
11 Together we represent the State in the case.

12 There is an old song. The title of the song is
13 Scars. And the first verse of the song is about these three
14 guys sitting around and they are doing like sometimes you
15 hear people do, they are talking about bad things that
16 happened to them and which things was worse. One guy had
17 been shot, and one guy had almost had his hairline torn off,
18 and one guy had almost been stomped to death by a bull, that
19 kind of thing. And there is a line from a song that goes
20 "scars. Everyone has got a story, a tail of glory that
21 somehow they survived. A constant reminder of how fragile
22 we are. You ain't lived until you have had scars."

23 But there is another part to that song that it's
24 about this fourth guy. And the fourth guy, of course, as in
25 any good song, is a guy with a broken heart. And they asked

1 him, and he tells him about his broken heart. And it was a
2 line in that song that says "the worst wounds in the whole
3 wide world never leave a mark, because all I have is a hole
4 where I used to have a heart."

5 In a few minutes you are going to hear from a
6 young woman named Minor [REDACTED] and Minor [REDACTED] is 17 years
7 old. But back when this happened, February of 2005, she was
8 14, and she lived in Union with her mother and with her
9 mother's boyfriend, the man seated over there, Luther
10 Pearson.

11 And early in the morning on February 28th of 2005,
12 after her mother had left the residence, Mr. Pearson came in
13 the Minor [REDACTED] bedroom and he had forcible sexual
14 intercourse with her. And kind of like that fellow in the
15 song, Minor [REDACTED] didn't have any visible injuries from that,
16 but Minor [REDACTED] has wounds.

17 And quite simply over the next -- this afternoon
18 and tomorrow we are going to have Minor [REDACTED] testify and tell
19 you about what Mr. Pearson did to her.

20 We are going to have the people that she talked to
21 about it initially testify and tell you about how all of
22 this was disclosed.

23 We are going to have some officers that worked on
24 the case and collected evidence testify.

25 And we are going to have some people from

1 Columbia, from the South Carolina Law Enforcement Division,
2 who processed and analyzed the evidence in this case
3 testify.

4 And just like that song, Minor [REDACTED] doesn't have
5 any bruises or physical injuries, but there is some scars in
6 this case. And you are going to hear about those scars.
7 And we believe that once you have heard the evidence that we
8 are going to present, that you will find Mr. Pearson guilty
9 of criminal sexual conduct with a minor and lewd act on a
10 minor. Thank you.

11 THE COURT: Thank you, solicitor.

12 Mr. Brannon.

13 MR. BRANNON: If it please the court, Your Honor.

14 THE COURT: Yes, sir.

15 MR. BRANNON: Ladies and gentlemen of the jury, my
16 name is Doug Brannon. I introduced myself earlier. Along
17 with me is Mr. David Collins, and today and for the better
18 part of the rest of this week we have the opportunity to
19 represent Mr. Luther Pearson.

20 I'm not going to talk to you about songs. I'm
21 going to talk to you about February 28th, 2005, and what has
22 happened since then.

23 Mr. Pearson didn't live with Minor [REDACTED] mother.
24 They were dating. There is no question about that. They
25 were involved in a relationship. And, in fact, they were

1 going to go and buy a house together.

2 Mr. Pearson worked a strange hourly job. His job
3 required him to work sometimes to one, two, or three in the
4 morning. There was no first shift, second shift, third
5 shift. It was work when the hours were there.

6 And on the early morning hours -- in the very
7 early morning hours of February the 28th, it was sometime
8 after midnight, Mr. Pearson got off of work and he came to
9 Delmar Johnson's house. Delmar is [Minor] momma. Delmar
10 is a school bus driver and works for the school and she's a
11 teacher's assistant. And Delmar was expecting Luther,
12 because what she was going to do on the 28th was run her
13 morning bus route and then she and Luther were going to go
14 and look at houses. They were going to go look at mobile
15 homes that they might buy together because they were
16 thinking about getting married. They did not live together,
17 but he did come there after work in the very early morning
18 hours of February the 28th.

19 Not too long before this is alleged to have
20 happened Delmar and Mr. Eison, [Minor] father, divorced.

21 What's really strange is that [Minor] and my
22 client's two sons are actually the ones that introduced
23 Luther Pearson to Delmar Johnson. But as Delmar and Luther
24 started to get closer together, [Minor] started to be
25 concerned. You see, [Minor] wanted momma and daddy back

1 together.

2 Luther spent the night with -- the latter part of
3 the night on February 28th with Delmar Johnson. Delmar got
4 up that morning and went to go do her bus route.

5 Minor got up that morning and went to school.
6 She got to school riding with Luther Pearson, Jr., and Lyle
7 Pearson. My client's two sons gave her a ride to school.
8 They came to her house, picked her up and took her to
9 school. Later on in school Minor told some school
10 officials that my client had molested her.

11 Ladies and gentlemen, you are going to hear stuff
12 today and through probably the course of this trial. You
13 are going to hear DNA. And I know that you have all seen TV
14 and DNA is -- DNA is the smoking gun. DNA is the thing that
15 puts the man in prison. You probably also heard that DNA is
16 a thing that sets them free. People convicted a long time
17 ago before DNA. Now they have got the DNA capabilities and
18 they can set them free.

19 Ladies and gentlemen, I'm going to tell you in
20 this case you are going to hear DNA. DNA doesn't prove
21 anything in this case.

22 Ladies and gentlemen, your job is to determine
23 what the facts are in this case. People are going to talk.
24 There is going to be evidence admitted, stuff in those brown
25 bags. You are going to get to see it. You are going to get

1 to touch it. And at the end of the today you decide who you
2 believe, what you believe, and you make a decision.

3 Judge McMahon is going to give you the law to
4 apply to it. But in a case -- in a criminal case in this
5 courtroom, in General Sessions, the State - these people
6 here - have the obligation to prove beyond a reasonable
7 doubt that what they say happened happened.

8 Ladies and gentlemen, a reasonable doubt is
9 defined as the kind of doubt that would make a reasonable
10 person hesitate to act. I'm just kind of an old schmo. To
11 me reasonable doubt means something that makes you go huh.

12 Ladies and gentlemen, you are all reasonable
13 because y'all qualified to be a juror. Therefore, if you
14 reasonable people would hesitate to act at the end of this
15 trial, he's not guilty. In other words, at the end of this
16 trial you go huh, he's not guilty.

17 Ladies and gentlemen, I ask you to listen very
18 carefully, because there is a bunch of holes in the story
19 that you are about to hear. Holes in the story that you are
20 about to hear, but there is one thing that you are going to
21 hear about that didn't have a hole in it. One thing that
22 didn't have a hole in it, and that's why DNA didn't matter
23 in this case. Thank you.

24 THE COURT: Thank you, Mr. Brannon.

25 Solicitor, you may call your first witness.

1 MR. ANTHONY: Your Honor, the State calls Minor
2 Eison.

3 Minor having been first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION BY MS. HORTON:

6 Q. State your name, please.

7 A. Minor

8 Q. Minor how old are you?

9 A. 17.

10 Q. And where do you live right now? What town do you live
11 in?

12 A. Union, South Carolina.

13 Q. Do you go to school here?

14 A. Yes, I do, Union County High.

15 Q. When is your birthday?

16 A.

17 Q. You got a birthday coming up pretty soon.

18 A. Uh-huh.

19 Q. Have you lived in Union your entire life?

20 A. Yes, I have.

21 Q. Where were you living back in February of 2005?

22 A. With my mother and her boyfriend.

23 Q. And where was that at?

24 A.

25 Q.

1 A. Yes.

2 Q. Is that here in Union?

3 A. Yes.

4 Q. And who was your mother's boyfriend then?

5 A. Luther Pearson.

6 Q. How long had you lived with your mother and Mr.
7 Pearson?

8 A. Since November.

9 Q. November of what year?

10 A. 2004. '05 -- yeah, '05.

11 Q. Before that where did you live?

12 A. With my father.

13 Q. Is that also in Union?

14 A. Uh-huh.

15 Q. When you were living with your mother and Mr. Pearson,
16 did anyone else live with you?

17 A. No.

18 Q. How did you come to live in that apartment with your
19 mother and Luther?

20 A. My mother and my father, they had problems, so my
21 mother left and I left with her.

22 Q. You left with your mom?

23 A. Uh-huh.

24 Q. You chose to live with your mom?

25 A. Uh-huh.

1 Q. And how did you feel about Mr. Pearson at that time?

2 A. We was all right. We was cool.

3 Q. I'm going to take you specifically to February the 28th
4 of 2005, and I'm going to ask you to talk to the jury and
5 tell them what, if anything, unusual happened on that day.

6 A. On February 28th, 2005, it was around 6:40, Luther
7 Pearson came into my room. He laid on my bed and he was
8 like "your bed is soft." And I was like why was he in here,
9 and then he didn't never say anything, so I tried to get up
10 and I falls back. I tripped over the rug in my room. So
11 then as I fell back, then he started feeling on my breast
12 and my vagina. And then after that I was asking -- I was
13 pushing his hands like and kept telling him to move. And
14 then he started -- we struggled taking my pants down about
15 two or three minutes. And then he finally got my pants
16 half-way down. He had his pants half-way down and then
17 that's when he assaulted me.

18 Q. And what -- you are going to have to tell me exactly
19 what you mean by assaulted you.

20 A. He had sex with me.

21 Q. Were you saying anything to Mr. Pearson at the time?

22 A. No.

23 Q. Was he hurting you in any way, holding your hands down,
24 or anything like that?

25 A. He was holding my hands so I couldn't push him, because

1 I was trying to push him up, but he was holding my hands
2 while he was doing it.

3 Q. What were you wearing at the time?

4 A. I was wearing some Dr. Seuss pajama pants. They were
5 red, and my Foster Park shirt and some purple and white
6 panties.

7 Q. Do you remember what Mr. Pearson was wearing at the
8 time?

9 A. He had on a yellow shirt and some black boxers, but I
10 thought he had --

11 Q. When -- how -- you testified earlier that it was around
12 6:30 or 6:40. How do you know what time it was?

13 A. Because my mother, she leaves at 6:30, and I happened
14 to look at the clock and it was 6:40.

15 Q. So your mother was not there at the time?

16 A. No.

17 Q. From -- when you lived in the apartment, at 6:40 in the
18 morning, is there full sun coming in that room?

19 A. No.

20 Q. When Mr. Pearson came into the room, where were you?

21 A. In my bed.

22 Q. And where were -- how were you in the bed, as far as
23 your comforter or your bedclothes?

24 A. Are you talking about closet clothes?

25 Q. No, your comforter.

- 1 A. Oh, my comforter was like back.
- 2 Q. You were not underneath your comforter?
- 3 A. Uh-uh, I wasn't under the comforter.
- 4 Q. I'm going to ask you -- you have testified about the
- 5 assault and about what happened. Exactly what type of sex
- 6 happened?
- 7 A. Rape.
- 8 Q. But what do you mean by that?
- 9 A. He had sex with me. He put his vagina in me.
- 10 Q. He put his what?
- 11 A. Penis in me, in my vagina.
- 12 Q. And did you notice at any time if he was wearing
- 13 anything --
- 14 A. Yes.
- 15 Q. -- on his penis?
- 16 A. Yes.
- 17 Q. What was that?
- 18 A. A rubber.
- 19 Q. Do you recall if at what time -- do you remember him
- 20 putting it on?
- 21 A. No.
- 22 Q. Minor how much do you weigh right now?
- 23 A. About 115.
- 24 Q. And how tall are you?
- 25 A. 5'4".

1 Q. And back in 2005, how much did you weigh?

2 A. About 98.

3 Q. And have you gotten any taller?

4 A. About an inch or two.

5 Q. What happened next after the assault?

6 A. After all that happened I went to the bathroom. I ran
7 my water for school. I got ready for school. And I came
8 in -- I went in my room. I waited on Luther, Jr. To come
9 and get me.

10 And when I was leaving, he said "don't tell nobody."
11 So I just looked at him. I didn't say tell him bye. I just
12 walked on out of the house and got in the car with his son.
13 Then we went back and got his other son and went to school.

14 Then when I got to school --

15 Q. I'm going to stop you right there before you get into
16 the rest of it. How did you feel at the time?

17 A. Scared.

18 Q. And did you try to call anybody?

19 A. No.

20 Q. When you left your bedroom, where was the first place
21 that you went?

22 A. To the bathroom.

23 Q. What clothes were you wearing at the time?

24 A. My pajamas.

25 Q. What happened to those clothes?

1 A. I put them in the dirty clothes hamper.

2 Q. Where is the dirty clothes hamper?

3 A. In the bathroom.

4 Q. Who else uses that clothes hamper?

5 A. Just me.

6 Q. Where did your mom put her dirty clothes?

7 A. In the kitchen, in the drying room.

8 Q. Did you talk to Mr. Pearson anymore after that that
9 morning?

10 A. No.

11 Q. Other than what he said to you right before you left,
12 did he say anything else to you that morning?

13 A. No.

14 Q. Did you say anything to him?

15 A. No.

16 Q. Why were riding to school with his son?

17 A. He had just got his license and I had told my mother I
18 would ride with him to school, because I usually ride the
19 bus with her in the morning, but I just rode with him to
20 school.

21 Q. And who is he?

22 A. Luther's son.

23 Q. What's his name?

24 A. Luther Pearson, Jr..

25 Q. And what kind of relationship did you have with Luther

1 Pearson, Jr. At this time?

2 A. We was cool.

3 Q. You said that you were cool?

4 A. Uh-huh.

5 Q. Does that mean y'all were friends?

6 A. Yeah.

7 Q. After you got to school, what happened?

8 A. I went to my first block class. That was the class I
9 had, Coach Massey's class.

10 Q. You had coach who?

11 A. Massey.

12 Q. And what class?

13 A. Math.

14 Q. Okay.

15 A. And then I was crying. And my friend, Shytyma H.
16 she kept asking me what was wrong, so I had wrote her a
17 letter and told her what happened. And then she was like
18 "well, we will wait until we get to second block to tell Ms.
19 Balkum, because we ain't going to tell Coach Massey."

20 Q. What did you tell her in the letter?

21 A. About Luther molesting me.

22 Q. All right. Start back. She said y'all would wait
23 until second block?

24 A. Uh-huh.

25 Q. Why was that?

1 A. Because we didn't want to tell Coach Massey. We was
2 real cool with Ms. Balkum. We always tell her everything,
3 so we just waited until we got to second block.

4 Q. And what does Ms. Balkum teach?

5 A. English.

6 Q. What happened after you got to second block?

7 A. Shytyma H. had talked to Ms. Balkum that we needed to talk
8 to her. Then she was like all right. So Ms. Balkum took
9 Shytyma H. out of the classroom first and they called me out
10 there. And Ms. Balkum had asked me did it really happen,
11 and I told her yeah. So we went to guidance and talked with
12 Ms. McGee.

13 And Officer Beatty was working at the high school, but
14 I didn't want to talk to him, because me and him was kin, so
15 they called Teresa Bowser from Sims Junior High.

16 Q. Who is Teresa?

17 A. She is another resource officer. And she came and
18 seen -- and she came to the high school. And then she -- I
19 saw her and told her what happened. She wrote the
20 statement. And then they called my momma and she came up
21 there and I had to tell her what happened.

22 Q. Called who?

23 A. My mother.

24 Q. Okay.

25 A. And then that's when Freddie Gault, and Officer Nix,

1 you know, came with him. And then after we talked to him --

2 Q. Just go back. This all was happening at school?

3 A. Uh-huh.

4 Q. Okay.

5 A. And then after we talked to them, we told them
6 everything that happened, what happened that morning, they
7 told me I needed to go get a rape kit. So I went to Wallace
8 Thompson Hospital and I got a rape kit.

9 Q. Who did you meet with, if anybody, did you meet with at
10 Wallace Thompson Hospital?

11 A. Officer Nix and another officer was there.

12 Q. Did you have to wait to see a doctor or anything when
13 you got there?

14 A. No, they already had my name, so when I got there, they
15 just called me on back.

16 Q. And what happened, as far as getting your rape kit?

17 A. When I went in there, she took my blood and she
18 examined the rape kit. It was the little examination stuff.
19 And then after all that happened, she had asked -- she was
20 talking to me and asking me questions, and then she took my
21 panties that I had on and she kept them.

22 Q. She took your underwear that you were wearing then and
23 put them in a bag as well?

24 A. Uh-huh.

25 Q. What happened after this happened?

1 A. Then after all the rape kit was over, we left and went
2 back to the house. Officer Nix and the other policeman,
3 they followed us to our apartment, and they came in and they
4 got my sheets and my pajamas and my underwear and stuff.

5 Q. Where did they get your pajamas and underwear and
6 stuff?

7 A. From my basket out of the bathroom.

8 Q. How did they know to go in there and get it?

9 A. I showed them.

10 Q. You showed them where it was?

11 A. Uh-huh.

12 Q. Where did you stay that night?

13 A. At home with my mother.

14 Q. And was Mr. Pearson there that night?

15 A. Uh-uh.

16 Q. Have you stayed there since that night?

17 A. Uh-uh.

18 Q. Where have you been since that night?

19 A. The next day, on March the 1st, that's when I moved in
20 with my dad.

21 Q. And you have been living with your dad ever since?

22 A. Uh-huh.

23 Q. You turn 18 next month?

24 A. Uh-huh.

25 Q. Minor I'm going to ask you now to -- is the person

1 who assaulted you back on February 28th in this courtroom?

2 A. Yes, he is.

3 Q. Could you point him out?

4 A. Right there.

5 Q. When you say right there, what is he wearing?

6 A. Brown shirt. Not brown, but tan shirt with a tie.

7 MS. HORTON: Let the record reflect that Minor

8 has indicated Mr. Pearson, who is sitting in between his
9 counsel Doug Brannon and David Collins.

10 BY MS. HORTON:

11 Q. Has Mr. Pearson's appearance changed in any way?

12 A. Yes.

13 Q. How has it changed?

14 A. He used to have braids.

15 Q. He used to have braids?

16 A. Uh-huh.

17 Q. When you -- I'm going to take you back to February
18 28th. When you got dressed that morning, after you took
19 your bath, where were your clothes that you got dressed in?

20 A. In my room.

21 Q. Were they in drawers in your room?

22 A. I always -- I always iron my clothes before I go to
23 school.

24 Q. You ironed them before you went to school?

25 A. Uh-huh.

1 Q. Where did you get them before you ironed them?

2 A. Out of my drawer in my room.

3 Q. Your clothes were in your room?

4 A. Uh-huh.

5 Q. Were they clean?

6 A. Uh-huh.

7 Q. Minor have you met with anyone regarding your
8 testimony today?

9 A. No.

10 Q. You haven't met with anyone from --

11 A. Oh, yes.

12 Q. And in doing that, has anyone told you what to testify
13 to?

14 A. No.

15 Q. Has anyone told you anything to say, as far as your
16 testimony?

17 A. No.

18 Q. I'm going to show you what's been marked for
19 identification as State Exhibit No. 1. I'm going to ask you
20 to open that bag. You can just look inside it. Do you
21 recognize what's in there?

22 A. Uh-huh.

23 Q. What's in it?

24 A. My T-shirt I had on.

25 Q. That's that Foster Park T-shirt that you mentioned

1 earlier?

2 A. Uh-huh.

3 Q. And do you recognize this as the T-shirt that you were
4 wearing on February 28th?

5 A. Yes.

6 Q. I'll give you what's marked for identification as
7 State's Exhibit No. 2 and ask you to open this bag and look
8 into it.

9 A. My underwear that I had on that morning.

10 Q. Is that the underwear that you wore from the house that
11 morning, or the underwear --

12 A. The house.

13 Q. -- that you wore from -- that you wore outside the
14 house, or the underwear that was left in the --

15 A. In the --

16 Q. -- clothes hamper?

17 A. Yes.

18 Q. Minor [REDACTED] looking at State's Exhibit No. 3, I would
19 ask you to open that and look inside.

20 A. My pajamas.

21 Q. Your pajama bottoms?

22 A. Uh-huh.

23 Q. And do you recognize those as the pajama bottoms that
24 you were wearing on February 28th, 2005?

25 A. Yes.

1 Q. And the last thing I'm going to show you is State's
2 Exhibit No. 4. We have got two bags to open this time.

3 I would ask you to look inside the white bag. Tell us
4 if you recognize what's inside that bag.

5 A. My underwear from the hospital after the examination.

6 Q. Your underwear that they took from you at the hospital?

7 A. Uh-huh.

8 Q. And when you put -- are those the underwear that you
9 put on before you left the house that morning?

10 A. Yes.

11 Q. Were they clean at that time?

12 A. Yes.

13 MS. HORTON: Court's indulgence, Your Honor.

14 THE COURT: Yes, ma'am.

15 (Off the record)

16 (Back on the record)

17 BY MS. HORTON:

18 Q. Thank you, Minor [REDACTED] Please answer any questions that
19 Mr. Brannon may have for you.

20 THE COURT: Thank you, solicitor.

21 Mr. Brannon.

22 MR. BRANNON: Thank you.

23 CROSS EXAMINATION BY MR. BRANNON:

24 Q. Hi Minor [REDACTED]

25 A. Hi.

1 Q. On February the 28th of 2005, did you hear your mom
2 leave?

3 A. No.

4 Q. You didn't.

5 So how did you know that at 6:40 she was gone?

6 A. Because I looked at the clock.

7 Q. I'm sorry?

8 A. I looked at the clock. I looked at the clock each time
9 I was up.

10 Q. Well, I understand that you looked at the clock and you
11 knew what time it was, but how did you know your momma was
12 gone?

13 A. Because I didn't hear her in the house.

14 Q. Okay. You didn't hear her leave, but because you
15 didn't hear her in the house, she was gone?

16 A. Uh-huh.

17 Q. And you say about 6:40 Luther came into your room?

18 A. Uh-huh.

19 Q. All right. When he came into your room, you say he
20 laid on your bed, right?

21 A. (Shaking head yes)

22 THE COURT: You need to answer out loud, Minor

23 A. Yes.

24 BY MR. BRANNON:

25 Q. And then your testimony was that he started to touch on

1 you or feel on you, correct?

2 A. Yes.

3 Q. And then he pulled your pajama bottoms and your panties
4 halfway down, is that correct?

5 A. Yes.

6 Q. And then he pulled his boxers halfway down, correct?

7 A. Yes.

8 Q. And when he did that, you noticed that he had on a
9 condom, correct?

10 A. Yes.

11 Q. Then you say that he had sex with you, correct?

12 A. Yes.

13 Q. After you say he finished having sex with you, do you
14 remember telling the police that you didn't see any fluids
15 coming out of his body or coming from the condom? Do you
16 remember that?

17 A. Yes.

18 Q. Okay. In fact, you wrote a statement, correct?

19 A. Yes.

20 MR. BRANNON: Your Honor, may I approach the
21 witness?

22 THE COURT: Yes, sir.

23 BY MR. BRANNON:

24 Q. Do you remember writing this statement, Minor

25 A. Yes, I do.

1 Q. Okay. And is that your signature down there?

2 A. Yes.

3 Q. And is that your mom's right above it?

4 A. Yes.

5 Q. And then you signed it down there, is that right?

6 A. Yes.

7 Q. And you signed it here on the bottom of the third page,
8 right?

9 A. Yes.

10 Q. So you made a three-page statement.

11 Do you remember writing that statement?

12 A. Yes.

13 Q. After you say that this assault took place, you got up
14 and went in the bathroom, right?

15 A. Yes.

16 Q. Okay. Did you always get dressed in the bathroom?

17 A. Yes.

18 Q. Why was that?

19 A. Because he'd be there.

20 Q. I'm sorry?

21 A. Because Luther would be there.

22 Q. Okay. Well, was there something about the bathroom
23 door locking and the bedroom door not locking, or something
24 like that?

25 A. I was -- both of them locked, but I always used the

1 bathroom. Every time I go in the bathroom, I take my
2 clothes.

3 Q. Do you remember telling the police that you got dressed
4 in the bathroom with the door locked?

5 A. Uh-huh.

6 Q. Is that still true today?

7 A. Yes.

8 Q. Okay. All right. Now, you told the solicitor a few
9 minutes ago that you kept your dirty clothes in the hamper
10 in the bathroom, is that correct?

11 A. Yes.

12 Q. And I think you said that it was only your clothes in
13 the hamper, right?

14 A. Yes.

15 Q. How many bathrooms did your house have?

16 A. One.

17 Q. Okay. Your mom didn't keep her clothes in the same
18 bathroom?

19 A. No.

20 Q. Okay. All right. Now, there was -- there was not
21 someone else, but there was something else living in your
22 house in February of 2005, wasn't there?

23 A. Yes.

24 Q. What was that? What was your dog's name?

25 A. Bandit.

- 1 Q. Bandit.
- 2 Tell the jury about Bandit.
- 3 A. He loved to bark.
- 4 Q. And what kind of dog was Bandit?
- 5 A. A Chihuahua.
- 6 Q. And Bandit was a little bit protective, wasn't he?
- 7 A. Uh-huh.
- 8 Q. Who did he try to protect?
- 9 A. Me and my mother.
- 10 Q. You and Delmar, right?
- 11 A. Uh-huh.
- 12 Q. And if somebody got out of line with you or Delmar,
- 13 Bandit would go after them, right?
- 14 A. Yes.
- 15 Q. Would he try and bite them?
- 16 A. He will try.
- 17 Q. But he barked, right?
- 18 A. Yes.
- 19 Q. Okay. Who is the lady that lived across the hall from
- 20 you in the apartment complex? What was her name, an older
- 21 lady?
- 22 A. I don't know.
- 23 Q. You don't remember her name?
- 24 A. No.
- 25 Q. Okay. Do you ever remember the neighbor talking about

1 Bandit barking?

2 A. No.

3 That morning?

4 Q. No, just anytime.

5 A. Yeah.

6 Q. She used to -- every once in a while she would say
7 Bandit is a little bit loud, or something like that, right?

8 A. Uh-huh.

9 Q. Okay. If Luther was bothering you, if Luther was
10 hurting you, why didn't you make a noise so that Bandit
11 would do something about it?

12 A. Because he was locked up in his cage.

13 Q. Well, where did Bandit sleep?

14 A. He slept in the room in his cage.

15 Q. He didn't sleep on a blanket next to your momma's bed?

16 A. No.

17 Q. He didn't. Okay.

18 Well, do you think if you had cried out or screamed
19 out, Bandit would have still barked?

20 A. Yeah.

21 Q. But you didn't, did you?

22 A. I was telling him to stop.

23 Q. Not loud enough for Bandit to hear you?

24 A. No.

25 Q. All right. Now, you say that Luther pulled your

1 bottoms -- both your jammies and your panties down to about
2 your knees, right?

3 A. Uh-huh.

4 Q. And he did the same to you, right?

5 A. Yes.

6 Q. Okay. Do you remember seeing Dr. Patrick at the
7 hospital on the 28th?

8 A. Yes.

9 Q. Did she make note -- do you know if she noticed any
10 bruising or anything like that?

11 A. No.

12 Q. None. Okay.

13 Now, when you were asked who you lived with, you said
14 that you lived with your momma, Delmar, right?

15 A. Yes.

16 Q. And with Luther, correct?

17 A. Yes.

18 Q. Okay. Who is this girl named Quinesha S.

19 A. My friend.

20 Q. Okay. How long had Luther been living there?

21 A. Since November, since he moved in.

22 Q. Okay. All right.

23 Now, who was the first person that you told about this
24 incident after you got to school?

25 A. Shytyma H.

1 Q. And how did you tell her about it?

2 A. We wrote a note back and forth.

3 Q. You wrote letters back and forth?

4 A. Yes.

5 Q. And she's here today, right?

6 A. Yes.

7 Q. Okay. Good.

8 Now, who is your counselor? Who is your therapist as a
9 result of this incident?

10 A. No one.

11 Q. Have you ever been to a counselor?

12 A. No.

13 Q. Okay. What about doctor's appointments? Have you had
14 any followup doctor's appointments since this incident
15 occurred?

16 A. I spoke with the health department to get pap smeared.

17 Q. But you never saw any medical doctor specifically as a
18 result of this February 28th incident?

19 A. No.

20 Q. Okay. Just one followup question again.

21 When you say Luther got off of you, when he got up, did
22 he pull your panties and your pajamas back up?

23 A. I did.

24 Q. You did.

25 Did you pull them back up as he was walking out, before

1 he walked out? When did that work?

2 A. Before.

3 Q. Okay. Was he already off of you when he pulled them
4 up?

5 A. Yes.

6 Q. And, again, he had a condom on, right?

7 A. Yes.

8 Q. And you didn't see any fluid come out of him, did you?

9 A. No.

10 Q. So the condom didn't have a hole in it, did it?

11 A. No.

12 MR. BRANNON: Nothing further, Your Honor. Thank
13 you.

14 THE COURT: Thank you, Mr. Brannon.

15 Solicitor, anything on redirect?

16 MS. HORTON: Your Honor, just very briefly, a
17 couple of questions.

18 THE COURT: All right.

19 REDIRECT EXAMINATION BY MS. HORTON:

20 Q. Minor at the very beginning you testified that you
21 didn't hear your mom in the house, that you looked at the
22 clock and it was 6:40, at the very beginning of his
23 cross-examination?

24 A. Yes.

25 Q. How did you normally get to school?

- 1 A. My mother.
- 2 Q. And what time did she normally leave?
- 3 A. 6:30.
- 4 Q. And that was every day?
- 5 A. Uh-huh.
- 6 Q. Why? Why did she have to leave so early every day?
- 7 A. She drive a bus.
- 8 Q. A bus for what?
- 9 A. Union County Schools.
- 10 Q. At some point that morning after the assault, after you
- 11 had your bath, do you remember feeling any kind of drainage?
- 12 A. Yes.
- 13 Q. Do you remember feeling something drain from where?
- 14 A. My vagina.
- 15 Q. Was Bandit used to Luther being in the house?
- 16 A. Yes.
- 17 Q. And when you or your mom was not there, would it be
- 18 unusual for Bandit to be in the home alone with Luther?
- 19 A. Yes.
- 20 Q. It was unusual or not unusual?
- 21 A. Both.
- 22 Q. Normally Bandit was not there with Luther?
- 23 A. Oh, yeah, he was there.
- 24 Q. So Bandit was there with Luther there that morning?
- 25 A. Uh-huh.

1 Q. And Bandit was comfortable with Luther?

2 A. Yes.

3 Q. And knew who Luther was?

4 A. Yes.

5 Q. Thank you.

6 A. You are welcome.

7 MR. BRANNON: Followup, Your Honor?

8 THE COURT: Thank you, solicitor.

9 Yes, sir, Mr. Brannon.

10 RECROSS EXAMINATION BY MR. BRANNON:

11 Q. Minor I have just a couple more questions.

12 The solicitor just said that you felt some drainage at
13 some point, is that right?

14 A. Yes.

15 Q. Was that before or after you took your bath?

16 A. Before.

17 Q. Before. Okay. All right.

18 MR. BRANNON: I don't think I have anything else.

19 Thank you.

20 THE COURT: Thank you very much, Minor You
21 may step down.

22 Solicitor, you may call your next witness.

23 MR. ANTHONY: Thank you, Your Honor.

24 We call Shytyma H.

25 THE COURT: Shytyma H. if you would just come down

1 and be sworn.

2 Shytyma H. having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. ANTHONY:

5 Q. Would you state your name, please?

6 A. Shytyma H.

7 Q. And Shytyma H. where do you live?

8 A. Carlisle.

9 Q. And are you currently in school?

10 A. Yes, sir.

11 Q. And where are you in school?

12 A. Salvation Army Community Center.

13 Q. And do you work?

14 A. Yes, sir.

15 Q. And where do you work?

16 A. Bojangles.

17 Q. And back in February of 2005, where were you in school?

18 A. Union High.

19 Q. And what year were you in then?

20 A. Excuse me?

21 Q. What grade were you in?

22 A. 9th.

23 Q. 9th grade.

24 Okay. And did you know Minor

25 A. Yes, sir.

1 Q. And how did you know Minor

2 A. We were best friends.

3 Q. And did you see Minor on the morning of February
4 28th of 2005?

5 A. Yes, sir.

6 Q. And where did you see her?

7 A. First block. I take one of Coach Massey's classes.

8 Q. And when you saw her that morning, how did she appear
9 to you?

10 A. Minor had looked like she had been crying. I could
11 tell something was wrong.

12 Q. And did you talk to her about what was wrong?

13 A. I asked her. She told me nothing at first. I asked
14 her again and she said "I got something to tell you."

15 Q. Okay. And then did you communicate with her about what
16 had happened?

17 A. Uh-huh. She wrote down on a piece of paper what had
18 happened.

19 Q. Okay. And did Minor tell you that she had been
20 sexually assaulted?

21 A. Yes, sir.

22 Q. And did she tell you when that had happened?

23 A. Yes, sir.

24 Q. When did she tell you that had happened?

25 A. February -- of that day in the morning when her momma

1 left to go to work.

2 Q. Okay. And did she tell you where it had happened?

3 A. Yes, sir.

4 Q. Where did she tell you it happened?

5 A. In her bedroom.

6 Q. And after she communicated this to you, what did you
7 suggest to her that you do, or that she do?

8 A. I asked her -- I asked her did she tell her mother and
9 she said no. She said she wouldn't tell her mother because
10 her mother wouldn't believe her, so I suggested that we talk
11 to Ms. Balkum.

12 Q. Who is Ms. Balkum?

13 A. Second block teacher.

14 Q. And why did you suggest that the two of you go talk to
15 Ms. Balkum about this?

16 A. Because Ms. Balkum was the only school official that we
17 felt comfortable talking to her about anything.

18 Q. Okay. And when were you supposed to see Ms. Balkum
19 that day?

20 A. Second block class.

21 Q. What time did that start?

22 A. 9:40.

23 Q. Okay. And so did you go to the second block class
24 where Ms. Balkum teaches?

25 A. Yes, sir.

1 Q. Okay. And what happened when you got to the second
2 block?

3 A. When we got to second block, I told Ms. Balkum. I said
4 "Ms. Balkum, when you have a chance, me and Minor need to
5 talk to you." She said okay.

6 Q. Okay. And what happened after that?

7 A. So after she got class started, she called us outside
8 the classroom and she asked us what we needed to talk to her
9 about, and I told -- told Minor to go ahead and tell her.
10 Minor couldn't respond.

11 Q. What was Minor doing? What was going on with
12 Minor

13 A. She was crying.

14 Q. Okay. And so what happened then?

15 A. So I told her what Minor had told me.

16 Q. Okay. And how did Ms. Balkum follow up on that?

17 A. When I told Ms. Balkum what had happened, Minor told
18 her -- had finished off, you know, what had started.

19 Q. Okay. And after this -- after Minor had indicated
20 this to Ms. Balkum, what did she do and have the two of you
21 do?

22 A. She took us up to the guidance counselors to talk to
23 Ms. McGee.

24 Q. And did anybody else come to the guidance office?

25 A. Officer Beatty.

1 Q. Okay. And then what -- after you went to the guidance
2 office with Minor what else did you do in regards to
3 this, Shytyma H.

4 A. I just told Ms. McGee basically what I had talked to
5 Ms. Balkum about. And then when Officer Beatty came in, I
6 wrote a statement.

7 Q. Okay. And after that what did you do?

8 A. I was dismissed.

9 Q. All right. Thank you.

10 MR. ANTHONY: That's everything on direct.

11 THE COURT: Thank you, Mr. Solicitor.

12 Mr. Brannon?

13 MR. BRANNON: If it please the court, Your Honor?

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION BY MR. BRANNON:

16 Q. Shytyma H. how are you today?

17 A. Fine.

18 Q. Just a minute ago you said Officer Beatty came in and
19 you wrote a statement, right?

20 A. Yes.

21 MR. BRANNON: Approach the witness, Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. BRANNON:

24 Q. Is this your statement, Shytyma H.

25 A. Yes, sir.

1 Q. Okay. Do you notice your signature on the bottom?

2 A. Yes, sir.

3 Q. Okay, good. Good. I just got a couple real quick
4 questions for you here.

5 Would you agree with me that it says "this morning

6 Minor came up to me with a sad face on and I happened to
7 ask her what was wrong and she told me something. She told
8 me she had something to tell me," right?

9 A. Yes, sir.

10 Q. But I think Minor testified, and then you said a
11 little while ago that y'all were passing notes?

12 A. That's when she told me what happened. We couldn't
13 talk at the time in class because morning announcements were
14 going on, so we passed notes.

15 Q. But you didn't put passing notes in your statement, did
16 you?

17 A. No, sir.

18 Q. So on February the 28th, about two hours after you
19 learned this, you write a statement and you don't put in
20 there passing notes, but today you are passing notes?

21 A. Well, that's what we did.

22 Q. Okay. Well, did you keep them notes?

23 A. No, sir.

24 Q. Well, if you were going to talk to Ms. Balkum, or to
25 Corporal Beatty, or any of those people, don't you reckon

1 some of them notes would have been important?

2 A. Yes, sir, but at the time we was thinking like that.

3 We was just thinking if somebody else was to get ahold of
4 them.

5 Q. But on February the 28th, when you wrote your
6 statement, two pages for Corporate Beatty, you didn't say
7 nothing about writing notes back and forth, did you?

8 A. No, sir.

9 Q. All right.

10 MR. BRANNON: Your Honor, I have nothing further.

11 THE COURT: Thank you, Mr. Brannon.

12 Anything on redirect, solicitor?

13 MR. ANTHONY: No.

14 THE COURT: Thank you.

15 Thank you very much, Shytyma H. You may step
16 down.

17 MR. ANTHONY: Your Honor, may this witness be
18 excused?

19 MR. BRANNON: No objection.

20 THE COURT: Any objection?

21 Yes, she may be excused. Thank you, Shytyma H.
22 You may call your next witness.

23 MR. ANTHONY: Next witness is Ms. Balkum.

24 THE COURT: Come down front, Ms. Balkum, and be
25 sworn.

1 KIM BALKUM, having been first duly sworn,
2 testified as follows:

3 THE COURT: All right, solicitor.

4 DIRECT EXAMINATION BY MR. ANTHONY:

5 Q. Would you state your name, please?

6 A. Kim Balkum.

7 Q. And Ms. Balkum, how are you employed?

8 A. I am a school teacher at Union County High School.

9 Q. How long have you taught there?

10 A. This is my eleventh year teaching.

11 Q. And what do you teach currently?

12 A. Currently I teach special education.

13 Q. And before that what did you teach?

14 A. I was an English teacher for eight years.

15 Q. And I want to take you now back to February of 2005.

16 Were you working at the high school at that time?

17 A. Yes, sir.

18 Q. And did you know Minor [REDACTED]

19 A. Yes, sir, she was in my second block English class.

20 Q. Okay. And approximately what time did that class meet
21 every day?

22 A. Approximately 9:30 until around 11:15.

23 Q. Okay. I want to take you now to February 28th of 2005.

24 Was Minor [REDACTED] in your class that day?

25 A. Yes, sir.

1 Q. And when she -- when she was -- when she came in that
2 day, did you make any kind of observations about her
3 demeanor?

4 A. Yes, sir, [Minor] is a very lively young lady, loud,
5 always outgoing, happy. And I noticed that day that she was
6 very subdued. She was very quiet.

7 She and her friend came in and they just sat down,
8 which is not normal. I normally have to calm them down, and
9 she was -- she acted much different that day, that I can
10 remember.

11 Q. And you referred to [Minor] and her friend. Who is
12 her friend?

13 A. Her friend [Shytyma H.]

14 Q. And so did you say anything to her that day after
15 noticing that change in her behavior?

16 A. Yeah, I had -- I had noticed that they were -- they
17 were talking a little bit to each other. And I had asked
18 them to, you know, calm down and said "is everything all
19 right?" And they -- everything was fine or, you know, kind
20 of dismissed me and continued talking. But other than that,
21 they weren't -- they were very quiet and -- I noticed that
22 they were very quiet.

23 Q. All right. And so what did you do after that initial
24 contact?

25 A. We started our school day as normally. A few minutes

1 later Shytyma H. asked me if they could speak with me -- if
2 Shytyma H. and Minor could speak with me in private. And I
3 asked them if this was something that we needed to do now,
4 or could it wait until after I was done with the lesson, and
5 she indicated that we needed to talk now outside, or outside
6 my door. I think she said outside, but outside the door.

7 Q. Okay. So what did you do then?

8 A. I -- I said "okay. Look girls, you know, let's step
9 outside," and we stepped outside the door and we talked.

10 Q. And when you got outside what happened?

11 A. Shytyma H. made the comment, she said "Minor has
12 something to tell you."

13 And Minor I remember folding her arms and looking
14 around and saying "I can't," and was very upset.

15 Q. Okay.

16 A. Just extremely upset.

17 And I had told Minor -- I looked at Minor I said
18 "Minor you know you can tell me anything." And she
19 just -- she said "I can't", like that.

20 Q. Okay. And what happened after that?

21 A. Shytyma H. began to tell me what Minor had told her
22 that what had happened that morning.

23 MR. BRANNON: Your Honor, I'm going to object to
24 anything -- I believe this would be -- I believe the
25 question requires a hearsay answer. I believe she's limited

1 to date, time, and place.

2 THE COURT: Correct. I would agree she's limited
3 to that.

4 MR. ANTHONY: Yes, sir. I don't think we are --

5 THE COURT: You may proceed, solicitor.

6 MR. ANTHONY: Yes, sir.

7 BY MR. ANTHONY:

8 Q. Without --

9 First of all, you said that Shytyma H. began -- Shytyma H.
10 conveyed some information to you?

11 A. Yes.

12 Q. Okay. Well, after she conveyed that information to
13 you, what was your response?

14 A. I looked to Minor and I said "Minor what's going
15 on?" You know, what happened, and her words to me were --

16 Q. And without -- since there are some limitations about
17 what you can say Minor told you --

18 A. Uh-huh.

19 Q. -- without saying who had committed --

20 A. Right.

21 Q. Did Minor report to you that she had been sexually
22 assaulted?

23 A. Yes, she did. Yes, she did.

24 Q. And did she tell you where that assault had occurred?

25 A. That it occurred in her bedroom that morning.

1 Q. Okay. And when she told you about it, what was her
2 demeanor?

3 A. Extremely, extremely upset. I -- I -- myself, I -- she
4 wasn't -- she wasn't the normal child that I had seen every
5 day that I had known for the past couple of years.

6 Q. And once she told you that, what did you do?

7 A. I realized that this was beyond my expertise, and I
8 told the girls, I said, "we have to go to guidance." I did
9 not know what my next step was to be, so we -- I told -- I
10 told my class, I said, "class, I need to be excused for a
11 few minutes. If you will please sit here." I went to a
12 colleague friend who had a teacher's aid in there. I spoke
13 with her and asked her to come to cover my class, and
14 Shytyma H. Minor and I went up to the guidance department
15 to speak with one of our guidance counselors.

16 Q. And after you took them to the guidance counselor,
17 what -- did you have any further involvement with this?

18 A. No. Later on that day I did have to write a statement,
19 but as far as -- I think Minor and I talked with the
20 guidance counselor for a few minutes, but I did excuse
21 myself because I did have a class, and I did talk with the
22 student's guidance counselor later on that day.

23 Q. Okay. Thank you.

24 MR. ANTHONY: That's everything to direct.

25 THE COURT: Thank you, solicitor.

1 Mr. Brannon?

2 MR. BRANNON: If it please the court.

3 CROSS EXAMINATION BY MR. BRANNON:

4 Q. Ms. Balkum, how are you today?

5 A. I'm fine. Thank you.

6 Q. You weren't at Minor house before school on
7 February the 28th, were you?

8 A. No, sir, I was not.

9 Q. And your testimony today has pretty much been that
10 Shytyma H. told you some things and you looked to Minor and
11 then you went to the guidance office, right?

12 A. Yes, but I did talk with Minor

13 Q. And you said that Minor wasn't acting like the
14 student that you had known for years leading up to that day,
15 right?

16 A. Yes, sir.

17 Q. Tell me about the student that you have known for years
18 leading up to that day.

19 A. The student that I know was very friendly, outgoing,
20 happy child, always in a good mood. Loud.

21 Q. Loud to the point of disruption?

22 A. No, no, not at all. Not at all. Not to the point of
23 disruption, but just a genuinely happy person. A happy
24 child.

25 Q. Okay. Ever a problem in your class?

1 MR. ANTHONY: Objection to the relevance of this.

2 THE COURT: I'll overrule the objection. You may
3 answer.

4 MR. BRANNON: Thank you.

5 A. Not that I can recall.

6 BY MR. BRANNON:

7 Q. No disciplinary actions in your room?

8 A. Not that I can recall, sir.

9 Q. Ever known this student to be expelled or suspended?

10 MR. ANTHONY: Objection, relevance.

11 THE COURT: I would sustain that objection.

12 MR. BRANNON: Your Honor --

13 THE COURT: I sustain the objection.

14 BY MR. BRANNON:

15 Q. Okay. All right.

16 But you responded to what you heard and what you saw
17 and went to the guidance counselor's office, correct?

18 A. Yes, sir.

19 Q. But, again, you weren't at her apartment before school
20 correct?

21 A. No, sir, I was not.

22 Q. Thank you, ma'am.

23 MR. BRANNON: No further questions.

24 THE COURT: Thank you, Mr. Brannon.

25 Solicitor, anything on redirect?

1 MR. ANTHONY: No. No redirect.

2 THE COURT: Thank you very much, Ms. Balkum. You
3 may step down.

4 All right. Perhaps it would be a good time to
5 take an afternoon recess.

6 Mr. Foreman, ladies and gentlemen of the jury, we
7 will take about a 15 minutes recess. Again I would remind
8 you during this recess and all our recesses you are not to
9 discuss the case with anyone. That includes your fellow
10 jurors, family, friends, or anyone else. Please remember to
11 keep an open mind about the case and do not begin your
12 deliberations until you are directed to do so by the court.
13 With that being said, Mr. Foreman, ladies and gentlemen of
14 the jury, you may go with our bailiff here, please.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: All right. Court would be in recess
18 for 15 minutes.

19 (Whereupon, proceedings were recessed)

20 (Whereupon, proceedings were reconvened)

21 (Clothing Evidence marked as State's Exhibit No. 5
22 for identification)

23 THE COURT: All right. Anything before we bring
24 in our jury, from the State?

25 MR. ANTHONY: No, sir.

1 THE COURT: From the defense?

2 MR. BRANNON: Yes, Your Honor. I would ask that
3 you allow me to proffer some testimony recalling Ms. Balkum
4 to the witness stand.

5 Your Honor, under Rule 405 (A), if the State
6 produces evidence or testimony specifically to the character
7 for a trait of character of a person and the court allows
8 that testimony to come in, then I should be able to
9 cross-examine as to any relevant specific instances of
10 conduct.

11 Ms. Balkum testified that, you know, the alleged
12 victim was acting differently that day and that she was --
13 she didn't remember any instances of misbehavior in class.
14 But, Your Honor, I have records here that show on 2-3-2005,
15 some 25 days before this alleged incident, that Ms. Balkum
16 actually put Minor on in-school suspension for excessive
17 talking and other acts. And, Your Honor, that's where I was
18 going when I asked the question that was objected to and the
19 court sustained it. But I believe under Rule 405 I can ask
20 Ms. Balkum about specific instances that would contradict
21 her characterization of Minor as a student.

22 THE COURT: All right, solicitor?

23 MR. ANTHONY: Well, essentially what he wants to
24 do is he asked about these character traits, he didn't get
25 the answer he wanted, and now he wants to ask some more.

1 And the rule is that he is not allowed to go into that.

2 I didn't object to some of those answers and he
3 got the answers she gave, but that doesn't make it okay for
4 him to start going into a bunch of other objectionable
5 stuff. So this is -- this is not --

6 Her character is not being put at issue by anybody
7 except the defense. And the defense may not like the
8 answers they got from this particular witness, but that
9 doesn't make it permissible for them to just dig around some
10 more and ask more objectionable questions, and that's what
11 this question is to be. It would be objectionable. They
12 are not relevant to anything.

13 THE COURT: Well, I took it, I guess, blended
14 somewhere between your position and Mr. Brannon's position.
15 I guess, as they say, solicitor, there is three sides to
16 every story, perhaps.

17 From Ms. Balkum's testimony, she testified that on
18 direct that Minor was lively, loud, outgoing, happy.
19 And on this particular day of 2-28-05 she was very subdued
20 and quiet. She testified she normally would have to calm
21 her down. She was very quiet.

22 And then he did ask her on cross examination some
23 questions. Ms. Balkum testified that Minor was friendly,
24 outgoing, happy, usually in a good mood, loud, but not to
25 the point of being disruptive.

1 And as I recall, I allowed her to answer some of
2 those questions, although you objected to one. And then
3 there was one question about a suspension, and I sustained
4 that objection, as I recall, based on the fact -- my
5 assumption to the fact that Ms. Balkum had never suspended

6 Minor [REDACTED]

7 Now, are you telling me something different, Mr.
8 Brannon?

9 MR. BRANNON: Your Honor --

10 THE COURT: Now, I'm looking at this -- are you
11 telling me something different, or did I have a
12 misunderstanding?

13 MR. BRANNON: No, Your Honor.

14 Would the court like to see the record?

15 THE COURT: Sure.

16 MR. BRANNON: There are two specific write-ups.
17 Your Honor. There are many write-ups, but I'm asking you to
18 look at only -- it's 2-3-05. On the document that you have
19 the teacher is identified as Balkum, and there were two
20 different sanctions, if you will, Your Honor. One was for
21 excessive talking and the other one was for other acts. And
22 I believe, Your Honor, that while they were watching Romeo
23 and Juliet, she was putting on her makeup, or combing her
24 hair, or something like that.

25 THE COURT: Well, if you want to proffer some

1 testimony from Ms. Balkum, you can certainly call her.

2 MR. BRANNON: Thank you, Your Honor. I would like
3 to do that.

4 THE COURT: All right. Is Ms. Balkum here?

5 MR. BRANNON: Yes, Your Honor.

6 THE COURT: All right.

7 Ms. Balkum, would you please come down and retake
8 the stand? You are still under oath, Ms. Balkum.

9 THE WITNESS: Yes, sir.

10 THE COURT: All right, Mr. Brannon.

11 (Whereupon, the following was proffered testimony)

12 MR. BRANNON: If it please the court?

13 CROSS EXAMINATION BY MR. BRANNON:

14 Q. Ms. Balkum, thank you for staying.

15 A. Yes.

16 Q. Earlier I asked you about **Minor** and I believe your
17 testimony was that she was loud, but that it never rose to
18 the occasion of you having to punish her or do something
19 along those lines. Do you remember that question?

20 A. Yes, sir.

21 Q. Okay. I'm going to --

22 MR. BRANNON: May I approach the witness, Your
23 Honor?

24 THE COURT: Yes, sir.

25 BY MR. BRANNON:

1 Q. Now, your name is B-A-L-K-U-M, is that correct?

2 A. Yes, sir.

3 Q. All right. And I'm going to ask you to look at this
4 document. This is student name Minor 9th grade.
5 I see the name Balkum there two times. Okay. And then on
6 2-3-05 she was -- the infraction is excessive talking?

7 A. Okay.

8 Q. And then on the same date other acts. Two days
9 administrative -- what is that, DE?

10 A. I think it stands for detention.

11 Q. Okay. And apparently you were watching Romeo and
12 Juliet and she was bored or something, right?

13 A. Possibly.

14 Q. Okay. And you said she was combing her hair and
15 looking in the mirror, right?

16 A. Uh-huh.

17 Q. Okay. But 25 days before she alleges this happened in
18 your classroom she was given a detention, is that correct?

19 A. By the administration, yes, sir.

20 Q. Okay. But the events occurred in your class, correct?

21 A. Yes, sir.

22 Q. So when I asked you if her behavior in class rose to
23 the level of disciplinary actions and you said no, that
24 would be incorrect?

25 A. Correct.

1 Q. Okay.

2 THE COURT: Well, that wasn't --

3 A. I do not recall that --

4 THE COURT: Wait just a minute. I don't recall
5 that being the question in front of the jury. I could be
6 wrong.

7 I recall the question if it ever rose to the level
8 of being a disruption, as opposed to a disciplinary action.

9 MR. BRANNON: Your Honor, you are correct. You
10 let her answer that question.

11 It was when I asked about disciplinary actions
12 that he objected and you sustained that objection.

13 THE COURT: And that was coupled into -- the
14 question was a general question, though, about -- I mean, I
15 don't want Ms. Balkum -- I'm not trying to defend Ms.
16 Balkum. I don't mean it like that, but I don't want her
17 staked out as if it's a prior inconsistent statement, but
18 your question to her was very generalized, "are you aware of
19 any suspension," as I recall it, Mr. Brannon.

20 MR. BRANNON: I don't -- I don't know the exact
21 words that I used.

22 I agree, Your Honor, and I'm certainly not trying
23 to -- I just -- I believe the jury has been given some
24 information that was not intentionally incorrect, but was
25 incorrect. I mean, we are talking about almost four years

1 ago, and so I don't -- I don't intend to -- I'm not
2 inferring that Ms. Balkum has done anything intentionally
3 here, but the jury now believes that Minor was never
4 suspended or disciplined, and the truth of the matter is
5 that about three weeks before this in the same teacher's
6 class she was.

7 THE COURT: On 2-3-05 she was cited, if you will,
8 for excessive talking in class.

9 MR. BRANNON: And given in-school detention.

10 THE COURT: So this is the same event? I thought
11 the other event was putting on her makeup.

12 MR. BRANNON: They were on the same day. She may
13 have been talking and putting on makeup, I don't know, but
14 there were two infractions. The talking did not lead to
15 detention, but the other acts did.

16 THE COURT: All right. Solicitor?

17 Anything else you want to proffer of --

18 MR. BRANNON: No, Your Honor.

19 THE COURT: -- Ms. Balkum? I didn't mean to cut
20 you off.

21 MR. BRANNON: No, Your Honor. Thank you.

22 THE COURT: Solicitor?

23 MR. ANTHONY: I suppose we would have to check the
24 record.

25 THE COURT: Sir?

1 MR. ANTHONY: If Mr. Brannon -- I just don't have
2 a note of the exact words of Mr. Brannon's question. I
3 remember him saying suspended, but I think the bottom line
4 is if the jury was given an incorrect answer -- given an
5 incorrect answer to a question, that shouldn't have been --
6 that that was irrelevant. I mean, we have never put her
7 character in issue. It's one thing to have somebody say
8 she's normally lively and boisterous and that day she wasn't
9 and have somebody say well, she's a good student, she's an
10 honest person, she's not a disciplinary problem. We would
11 never elicit any testimony like that. We didn't do anything
12 to go into **Minor** character or her behavior, her
13 performance in school, anything like that. This was just,
14 you know, basically some very basic testimony about her
15 demeanor and how her demeanor was different from what the
16 teacher had experienced to be before, but that's not going
17 into character.

18 The defense went into character, and they are
19 just -- the State's position would be that they are
20 basically just saddled with the answers that they received.
21 But to go into this, you know, the particulars of her
22 disciplinary record, that's not relevant. There is no rule
23 that allows them to do that.

24 THE COURT: All right.

25 MR. ANTHONY: And the other thing is the one

1 citation is the excessive talking. Well, the teacher
2 testified -- Ms. Balkum testified she talked to her. That
3 was -- you know, that's -- I mean, the jury did not get a
4 bad, you know, false impression about that, because that was
5 part of her testimony at some point, I think either on
6 direct or on cross and she said that. Maybe both.

7 THE COURT: All right. I think -- I have looked
8 at this one note on Rule 405 (B) -- that's the rule you are
9 proceeding under, correct?

10 MR. BRANNON: Yes, sir, Your Honor.

11 No, 405 (A).

12 THE COURT: (A)?

13 MR. BRANNON: Yes. That rule speaks to character
14 being brought in on direct and my ability to question on
15 cross as to specific instances.

16 MR. ANTHONY: And my only character we brought in
17 was the fact that she's a lively person, which is not --
18 that's not -- that is not character. That would be trait
19 reference is that she's a lively person. That's not
20 character.

21 THE COURT: I do not see excessive talking.

22 I'm reading this Groom's case that's cited in the
23 notes thereafter. I do not see excessive talking and
24 putting on makeup in Romeo and Juliet on a 14 year old
25 adolescent child would amount to her character or reputation

1 for truthfulness for veracity. So I would allow the
2 proffer, but I will not allow this to go to the jury.

3 Is there anything else you want to proffer through
4 Ms. Balkum?

5 MR. BRANNON: No, Your Honor. Thank you.

6 THE COURT: Thank you.

7 All right. Thank you for staying with us, Ms.
8 Balkum. You may step down.

9 Anything further before we bring in our jury, Mr.
10 Brannon?

11 MR. BRANNON: Nothing, Your Honor, and at this
12 point I would have no objection to her being excused.

13 THE COURT: All right. Then Ms. Balkum, you may
14 be excused. Thank you very much.

15 Anything further, solicitor?

16 MR. ANTHONY: No, sir.

17 THE COURT: All right. If you would bring in our
18 jury, please?

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: All right. It appears our jury is
22 back present in the courtroom.

23 Again, thank you, ladies and gentlemen, for your
24 patience and attention.

25 We are continuing the trial of the case by the

1 presentation of witnesses by the State.

2 Solicitor, you may call your next witness.

3 MR. ANTHONY: We call Officer Bowser.

4 THE COURT: Officer, if you would step down,
5 please, and be sworn.

6 OFFICER TERESA BOWSER, having been first duly
7 sworn, testified as follows:

8 THE COURT: All right, solicitor.

9 DIRECT EXAMINATION BY MR. ANTHONY:

10 Q. Would you state your name, please?

11 A. My name is Teresa Bowser.

12 Q. And Ms. Bowser, how are you employed?

13 A. What?

14 Q. How are you employed?

15 A. I can't hear you.

16 Q. How are you employed?

17 A. I am employed with the city of Union Public Safety
18 Department.

19 Q. And how long?

20 A. I have been with the police department for 13 years.

21 Q. And what's your position with the police department?

22 A. I'm school resource officer at the high school.

23 Q. And back on February -- back in February of 2005, how
24 were you employed? What was your assignment on February of
25 2005?

1 A. Then I was employed -- still employed with the City of
2 Union, but I was school resource officer at the Achievement
3 Academy.

4 Q. And on February the 28th of 2005, did you come into
5 contact with Minor [REDACTED]

6 A. Yes, sir.

7 Q. And how did you come to see Minor [REDACTED]

8 A. The school resource officer from Union High School
9 called me and told me that there was a situation at the high
10 school and he requested that I come out.

11 Q. And did you go to the high school?

12 A. I did.

13 Q. And did you see Minor [REDACTED]

14 A. Yes, sir.

15 Q. And where did you see her?

16 A. She was in the guidance counselor's office, Ms. McGee's
17 office.

18 Q. Okay. And did you -- what was the purpose of you
19 coming to see Minor [REDACTED] What were you there to do?

20 A. Talk with her about her being assaulted --

21 Q. Okay.

22 A. -- in her home.

23 Q. And was there a reason why you were going to be there
24 rather than the school resource officer who was assigned to
25 the high school at the time?

1 A. Yes, the school resource officer that was assigned at
2 the high school at the time was a male. She didn't feel
3 comfortable talking with a male.

4 Q. And without saying who she said did this, did Minor
5 report to you that she had been sexually assaulted?

6 A. Yes.

7 Q. And when did she say this had happened?

8 A. That morning between 6:30 and 6:40.

9 Q. And where did she say it occurred?

10 A. In her bedroom.

11 Q. And once you took this statement from Minor did
12 she receive some instructions about what to do next in
13 regards to the report she had made?

14 A. She was told to report to the hospital.

15 Q. And do you know who she went there with?

16 A. No, sir.

17 Q. All right. And do you have any other role in the
18 investigation of the case?

19 A. No, sir.

20 Q. Thank you.

21 MR. ANTHONY: That's everything on the direct.

22 THE COURT: Thank you, solicitor.

23 Mr. Brannon.

24 MR. BRANNON: If it please the court, Your Honor?

25 THE COURT: Yes, sir.

1 CROSS EXAMINATION BY MR. BRANNON:

2 Q. Officer Bowser, you weren't at Minor apartment on
3 February the 28th in the morning hours, were you?

4 A. No, sir.

5 Q. Okay. After you took your report, did you make any
6 phone calls to anybody?

7 A. No, sir.

8 Q. Okay. Did you give Ms. Minor any documents,
9 or pamphlets, or anything like that?

10 A. No, sir.

11 Q. Okay. You just took a report?

12 A. Yes, sir.

13 MR. BRANNON: Nothing further. Thank you.

14 THE COURT: Anything on redirect, solicitor?

15 MR. ANTHONY: No. No, sir.

16 THE COURT: All right. Thank you very much,
17 officer. You may step down.

18 All right, solicitor, you may call your next
19 witness.

20 MR. ANTHONY: The next witness would be Ms.

21 Linder. Ms. Linder, please.

22 THE COURT: All right. If you would just step
23 down front, Ms. Linder, the clerk will swear you.

24 GWEN LINDER, having been first duly sworn,
25 testified as follows:

1 THE COURT: All right, solicitor.

2 DIRECT EXAMINATION BY MR. ANTHONY:

3 Q. Would you state your name, please?

4 A. Gwen Linder.

5 Q. And Ms. Linder, how are you currently employed?

6 A. Currently I work for Code Care Home Health.

7 Q. And back in February of 2005, how were you employed?

8 A. I worked for Wallace Thompson in the emergency room.

9 Q. And what was your job with Wallace Thompson?

10 A. Staff nurse in the ER.

11 Q. And what type nurse are you?

12 A. Registered nurse.

13 Q. And how long did you work in the emergency room at
14 Wallace Thompson?

15 A. Since 1978, either full time or part-time.

16 Q. Okay. And I want to take you now to February 28th of
17 2005. Did you see Minor on that date?

18 A. Yes.

19 Q. And where did you see her?

20 A. In the emergency room.

21 Q. And what was the purpose of your contact with Minor
22 on that date?

23 A. She came in for an exam.

24 Q. And approximately what time did you start the process
25 of dealing with her?

1 A. According to the record, I had looked at it, it was
2 around 3:30.

3 Q. And how did y'all -- how did you begin the examination
4 process?

5 A. Well, first you took the patient's vital signs, type up
6 the ER record and put their complaint on the chart.

7 Q. Okay. And once you did that, what did you do?

8 A. We have to take them to another room for exam, which
9 would have been room A, I think it was.

10 Q. Okay. And then once you get to the examination room,
11 what do you do then?

12 A. Well, we have the kit that we have to get and open up,
13 start collecting any evidence. And usually have the patient
14 take their clothes off. Give them a gown. And if there is
15 anything we are going to keep, or collect, put it in the bag
16 that's in the evidence kit.

17 Q. Okay. And did you -- after -- after you opened up the
18 kit, do you ask the patient any questions about the assault
19 itself?

20 A. Yes, there is a form in there that has questions and
21 different things about the exam to be filled out.

22 Q. And did you talk to **Minor** as part of the process
23 doing the kit?

24 A. Yeah, you have to ask them questions.

25 Q. And did **Minor** report to you that she had been

1 sexually assaulted?

2 A. Yes.

3 Q. And where did she say that had occurred?

4 A. I think it was in their home, in her bedroom.

5 Q. And when did she say that had happened?

6 A. It was up in the morning, about 6:30, or --

7 Q. I'm sorry?

8 A. It was around 6:00 or 6:30, or something, that morning.

9 Q. And did you collect any clothing from [Minor] [REDACTED] when
10 you were doing this examination?

11 A. Yeah, her underwear, and we put them in a bag.

12 Q. I'm showing you what's been marked for identification
13 as State's Exhibit No. 4. I'm showing you the paper bag
14 that's in the plastic bag. I would ask if you would just
15 look at that and see if you can identify it?

16 A. Yeah, it's my writing. It's terrible. [Minor] [REDACTED]
17 and I signed it.

18 Q. Okay.

19 A. I collected it at 1550 on 2-28.

20 Q. That would be 3:50?

21 A. Yeah.

22 Q. Okay. And once you collected the underwear, what did
23 you do with it, as far as securing it in that bag?

24 A. I have to put it in the bag and then they have the red
25 seal that comes in the evidence kit, and we have to seal it

1 and initial it.

2 Q. And is that what you did in this instance?

3 A. Yeah.

4 Q. And are those -- is that your initials on the seal?

5 A. Yes, sir.

6 Q. Okay. Well, after you collected Minor underwear,
7 what was next thing that you did in regard to doing this
8 kit?

9 A. After we got her dressed and I got the clothing --
10 apparently whatever else she had on, she must not have had
11 on at home, because we didn't keep that. It was just her
12 underwear. And Dr. Patrick, the doctor that -- the
13 emergency room doctor came in and did a pelvic exam and
14 collected swabs.

15 Q. And you say collected swabs. What area of the body do
16 you take the --

17 A. Vaginal swabs.

18 Q. All right. And after Dr. Patrick did her examination,
19 what was the next thing that you did?

20 A. The lab came in and they took blood. There is tubes in
21 the kit that -- in the evidence kit that have to be sent off
22 to SLED. So the lab came in, collected the blood, and we
23 signed the paper and put them into the bags. They have
24 little plastic bags I think and then another bag that they
25 go in.

1 Q. Okay.

2 MR. ANTHONY: If I could have just have one
3 second?

4 THE COURT: Yes, sir.

5 MR. ANTHONY: Oh, here, it is. Okay.

6 BY MR. ANTHONY:

7 Q. I'm showing you now what's been marked for
8 identification as State's Exhibit No. 5 and -- I have got a
9 plastic envelope I'm going to show you, and then I have also
10 got a paper bag here. I would ask you if you recognize
11 those two items and can say what they are?

12 A. These are -- this is what comes in the kit, evidence
13 kit, and it's got Minor name on it and the date and
14 time that the blood was drawn and the person that drew the
15 blood.

16 Q. Okay. And were you there when the blood was drawn?

17 A. Yeah.

18 Q. And after the blood was drawn, what did you do with it?

19 A. Put it in this plastic bag and then we put it in the
20 envelope and put a seal on it, like we did all the other
21 stuff.

22 Q. And I'm showing you now this paper envelope?

23 A. Yes.

24 Q. Is that -- what is that red tape on the paper envelope?

25 A. That's the evidence seal that we have to put on

1 everything and put ours initials.

2 Q. And did you seal up that envelope?

3 A. Yeah.

4 Q. Is that your initials on that?

5 A. Yeah, I -- because what was in here was the blood and
6 the vaginal swabs that the doctor collected.

7 Q. Okay.

8 A. They go in this.

9 Q. All right. Thank you.

10 Okay. Now, after you collected the blood, the vaginal
11 swabs, put the vaginal swabs in this bag here, what happened
12 to the evidence after it was collected by you? What did you
13 do with it? Say like this envelope here that was part of
14 Exhibit No. 5, what did you do with this?

15 A. There is the box that all of it comes in and the
16 papers. After all the paperwork is filled out and all the
17 evidence is collected, it goes into that box, and the seal
18 is put around the box and initial it. And we hold onto it
19 until somebody comes and takes it from us. An officer
20 comes.

21 Q. And on the 28th day of February, 2005, did somebody
22 come and get it?

23 A. Yes.

24 Q. Do you remember who that was?

25 A. I think it was Donald Ray Nix.

1 Q. And he worked with the Union Public Safety Department?

2 A. Yeah.

3 Q. And after you conducted this examination of Minor
4 on this date, did you have any further contacts with her or
5 any other involvement in the investigation of the incident?

6 A. No.

7 Q. Okay. All right. Thank you.

8 MR. ANTHONY: That's everything on direct.

9 THE COURT: Thank you, Solicitor.

10 Mr. Brannon?

11 MR. BRANNON: Thank you, Your Honor. May it
12 please the court.

13 CROSS EXAMINATION BY MR. BRANNON:

14 Q. Ms. Linder, how are you today?

15 A. Good.

16 Q. When you -- when you see someone, such as Minor or
17 any other alleged victims of a sexual assault, do you do any
18 counseling?

19 A. No, we don't. We -- some of the papers that come in
20 that kit have a rape crisis number on it.

21 Q. Right.

22 So although you don't do counseling, you do provide
23 information for counseling, is that correct?

24 A. Yes.

25 Q. Okay.

1 MR. BRANNON: One second, Your Honor.

2 (Off the record)

3 (Back on the record)

4 MR. BRANNON: Nothing further, Your Honor. Thank
5 you.

6 THE COURT: Thank you, Mr. Brannon.

7 Anything on redirect?

8 MR. ANTHONY: No, sir, no redirect.

9 THE COURT: Thank you, Ms. Linder.

10 THE WITNESS: Thank you.

11 THE COURT: You may be excused.

12 THE COURT: All right, solicitor, you may call
13 your next witness.

14 MR. ANTHONY: The next witness is Ms. Garner.

15 MARY GARNER, having been first duly sworn,
16 testified as follows:

17 THE COURT: All right, solicitor.

18 DIRECT EXAMINATION BY MR. ANTHONY:

19 Q. Would you state your name, please?

20 A. Mary Cannon Garner.

21 Q. Ms. Garner, how are you employed?

22 A. I'm a lab tech at Wallace Thompson Hospital.

23 Q. How long have you worked at Wallace Thompson?

24 A. Twelve and a half years.

25 Q. And working there as a lab tech, what do you do

1 exactly?

2 A. We process specimens and run lab tests. We draw blood.
3 We run tests on urinalysis. We do blood banking, just to
4 name a few things.

5 Q. And were you employed in that capacity back on
6 September 14th of 2006?

7 A. I was.

8 Q. And do you have any recollection of drawing Luther
9 Pearson's blood on that date?

10 A. No, I don't.

11 (Chain of Custody Form marked as State's Exhibit
12 No. 6 for identification)

13 BY MR. ANTHONY:

14 Q. I'm going to show you what's been marked for
15 identification as State's Exhibit No. 6. I would ask that
16 you take a look at that form.

17 Can you tell me what that form is?

18 A. It's a chain of custody form saying that I drew some
19 blood from Mr. Luther Bradford Pearson.

20 Q. Okay. Now, when that form that you have, when do you
21 use that form?

22 A. We use it when the officer brings a client in that
23 wants blood drawn. Urine. This blood was drawn on this
24 form.

25 Q. So you used that in situations where somebody in law

1 enforcement brings somebody to the hospital?

2 A. Yeah, we do.

3 Q. And the information that you put on that form, when do
4 you write that information down in relation to the person
5 being brought in?

6 A. Okay. We write it down during the time we draw the
7 blood.

8 Q. And what does that record that you have indicate that
9 you did in regards to Mr. Pearson on September the 14th of
10 2006?

11 A. I drew Mr. Pearson's blood. That's what it states.

12 Q. And is that form signed by you?

13 A. It is.

14 Q. Okay. And what procedure do you use when somebody
15 comes into the hospital, a law enforcement officer asks you
16 to draw that person's blood?

17 A. Okay. We must have this chain of custody form.

18 We tie a tourniquet around their arm. We disinfect the
19 arm. We insert the needle into the arm, push the
20 vacutainer on. We label the tube and we put a seal over
21 it.

22 Q. And then once you have sealed up the tube, what do you
23 do?

24 A. We hand it to the officer. I sign the form and he
25 signs up under it saying that I gave it to him.

1 Q. Okay. And that's what happened, has been done with
2 that information and officer signed it indicated it's been
3 transferred from you to him?

4 A. It does.

5 Q. Okay. Thank you.

6 MR. ANTHONY: That's everything on direct.

7 THE COURT: Thank you, solicitor.

8 Mr. Brannon.

9 MR. BRANNON: Thank you. If it please the court.

10 CROSS EXAMINATION BY MR. BRANNON:

11 Q. Ms. Garner, I think the very first question that you
12 were asked was do you have any specific recollection of
13 drawing blood from my client, is that correct?

14 A. Yes.

15 Q. And you said no?

16 A. No.

17 Q. Would that mean that he didn't pose you any problem?
18 He didn't fight you? He didn't do anything? He just let
19 you take his blood?

20 A. Yes.

21 MR. BRANNON: Thank you. Nothing further.

22 THE COURT: Redirect?

23 MR. ANTHONY: No redirect.

24 THE COURT: Thank you, Ms. Garner. You may step
25 down.

1 Can be Ms. Garner be excused?

2 MR. BRANNON: Yes.

3 THE COURT: You may call your next witness.

4 MR. ANTHONY: Your Honor, may we approach about a
5 scheduling situation?

6 THE COURT: Yes, sir.

7 (Whereupon, the lawyers approached the bench for
8 an off-the-record discussion)

9 THE COURT: Mr. Foreman, ladies and gentlemen of
10 the jury panel, I'm now informed it would be a good time to
11 take our evening recess. Again, you will be able to repeat
12 this back to me before the week is out. I will remind you
13 during this recess you are not to discuss this case with
14 anyone. This includes your family, your friends, your
15 fellow jurors, or anyone involved in the case. As I tell
16 you, I realize that if your home is anything like my home
17 used to be back when my children were still at home, by the
18 time you get home in the afternoon, they would say what did
19 you do today, daddy, or what did you do today, momma.
20 Although none of my children are home anymore, I don't quite
21 have them all off the payroll, but, but you can certainly
22 tell your spouses and your family that you have been
23 selected a member of the jury, but you cannot discuss the
24 facts of the case with anyone. That includes, as I say,
25 your family, friends, or anyone involved in the trial. If

1 anyone tries to talk with you about the case, please let me
2 know.

3 Remember, do not read, watch, or listen to any
4 news reports about this trial. Do not do any research on
5 the Internet, do any independent investigation, and please
6 remember to keep an open mind about this case until I
7 instruct you to begin your deliberations.

8 I would ask you to please be back in your jury
9 room at 9:30 in the morning. At 0930 hours if you would
10 please back in your jury room, we will start promptly
11 thereafter. With that you are now excused and I hope that
12 y'all will have a pleasant evening.

13 (The following takes place outside the presence of
14 the jury panel)

15 THE COURT: All right. Anything further,
16 solicitor?

17 MR. ANTHONY: No, sir, nothing on the record.

18 We might want to just go back in chambers and talk
19 about the scheduling.

20 MR. BRANNON: No, Your Honor. Thank you.

21 THE COURT: All right. Court would be in recess
22 until 9:30. Thank you very much.

23 (Whereupon, proceedings were adjourned to February
24 13, 2008)

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF UNION) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 LUTHER BERNARD PEARSON,) 2007-GS-44-416
7 SR.,) 2007-GS-44-417
8 Defendant.) FEBRUARY 13, 2008
9) Union, South Carolina

10 (VOLUME II)

11 B E F O R E:

12 THE HONORABLE R. KNOX MCMAHON, JUDGE. ; and a jury.
13
14

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1 (PROCEEDINGS, February 13, 2008)

2 (Underwear Cutting marked as State's Exhibit No. 7
3 for identification)

4 (Underwear Cutting marked as State's Exhibit No. 8
5 for identification)

6 THE COURT: Good morning, solicitor, Mr. Brannon.
7 Anything before we bring in our jury this morning?

8 MR. ANTHONY: No, not from the State, Your Honor.

9 THE COURT: Mr. Brannon?

10 MR. BRANNON: Not from the defense, Your Honor.

11 THE COURT: All right. It appears all parties are
12 present. The defendant is present.

13 Mr. Bailiff, if you will bring our jury in,
14 please.

15 (The following takes place in the presence of the
16 jury panel)

17 THE COURT: Mr. Foreman, ladies and gentlemen of
18 the jury, good morning.

19 THE JURY: Good morning.

20 THE COURT: I hope that you all had a pleasant
21 evening.

22 We are continuing with the trial of the case with
23 the presentation of testimony by the State.

24 Solicitor, you may call your next witness.

25 MR. ANTHONY: Thank you, Your Honor.

1 We call Dr. Patrick. All right.

2 THE COURT: Doctor, if you would come down, the
3 clerk will swear you in.

4 DR. ELIZABETH PATRICK, having been first duly
5 sworn, testified as follows:

6 THE COURT: Solicitor.

7 MR. ANTHONY: Thank you, Your Honor.

8 DIRECT EXAMINATION BY MR. ANTHONY:

9 Q. Would you state your name, please?

10 A. Elizabeth Allison Labelle Patrick.

11 Q. And Dr. Patrick, how are you currently employed?

12 A. I presently work for Three Rivers Internal Medicine, a
13 group in Columbia. I'm also an emergency room physician for
14 the VA hospital in Columbia, at the Dorn VA.

15 Q. And going back to February of 2005, how were you
16 employed then?

17 A. I was employed by UES, United Emergency Services, as an
18 emergency room physician and the medical director of the
19 Wallace Thompson emergency room.

20 Q. And would you give the jury your educational background
21 and training in the medical field, please?

22 A. I have my medical degree from the University of
23 Pennsylvania, in Philadelphia.

24 I did a surgery -- a partial residency in Houston,
25 Texas, and I finished internal medicine residency in

1 Portland, Oregon.

2 I then practiced as emergency medicine and internal
3 medicine in Illinois, Tennessee, and now South Carolina.

4 Q. And as part of your duties when you were working as a
5 medical director of the emergency room here at the hospital
6 in Union, did you perform sexual assault examinations?

7 A. Yes, that was within the responsibilities of the
8 emergency room physician.

9 Q. And approximately how often would you be called upon to
10 perform a sexual assault examination?

11 A. Usually about once or twice a month.

12 Q. And how long did you serve as the physician in the ER
13 here in Union?

14 A. About two and a half years.

15 MR. ANTHONY: Your Honor, at this time we tender
16 Dr. Patrick to the court as an expert in the field of
17 emergency medicine.

18 THE COURT: All right.

19 MR. BRANNON: There would be no objection, Your
20 Honor.

21 THE COURT: All right. Thank you, Mr. Brannon.

22 Mr. Foreman, ladies and gentlemen of the jury,
23 normally a person cannot give opinion testimony. Normally
24 when a person testifies, they must testify as to what they
25 either saw, heard, or sensed by smell, or something of that

1 nature. However, there is an exception when someone,
2 because of education or experience and training, they are
3 permitted to give their opinion in certain areas if the
4 court qualifies them by weight.

5 This witness, Dr. Elizabeth Patrick, would be
6 qualified in the area of emergency medicine. Is that
7 correct?

8 MR. ANTHONY: Yes.

9 THE COURT: Emergency medicine, to give opinion
10 testimony in that area. That does not mean that you must
11 accept the opinion, but it is evidence for you to use in any
12 way that you see fit.

13 Thank you, solicitor. You may proceed.

14 MR. ANTHONY: Thank you, Your Honor.

15 BY MR. ANTHONY:

16 Q. Taking you now to February 28th of 2005, did you see
17 Minor [REDACTED] on that day?

18 A. I did.

19 Q. And how did you come to see her?

20 A. She presented to the emergency room during my shift.

21 Q. And when she came to the emergency room, did she make a
22 report to you that she had been sexually assaulted?

23 A. She did.

24 Q. And where did she say the assault had occurred?

25 A. She reported that it occurred in the bedroom of her

1 house.

2 Q. Okay. And when did she say that it occurred?

3 A. Earlier that day.

4 Q. Okay. And what was [Minor] demeanor when you were
5 speaking to her about this?

6 A. I remember her as being very upset and distraught.

7 Q. And did you perform any type of examination as part of
8 the sexual assault exam?

9 A. Yes, I did.

10 Q. What exactly did you do in regards to physical
11 examination of [Minor]

12 A. We did just sort of a general physical exam. And then
13 in addition, I did a pelvic examination, including
14 examination with a Wood's light or black light.

15 Q. And what does that entail?

16 A. The pelvic exam?

17 Q. Well, the Wood's light?

18 A. The Wood's light or black light is a light that you can
19 use looking for things like semen. That's what the function
20 is in this particular type of exam.

21 Q. Okay. And did you find any semen on [Minor] body
22 when you used that light?

23 A. No, I did not.

24 Q. Did you do anything else as part of your examination?

25 A. I did a number of swabs, as the sexual assault kit

1 recommends. The nurse hands me a number of swabs to make
2 some slides and to be entered into evidence, and the
3 physician performs that part of the exam and then returns
4 those swabs to the nurses to be part of the kit.

5 Q. And during the course of the actual physical
6 examination you did of Minor [REDACTED] did you observe any
7 injuries to her vaginal area?

8 A. I did not.

9 Q. And in your experience, is it unusual to have
10 situations where someone would have engaged in or been
11 forced to engage in intercourse and not have any injury?

12 A. Not necessarily, unfortunately, and it often makes the
13 rape victims very guilty. Fear, as well as excitement,
14 releases very similar hormones in the body. So you can get
15 lubrication in the vagina, or even an erection for a male,
16 through being scared. And, you know, if there is
17 lubrication, then you may not see any evidence of forced
18 entry, but that may occur as part of fear, not necessarily
19 excitement.

20 Q. And what type activities could a female engage in after
21 having sexual intercourse that would tend to eliminate the
22 presence of semen on her body?

23 A. Most rape victims feel very dirty and used after the
24 event has happened. And, unfortunately, almost all of them
25 have showered and/or bathed to try to get the dirt off of

1 them, and that very often is the case before most of the
2 rape victims go to the emergency room. Their first thing
3 they want to do is just to get clean again.

4 Q. Okay. And what would account for a female having
5 bathed, but then having the semen deposit on a pair of
6 panties that is put on after a bath or after washing?

7 A. Well, anything deposited in the vagina, for the most
8 part, would go to the lowest point of gravity. So if semen
9 is deposited in the vagina, eventually it does drain out,
10 even if you have already showered.

11 MR. ANTHONY: If I could have one moment.

12 (Off the record)

13 (Back on the record)

14 BY MR. ANTHONY:

15 Q. Thank you.

16 MR. ANTHONY: That's everything on direct.

17 THE COURT: Thank you, solicitor.

18 Mr. Brannon?

19 MR. BRANNON: If it please the court, Your Honor.

20 CROSS EXAMINATION BY MR. BRANNON:

21 Q. Good morning Dr. Patrick. How are you?

22 A. Good morning.

23 Q. February 28th, 2005, you were working at the emergency
24 room here in Union, correct?

25 A. Correct.

1 Q. And you performed a sexual assault analysis or exam on
2 Minor is that correct?

3 A. Yes.

4 Q. Now, other than the physical examination and gathering
5 of evidence, was there any information provided to Minor
6 about the alleged sexual assaults, or anything like that?
7 Are you aware of anything?

8 A. That's part of the whole process. There is a kit which
9 includes a number of steps, you know, which includes
10 counseling. And you are given information I believe to the
11 local rape counseling group, and, you know, it's contained
12 on part of the sheet. I don't remember the exact one, but
13 that's part of the information provided at the end of the
14 exam, yes, sir.

15 Q. Thank you.

16 Now, as part of the kit or the protocol that you went
17 through that day, did you take from Minor a pair of
18 panties?

19 A. I did not. That was part of the nursing part of the
20 exam.

21 Q. Okay. Are you aware that that was done?

22 A. That was documented on the paperwork before I performed
23 my physical exam.

24 Q. Okay. And so there was somebody at the hospital that
25 probably saw Minor disrobe and then took those panties,

1 right?

2 A. That would be the nursing staff.

3 Q. Okay. So that pair of panties that was gathered at the
4 hospital, there would be somebody who would actually have
5 seen the victim remove that pair of clothing, correct?

6 A. That is my understanding.

7 Q. Okay. All right. Now, have you reviewed your report?

8 A. Yes, I did.

9 Q. Okay.

10 MR. BRANNON: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes, sir.

13 BY MR. BRANNON:

14 Q. Doctor, I'm going to ask you to look back at a couple
15 of these pages here. Forgive my fumbling.

16 Now, during your pelvic examination, you make some
17 notes, correct?

18 A. Correct.

19 Q. All right. Now, what --

20 MR. ANTHONY: Excuse me, Your Honor. Could I just
21 be advised what page he's showing her?

22 MR. BRANNON: They are not numbered, John, but
23 I'll show it to you.

24 MR. ANTHONY: Okay. Thank you.

25 BY MR. BRANNON:

1 Q. What does WNL mean?

2 A. Within normal limits.

3 Q. Okay. Now, you did your examination based on your
4 experience and expertise?

5 A. Correct.

6 Q. And you found these different female body parts to be
7 within normal limits, is that correct?

8 A. Correct.

9 Q. The vulva. I don't even know --

10 A. The atroitus, vagina, and the anus.

11 Q. And then what's that right there?

12 A. There was not a perceivable hymen. That's not unusual
13 in American women.

14 Q. But there was none seen?

15 A. Correct.

16 Q. Is that specifically indicative of anything?

17 A. No.

18 MR. ANTHONY: Well -- no objection.

19 THE COURT: All right. You may re-ask the
20 question then.

21 BY MR. BRANNON:

22 Q. Is the fact that there is no hymen specifically
23 indicative of anything?

24 A. No.

25 Q. Okay. It's not indicative of a sexual assault having

1 occurred?

2 A. No.

3 Q. Okay. Thank you.

4 And then the Wood's light, that's like one of those
5 handheld kids black lights that makes posters glow, right?

6 A. Yes.

7 Q. It always makes bodily fluids glow, correct?

8 A. Correct.

9 Q. You used the Wood's light when examining **Minor**
10 **Minor** is that correct?

11 A. Correct, the external exam.

12 Q. And then you are looking here for semen, I would
13 suppose, correct?

14 A. There wasn't wet mounts, I'm looking for semen.

15 Q. Okay. And there was none seen, correct?

16 A. We did not see any sperm.

17 Q. Okay. All right.

18 Now, this list here is an evidence checklist, and I
19 imagine this is you are telling law enforcement or SLED what
20 you got and what you didn't get, correct?

21 A. I'm not in charge of the evidence checklist. That's
22 done by the nursing staff.

23 Q. Okay. Here we have number two, underwear, it was
24 collected, correct?

25 A. Correct, by the nursing staff.

1 Q. Okay. The outer clothing was not collected, correct?

2 A. That's what was documented.

3 Q. And then it says there were no miscellaneous materials
4 collected, correct?

5 A. Correct.

6 Q. There were no bite marks or swabs of bite marks,
7 correct?

8 A. Correct.

9 Q. Oral swabs or smears, there was none of those, right?

10 A. Correct.

11 Q. No fingernail scrapings, correct?

12 A. Correct.

13 Q. No pubic hair combings, correct?

14 A. Correct.

15 Q. You did do the vaginal swab, correct?

16 A. Yes, I performed that.

17 Q. Now, it says rectal swab or smear, there was none
18 taken, is that correct?

19 A. Correct.

20 Q. All right. And then you took a blood sample, or
21 someone took a blood sample from **Minor** correct?

22 A. Correct.

23 Q. All right. Did you detect any bruising or anything
24 like that that would be indicative of a struggle between Ms.
25 **Minor** and her alleged perpetrator?

1 A. I did not.

2 Q. You did not. Okay.

3 MR. BRANNON: One second, Your Honor?

4 THE COURT: Yes, sir.

5 (Off the record)

6 (Back on the record)

7 BY MR. BRANNON:

8 Q. Doctor, one last series of questions.

9 If -- if a woman has had sex, be it consensual or
10 forcible, and her partner has used a condom, is there signs,
11 is there -- is there a chemical residue? Is there anything
12 that can be seen during one of your examinations that would
13 expose or present the use of a condom during that sexual
14 activity?

15 A. Usually not. A lot of it would probably depend upon
16 the particular condom, what type of spermicidal lubricant
17 and things like that that are on it, but most the time we
18 have no way of documenting whether or not a condom was
19 actually used, based on the physical exam. And, in
20 addition, if proper techniques were not used, you can end of
21 up with all sorts of sperm anywhere.

22 Q. Now, in your examination of Minor [REDACTED] did you find any
23 signs of the use of a condom?

24 A. I did not.

25 Q. Did you find any signs of the use of a lubricant or

1 spermacide?

2 A. I did not, but she had also bathed and you would not
3 expect to find that.

4 Q. Thank you, doctor.

5 MR. BRANNON: I have nothing further.

6 THE COURT: Thank you, Mr. Brannon.

7 Solicitor, anything in redirect?

8 MR. ANTHONY: Could I have one moment?

9 THE COURT: Yes, sir, certainly.

10 (Off the record)

11 (Back on the record)

12 REDIRECT EXAMINATION BY MR. ANTHONY:

13 Q. Just one followup. You were asked about weather you
14 could -- whether you could determine if a condom had been
15 used during the act. And you said that semen could be
16 positive -- could be positive, if there was a failure to use
17 the proper technique. Could you explain what type failure
18 would leave semen being positive on a female, even if the
19 condom were used?

20 A. Unfortunately the most common reason for condom
21 failure, as far as contraceptive, is that after the act, as
22 the penis is backing less firm, most people do not hold the
23 base of the condom against the penis. And oftentimes the
24 fluid will leak as the penis is becoming smaller.

25 In addition, depending upon what brand that you get,

1 there is a certain degree of out-of-the-box failure, where
2 you are either going to get a hole or it's going to break.

3 Q. All right. Thank you.

4 MR. ANTHONY: That's all.

5 THE COURT: Anything on recross?

6 MR. BRANNON: No.

7 THE COURT: Thank you, Mr. Brannon.

8 Thank you very much, doctor, for being here today.
9 You may step down.

10 THE WITNESS: Do I have to come back tomorrow? I
11 had two subpoenas.

12 THE COURT: Doctor, we would love to have you come
13 back. I don't think she needs you to come back. Let me
14 see.

15 Any objections to the doctor being excused?

16 MR. ANTHONY: No.

17 MR. BRANNON: No, Your Honor, and that second
18 subpoena was mine.

19 THE COURT: All right. Thank you very much. No,
20 you do not. You may step down and you may be excused.
21 Thank you, doctor.

22 MR. BRANNON: Your Honor, would the court allow
23 about a three minute break? Forgive me, but I have left my
24 glasses in the truck and I can't see from me to you, Your
25 Honor.

1 THE COURT: I wouldn't know how to react to that,
2 of course.

3 All right. Ladies and gentlemen, if you would
4 please step to your jury room. Three minutes will become
5 ten very quickly, I'm sure, but do not discuss the case
6 during this brief recess. If you would go with our bailiff.
7 Thank you.

8 (The following takes place outside the presence of
9 the jury panel)

10 THE COURT: All right. Court would be in recess
11 for about ten minutes.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 (Blood Sample marked as State's Exhibit No. 9 for
15 identification)

16 THE COURT: During the break one of the jurors
17 spoke to the bailiff and asked if she could take notes. I
18 certainly have no objections to that.

19 Solicitor, do you have a position?

20 MR. ANTHONY: No, we don't object, Your Honor.

21 THE COURT: Mr. Brannon, do you have a position?

22 MR. BRANNON: No, Your Honor.

23 THE COURT: All right. You don't have a position?

24 MR. BRANNON: No objection.

25 THE COURT: No objection. All right.

1 Do you have a pad and pen or pencil, Mr. Clerk?

2 THE CLERK: We just need, or do we need more than
3 one?

4 THE COURT: Well, what's going to happen is you
5 just need one, until the one gets her pad and pencil, and
6 then you will need seven, and then you will need 15 and then
7 I want one. We will end up needing one for everybody,
8 actually, I think. I mean, you don't have to hand them out,
9 but you have to have them available.

10 THE CLERK: I'll go downstairs and get them. I
11 have one right now.

12 THE COURT: We will see. Maybe when get by with
13 just the one.

14 And I will give her, or the jury, a little short
15 charge on it. It will take about 30 seconds. All right.

16 And you can bring out the jury in. And if any of
17 the others wants a pad or pencil, please let me know, Mr.
18 Bailiff.

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: All right. It appears our jury is
22 back present in the courtroom.

23 During the break the bailiff indicated to me that
24 one of the jurors had some interest in taking notes. You
25 may certainly do that.

1 I will tell you this. You may take notes during
2 the trial of the case. However, please remember that -- and
3 since it's only one, if any of the others want a pad or pen,
4 you may also have it, but please remember some people are
5 better note takers than others, and an individual juror's
6 notes should not be given any greater weight in the
7 recollection of other jurors. The recollection of an
8 individual juror should be considered as reliable as any
9 notes taken by any other juror.

10 And I would also advise that if you take notes,
11 when you are taking notes, and I'm a note taker myself, that
12 you may not notice the demeanor or the body language of a
13 particular witness, which you can also use in determining a
14 witness' credibility.

15 With that being said, we will continue with the
16 trial of the case.

17 Solicitor, you may call your next witness.

18 MR. ANTHONY: We would call Mr. Nix.

19 THE COURT: All right.

20 DONALD RAY NIX, having been first duly sworn,
21 testified as follows:

22 THE COURT: All right, solicitor.

23 DIRECT EXAMINATION BY MR. ANTHONY:

24 Q. Would you state your name, please?

25 A. My name is Donald Ray Nix.

1 Q. And Mr. Nix, how are you currently employed?

2 A. I'm currently employed at the Food Lion now.

3 Q. Back in February of 2005, how were you employed?

4 A. I was a criminal investigator with the public safety
5 department.

6 Q. And how long did you work for the public safety
7 department?

8 A. Approximately ten years.

9 Q. And I want to take you now to February 28th of 2005.
10 Did you become involved in the investigation of the sexual
11 assault of Minor

12 A. I did.

13 Q. And how did you begin your involvement in that
14 investigation?

15 A. My involvement in the investigation was we -- public
16 safety, we just sort of kind of worked as a team. Captain
17 Gault and Mr. Henderson was on another assignment and I
18 became involved in the investigation, so I was told to go to
19 the hospital and pick up a sexual assault kit.

20 Q. And did you do that?

21 A. I did.

22 Q. All right. And who did you speak to at the hospital?

23 A. Hospital staff. I think Dr. Patrick was there. And I
24 was -- when I went over and picked it up, it was
25 relinquished over to me as evidence.

1 Q. And what condition was the -- what exactly specifically
2 did you receive?

3 A. Okay. Sexual assault kit is a kit that's set up by
4 SLED. It's in a box. It contains several different things
5 inside of it. And basically when we get it, it's sealed and
6 signed by the hospital staff with all the evidence inside of
7 it, and it was given to me in that shape.

8 Q. Okay. And is that how the kit in **Minor** case was
9 turned over to you?

10 A. That's correct.

11 Q. Then once you received that sealed box, what did you do
12 with it?

13 A. It was then transported from Wallace Thompson Hospital
14 back to the Union Public Safety Department, where it was
15 placed into evidence, in refrigerated evidence, at public
16 safety.

17 Q. And after you went to the hospital and collected the
18 sexual assault kit, what was next thing that you did in
19 regards to investigating this incident?

20 A. After receiving the sexual assault kit and turning it
21 over to evidence, myself and Investigator Henderson went to
22 **Minor** apartment, her mother's apartment.

23 Q. Where was that located?

24 A. 49 West Apartments. I think the address is 1208.

25 Q. Okay. That's in Union?

1 A. Union, South Carolina.

2 Q. And that's in Union County?

3 A. Yes, sir.

4 Q. And what was the purpose of going to Minor
5 apartment?

6 A. The purpose of going to Minor apartment was
7 further collection of evidence we needed and the actual --
8 we actually got permission from Minor to go in her
9 apartment --

10 Q. Okay.

11 A. -- and recovered the evidence.

12 Q. And the reference that you make as to Minor you
13 are talking about Minor mother?

14 A. Yes, that's correct.

15 Q. And who was there when you were there at the residence?

16 A. Myself, Investigator Henderson, Minor and her
17 mother. I'm not sure, Delmar.

18 Q. All right. And what did you collect while you were
19 there at the Eison residence that evening?

20 A. Basically in a case like this we collect the clothing
21 of the victim, what she currently had on at the time. Bed
22 clothing and stuff like that, or any kind of evidence that
23 they think we need.

24 Q. And specifically in this instance what did you collect?

25 A. We collected the bed sheets, the comforter, Minor

1 clothing that she said she had on, the victim. And we
2 collected all that and it was gathered there at the scene.

3 Q. Okay. And specifically in regards to the bed sheets,
4 where did you locate those?

5 A. In Minor bedroom.

6 Q. And then the clothing, where did you recover it?

7 A. The clothing was picked up in the bathroom and out of a
8 clothes hamper.

9 Q. And specifically what items of clothing did you
10 recover?

11 A. Basically what she told us she had on; a T-shirt,
12 pajama bottoms and her underwear.

13 Q. And the three items that you took, T-shirt, pajama
14 bottoms and her underwear, how were you able to identify
15 those as clothes that she was wearing at the time of the
16 assault?

17 A. The victim pointed them out to us.

18 Q. And after you took these items, did you do anything to
19 let Minor mom know that those were the particular items
20 that you were taking?

21 A. That is correct. We have a return form, that -- we
22 gather evidence. We have an inventory form that we fill out
23 and she is given a copy of the inventory form from the
24 search we do.

25 Q. All right. I want to show you what's been marked in

1 evidence as State's Exhibit No. 1 and State's Exhibit No. 3,
2 and I would ask, first of all, you take to look at No. 1 and
3 see if you recognize it?

4 A. No. 1 is the white T-shirt.

5 Q. All right. And do you recognize that item?

6 A. I do.

7 Q. All right. And where have you seen that item before?

8 A. This is the item that I recovered from Minor
9 apartment.

10 Q. All right. And is the T-shirt still in the same
11 condition it was in when it was recovered from Minor
12 apartment? I'll give you a minute to put your gloves on.

13 A. It appears to me that it is.

14 Q. Take a look.

15 A. It appears that it is.

16 Q. All right. And then I would ask you to look at Exhibit
17 No. 3 for identification and see if you can identify it?

18 A. It is. That's correct.

19 Q. All right. And are the PJ bottoms in the same
20 condition they were as when you found them?

21 A. That's correct.

22 MR. ANTHONY: We move Exhibit 1, the T-shirt, and
23 Exhibit No. 3, the pajama bottoms, into evidence at this
24 time.

25 THE COURT: All right, Mr. Brannon?

1 MR. BRANNON: No objection, Your Honor.

2 THE COURT: All right, State's 1 and State's 3 is
3 in evidence without objection.

4 BY MR. ANTHONY:

5 Q. After going to the residence that night and taking the
6 items of evidence that you have testified about collecting,
7 did you do anything that night trying to locate Mr. Pearson?

8 A. Yes, sir, we -- we wanted to question Mr. Pearson about
9 the alleged incident. So what we done, we broke up in
10 groups and went to several different locations to try to
11 locate him. Myself and Lieutenant Henderson went to I think
12 is his grandmother's residence and tried to locate him. He
13 wasn't there, so Mr. Henderson left his card there.

14 Q. Were you able to locate him that night?

15 A. Not that night.

16 Q. What was -- after you did your work on February 28th,
17 what was the next time that you had any kind of involvement
18 in relation to the processing of the evidence in this case?

19 A. I think the 1st of March I ended up taking the evidence
20 to SLED, South Carolina Law Enforcement Division, for
21 processing.

22 Q. Okay. And I'm going to show you -- I'm going to show
23 you what's been marked in evidence as State's Exhibit No. 2.
24 I would ask that you open that bag up and just take a look at
25 it and see if you recognize the contents.

1 A. These are Minor undergarments.

2 Q. Okay. Now, once you recovered those panties, what did
3 you do with them? That -- going back to the night of the
4 28th, what did you do with those panties?

5 A. Going back to the night of the 28th, it was placed in
6 this evidence bag and sealed and put in evidence at the
7 Union Public Safety Department.

8 Q. And are those panties still in the same condition as
9 they were when you took them from the bathroom that night?

10 A. Well, they have been processed. They are the same type
11 style, I guess.

12 Q. They weren't cut like that?

13 A. No, sir, they wasn't cut like that.

14 MR. ANTHONY: We would move Exhibit No. 2 into
15 evidence.

16 THE COURT: Mr. Brannon? Mr. Brannon, State's 2?

17 MR. BRANNON: Yeah, no objection to the panties,
18 no.

19 THE COURT: All right. State's 2 is in evidence
20 without objection.

21 BY MR. ANTHONY:

22 Q. And I'm going to show you now what's been marked for
23 identification as State's Exhibit No. 4 and ask if you
24 recognize that bag?

25 A. This is a bag that -- when you carry evidence to SLED,

1 this is the evidence bag they put it in and seal it. You
2 have to initial it and date it when they seal it.

3 Q. And did you take that bag -- the paper bag that's
4 inside the plastic bag, what did you do with that bag?

5 A. This bag -- this bag is removed from the sexual assault
6 kit and placed into SLED's evidence bag, with it still being
7 in the sexual assault bag that was in the kit.

8 Q. And so when you testified earlier about the kit being
9 placed in a sealed box --

10 A. Right.

11 Q. -- where was that paper bag in relation to the box?

12 A. This paper bag was inside the sealed box.

13 Q. Okay. And so you took that box to SLED?

14 A. Right.

15 Q. And once you got to SLED, what happened to the paper
16 bag?

17 A. The paper bag is taken, removed from the box and placed
18 in SLED's evidence bag, this plastic bag right here, and
19 sealed.

20 Q. Okay. And do you do anything, or did you do anything,
21 to document that you were the person who had sealed up the
22 bag?

23 A. I did. I initialed it and dated it.

24 Q. When is it dated?

25 A. Dated March the 2nd, 2005.

1 Q. All right. And what was the purpose of submitting
2 those panties to SLED?

3 A. The purpose of submitting these panties to SLED was
4 this is the panties she had on when she was examined at the
5 emergency room.

6 Q. Okay. And I'm showing you now what's been marked for
7 identification as State's Exhibit No. 5. There is a paper
8 bag inside that plastic bag, and I would ask if you could
9 tell the jury what was in that paper bag?

10 A. This is a paper bag that contained Minor blood.

11 Q. Okay. And when did you receive that bag?

12 A. I received this, Minor blood, on 2-28-05.

13 Q. Okay. And how just -- like the bag with the panties in
14 it, what kind of container was the bag with the blood in it?

15 A. It had two -- I'm not sure. It had a vial of blood in
16 it and it was placed inside the bag inside the sexual
17 assault kit.

18 Q. All right. And so when you -- what -- that paper bag,
19 what kind of container was it in when it was transported to
20 SLED?

21 A. It was also in the sexual assault kit.

22 Q. In the sealed box?

23 A. In the sealed box.

24 Q. And so when you took that paper bag to SLED, what was
25 done with the bag, as far as packaging it for analysis?

1 A. The bag was removed from the sexual assault kit box,
2 placed into SLED's evidence bag, sealed and dated by myself.

3 Q. Now I'm showing you what's been marked for
4 identification --

5 Well, let me back up just a moment.

6 Did you several months later meet Mr. Pearson at
7 Wallace Thompson Hospital?

8 A. I did.

9 Q. Okay. And what was -- what was the purpose of that?

10 A. I met Mr. Pearson at the hospital to get another -- to
11 get a blood sample from him. It was a court order. And I
12 met him in the hospital. She withdrew his blood and it was
13 turned over to me.

14 Q. When you say she, who are you referring to?

15 A. The medical personnel staff.

16 Q. And so a medical person drew Mr. Pearson's blood. And
17 then what became of the blood?

18 A. The blood was given to me and it was placed into
19 evidence.

20 Q. And do you recall the date the blood was -- that you
21 did this?

22 A. I'm not sure. I think it was sometime in September.
23 I'm not sure what it was.

24 Q. Okay. I'm going to show you what's been marked for
25 identification as State's Exhibit No. 6. Would that refresh

1 your recollection as to the date the blood was taken?

2 A. Yeah, it was 9-14-06.

3 Q. All right. So after you -- -- after you went to the
4 hospital and obtained a sample of Mr. Pearson's blood, what
5 was done with it?

6 A. It was taken to the South Carolina Law Enforcement
7 Division, SLED.

8 Q. And I'm going to show you now what's been marked for
9 identification as State's Exhibit No. 9.

10 A. Okay.

11 Q. I would ask if you recognize that item?

12 A. I do.

13 Q. All right. And what is that, Mr. Nix?

14 A. This is a South Carolina Law Enforcement Division
15 evidence bag, and Mr. Pearson's blood was taken down there
16 on 10-3-06. It was placed in their bag and sealed it and
17 dated by myself.

18 Q. So when you submitted that bag to SLED, it was sealed
19 up with your initials on the top?

20 A. That's correct.

21 Q. And during the course of your investigation of this
22 incident, did you become aware of the year Mr. Pearson was
23 born?

24 A. Yes, sir.

25 Q. And what was that?

1 A. 1966.

2 Q. All right.

3 MR. ANTHONY: If I could have one moment, please?

4 THE COURT: Yes, sir.

5 (Off the record)

6 (Back on the record)

7 MR. ANTHONY: All right. Thank you. That's
8 everything on direct.

9 THE COURT: Thank you, Mr. Solicitor.

10 Mr. Brannon?

11 MR. BRANNON: Thank you, Your Honor.

12 CROSS EXAMINATION BY MR. BRANNON:

13 Q. Mr. Nix, how are you doing today?

14 A. Just fine. How are you?

15 Q. Good.

16 Now, on the 28th you went to the hospital and you got a
17 sealed box, right?

18 A. That's correct.

19 Q. And then you took it to the police department and put
20 it into a refrigerator for storage, correct?

21 A. That's correct.

22 Q. And then sometime later you took it to SLED?

23 A. Right.

24 Q. Okay. And then at what point does the box get opened
25 and then you put it into these separate bags?

1 A. At SLED. When it's processed at SLED -- not processed,
2 but when it's submitted to SLED, that's when the seal is
3 broken by SLED and you take it out and put it into sealed
4 bags.

5 Q. So when you get to SLED, they cut the wrapper. And
6 then are you there when the contents are placed into the
7 plastic bags?

8 A. Yes, sir.

9 Q. And then you sign the plastic bag indicating that you
10 were there and the seal was made, correct?

11 A. That's correct.

12 Q. Okay. So when you went to SLED, you had the stuff
13 taken from the apartment and the rape kit at the same time,
14 right?

15 A. I can recall, I think that's correct.

16 Q. Okay. So you had the clothing, the bed linens and the
17 comforter, as well as the box from the hospital, right?

18 A. I remember carrying the sexual assault kit and I think
19 the bed sheets. I think that's what I carried. I'm not
20 exactly sure. It's been so long.

21 Q. Okay. Now, again, back to February 28th. You went to
22 Minor [REDACTED] and Delmar's apartment, is that correct?

23 A. That's correct.

24 Q. And when you got there, who was there?

25 A. When I got there, myself and Minor [REDACTED] Investigator

1 Henderson and her mother.

2 Q. Did you y'all go together?

3 A. Yes, sir, we met them there at the apartment.

4 Q. Okay.

5 A. We got a consent to search from Minor [REDACTED]

6 Q. From Delmar, right?

7 A. Delmar, that's right.

8 Q. But did you ride in the same car?

9 A. No, we met them there.

10 Q. So they were there when you got there, right?

11 A. We met them there. We left -- we met them at her
12 apartment. I'm pretty sure they were already there.

13 Q. They were already there. I'm just trying to get that
14 time frame.

15 Okay. Now, I'm going to show you -- you said you
16 obtained consent from Delmar to search, correct?

17 A. That's correct.

18 Q. Is that a copy of that consent to search?

19 A. It is.

20 Q. Okay. And it's signed by Delmar Johnson, correct?

21 A. Delmar Eison.

22 Q. That was her married name. Forgive me, but that's the
23 mother of Minor [REDACTED] is that correct?

24 A. That's correct.

25 Q. Okay. Now, did Minor [REDACTED] mother put up any fight or

1 argument to allow you to search her apartment?

2 A. No, sir.

3 Q. On that date did she appear to be supportive of her
4 daughter?

5 A. She appeared to at the hospital where she appeared to
6 be supportive of her.

7 Q. So the mother consented to search freely and
8 voluntarily?

9 A. Right.

10 Q. Okay. Now, when you search -- when you get -- you got
11 a consent to search, but you also got a search warrant,
12 correct?

13 A. I didn't get a search warrant. Captain Gault did.

14 Q. But there was a search warrant obtained?

15 A. There was, yes.

16 Q. And when you get a search warrant, you have to tell the
17 judge or the magistrate what you are looking for, right?

18 A. That's correct.

19 Q. Okay. I'm going to show you a copy of the items to be
20 searched for.

21 A. Okay.

22 Q. What was it that Investigator Gault told the
23 magistrate, I believe that being Wade Hampton, was going to
24 be searched for?

25 A. Clothing, bed linens, condoms and condom wrappers.

1 Q. Okay. Thank you.

2 Now, after you search and the search is completed, then
3 there is a thing called the return, correct?

4 A. Correct.

5 Q. Is this the return from that search warrant?

6 A. It is.

7 Q. What items were secured?

8 A. One white T-shirt; one pair of panties, purple flowers;
9 one pair of sleep bottoms; one comforter; one sheet,
10 bedding; and one mattress cover.

11 Q. Now, compare what you got to what you were looking for.

12 A. We have the clothing, the bed linen, but we didn't
13 recover any condom or condom wrappers.

14 Q. So you found no condom or condom wrappers?

15 A. That's correct.

16 Q. Luther Pearson wasn't in that apartment when you were
17 there to search it, was he?

18 A. No, sir.

19 Q. As far as you know, he didn't even know that you were
20 there to search, correct?

21 A. As far as I know, he did not.

22 Q. All right. Did you ever go to Union County High
23 School?

24 A. Yes.

25 Q. In relation to this event?

1 A. Oh, no, no, sir, I did not go.

2 Q. You did not respond to the school?

3 A. No, sir.

4 Q. Forgive me for the stupid question.

5 A. No, sir.

6 Q. Okay. Now, you were asked about attempts to question
7 Luther Pearson on the 28th, correct?

8 A. Right.

9 Q. And you went to his grandmother's house, right?

10 A. Right.

11 Q. That's that nice lady sitting right there in the front
12 row, right?

13 A. I'm assuming, I guess.

14 Q. And you left your business card, right?

15 A. Henderson did.

16 Q. And Luther Pearson called, didn't he?

17 A. If he called, he didn't call me.

18 Q. Well, are you aware that Luther Pearson --

19 A. I'm not aware if he called or not.

20 Q. Are you aware that Luther Pearson made a statement?

21 A. Yes, sir, I am.

22 Q. So that would lead you to believe that he cooperated or
23 responded to your attempts to communicate with him, right?

24 A. He responded to Captain Gault, that's correct.

25 Q. So he wasn't trying to hide from you, right?

1 A. As far as I know.

2 MR. ANTHONY: Objection. That calls for a
3 conclusion.

4 MR. BRANNON: Your Honor, I believe the State
5 opened the door when they opened -- asked the open ended
6 questions about attempts.

7 THE COURT: Rephrase the question, Mr. Brannon.

8 MR. BRANNON: All right.

9 BY MR. BRANNON:

10 Q. Based on the fact that Mr. Pearson gave a statement, do
11 you believe that he was attempting to evade you on February
12 the 28th of 2005?

13 MR. ANTHONY: Same objection.

14 THE COURT: I'll allow him to ask that question.
15 You may answer that question.

16 A. To my knowledge, no.

17 BY MR. BRANNON:

18 Q. Thank you very much.

19 Now, you did -- you got the rape kit, you searched the
20 apartment, you got the consent to search the apartment, you
21 went out and looked for Luther Pearson all on February 28th,
22 or maybe March 1st?

23 A. Correct.

24 Q. Within that few couple of days, right?

25 A. Right.

1 Q. Why is it then that there was no warrant signed or
2 obtained for Luther Pearson until almost a year later?

3 A. Do you want me to answer that?

4 Q. Yeah.

5 A. Well, based on, I guess, the evidence analysis from
6 SLED, I guess that's why the warrant was not signed a year
7 later.

8 Q. When was that warrant served?

9 A. This warrant was served on 1-26-06.

10 Q. So eleven months after Minor makes her
11 statement, the State issues a warrant, correct?

12 A. Right.

13 Q. All right. So on January -- excuse me, on February the
14 28th of 2005, based on Minor statement, you
15 didn't have enough evidence to arrest Luther Pearson, did
16 you?

17 A. I did not arrest Luther Pearson.

18 Q. The State didn't have enough evidence to arrest Luther
19 Pearson, did you?

20 MR. ANTHONY: Well, objection. That calls for a
21 conclusion.

22 THE COURT: Well, he can give him his opinion.
23 He's a ten year officer. You may answer the question.

24 A. Do you want my opinion?

25 BY MR. BRANNON:

1 Q. Yes.

2 A. My opinion is at that time the statement that was
3 given, no.

4 Q. No?

5 A. No.

6 Q. Okay. All right.

7 Now, she told you -- or in her written statement she
8 said Luther Pearson had on a condom, right?

9 A. I didn't take the statement from **Minor**

10 Q. Why else would you obtain a search warrant to search
11 specifically for condoms and condom wrappers?

12 A. I did not get the search warrant, Mr. Brannon.

13 Q. Did you read the search warrant just a minute ago?

14 A. I did.

15 Q. And it said condom --

16 A. Are you asking me -- you are asking me something that
17 was something that I didn't obtain. I just served it.

18 Q. In your opinion, on February 28th, 2005, based on her
19 statement, there wasn't enough evidence to arrest, correct?

20 A. At that time.

21 Q. Thank you.

22 MR. BRANNON: Nothing further.

23 THE COURT: Thank you, Mr. Brannon.

24 Solicitor, anything in redirect?

25 MR. ANTHONY: Yes, sir.

1 THE COURT: All right.

2 REDIRECT EXAMINATION BY MR. ANTHONY:

3 Q. You are aware of what occurred before a warrant was
4 sought for Mr. Pearson?

5 A. Yes, sir.

6 Q. And what was that?

7 A. Evidence processing. SLED analysis, it takes time.
8 Sometimes a long time. It don't come as quick as you think
9 or want it to.

10 Q. I'm sorry?

11 A. I said it don't come as quick as you want it to.

12 Q. And in this case, as a matter of fact, the DNA analysis
13 from SLED did not come back until January of 2006, correct?

14 A. Right, we had to have more evidence.

15 Q. And it was in January of 2006, when the warrant was
16 sought for Mr. Pearson?

17 A. That's correct.

18 Q. And you were looking for Mr. Pearson that night. When
19 did you actually -- when did you actually see him?

20 A. I think he came in the next day.

21 Q. And did you make **Minor** aware of the fact that you
22 were looking for Mr. Pearson?

23 A. Yes, sir.

24 Q. That night?

25 A. Yes, sir.

1 Q. And insofar as when you transported these items to
2 SLED -- I'm showing you what's titled a SLED laboratory
3 evidence inventory sheet. I would ask that you review that
4 and see if that refreshes your recollection as to when these
5 items were transported and what items were transported at
6 one time?

7 A. Okay. At one time one white T-shirt belonging to the
8 victim Minor [REDACTED] one pair of girl's underwear, purple
9 and white, belonging to the victim Minor [REDACTED] one pair
10 of pajama bottoms belonging to victim Minor [REDACTED] one
11 bed linen from the victim's bedroom belonging to Minor [REDACTED]
12 Minor sexual assault kit. And that was sent per, you know,
13 per SLED.

14 Q. So those items - the clothing that you recovered from
15 the search of the house and that box - that was all carried
16 at the same time?

17 A. Right.

18 Q. But all those items were packaged separately?

19 A. Correct.

20 Q. Is that correct?

21 A. That's correct.

22 MR. ANTHONY: If I could have one moment?

23 THE COURT: Yes, sir.

24 (Off the record)

25 (Back on the record)

1 MR. ANTHONY: All right. That's everything on
2 redirect.

3 THE COURT: Thank you, solicitor.
4 Anything on recross?

5 MR. BRANNON: Yes, Your Honor.

6 RECROSS EXAMINATION BY MR. BRANNON:

7 Q. Investigator Nix, why didn't you ask Luther Pearson for
8 permission to search the apartment?

9 A. Why didn't I ask him?

10 Q. Yes.

11 A. Well, that's not his apartment. It's Minor
12 apartment.

13 Q. Thank you. Okay.

14 Now, the arrest warrant was issued. I believe Officer
15 Gault got the warrant, correct?

16 A. Correct.

17 Q. Do you remember the date, January of 2006?

18 A. Yes.

19 Q. You took blood samples to SLED from Luther Pearson,
20 right?

21 A. Right.

22 Q. Do you remember when?

23 A. Not exactly off the top of my head, I don't. I think
24 it was in October.

25 Q. Is this that -- is this that bag, I believe that little

1 envelope in there? Is that it?

2 A. That's correct.

3 Q. Okay. When did you get that blood?

4 THE COURT: What item is that, Mr. Brannon?

5 A. 9.

6 THE COURT: State's 9?

7 MR. BRANNON: State's 9. Yes, Your Honor.

8 THE COURT: I didn't know State's 9 --

9 MR. BRANNON: It's identified as State's 9. It's
10 not in evidence.

11 MR. ANTHONY: Could I step up here and see?

12 Yes, sir, he's showing him State's No. 9.

13 THE COURT: Okay. Thank you.

14 BY MR. BRANNON:

15 Q. What's the date? What's the date on that?

16 A. 10-3-06.

17 Q. Do you know when that blood was drawn?

18 A. There is a form right there. I think it was September.

19 Q. September of '06?

20 A. Right.

21 Q. Now, does September come after January?

22 A. True.

23 Q. So if the warrant was obtained in January of '06, and
24 there was blood drawn in September of '06, taken to DNA in
25 October of '06, how was that warrant based on this blood?

1 A. You would have to -- you will have to talk to Mr. Gault
2 about that, sir. I don't know. I can't answer that.

3 Q. Okay. But I asked you was there enough evidence on
4 February --

5 A. You asked me my opinion.

6 THE COURT: Wait just a minute. The court
7 reporter can't get both people talking at the same time.

8 If you would please ask the question, allow Mr.
9 Nix to totally and completely answer the question, and then
10 ask your next question.

11 MR. BRANNON: Okay.

12 THE COURT: Thank you, Mr. Brannon. You may
13 proceed.

14 MR. BRANNON: Thank you.

15 BY MR. BRANNON:

16 Q. Forgive me. I'm not trying to argue with you.

17 A. I know.

18 Q. I did. I asked you your opinion, in February of '05,
19 was there enough evidence, based on her statement alone, and
20 I believe you said no.

21 A. My opinion, right.

22 Q. And then I said why was the warrant issued later, and
23 you said, I believe, based on evidence that came back from
24 SLED, correct?

25 A. That's my understanding.

1 Q. Okay. When you have -- you got a T-shirt that's got
2 blood on it. It's sent to SLED for examination, right?

3 A. Right.

4 Q. That's just one half of the puzzle, correct?

5 A. That's part of it.

6 Q. You need something to match it to, correct?

7 A. That's correct.

8 Q. In this case doesn't this envelope hold the other half
9 of the equation, the matching equation?

10 A. To my opinion, no.

11 Q. I'm sorry?

12 A. My opinion, no.

13 Q. It doesn't?

14 A. In my opinion.

15 Q. But this is -- all of this up here is **Minor** This
16 is the only thing that's Luther, right?

17 A. That's -- my knowledge that's all it is.

18 Q. I'm sorry, I didn't hear you.

19 A. To my knowledge that's all it is.

20 Q. Okay. Thank you.

21 (Off the record)

22 (Back on the record)

23 MR. BRANNON: One last question.

24 BY MR. BRANNON:

25 Q. This is that list of inventory that you took, right?

1 A. Right.

2 Q. Forgive me, I have highlighted it and stuff like that.

3 On there you have got identified pair of panties from

4 Minor [REDACTED] correct?

5 A. Right.

6 Q. Did you ever see her wear those panties?

7 A. No, sir.

8 Q. The only reason that you have from Minor [REDACTED] is
9 because she told you they were hers, correct?

10 A. Right.

11 Q. They came out of the laundry hamper, didn't they?

12 A. They did.

13 Q. Thank you.

14 MR. BRANNON: Your Honor, I have nothing further.

15 THE COURT: Thank you.

16 Mr. Clerk, would you hand me, please, State's

17 Exhibit No. 6?

18 All right. Thank you.

19 MR. ANTHONY: Your Honor, may I follow up?

20 THE COURT: No, sir.

21 Thank you, Officer Nix. You may step down.

22 Would you wait outside momentarily before you are
23 excused?

24 Mr. Foreman, ladies and gentlemen of the jury, if
25 you would step momentarily to your jury room. Do not

1 discuss the case during this brief recess amongst yourself.
2 Thank you. If you would go with the bailiff, please.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: Solicitor, before I would allow any
6 further direct, which would be re-redirect, I wanted to see
7 what area that you were going into. I think I have the
8 authority under Rule 611 (d) to allow re-examination and/or
9 recall. I don't want to say -- I didn't mean to cut you off
10 when I do cut you off. I mean that's talking out of both
11 sides of my mouth. If you could tell me what area that you
12 were intending to go into now with Officer Nix, with Mr.
13 Nix.

14 MR. ANTHONY: Well, what I want to ask about is he
15 raised on recross the fact that the exhibit where Mr.
16 Pearson's blood was taken to SLED, an exhibit that we think
17 provides the legal basis --

18 THE COURT: State's 9?

19 MR. ANTHONY: Yes, sir. The exhibit that provides
20 the legal basis for the SLED blood test.

21 It's kind of an awkward situation if we have to
22 explain, because what happened was in 2005, the city police
23 did a search warrant for Mr. Pearson's blood. They sent the
24 search warrant for the blood to SLED. SLED came back with a
25 match and said it was Mr. Pearson. The city police

1 subsequently in January of 2006, got a warrant for Mr.
2 Pearson's arrest.

3 The case came to the solicitor's office. I think,
4 as Ms. Horton explained to the court back in chambers, the
5 solicitor's office made a determination that the sample from
6 the search warrant, there would be a legal problem with that
7 being admitted in court. So that's why there was a
8 Schmerber order done, and a subsequent sample of Mr.
9 Pearson's blood taken in -- it was taken to SLED in December
10 of 2006. That's the blood sample that we think provides the
11 legally sufficient basis for the match for Mr. Eison (sic).
12 But, of course, Mr. Brannon has -- it's his right to do
13 cross-examine people, has got the jury thinking, well, they
14 went and got a warrant for him before they say -- basically
15 we are in the position now where it looks to the jury like
16 we say we got the warrant based on a match to Mr. Pearson,
17 but then the bloods were used and provided a basis for that
18 match didn't get drawn until after we got the warrant. So
19 my -- the purpose of my re-redirect would be to inquire of
20 the witness as to whether he could explain that to the jury.

21 And then the one other thing that I would ask is
22 they -- on recross he made a -- he asked a question about
23 the only reason they took panties was that the victim told
24 them that those were the panties she was wearing. Well, I
25 wouldn't go into that. I just want to go into the confusion

1 about the warrant.

2 THE COURT: All right. Well, I think under 611
3 (d), under my discretion under 611 (d), and also under 401,
4 and really the reverse of 403, as opposed to the confusion
5 of the issues, the unconfusion of the issues.

6 Yes, sir, Mr. Collins, if you want to be heard.

7 MR. COLLINS: Your Honor, if I may be heard very
8 briefly.

9 There was actually a motion that we had intended
10 to bring to the court later this morning. It's our
11 understanding that the State is going to present the rest of
12 their chain of custody folks and we were going to have a
13 break while we waited for the SLED expert to come this
14 afternoon to present the SLED reports.

15 In going through -- there are actually three SLED
16 reports that were provided to us during discovery. There
17 was one, I believe it was in May of '05, that was analysis
18 of the pieces of physical evidence that were recovered from
19 the alleged victim's, Minor [REDACTED] and her daughter's
20 apartment. Those were the T-shirt, the panties that were
21 recovered from the hamper, the bed linens, those types of
22 items.

23 There was a second SLED report in January, on
24 January 6th of 2006, which resulted from the analysis of
25 that first blood sample obtained by search warrant, which

1 the State admits at this point they have got a problem with
2 admitting that particular report.

3 And then there is a third in, I believe it's
4 February, on February 15th of 2007, which purports to be an
5 analysis of the second blood drawn, which is what we
6 actually have a chain of custody for.

7 In other words, we have no chain of custody for
8 that first -- that first 2006 SLED report, which is what
9 this particular witness, I believe, is indicating was the
10 basis for the warrant.

11 So with regard to this witness, our concern is
12 that by allowing the solicitor to go into that line of
13 questioning, this particular witness, who is not an expert,
14 and at this point I do not believe is even a law enforcement
15 officer anymore, is going to be testifying about a SLED
16 report that is not admissible in this particular proceeding.

17 The motion we were going to make later was to
18 exclude both the January and -- the January of '06 and
19 February of '07 SLED reports. The problems -- the primary
20 problem with those two SLED reports is that the blood sample
21 that's indicated in both the profiler plus the cofiler
22 analysis in those is the first blood sample from Mr.
23 Pearson. That is what those profiler plus the cofiler
24 results are based on that first blood sample that are not
25 admissible. There is no chain of custody that has been

1 presented, and the State already acknowledges that that
2 blood evidence cannot be presented in this particular
3 proceeding.

4 So this particular witness may very well be -- if
5 this is allowed by the court, this particular witness may
6 testify about DNA results that ultimately may not even be
7 admissible in this particular proceeding. So we are
8 concerned that inadmissible evidence through an improper
9 witness is going to be put in front of this particular jury.

10 THE COURT: All right. And I understand your
11 concern, but I did not take the solicitor's position that he
12 was going to offer the results of any DNA through Mr. Nix.
13 I'm just going by what my understanding is.

14 I took it the area of the solicitor wants to go
15 into now is basically related to State's 9 for
16 identification that Mr. Brannon went into on recross of Mr.
17 Nix concerning the timing. And, of course, Mr. Brannon also
18 asked him about the SLED inventory list and the panic that
19 the solicitor had already been into the SLED inventory list
20 and says he's not going back into there, unless I
21 misunderstood your position, solicitor, of what you
22 wanted -- I thought that you just wanted to go back into it
23 for purposes of timing and tracking.

24 MR. ANTHONY: That's right, to explain why the
25 first warrant -- why the warrant for his arrest was obtained

1 in January, I have to explain that there was a SLED test
2 result that matched Mr. Pearson to -- well, I have to at
3 least have him say we got back -- we got our results from
4 SLED. Even though I don't have him go into what they were,
5 I have to at least say we got our results from SLED in
6 January of 2006, and that's why we sought the warrant.

7 And they -- they opened the door to that, because
8 they -- they pointed out that we didn't get -- they through
9 their questions they pointed out he was in arrested in
10 January of 2006, and said that the blood that was sent to
11 SLED of his wasn't sent down there until October of 2006.
12 So I have to at least be able to say that they received the
13 report from SLED in January of 2006, and that was based on
14 blood taken from Mr. Pearson in 2005.

15 THE COURT: September of 2005 by Ms. Garner -- or,
16 no, that was 2006. That's a different -- that's a different
17 draw. I'm with you.

18 MR. ANTHONY: Actually there was a blood draw
19 taken from Mr. Pearson in --

20 THE COURT: That's the one that Mr. Collins is
21 alleging that you don't have a chain on.

22 MR. ANTHONY: Well, we are not -- we are not going
23 to -- that's not the basis for the DNA testimony, so we
24 are -- so we are not trying to show chain on that.

25 THE COURT: Well, let me make sure -- let me make

1 sure I'm also tracking Mr. Collins' position correctly. I
2 think what I'm hearing is he's saying the blood draw -- the
3 first blood draw, I'm not sure what the date of that is.

4 MR. COLLINS: Your Honor, that would have been
5 October of 2005.

6 THE COURT: The blood draw of October of '05,
7 drawn by a search warrant, correct?

8 MR. COLLINS: Yes, sir.

9 THE COURT: The analysis comes back on that
10 January of '06, and that tracks the date of getting the
11 arrest warrant for Mr. Pearson?

12 MR. COLLINS: That's correct, Your Honor.

13 THE COURT: The State then decides that they
14 should have a Bacchus or Schmerber order, Bacchus hearing, I
15 guess and get the second blood draw, which is identified in
16 State's Exhibit No. 6 as having occurred 9-14-06.

17 MR. COLLINS: That's correct.

18 THE COURT: So it makes it look like to this
19 jury -- I don't know if they have put the cart before the
20 horse, but they put some kind of something in front of the
21 horse, I'm not sure what it is, that the warrant was secured
22 in January of '06, eight months prior to the blood being
23 drawn. That's what it looks like to them.

24 MR. ANTHONY: Yes, sir, that's what they think
25 right now.

1 THE COURT: That's why I asked to see State's
2 Exhibit No. 6. I was trying to track it myself.

3 But I further hear him saying, I think, that they
4 have issues -- it's almost the fruit of the poisonous tree
5 type of argument, that they have issues with the original
6 blood draw of 10-05 because they don't track the chain
7 correctly and everything else then becomes fruit of the
8 poisonous tree. Now, you didn't use those words and those
9 may not be the appropriate words to use for your argument.
10 I always like to say it's what I hear, not what you said,
11 because you may be saying something very different.

12 MR. COLLINS: You have actually summarized it much
13 better than I could, Your Honor.

14 THE COURT: And if that's the case, if that's the
15 case, what do we do with cases then like inevitable
16 discovery? Blood is not going to change. What do we do
17 with those cases, to where even if there was a -- and you
18 may know the answer to this. Even if there was something
19 wrong with the State's procedure on the search warrant --
20 and I hadn't looked at that issue. The State hasn't argued
21 it, that there was nothing wrong. But even if there is
22 something wrong with the search warrant in '05, or whenever
23 the date of the search warrant is for the blood, that
24 inevitably they are going to get this blood. They did not
25 go back and -- they did go back and cure it with the hearing

1 before Judge Alford with the Schmerber hearing. And there
2 is no evidence -- if you track the blood sample -- and let
3 me make sure I get this right too. If you track -- do you
4 have your solid chain on the blood sample used for the basis
5 of your comparison, in your opinion, solicitor?

6 MR. ANTHONY: Yes, sir, we do.

7 THE COURT: In your opinion, Mr. Collins?

8 MR. COLLINS: No, Your Honor.

9 If -- and if I may address the question that you
10 raised, the inevitable discovery.

11 If the February '07 DNA results referred -- if
12 they did a new analysis based on the second blood draw, and
13 that's where the DNA expert is going to come in here and
14 testify about, if that is what her report is based on, I
15 think they may very well have cured that problem. We would
16 be arguing about has Mr. Brannon opened the door by asking
17 this, not entitled to clarify, and what limits do we put on
18 the solicitor in clarifying the question or resolving that
19 issue.

20 But in this particular case, the February '07
21 results aren't based on the second blood work. They are
22 based on the first blood drawn. They basically put a new
23 date on a SLED report and gave us the results from that
24 poison fruit, and that's -- I think that defect in and of
25 itself may very well keep out that second DNA test, and what

1 we run the risk of doing at this point is allowing the
2 solicitor to talk about blood draws and SLED reports and
3 other things that may never come in. And so they basically
4 get their defective evidence in through a back door.

5 THE COURT: Well, at the same time the argument
6 becomes somewhat circular in my mind, because the solicitor
7 initially said "I want to go back in to clarify the tracking
8 dates, not the results."

9 I think you have to have a chain of custody on
10 whatever sample -- you know, a chain, where this very recent
11 case in June of last summer, State v. Sweet, that
12 clarifies -- well, clarified, it was glasses in a truck, I
13 guess, clarified it to a certain extent of the chain of
14 custody on the fungible items. You are both very well aware
15 of that. I think you are going to have a chain on whatever
16 sample is used for Ms. --

17 MR. ANTHONY: Ms. Taylor.

18 THE COURT: Yeah, right, Ms. Taylor or Agent
19 Taylor's testimony.

20 I take it that Mr. Nix's testimony still just goes
21 to the tracking -- you would have to ask -- the question
22 would be -- well, what is the question that you propose to
23 ask Mr. Nix, solicitor?

24 MR. ANTHONY: I propose to ask Mr. Nix if he's --
25 ask him if he's aware of Mr. Pearson being arrested in

1 January of 2006.

2 Ask him if Union Public Safety had obtained a
3 sample of Mr. Pearson's blood before that arrest was made,
4 and if they had received a SLED report before that arrest
5 was made -- or SLED report concerning DNA before that arrest
6 was made in January of 2006.

7 And then I would ask him if any request was made
8 of Union Public Safety in September of 2006, concerning Mr.
9 Pearson's blood.

10 And I would expect him to say there was a request
11 made from the solicitor's office to get another sample for
12 comparison, and I think that would -- that would clear up
13 the issue.

14 THE COURT: Well, isn't that going to do -- is
15 that going to do what Mr. Collins' position is when you ask
16 "did you get a sample of Mr. Pearson's blood before his
17 arrest in January of '06, and was that provided to SLED for
18 a DNA analysis before January of '06? Was it provided to
19 SLED for DNA analysis?"

20 MR. ANTHONY: Yes, sir.

21 THE COURT: I mean, that's the question that you
22 want to ask?

23 MR. ANTHONY: Yes, sir, it was. I would like to
24 ask him that.

25 THE COURT: And then -- then practically speaking

1 couldn't you then put the captain up or another officer up
2 and follow up and say, "well, what was the basis of getting
3 the warrant January of '06, when we had the SLED analysis
4 back from DNA?"

5 I mean, the circumstantial evidence there is, of
6 course, that there was blood sample from Mr. Pearson that
7 matched -- that SLED matched to Mr. -- a blood sample from
8 Mr. Pearson that SLED matched to some evidence from the rape
9 kit or from the hospital panties, as I call them, or from
10 some object that matched to him? You may be able to offer
11 that, but don't you have to get your chain solid first?

12 MR. ANTHONY: Well, sir, I would agree that that
13 is not something that I should have been allowed to go into.
14 It wasn't something that I was going to go into. I mean,
15 the whole -- the whole thing here is, you know, that's why
16 we went and got the blood in October of '06, because we
17 didn't think that the blood that was secured in 2005 was
18 going to -- that there was a legal basis to get that in.
19 So -- but we are not going to ask questions about that, but
20 they get up and convey this impression "well, they say they
21 didn't charge him until they got the DNA, but here they have
22 got this bag where they didn't submit the DNA in October' of
23 2006, ten months before they charged him." They are the
24 ones that did all that, and I just think we are entitled now
25 to make sure the jury understands why it was done. And, I

1 mean, I agree we couldn't have -- I don't think we could
2 have shown chain on that 2005 sample that would be
3 admissible. That's why we went and got the sample in 2006.
4 But since they have gone into it, I think we are entitled to
5 be able to go into it and explain to the jury why he was
6 arrested.

7 THE COURT: Well, does Mr. Nix even know?

8 MR. ANTHONY: I expect he would, Your Honor.
9 And -- I mean, if he doesn't, some -- I can call another
10 witness that will, but I think -- I think he would. I
11 believe I could elicit that testimony from him.

12 THE COURT: Well, if your -- if the State's
13 position was the search warrant for the blood in '05 wasn't
14 sufficient, so you get your Schmerber order, and I haven't
15 seen the Schmerber order nor the search warrant, but you get
16 it at a later and submit -- resubmit the SLED, is the SLED
17 testimony going to be based on the Schmerber sample?

18 MR. ANTHONY: Yes, sir.

19 THE COURT: Okay. Not on the search warrant
20 sample?

21 MR. ANTHONY: No, sir.

22 THE COURT: Well, I think -- may I see the
23 warrant, the arrest warrant on January '06? Thank you.

24 So the captain gets the warrant -- where it has
25 the warrant based upon police investigation, I take it part

1 of that would have been then based on the SLED report of
2 January of '06?

3 MR. ANTHONY: I'm sorry, Your Honor?

4 THE COURT: The captain gets the warrant. And
5 part of the probable cause in the warrant is based on police
6 investigation. Part of that would have been based on the
7 SLED report of January -- excuse me, of -- yes, of January
8 of '06? The SLED report --

9 MR. ANTHONY: Yes, sir.

10 THE COURT: -- on the search warrant sample?

11 MR. ANTHONY: Yes, sir.

12 THE COURT: Correct?

13 MR. ANTHONY: Yes, sir.

14 THE COURT: And that -- would you hand me State's
15 9 for identification?

16 THE CLERK: Yes, sir.

17 THE COURT: And State's 9 for identification is
18 the search warrant blood draw?

19 MR. ANTHONY: States 9 is Schmerber.

20 MR. BRANNON: Is the Schmerber.

21 They don't have anything referencing the search
22 warrant, not in evidence or marked.

23 THE COURT: All right. So what Mr. Brannon has
24 done is asked in recross about State's 9, the Schmerber, the
25 Schmerber blood draw, and the arrest warrant of 1-25-06, and

1 says "how can you base your investigation -- it takes me
2 awhile to get information.

3 "How can you base your investigation on the blood
4 draw nine months after the warrant was issued?" I think he
5 can explain that. I think you can explain that, solicitor.

6 Now, Detective Nix cannot go into -- or Mr. Nix
7 cannot go into DNA results.

8 MR. ANTHONY: Yes, sir, I don't intend to ask him
9 that.

10 THE COURT: I mean, that would be hearsay,
11 obviously, at this point. And obviously I think his
12 answer -- his response, as I recall, is correct, that a
13 warrant issued nine months earlier could not have been based
14 on a sample drawn nine months later. I mean, that's a --
15 that's common sense. But I think you can explain the
16 discrepancies in the dates, because what we would end up
17 having is if he couldn't, then that argument would be in
18 front of this jury, ultimately, because there is good
19 lawyers involved in the case on both sides and the jury
20 would be saying how in the world can the police go out here
21 and tell you that they have solved this case, based on SLED
22 analysis, when they didn't even submit the sample until nine
23 months later. And that would -- that would just be in
24 error. It would just be in error.

25 And that still doesn't clear the hurdle of his

1 evidentiary issues on the DNA, because the DNA report, if I
2 understand it now, are 2-15-07. Again, I make an assumption
3 that the one that you would have Agent Taylor, if she's
4 qualified, testify to, and that would track the Garner blood
5 sample, as I understand it?

6 MR. ANTHONY: Yes, sir.

7 THE COURT: But he still has his argument. I
8 mean, we still haven't resolved his substantive argument on
9 the search warrant and Schmerber order issue.

10 I will allow you to recall Mr. Nix in that regard,
11 but he cannot testify to DNA results.

12 Yes, sir, Mr. Collins.

13 MR. COLLINS: Your Honor, just to give you a heads
14 up before he intends to testify, based on the yellow sheets
15 or the supplemental reports, this particular witness was not
16 involved in the first blood draw or any of the investigation
17 subsequent to that. So just -- just so the court is aware
18 that he may not have any firsthand knowledge that can
19 explain that.

20 THE COURT: Well -- and that's a point well taken,
21 but, you know, at the same time he -- obviously you can
22 object, or Mr. Brannon can object, during his testimony.

23 As I understood the testimony, he was not involved
24 in the search warrant or the return. And, of course, nobody
25 objected. It's like basketball, no harm, no foul. I would

1 take it in that regard. Obviously a witness has to have
2 personal knowledge.

3 Now, there are those cases out there. One I read
4 the other day, State v. Davis, that says the police can
5 testify to their investigation. And, of course, that
6 investigation can be, I take it, be based somewhat on
7 hearsay. I'm not sure there is a police investigation
8 hearsay exception, but if you read those cases, it makes one
9 wonder sometimes.

10 MR. COLLINS: You can make an argument, yes.

11 THE COURT: You know, and I'm not saying there
12 should or shouldn't be, but that's the issue.

13 Do you want to take -- I think, though, he -- I
14 think the State should be allowed to explain any
15 discrepancy -- the discrepancy, if any, in the dates. Do
16 you understand?

17 MR. ANTHONY: Yes, sir.

18 MR. COLLINS: Yes, sir.

19 MR. BRANNON: May we proffer that testimony, Your
20 Honor?

21 THE COURT: Do you want to proffer it, Mr.
22 Solicitor?

23 MR. ANTHONY: No, I don't want to proffer it.

24 THE COURT: All right. Well, bring us our jury,
25 Mr. Bailiff.

1 If you have an objection, we'll send them back
2 out, Mr. Brannon.

3 MR. BRANNON: Judge?

4 THE COURT: If you make an objection, you need to
5 be heard during this testimony, I'll send the jury back out.
6 All right?

7 Have Mr. Nix come back in, Mr. Bailiff.

8 (The following takes place in the presence of the
9 jury panel)

10 THE COURT: All right. Mr. Nix, you may come back
11 around and retake the stand for us, please. You are
12 certainly still under oath, sir.

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. Solicitor, you may
15 proceed.

16 MR. ANTHONY: Thank you.

17 REDIRECT EXAMINATION BY MR. ANTHONY:

18 Q. All right. Mr. Nix, you just testified about -- you
19 just testified about what was marked for identification as
20 State's Exhibit No. 9, which is dated October 3rd, 2006, is
21 that right?

22 A. That's correct.

23 Q. Okay. And you had earlier testified that the warrant
24 from Mr. Pearson was sought in January of 2006. Is that
25 correct?

1 A. That's correct, that's what's on the warrant.

2 Q. And that was after public safety had received a DNA
3 report from SLED?

4 A. That's correct.

5 MR. BRANNON: Objection. It calls for hearsay.

6 THE COURT: No, sir, I would overrule the
7 objection.

8 You may answer that question.

9 A. Yes, sir.

10 BY MR. ANTHONY:

11 Q. And why was it that a blood sample for Mr. Pearson was
12 sought in October of 2006?

13 A. Because it was a court order.

14 Q. Okay. And why was a court order sought?

15 A. To obtain blood from Mr. Pearson.

16 Q. And at that point had blood already previously been
17 obtained from Mr. Pearson?

18 A. To my knowledge, no.

19 Q. Okay. You are not -- you are not aware of --

20 A. I'm not -- I wasn't the head investigator of the case.

21 Q. Are you aware of there being a search warrant for Mr.
22 Pearson's blood done in 2005?

23 A. To my knowledge there were by Mr. Gault.

24 Q. Okay. Okay. So you are aware of a search warrant
25 being done by public safety for Mr. Pearson's blood in 2005?

1 A. Yes, sir.

2 Q. Okay. And at the time and a warrant -- the warrant for
3 Mr. Pearson was not sought until January of 2006?

4 A. Right.

5 Q. After the report from SLED came back?

6 A. Right.

7 Q. Okay. And you said that the blood sample that was
8 gathered in October of 2006 came because of a court order?

9 A. That's correct.

10 Q. Correct. All right.

11 And were you advised by anyone that a court order would
12 be needed because of the legal issues involved in Mr.
13 Pearson's situation?

14 A. Was I advised by anyone?

15 Q. Yes.

16 A. By the court system. A court order was given to me.

17 Q. Okay. And who had sought that court order?

18 A. The judge.

19 Q. All right. Had someone from the solicitor's office
20 requested it?

21 A. Right.

22 Q. Okay. And, to your knowledge, was that because the
23 attorneys from the solicitor's office believed that that was
24 the appropriate way to take Mr. Pearson's blood to present
25 in court?

1 A. Right.

2 MR. ANTHONY: If I could have one moment, please?

3 (Off the record)

4 (Back on the record)

5 MR. ANTHONY: Thank you. That's everything.

6 THE COURT: Thank you, solicitor.

7 Mr. Brannon?

8 MR. BRANNON: No questions, Your Honor.

9 THE COURT: Thank you, Mr. Brannon.

10 Thank you, Mr. Nix. You may step down.

11 May this witness be excused, solicitor?

12 MR. ANTHONY: Yes, we would ask the witness be

13 excused.

14 THE COURT: Mr. Brannon?

15 MR. BRANNON: No objection.

16 THE COURT: Thank you, Mr. Nix, you may be

17 excused.

18 MR. ANTHONY: We call Cecil Bradstreet.

19 Yes, sir, are you okay about calling another

20 witness, Your Honor?

21 THE COURT: Yes, sir, I'm always okay in the

22 courtroom.

23 MR. ANTHONY: All right.

24 SLED AGENT CECIL BRADSTREET, having been first

25 duly sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. ANTHONY:

2 Q. Would you state your name, please?

3 A. Cecil K. Bradstreet.

4 Q. And Mr. Bradstreet, how are you employed?

5 A. I'm sorry?

6 Q. How are you employed?

7 A. I'm employed with the South Carolina Law Enforcement
8 Division.

9 Q. And what's your current position with them?

10 A. I'm a statistical research analyst. I have been
11 recently attached to the Gang Unit for intelligence
12 department for the state.

13 Q. And back in February of 2005, or -- I'm sorry, back in
14 2005, in the spring of 2005, how were you employed?

15 A. I was a forensic technician within the evidence
16 processing department.

17 Q. And what did you do as a forensic technician? What did
18 your job involved?

19 A. As a forensic technician I would examine various types
20 of evidence for the presence of blood, hair, fiber or semen.
21 We would perform chemical tests for blood or semen, forward
22 any results to the DNA department and testify on behalf for
23 the State.

24 Q. And how long did you work in the evidence processing
25 department?

1 A. I was there approximately six years.

2 Q. And could you tell the jury what your education and
3 training is in the field of evidence processing?

4 A. For the field of evidence processing, I have my
5 bachelors from the University of South Carolina.

6 I went -- I have undergone extensive on-the-job
7 training through court-qualified experts. I annually
8 underwent proficiency exams in my field of hair, fiber,
9 blood and semen, which I passed every year.

10 MR. ANTHONY: Your Honor, at this time we would
11 qualify Agent Bradstreet in the field of evidence
12 processing.

13 THE COURT: All right. Mr. Brannon?

14 MR. BRANNON: No objection, Your Honor.

15 THE COURT: All right. Again, ladies and
16 gentlemen of the jury, normally when a person testifies,
17 they may only testify to something within their personal
18 knowledge, something they either see, heard, or something of
19 that nature. There is an exception when someone is
20 qualified, because of education or experience. They are
21 submitted to give their opinion in certain areas. The court
22 qualifies them that way.

23 This witness, Agent Cecil Bradstreet, will be
24 qualified in the area of evidence processing to give opinion
25 testimony in that area. That does not mean that you must

1 accept the opinion, but it is evidence for you to use in any
2 way you see fit. Thank you.

3 Solicitor, you may proceed.

4 MR. ANTHONY: Thank you, Your Honor.

5 BY MR. ANTHONY:

6 Q. I'm going to show you two items.

7 The first one I'm going to hand up is what's been
8 marked for identification as State's Exhibit No. 4. I would
9 ask that you take a look at that.

10 Would you like a pair of gloves?

11 A. Please.

12 These are items 5.11, which were a pair of pink and
13 burgundy panties. The label expression size 10-12, smiley
14 face design on the waistband.

15 Q. And have you seen those panties before?

16 A. Yes, sir, that's correct.

17 Q. When did you see them?

18 A. I opened this package on May 27th of 2005.

19 Q. And when they -- when they were submitted to you, how
20 did they come to you?

21 A. They came in this sealed pouch right here.

22 Q. In the sealed plastic bag?

23 A. Yes, sir, that's correct.

24 Q. And then were the panties also located in that paper
25 bag?

1 A. They were in this sealed bag, which I broke the seal
2 right here.

3 Q. And other than the cutting that you made on the
4 panties, are they still in the same condition as they were
5 in when submitted to you?

6 A. Yes, sir, that's correct.

7 MR. ANTHONY: We move Exhibit 4 into evidence.

8 MR. BRANNON: No objection, Your Honor.

9 THE COURT: That's State's 4?

10 MR. ANTHONY: Yes, sir.

11 THE COURT: All right. State's 4 is into evidence
12 without objection.

13 BY MR. ANTHONY:

14 Q. And I'm also going to show you what's been admitted
15 into evidence as State's Exhibit No. 2. I would ask you to
16 take that exhibit out and I would ask you if you have seen
17 that item before?

18 A. Yes, sir, these are item 2. These are a pair of white
19 with purple floral pattern panties with a white bow. Foster
20 Park Elementary -- I'm sorry, they were Gorgio New York
21 style size 10, size 12.

22 Q. And how did those panties come to you?

23 A. They were in the sealed bag.

24 Q. All right. And could you tell the jury what you did in
25 regards to processing both those pair of panties they you

1 just shown me?

2 A. Anytime there is a request for the presence of semen,
3 before we start we actually black out a room, use
4 room-darkening shades, and use what's called a alternate
5 light source, which is a lumalight. Put on orange colored
6 glasses. You blacken out the room, slip on this light.
7 Anything that is a fluid base, whether it be saliva, feces,
8 vaginal secretions, you know, semen, whatever there may be,
9 that's going to fluoresce. We are going to circle those
10 areas and then go back and use a chemical test called acid
11 phosphatase.

12 Acid phosphatase reacts with an enzyme that's found in
13 semen. It's a presumptive test and it's not definitive.
14 What we do then is, of course, put the light back on, take a
15 cotton swab stain and swab the area. Then using the acid
16 phosphatase test, it's going to turn a bright purple color.
17 That's a presumptive positive for semen. If I get that
18 positive, I'm going to make my cutting from that area and
19 forward that to DNA for further testing.

20 Q. And in regards to those two pairs of panties, what was
21 the result of that test that you just told the jury about?

22 A. For item 5.11, I made a cutting from the crotch of the
23 panties. There was a presumptive positive for it.

24 Q. When you refer to 5.11, that's the number that you gave
25 it? What pair of panties is that?

1 A. Item number 4, I'm sorry.

2 Q. State's Exhibit 4?

3 A. State's Exhibit 4.

4 Q. Okay.

5 A. Item 5.11 is the one that's assigned at SLED.

6 It was a presumptive positive, so I cut the crotch of
7 the panties, put those in a gold coin envelope, place them
8 in another pouch like this, and went on to my next item.

9 State's Exhibit No. 2, the same chemical test was
10 performed. I got the same result. I made a cutting from
11 the crotch of the panties, placed those in a gold coin
12 envelope. Placed them in a heat-sealed pouch, forwarded to
13 DNA for further testing.

14 Q. And aside from those two pair of panties, did you check
15 anything else that was submitted to you for semen or other
16 body fluids?

17 A. Yes, sir, I processed a Haynes T-shirt. That was
18 negative.

19 I also processed a pair of red pajama pants. That was
20 negative.

21 And a pink flat sheet. That was also negative.

22 Q. Okay. And as to the sheet, did you do any kind of
23 testing on it for any hair evidence?

24 A. I did scrape it down for hair. I did not find anything
25 that, though, appeared to be hair.

1 Q. And I'm going to show you now a bag with what's been
2 marked State's Exhibit -- or marked for identification as
3 State's Exhibit 7 and 8. I hand that up to you and ask you
4 if you could identify those two items?

5 A. Yes, sir, I can. This is item 5.11.1. 5.11 was this
6 pair of panties.

7 Q. And what's the exhibit number on that, 5.11.1 is?

8 A. State's Exhibit 7.

9 Q. State's Exhibit 7. Okay.

10 A. This is a cutting from the crotch of the panties. That
11 was positive -- presumptive positive for semen. I placed it
12 in here. These are my initials and the date. I placed it
13 in this gold coin in this heat-sealed pouch.

14 State's Exhibit No. 8 is item 2.1 from the pair of
15 panties item 2. My initials across the back, placed them in
16 here.

17 Once I placed everything in here, heat sealed it across
18 the top, signed and dated right there, routed it to DNA for
19 further testing.

20 Q. Thank you.

21 MR. ANTHONY: If I could have one moment?

22 THE COURT: Yes, sir.

23 (Off the record)

24 (Back on the record)

25 MR. ANTHONY: Okay. That's everything on direct.

1 THE COURT: Thank you, solicitor.

2 Mr. Brannon?

3 MR. BRANNON: If it please the court, Your Honor.

4 CROSS EXAMINATION BY MR. BRANNON:

5 Q. Mr. Bradstreet, how are you today?

6 A. Good. How are you?

7 Q. Have you ever met a woman named Minor

8 A. No, sir, I have not.

9 Q. Have you ever met a man named Luther Pearson?

10 A. No, sir, I have not.

11 Q. As far as the evidence that you talked about and tested
12 and made cuttings from, were you involved in the collection
13 of that particular material?

14 A. From the scene?

15 Q. From the scene.

16 A. No, sir, I was not.

17 Q. Do you have any knowledge how the semen got on those
18 panties?

19 A. No, sir, I do not.

20 Q. You don't know whose semen is on those panties, do you?

21 A. That's correct, my testing is presumptive.

22 Q. Okay. You don't know where those panties were when
23 collected, do you?

24 A. No, sir, I do not.

25 MR. BRANNON: I have nothing further.

1 THE COURT: Thank you, Mr. Brannon.

2 Anything in redirect, solicitor?

3 MR. ANTHONY: No, sir.

4 THE COURT: Thank you very much, Agent Bradstreet.
5 You may step down.

6 May this witness be excused, solicitor?

7 MR. ANTHONY: Yes, sir. The State would ask if he
8 could be excused.

9 MR. BRANNON: No objection.

10 THE COURT: Thank you very much. You are excused,
11 Mr. Bradstreet.

12 MR. ANTHONY: May we approach on a scheduling
13 matter?

14 THE COURT: Yes, sir.

15 All right. Mr. Foreman, ladies and gentlemen of
16 the jury, I understand our next witness is also from
17 Columbia, who was scheduled to be in another court also this
18 morning and they had first dibs, so to speak. She had to be
19 in Anderson this morning and she's coming from Anderson to
20 Union. I don't even know how you get from Anderson to
21 Union, but I'm assuming there is a way to do that. I don't
22 anticipate her arriving much before lunchtime, based on the
23 scheduling, as I understand it to be now. So what I'm going
24 to do is rather than hold y'all captive or tell you come
25 back at a particular early time as soon as she's here, I'm

1 just going to release y'all and ask you to please be back in
2 the jury room at two o'clock. I realize that's two and a
3 half hours, but I don't much anticipate her being here until
4 sometime after one o'clock, at least. That's probably a
5 good target to shoot for.

6 Please remember during this break you are not to
7 discuss this case with anyone. That includes your family,
8 your friends, your lunch mates, anyone involved in the
9 trial.

10 If anyone tries to talk with you about the case,
11 please let me know immediately. Remember to keep an open
12 mind about the case until I advise you to begin your
13 deliberations, and please be back in your jury room promptly
14 at two p.m. and we will start promptly thereafter. Thank
15 you very much and have a pleasant lunch.

16 Yes, ma'am, if you would give your pad to the
17 bailiff. I'll have the clerk secure them. Nobody will look
18 at them. I'll have the clerk secure them during this
19 recess. Thank you very much.

20 (The following takes place outside the presence of
21 the jury panel)

22 THE COURT: All right, solicitor, Agent Taylor
23 would be your last witness?

24 MR. ANTHONY: Yes, sir.

25 THE COURT: All right. We will take about a 15

1 minutes recess and then if we have any motions, perhaps we
2 can get those resolved and then we will take our lunch
3 recess. All right.

4 Court will be in recess for 15 minutes.

5 MR. ANTHONY: Thank you, Your Honor.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: All right. Are there any motions from
9 the State?

10 MR. ANTHONY: No, sir, not at this time.

11 THE COURT: All right.

12 From the defense.

13 MR. BRANNON: No, Your Honor, not at this time.

14 THE COURT: All right, sir. Very good. We will
15 be at ease until two p.m.?

16 MR. ANTHONY: Yes, sir. Thank you.

17 THE COURT: Court would be in recess until two
18 p.m.. Thank you very much.

19 (Whereupon, proceedings were recessed)

20 (Whereupon, proceedings were reconvened)

21 THE COURT: All right, solicitor, anything before
22 we bring in our jury?

23 MR. ANTHONY: No, sir, not from the State.

24 THE COURT: Mr. Brannon?

25 MR. BRANNON: No, sir.

1 Just for the court's clarification, this next
2 witness called by the State would be questioned by Mr.
3 Collins.

4 THE COURT: All right. Thank you, Mr. Brannon.
5 Mr. Bailiff, bring in the jury, please.

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT: All right. It appears our jury is
9 back present in the courtroom.

10 Ladies and gentlemen, I hope y'all had a pleasant
11 lunch. We are continuing with the trial of the case by the
12 presentation of testimony by the State.

13 Solicitor, you may call your next witness.

14 MR. ANTHONY: Thank you, Your Honor.

15 We call Agent Taylor.

16 THE COURT: All right, Agent Taylor, if you come
17 around, please, and be sworn.

18 SLED AGENT ROBIN TAYLOR, having been first duly
19 sworn, testified as follows:

20 THE COURT: All right, solicitor.

21 DIRECT EXAMINATION BY MR. ANTHONY:

22 Q. Would you state your name, please?

23 A. My name is Robin Taylor.

24 Q. And Agent Taylor, how are you employed?

25 A. I work with the South Carolina Law Enforcement

1 Division, more commonly known as SLED.

2 Q. And what is your position there?

3 A. I'm a forensic DNA analyst.

4 Q. And how long have you worked for SLED?

5 A. March will be 18 years.

6 Q. And would you give the jury your educational background
7 and your training in the field of DNA analysis, please?

8 A. I have a Bachelors of Science Degree in Medical
9 Technology from the University of South Carolina.

10 I graduated from Baptist Medical Center School of
11 Medical Technology in Columbia.

12 I'm board certified by the American Society of Clinical
13 Pathologists.

14 I have worked in clinical laboratories for
15 approximately two and a half years prior to joining SLED.

16 And then in the 18 years I have been at SLED, I have
17 been through three different training programs in the field
18 of forensics serology, forensic RFLPDNA Analysis and
19 forensic PCRDNA analysis.

20 Q. And have you testified in court before as an expert
21 witness?

22 A. Yes, sir, I have.

23 Q. Approximately how many times have you been qualified as
24 an expert witness?

25 A. In excess of 50 times.

1 Q. I take it that you were probably qualified as an expert
2 witness A few hours ago in Anderson County?

3 A. Yes, sir.

4 MR. ANTHONY: Your Honor, at this time we would
5 tender Agent Taylor to the court as an expert in the field
6 of DNA analysis.

7 THE COURT: All right. Mr. Collins?

8 MR. COLLINS: No objection, Your Honor.

9 THE COURT: All right. Thank you, solicitor and
10 Mr. Collins.

11 Again, ladies and gentlemen, normally a person
12 cannot give opinion testimony. Normally when a person
13 testifies, they must testify to the either what they saw,
14 heard or sensed by smell, or something of that nature.
15 However, there is an exception when someone is qualified
16 because of education or experience or training in some
17 particular profession or art or science. They are permitted
18 to give their opinion in certain areas, if the court
19 qualifies them in that way.

20 This witness, Agent Robin Taylor, would be
21 qualified in the area of forensic DNA analysis to give
22 opinion testimony in that area. That does not mean that you
23 must accept the opinion, but it is evidence for you to use
24 in any way you see fit. Thank you.

25 Solicitor, you may continue.

1 MR. ANTHONY: Thank you, Your Honor.

2 BY MR. ANTHONY:

3 Q. Would you just tell the jury what DNA is and how you
4 use DNA as part of your profession at SLED?

5 A. Okay. DNA is a chemical that's present in most of the
6 cells of your body, excluding actually red blood cells, but
7 it's found in skin cells, sperm cells, things of that
8 nature. It conveys genetic information from one generation
9 to the next. You get half of your DNA from your mother and
10 half of your DNA from your father.

11 In forensics we don't test all of a person's DNA. We
12 target a very small portion, actually, of DNA that's known
13 to be highly variable from person to person.

14 The entire point of doing this analysis is to receive
15 unknown samples related to a crime and then known standards
16 from the people potentially involved with a crime and do DNA
17 analysis on both of them and make a comparison and determine
18 whether or not there is a match or not a match. We report
19 our findings in both written reports and in court, when
20 necessary.

21 Q. And what kind of substances contain DNA? Where do you
22 generally find DNA?

23 A. DNA is actually contained in the nucleus of a cell.
24 That could be white blood cells or sperm cells, like I said,
25 but usually what we are looking for are body fluids. We

1 will do initial testing for usually blood, semen, or saliva.
2 And with the presence of those we will take it into DNA
3 analysis on those body fluids.

4 Q. And in regards to an item containing DNA, you have,
5 say, a piece of cloth, what kind of activity would generally
6 remove DNA evidence from fabric or clothing?

7 A. Well, generally speaking, washing would remove DNA.
8 It's not unusual for us to be asked to perform DNA analysis
9 to see if someone was wearing an item of clothing. And you
10 have a much less likelihood of getting a profile like that
11 if you can tell that the item is cleaned or maybe recently
12 laundered. It's not that difficult to get rid of it, if you
13 need to.

14 Q. I'm going to show you now a bag that contains two
15 State's Exhibits. One is 7 for identification and other is
16 8 for identification. I would ask that you review those two
17 exhibits and also the larger bag that they are in and let
18 the jury know if you have seen those items before.

19 A. I have seen these items. They are cuttings received by
20 me from our evidence processing department, labeled item
21 number 2.1 and item 5.11.1. They were received by me in
22 this bag. This is a very standard packaging that we use at
23 SLED. It's called a heat-sealed pouch. And the value in
24 this is that when I look at it, when I receive a piece of
25 evidence, I can look at it and very quickly tell if it's

1 been opened or tampered with, because it should be
2 completely closed by the initial person who is packaging
3 these items. And then when I open it, I would seal it back
4 and my initials and the trainee I had at the time, we
5 initialed and dated this, so that further on down the line
6 one can tell if it's been opened any further.

7 Q. And when you received that bag, it was in a sealed
8 condition, the plastic bag was?

9 A. Yes, it was. And, in fact, if I receive something and
10 something looks amiss, it doesn't look normal, I'm not going
11 to proceed with analysis until any issue has been resolved.

12 Q. All right. And the two paper envelopes inside it,
13 those also were sealed when they came there?

14 A. Yes, they were.

15 MR. ANTHONY: Your Honor, at this time we would
16 move Exhibit 7 and 8 into evidence.

17 THE COURT: All-right, Mr. Collins?

18 MR. COLLINS: No objection, Your Honor.

19 THE COURT: All right. State's 7 and 8 in
20 evidence without objection.

21 BY MR. ANTHONY:

22 Q. And, if you would, tell the jury when you got those two
23 cuttings that are in those envelopes, what did you do with
24 them?

25 A. Well, as is the case in most sexual assault, the

1 initial -- I'm sorry, excuse me.

2 The initial testing is to identify the body fluid
3 present. And as in most sexual assault cases, and in this
4 one, I tested for the presence of semen, and it was
5 positive, and I proceeded to do DNA analysis.

6 Q. And just tell the jury a little bit about what you did
7 to test for the presence of semen.

8 A. Well, you take the actual piece of cloth. And the goal
9 is to get your body fluid off of your substraight material,
10 off of the cloth that it's deposited on. So I make a small
11 cut and I put it in a tube. It's about the size of a large
12 bullet, maybe, and add certain liquid reagents and just
13 proceed to pull that DNA off of that cloth. And then I get
14 rid of that small cutting and purify and clean up the DNA,
15 quantitate it, find out how much I have and then load it on
16 my system and see if I get a profile.

17 Q. And were you able to get a profile from those two, from
18 the cuttings that you took from those two exhibits?

19 A. Yes, I was.

20 Q. And just going back a moment, how is it initially that
21 you make a determination that there is semen?

22 A. That's simply a chemical test. It looks very much
23 actually like a pregnancy test, whereby I load some of the
24 liquid -- where I have pulled some of that fluid off of the
25 cloth, load it onto those little test cards and it gives me

1 a result. It's a very simple test, actually.

2 Q. So you run the simple test and detect the semen and
3 then you do the test where you separate the material from
4 the fabric to develop a profile?

5 A. That's correct.

6 Q. And did you test anything else in relation to this
7 case, aside from those two cuttings? Were there any other
8 items submitted to you?

9 A. Yes, there were. There were blood standards from
10 Minor [REDACTED] and Luther Pearson.

11 Q. And was there --

12 A. I believe that was all I analyzed.

13 Q. Were there any swabs submitted?

14 A. Oh, yes, I'm sorry, there were some vaginal swabs
15 submitted. When I tested those for semen, they were
16 negative. There was no semen identified on the vaginal
17 swabs.

18 Q. I'm showing you now what's been marked for
19 identification as State's Exhibit No. 5 and also what's been
20 marked for identification as State's Exhibit No. 9. I would
21 ask that you look at those two items and see if you can tell
22 if you ever seen them before.

23 A. State's Exhibit No. 5 contains the envelope that has
24 Minor [REDACTED] known blood standard. When we received
25 these standards, they were in a liquid blood vial, like you

1 would have drawn on at the doctor's office. At that time a
2 good way for us to store DNA in its liquid form, it's not
3 very stable and won't last very long, so we need to dry it.
4 And so we take a piece of filter paper and pour some of that
5 blood onto the filter paper and place it in one of these
6 envelopes with the appropriate information, case number.
7 This is the original label that was placed by the medical
8 person who drew it. And then their initials and a date here
9 when it was actually poured it from that tube onto the
10 filter paper. That's part of the sexual assault kit, which
11 that's what this larger envelope contained was from the
12 sexual assault kit.

13 Q. And just keeping you in No. 5 for right now, when that
14 exhibit -- when that bag came to you, the larger plastic
15 bag, the paper bag that it's in, was the plastic bag sealed?

16 A. Yes, it was.

17 Q. Okay.

18 MR. ANTHONY: We move No. 5 into evidence at this
19 time.

20 THE COURT: All right, Mr. Collins?

21 MR. COLLINS: No objection.

22 THE COURT: All right, State's 5 is in evidence
23 without objection.

24 BY MR. ANTHONY:

25 Q. Now, if you would, I would ask you if you have seen No.

1 9 for identification before?

2 A. Right, State's Exhibit No. 9 is the same type of
3 envelope with the same case information and name and item
4 number. This is the known blood standard from Mr. Pearson,
5 and it was -- there is a date and initials here where it was
6 placed onto cloth and preserved. And, again, it was
7 received sealed, and you can see places where I have opened
8 it and -- actually opened the pouch a couple of times for
9 various reasons, but it too was received by me in a sealed
10 state.

11 Q. All right.

12 MR. ANTHONY: Your Honor, at this time we move
13 Exhibit No. 9 into evidence.

14 THE COURT: All right, Mr. Collins?

15 MR. COLLINS: No objection.

16 THE COURT: State's 9 is in evidence without
17 objection.

18 BY MR. ANTHONY:

19 Q. So when you get these -- when you get these pouches
20 with blood standards in on them, what do you do with that
21 blood, as far as trying to develop a DNA profile to match up
22 to something else?

23 A. We treat it very much like evidence, in that, you know,
24 the actual general procedure is much the same. We just do
25 it separated from evidence by time and space.

1 And, again, it's a matter of pulling some the DNA off
2 of that material, isolating it, purifying it and
3 quantitating it, finding how much I have, and then, again,
4 loading it onto the system to get the actual profile. Then
5 you make the comparison. You look at the two profiles, or
6 however many profiles you need. You compare your evidence
7 against your known standards to determine where that DNA
8 came from or who that DNA came from.

9 Q. So in relation to this case, what did you -- what did
10 you do in regards to taking the blood from Minor [REDACTED]
11 and blood from Luther Pearson and comparing it to those two
12 cuttings from those pairs of panties that I showed you
13 before?

14 A. Well, in dealing with this evidence, these cuttings
15 from the panties -- and this is the same in any potential
16 sexual assault case. A cutting that contains semen is
17 potentially a mixture of both female and male body fluids.
18 What we -- the point is to -- we need to separate those two.
19 We need to pull the semen away from the female portion of
20 the DNA as much as is possible. The complete separation is
21 the ideal, but it's not a big problem if it doesn't happen
22 completely. We try to isolate the two, so one sample
23 becomes two. You do your initial extraction or pulling off
24 of that DNA and then you put it in a separate tube and then
25 you treat it with stronger chemicals or break open those

1 sperm cells. They are a little bit tougher to get into and
2 that helps us separate these two. So one cutting and one
3 sample becomes two when you actually run your analysis. So
4 that's what I did on the cuttings from the panties.

5 Now, with the known standard from the blood I don't
6 have to do any kind of separation. I'm expecting DNA from
7 one person, and one person only, and I run -- but after I
8 have done that separation, the procedure is a lot the same.
9 You just purify it. You find how much you have and then you
10 determine your profile. And then you literally visually
11 make a comparison between the two profiles to determine who
12 is present in your evidence.

13 Q. So were you -- in regards to both those panties, were
14 you able to do a separation and find two profiles?

15 A. I was.

16 Q. Okay. And as far as a comparison of those two profiles
17 from those two pairs of panties, what determination did you
18 make when you made that comparison?

19 A. Well, one of the profiles was a little bit easier to
20 determine what I would call the male portion. It was a
21 little bit easier to visualize it. So the DNA profile
22 developed from the semen on item 2.1, the pair of panties
23 that is item 2.1, matches the DNA profile of Luther Pearson.
24 And the probability of randomly selecting another unrelated
25 individual who has that same profile is approximately one in

1 one quintillion.

2 Q. Okay. And then in regards to the second pair of
3 panties that you -- or the second cutting from the panties,
4 what determination did you make as to it?

5 And let me just clear one thing up. When you say item
6 2.1, item 2.1 is a number that you assigned?

7 A. Yes, that's our SLED item number. That's what I'm
8 referring to.

9 Q. So when you say item 2.1, you're referencing State's
10 Exhibit No. 8, is that correct?

11 A. That's correct.

12 Q. And then when you referenced item 5.11.1, you're
13 referencing in State's Exhibit No. 7?

14 A. That's correct.

15 Q. Okay. So going back now, you talked about Exhibit 8.

16 Going to Exhibit 7, which is your 5.11.1, what
17 determination did you make about it?

18 A. I'm trying to -- the determination was very much the
19 same, except that there was one difference between the two
20 different items. When I looked at the male portion of the
21 DNA for item 2.1, the one I just talked about, I was able to
22 see a very clear what we term major contributor. I was able
23 to see clearly a majority of one person's DNA being the
24 contributor, and that's why I did the statistics on that
25 one, the one in one quintillion statistic.

1 On 5.11.1 the results were very similar, but the
2 proportions were different. And I just said that that's a
3 mixture and it was consistent with being a mixture of those
4 two individuals - of Minor [REDACTED] and Luther Pearson. I
5 didn't see anything in that profile that was foreign to
6 them, and I saw everything that I would expect to see if
7 their DNA were mixed together.

8 And, again, keep in mind that when these two stains
9 start out, they are a mixture of the two of them. Okay? I
10 separate them. I was just more successful in separating
11 them on one of the items than the other. And, therefore,
12 that's the one that, based on the rules we have in place,
13 they are used nationally and are fully accepted to do these
14 statistics, item 2.1 was more favorable to apply that
15 statistic. But the results were very similar on the other
16 cutting also. It was just that the levels of DNA were more
17 equal and I was unable to separate them out.

18 Q. And when you looked at the two cuttings and made a
19 comparison between the second profile, not Mr. Pearson's
20 profile, but the second profile on the cutting to Minor [REDACTED]
21 what determination did you make there?

22 A. Okay. Everything I have talked about up to now was the
23 sperm portion or the male portion of the profile. That's
24 what I was talking about. Remember, I separated the two. I
25 was talking about the male portion of the profile.

1 But when you look at the female portion of the
2 profile -- again, started out as one and it's separated into
3 two. When I look at the female portion of the profile it,
4 was purely one person. There was no mixture of the two at
5 all. I got a clean separation for the female portion, but I
6 didn't get a clean separation for the male portion. It
7 happens. Actually it's quite common. And I was able to
8 look at the female portion of both of these pairs of panties
9 and determine that it was -- that it belonged to **Minor**
10 **Minor** and I actually --

11 MR. COLLINS: I would object at this point. This
12 may be a matter -- the objection may be one we need to take
13 up outside of the jury.

14 THE COURT: All right, Mr. Collins.

15 Mr. Foreman, ladies and gentlemen of the jury, if
16 you would step momentarily to your jury room. Do not
17 discuss the case during this brief recess.

18 (The following takes place outside the presence of
19 the jury panel)

20 THE COURT: All right, Mr. Collins?

21 MR. COLLINS: Your Honor, Ms. Taylor has just
22 testified that she positively identified **Minor** **Minor**
23 **Minor** as for a direct match between her standard, which was
24 the blood and the separated DNA from the cutting. That
25 conclusion was not included in her written report, was never

1 provided by the State. And that, to be quite honest, is the
2 first time we have ever heard that conclusion, and it
3 actually contradicts what's in the written report.

4 The written report clearly identifies the DNA
5 profile of Luther Pearson, but the closest Ms. Taylor comes
6 to saying about [Minor] in her written report is that
7 there is a consistency. I think the actual word is "the DNA
8 obtained is consistent with a mixture of [Minor] and
9 Luther Pearson." What she's just testified to is that
10 [Minor] DNA was specifically identified on this
11 cutting when compared to [Minor] blood standard. And
12 that is not what is in this, in the written report, that we
13 have been provided. So basically what we have got is
14 information provided in discovery contradicting what is
15 being testified to from the stand. And to be honest, the
16 only way for me to cross-examine Ms. Taylor on this is to
17 use the written report, which we discussed earlier having
18 information that -- results from that first blood sample,
19 which we have no chain of custody for. I mean, so I have
20 almost been put in the position of using what otherwise is
21 excludable material to contradict brand new testimony.

22 THE COURT: What report are you referring to that
23 was provided in discovery that is not included in Agent
24 Taylor's testimony?

25 MR. COLLINS: I have got the February 15th, 2007

1 report, which is almost a carbon copy of the January '06
2 report, both of which the only definitive match that she
3 makes with regard to DNA profile is Luther Pearson.

4 THE COURT: All right.

5 All right, solicitor.

6 MR. ANTHONY: Well, the reports that she did were
7 turned over. I don't think that the way she phrased this in
8 her report where she says DNA is consistent with being a
9 mixture of Minor [REDACTED] and Luther Pearson is necessarily
10 contrary. It's very consistent with how she testified. If
11 it is, he can cross-examine her about it. If he wants to
12 argue that she's written a report that's not accurate,
13 that's why they have cross-examination.

14 And I don't understand how Mr. Pearson's blood
15 sample plays into this at all, because the only -- the only
16 standard she's testified about testing is the one standard
17 that I put into evidence, which was the one that
18 Investigator Nix testified about taken from the hospital of
19 October of 2006. So I don't -- he's not in any kind of
20 position where he's having to make a reference to a prior
21 blood standard taken from Mr. Pearson.

22 THE COURT: All right. Mr. Collins?

23 MR. COLLINS: Your Honor, it's -- it's the same
24 problem we had earlier this morning, in that in order to --
25 let me back up. And I can -- if there is a way to do this,

1 I would like to put in the record, but not for the jury, the
2 actual written reports from Ms. Taylor to preserve the
3 record showing what was provided to us in discovery by the
4 State, her written report, to show the contradictions
5 between what she's written and what she's testified to.

6 Again, I think we are -- Mr. Brannon and I have
7 almost been baited into a position where we have got to --
8 we've got to -- the only information that we have to
9 cross-examine her is stuff that includes evidence that's not
10 admissible. And so if I go use this written report to
11 cross-examine Ms. Taylor, I run the risk of basically
12 putting up their excludable evidence and trying to make my
13 case.

14 THE COURT: It's called Hobson's choice, I think,
15 Mr. Collins.

16 MR. COLLINS: Yes, sir.

17 THE COURT: Well, you can certainly mark her
18 reports as Court's Exhibits to protect the record. I don't
19 know that you need testimony from Ms. Taylor for that. If
20 you and the solicitor agreed that it was report of Agent
21 Taylor's January of '06, and the report of Agent Taylor's
22 provided 2-15 of '07, you can make copies of those reports
23 as Court's Exhibits to protect you on the record in that
24 regard.

25 You could also cross-examine her fully and

1 completely on any and all reports that she has issued and on
2 any of her notes that you may have, or lab notes that you
3 may have, or any other documentation that you may have, or
4 that she -- or that may have been provided by the State, but
5 you can mark her reports as a Court's Exhibit. I think that
6 protects you as far as discovery issues at this point, and
7 if she's testified inconsistent to what is in her report,
8 you can certainly cross-examine her in that regard. And
9 just because you cross-examine a witness as to part of the
10 report doesn't necessarily mean under 106 that the rule of
11 completeness that all the report is necessarily admissible.

12 MR. COLLINS: Yes, sir.

13 THE COURT: I don't -- the solicitor may have a
14 different opinion. You may have a different opinion to
15 that, but I don't think it necessarily makes the entire
16 report of January of '06 admissible.

17 MR. COLLINS: Yes, sir.

18 THE COURT: Unless I'm missing your point.

19 MR. COLLINS: Your Honor, we will proceed at this
20 point. I think you have answered it. And my objection was
21 to her being able and allowed to testify inconsistent with
22 documentation that was provided by the State, and at this
23 point we would move to strike her testimony from the record.
24 I understand the court's ruling denies both those.

25 THE COURT: I want you to mark your reports now.

1 MR. COLLINS: Yes, sir, with the court's
2 permission we will get a clean copy at the break. The ones
3 that I have are marked up and I think it would be best to
4 have a clean copy of the reports for the record at a time
5 when we have a break.

6 THE COURT: All right. That's fine.

7 And as far as motion to strike, as I understood
8 Agent Taylor's testimony at the point she was at and you
9 objected, that she was then going into the second profile,
10 which I take is the female profile on State's 7 and 8, and
11 her testimony was that was purely one person, and one person
12 only on and both pair of these -- I wrote down on both pair
13 of these panties. I don't know that that was her exact
14 language at the time, so -- that was where your objection
15 came, and I would deny your motion to strike that language.
16 You may certainly cross-examine her.

17 MR. COLLINS: Yes, sir, Your Honor.

18 THE COURT: Anything further?

19 MR. COLLINS: Nothing else, Your Honor.

20 THE COURT: Thank you.

21 You may bring our jury back in now.

22 (The following takes place in the presence of the
23 jury panel)

24 THE COURT: All right. Our jury is back present
25 in the courtroom.

1 Thank you, Mr. Collins.

2 Solicitor, you may proceed.

3 MR. ANTHONY: Thank you.

4 BY MR. ANTHONY:

5 Q. Agent Taylor, let's back up just a little bit.

6 After you had made those determinations regarding Mr.
7 Pearson's profile being on those two cuttings,
8 what determination did you make in regards to the
9 relationship between the two cuttings -- or the profile that
10 you got and the two cuttings and Minor DNA
11 profile?

12 A. In just doing a visual comparison of the DNA profile
13 that I developed on the female portion of the cuttings from
14 those panties, the non-sperm portion, I just visually
15 determined that it was the same profile as reflected in
16 Minor known standard.

17 Q. Okay. And that is as to both pairs of panties, or as
18 to both cuttings?

19 A. That's correct, both pairs of panties.

20 Q. Okay. Now, the substance that -- you testified that
21 you made a positive determination of semen on the cutting.
22 What type substance would, in your opinion, most likely be
23 the female portion of that cutting?

24 A. In the crotch of a pair of female panties, most often I
25 would assume the DNA profile to come from vaginal fluid.

1 MR. COLLINS: Your Honor, I would object to as an
2 assumption on her part. Again, I think her answer
3 specifically stated that --

4 THE COURT: All right, if you would lay a
5 foundation for that, solicitor, please.

6 Thank you. I would sustain the objection at this
7 time.

8 BY MR. ANTHONY:

9 Q. Just based on your experience and based on this
10 particular profile, what type substance -- what type
11 substance would be most likely be found in the crotch of --
12 or on what type substance would most likely be the female
13 contribution to that profile?

14 A. It's most likely vaginal fluid.

15 Q. And were you able to quantify the likelihood that it
16 would be somebody else's profile besides [REDACTED] Minor

17 A. I did do that. I would like to clarify that just a
18 little bit.

19 On a sexual assault case with what we in DNA think of
20 as intimate samples, such as vaginal swabs, to include
21 panties, you know, and intimate undergarments, and sometimes
22 even a swab from skin, we consider those what we call an
23 intimate sample. So normally we pretty much don't pay a lot
24 of attention to a result when it's from that person, when --
25 to me these were presented as being Minor [REDACTED]

1 panties. That's how it was presented to me. I had no
2 knowledge otherwise, and I didn't see anything surprising in
3 seeing her DNA profile in the non-sperm portion, so I did
4 not address that, but I did go back and do a statistic that
5 would apply that non-sperm female portion of these cuttings
6 from her panties, and I did it a match back to her, which,
7 again, is not actually a normal procedure, but -- it's not
8 normally necessary, but I did determine that the
9 likelihood -- the probability of randomly selecting an
10 unrelated individual who could have the same DNA profile
11 that I saw in the female portion of these panties is
12 approximately 1 in 7.9 quadrillion.

13 MR. ANTHONY: Your Honor, I would like to publish
14 Exhibit 7 and 8 to the jury, if I may?

15 THE COURT: All right. Yes, sir.

16 That's State's 7 and 8?

17 MR. ANTHONY: Yes, sir.

18 THE COURT: All right. Yes, sir.

19 BY MR. ANTHONY:

20 Q. The first item I'm going to show you is Exhibit 7,
21 which is your item 5.11.1. And I just would ask when you
22 talk about the cutting, I was hoping that you could give --
23 I was hoping that you could give the jury an idea of the
24 area that you are talking about.

25 If you could take that laser pointer and just show the

1 jury the cutting where you isolated the semen and the
2 contribution from Minor [REDACTED] Where is that on this
3 exhibit?

4 A. What you see here is a cutting I received from our
5 evidence department, evidence processing department. They
6 marked in with black ink the areas that they found to
7 preliminarily test positive that needed further
8 confirmation, and it gets sent to me at that point.

9 I made a cutting right here. There is -- and I can't
10 hold it steady enough, but it's actually cut right where I'm
11 outlining right there. I just cut the lining. I didn't
12 need both layers. I cut the lining from this pair of
13 panties and then proceeded to do as I said before. Actually
14 I did two tests off of that cutting. Part of it was used to
15 initially identify the presence of semen, okay. And then
16 the second part I took on for DNA analysis, once I
17 determined that semen was present. So it's not a very big
18 area. It's just that, that right there.

19 And, again, I put the piece of that cloth into a small
20 tube, added some liquids, proceeded to pull the DNA off of
21 that cloth. And, as I stated earlier, purified it, cleaned
22 it up and quantitated it and then ran the profile.

23 Q. And in that area right here you found Mr. Pearson's
24 semen and DNA from Minor [REDACTED]

25 A. Well, on this particular item, this was 5.11.1, that's

1 the one where even in what should be the male-only portion,
2 it was a mixture of the two of them, and I didn't actually
3 say it's Mr. Pearson's semen. I didn't go that far. I just
4 said that the DNA profile that I see is consistent with
5 being a mixture of the two of them. I didn't see anything
6 foreign to them, and I didn't see anything that would make
7 me think that there was, you know, anything going on. It
8 just looked liked the two of them, and that's why that's
9 reported that way on this particular pair.

10 Q. But you were able to make a conclusion that in this
11 area there was semen?

12 A. Semen was identified, yes.

13 Q. All right. And so I'll show you now -- I'll show you
14 now Exhibit No. 8, which is -- that's your exhibit 2.1, and
15 I would ask if you could, once again, just on that exhibit
16 show the jury where you cut the material that you tested?

17 A. Okay. Again, you can see outlined in with black
18 circles the areas that the evidence processing technician
19 may note that I needed to pay attention to. So I took
20 almost a central center cutting from the largest area, and
21 I'm outlining it right there, and, again, did the same
22 testing as the other pair. First did initial testing to
23 determine if semen was present, and it was identified semen.
24 And then I used another portion of that small area I cut out
25 to do DNA analysis.

1 Q. And when you did that DNA analysis, you determined --
2 you were able to determine the presence of whose DNA?

3 A. I was able to do the statistic on that particular
4 cutting and matched the semen back to Luther Pearson.

5 Q. Okay. And was that -- of the two profiles, is that the
6 ones where you found the -- where you were able to actually
7 distinguish a major contributor?

8 A. I had major portion of that -- when I'm again looking
9 only at the male portion of the profile -- of the male
10 portion of the cutting, I was able to see that his DNA was
11 in the majority there and able to do the statistic.

12 Q. Okay. And were you also able to identify Ms. Minor
13 Eison's DNA?

14 A. Yes. And, again, keep in mind that one sample is one
15 cutting from here becomes two different profiles, and the
16 majority of the time I have been talking about what I would
17 consider the male portion of the profile, although there was
18 some of Minor present, it -- now we are talking
19 become the female portion of the profile, a separate
20 profile, and it was -- it didn't have any mixture or
21 anything in it. It was simply a female profile and I made a
22 visual comparison. It matched back to Minor

23 MR. ANTHONY: If I could have one moment?

24 THE COURT: Yes, sir.

25 (Off the record)

1 (Back on the record)

2 MR. ANTHONY: All right. Thank you. That's all
3 on direct.

4 THE COURT: Thank you, solicitor.

5 Mr. Collins?

6 MR. COLLINS: Thank you, Your Honor.

7 CROSS EXAMINATION BY MR. COLLINS:

8 Q. Ms. Taylor, if you bear with me just a minute, I'll get
9 the light out of my eyes here.

10 A. That's all right.

11 Q. If we can, I want to just go back to the very beginning
12 of your testimony and start there, I guess the basics of
13 what DNA are. I think you said this was the genetic
14 material that we get from our parents, is that correct? The
15 DNA is half mom's and half dad's passed down to you?

16 A. That's correct.

17 Q. Now --

18 A. I'm sorry, let me rephrase. Let me re-answer that.
19 Half of your DNA comes from your mom and half comes from
20 your father.

21 Q. Okay. Now, there is actually two kinds of DNA. Isn't
22 there a nuclear and mitochondrial? Are those two different
23 types?

24 A. Yes.

25 Q. And it's actually I think the nuclear DNA that you get

1 half and half from your parents, right?

2 A. That's correct. And that's what we use in forensics
3 the majority of the time is nuclear DNA.

4 Q. And then the mitochondrial comes directly from your
5 mother's side, the maternal side, correct?

6 A. That's correct.

7 Q. And as a matter of fact, it's this blend of the
8 material from mother and father that makes the paternity
9 index possible and paternity testing that we use DNA for, is
10 that correct?

11 A. Yes, it does.

12 Q. So there is similarities in matches between parents and
13 children?

14 A. Certainly, yes.

15 Q. As a matter of fact, those similarities are what allow
16 us to determine who the father is of a child? Or I think
17 even in some, like 9-11, they are used as the method for
18 identifying deceased individuals, is that correct?

19 A. It's used in -- yes, paternity testing and missing
20 persons-type testing. In fact, I performed some of those
21 analysis.

22 Q. And I think -- the closer the relative, the closer
23 match, is that correct? Parents are closer than say
24 grandparents or other relatives?

25 A. Yes, that is correct.

1 Q. Now, in -- the work that's done in your lab, the type
2 of work that you do, those are short tandem repeat PCR
3 tests, is that correct?

4 A. Yes, it is.

5 Q. And the PCR is actually -- I'm not a scientist, so I'm
6 not exactly sure how to pronounce the full name of that.

7 A. PCR?

8 Q. Yes.

9 A. Stands for polymerase chain reaction.

10 Q. And that's basically the way that you take a very small
11 sample of DNA and make copies of copies of copies of copies
12 to get enough to test, is that correct?

13 A. That's correct.

14 Q. So you could take a little bit and it's almost like
15 running it through a photocopier and then making copies of
16 copies until you get enough to test?

17 A. Yes, it's somewhat like that.

18 Q. Now, I believe we have almost treated the testing that
19 you did, that you have talked about today, as if it happened
20 at one particular time. All these tests weren't done at the
21 same time, were they, the ones that you are testifying about
22 today?

23 A. I'm not sure what tests that you are referring to, but
24 I did testing for the presence of semen and it wouldn't have
25 happened concurrently with the DNA, of course. I'm going to

1 determine if semen is present before I do the DNA. And so
2 at some point after determining the presence of semen I
3 began the DNA analysis process. I'm not sure if I'm
4 answering your question --

5 Q. Well --

6 A. -- or not.

7 Q. Well, Mr. Bradstreet, who testified earlier, is the
8 gentleman that initially put those black marks on the
9 panties, correct?

10 A. That's correct.

11 Q. And I think Mr. Bradstreet did his work sometime in
12 about May of '05, is that correct?

13 A. I'm sorry, I have really no idea exactly when he did
14 his testing.

15 Q. And then when you actually did the -- when you did the
16 portion where you have identified whether or not there was
17 semen present, that was in January of '06, is that correct?

18 A. That's when my report was generated. I don't remember
19 the exact day I did the testing, but the results were
20 reported out on January 6th. An initial report was
21 generated on January 6th of 2006.

22 Q. And then this -- I think it's Plaintiff's No. 9 that
23 has Mr. Pearson's blood in it, that report actually came out
24 in February of '07, is that correct?

25 A. That's correct.

1 Q. All right. So we have got May of '05, a report in
2 January of '06, and a report in January -- or February of
3 '07?

4 A. That's correct.

5 Q. So we are talking a two year span of time? Not one day
6 when you are doing all these tests?

7 A. That's the span of time between Mr. Bradstreet doing
8 his either testing or reporting, I'm not sure, and my final
9 reporting. Testing happened sometime prior to reporting.

10 Q. Now, I think during that two year span of time didn't
11 SLED use three different testing protocols? There is the
12 profiler plus, the cofiler, and then the identifiler, right?

13 A. We were not using those pretty much at the same time.
14 I will need to explain that a little more clearly.

15 To generate a DNA profile, before -- before I actually
16 do the copying of the DNA, I'm going to put in a tube the
17 components needed for that reaction to actually take place.
18 Okay.

19 Up until about I'm thinking maybe a year ago, I'm not
20 positive exactly of the time frame, we used two kits to
21 compile a DNA profile. These are manufactured kits. They
22 are used worldwide, actually, and they were called profiler
23 plus and cofiler. And while they share a couple of things
24 that would look the same on both kits, together they gave us
25 13 different locations to look at and make our comparison.

1 Those 13 different locations are what composed the actual
2 profile. Okay.

3 In order to use those two kits I had to set up two
4 reactions. Now, just like any other job at home, or
5 anything, you want to do it a better way, so the
6 manufacturer came out with a way that we could set up one
7 reaction and not get 13, but 15 different locations. That's
8 half the amount of time to set up that reaction. It saves
9 us time and saves a lot of other things too. The --

10 Q. Ms. Taylor --

11 THE COURT: Wait a minute. Let her finish her
12 answer.

13 A. The results of the two kits are identical. The
14 locations we look at are identical, except for the two
15 additional ones that we get now. It's just a matter of
16 moving onto the latest technology, but the results are the
17 same. I can take one sample, any sample. I could take my
18 own DNA and run it on profiler --

19 MR. COLLINS: Your Honor, I would ask her to be
20 responsive. Her answer has become unresponsive. I simply
21 asked if she had three different tests that she performed on
22 samples.

23 THE COURT: Well, I think as an expert she can
24 answer the question and explain her answer, as far as
25 profiler plus, cofiler, and identifiler, I think that's

1 right. I can't read my writing. If she thinks she has
2 responded to your question appropriately, you can go onto
3 your next question, but I don't want to cut her off of
4 explaining her answer in that regard.

5 Have you explained your answer?

6 THE WITNESS: I was just going to add one more
7 sentence.

8 THE COURT: Add one more sentence then.

9 A. You can compare results from a profiler cofiler profile
10 to identifiler. Those can be compared.

11 THE COURT: Thank you.

12 Thank you, Mr. Collins. You may proceed.

13 MR. COLLINS: Thank you.

14 BY MR. COLLINS:

15 Q. Now, each one of those testing kits, though, have
16 different reagents to begin processing and move it along, is
17 that correct? If you just --

18 A. No. In fact, they are much the same. What identifiler
19 did was just combine profiler and cofiler to get the same
20 type of profile.

21 Q. Did I misunderstand you? I thought you said that
22 profiler plus and cofiler had different chemicals and that
23 they set and that's why you used two different tests?

24 A. They had different locations. We use two kits because
25 we wanted to get all 13 locations.

1 Q. So the initial testing that was done was done with the
2 older technology, the profiler plus and the cofiler, and
3 then there was a different -- a completely different test
4 done on Mr. Pearson's blood in 2007, with the identifiler,
5 is that correct?

6 A. I believe it's a misrepresentation to say it's a
7 completely different test. It's almost identically the
8 same. It's just combined two reactions into one reaction.

9 The information that I get out of the combined kits or
10 identifiler, the one kit, is essentially the same, except
11 for the two additional locations that we now see.

12 And when I say it's older technology, profiler and
13 cofiler are still being used by many, many laboratories. We
14 are just very fortunate to have been able to convert over to
15 the newer way of doing it to the one reaction, but the
16 information you receive is the same.

17 Q. Now, you had a trainee at the time that you did I guess
18 it was the initial test in 2006, is that correct?

19 A. That is correct.

20 Q. Was that trainee involved in the process or was she or
21 he simply an observer?

22 A. She was probably some of both. She -- it would
23 depend -- and I honestly don't remember exactly what point
24 she was in her training at the time of this case, because
25 it's an ongoing process in judging what a trainee can and

1 cannot handle, but anytime a person is trained under me,
2 they are under my direct supervision and they do nothing
3 without my approval.

4 Q. This No. 9, Exhibit No. 9 which was Mr. Pearson's
5 blood, you said you opened that particular piece or that
6 particular packet several different times, is that correct?

7 A. I believe it -- I need to see it again, please, to be
8 sure.

9 It appears that this one is opened two times by myself.

10 Q. By you?

11 A. Yes, sir.

12 Q. Well, the one time test was what you used to test that
13 blood, correct, the identifiler?

14 A. That's correct.

15 Q. Do you have any idea why you opened it twice?

16 A. There can be a variety of reasons. Perhaps I needed to
17 for some reason lay eyes on the writing on that envelope and
18 it was turned backwards. I mean, there are all kinds of
19 reasons while something is in my custody that I may go into
20 that package more than once. It doesn't mean I ran the test
21 more than once. It doesn't -- it's really not a big
22 significance to me, other than to say that while it's in my
23 custody I have -- I can open and close those packets as many
24 times as I need to in order to generate accurate reporting,
25 or it may have been something I just needed to look at. I

1 really don't know why it was opened twice.

2 Q. Now, step back and make sure that I understand where
3 these samples came from. The 2.1 that you referred to --

4 Let me ask it this way. The 5.11.1, that particular
5 cutting, that is from the rape kit, is that correct, the
6 sexual assault kit?

7 A. That is from a pair of panties that was submitted at
8 the same time, along with -- to be included with the rape
9 kit, yes.

10 Q. So the simple answer is yes, that it's part of the
11 sexual assault kit?

12 A. It was part of the item No. 5, which was the sexual
13 assault kit.

14 Q. The 2.1, that was a completely separate set of panties
15 or underwear that was collected at a different time, not
16 part of the sexual assault kit, correct?

17 A. It was not submitted to SLED as part of the sexual
18 assault kit. I have no knowledge of the collection
19 circumstances of it.

20 Q. Well that leads me to my next question. You have never
21 met **Minor** correct?

22 A. No, I have not.

23 Q. And before today you have never seen Mr. Pearson, is
24 that correct?

25 A. No, I have not.

1 Q. And you weren't -- you weren't part of collecting any
2 of this particular -- any of the evidence that we have?

3 A. No, I was not part of any collection.

4 Q. And so the information -- the information that you have
5 outside of your test results is what was provided to you by
6 the law enforcement agency that presented the evidence to
7 you, correct?

8 A. That's correct.

9 Q. Okay. So, for example, if we say these were **Minor**
10 Eison's panties, you only know that information because
11 that's what somebody told you they were?

12 A. That's correct, and my findings being consistent with
13 what was presented to me.

14 Q. Now, you did two written reports about --

15 A. Yes, I did.

16 Q. -- **Minor**
17 Do you have those reports with you?

18 A. I do.

19 Q. Your testimony about Mr. Pearson's DNA is in that
20 2007 -- the February 2007 report, when you say his DNA was
21 identified from, I believe it was, 2.1? The DNA from the
22 non-sexual assault kit panties is his DNA, correct?

23 A. That's correct.

24 Q. But the ones with the -- that came with the sexual
25 assault -- the assault kit, you never put in a written

1 report that that was Minor DNA, did you? You
2 never put in a written report the quantified number that you
3 gave us today, correct?

4 A. That is correct, yes.

5 Q. As a matter of fact, all you could say is that the DNA
6 on there was consistent as a blend of Minor and Mr.
7 Pearson?

8 A. That's what I said about that pair of panties.

9 As I said, panties are considered an intimate item.
10 It's normally not necessary to include that portion in the
11 report.

12 Q. But those numbers about Minor DNA coming from a
13 randomly selected population today is the first time that
14 you have presented that information, is that correct?

15 A. Yes, it is.

16 Q. And that phrase that you put at the end of that "from a
17 randomly selected population," that's an important qualifier
18 on that number, isn't it?

19 A. It certainly is, yes, sir.

20 Q. Now, DNA comes from a wide variety of sources, is that
21 right? I mean --

22 A. A wide variety of body fluids.

23 Q. Body fluids?

24 A. From the body, yes.

25 Q. I believe from you could get it, from hair, or skin, or

1 blood, or semen, or --

2 A. That's correct.

3 Q. When you were talking about the DNA samples from the
4 different panties, I believe you said it was most likely --
5 or in your experience you would find it most common for the
6 DNA in that particular area of that item of clothing to be
7 from a particular source? From vaginal?

8 A. That is in my opinion the most likely scenario.

9 Q. But you don't have any way of knowing that for sure?
10 And that's -- I mean that's an assumption or a best guess,
11 given the circumstances?

12 A. That is correct, based on experience and previous
13 testing, that is where I draw that assumption or likelihood
14 of that being the case.

15 Q. Does your testing include any method for identifying of
16 whether or not there would be a contaminant, such as a
17 spermicide or other lubricant, in the same area as the DNA?

18 A. No, I'm only testing for biological fluids and DNA.

19 Q. So nothing that you do would show even the presence of
20 those materials?

21 A. No, I do no testing for any chemical or anything like
22 that. Again, my testing is for biological fluids and DNA.

23 Q. Now, in that assault kit was -- I believe you put in
24 your report that there was also vaginal swabs that you
25 tested, is that correct?

1 A. Yes, that is correct.

2 Q. And those vaginal swabs, according to your written
3 report, did not indicate there was presence of any semen?

4 A. That's correct.

5 Q. Now, does the assault kit come with the evidence
6 checklist?

7 A. I'm sorry, I don't know what you mean by an evidence
8 checklist.

9 MR. COLLINS: If I may approach, Your Honor?

10 THE COURT: Yes, sir.

11 BY MR. COLLINS:

12 Q. Is a document such as that included in your --

13 A. Usually, yes. This document is a what we would call a
14 sexual assault kit protocol, and it is supplied by SLED,
15 along with the rape kit. It would be, again, the
16 standardized way of collecting sexual assault evidence, and
17 this questionnaire is part of what is normally filled out.
18 And at the end there is a place for usually nursing
19 personnel who collected the kit to indicate what they have
20 collected and include it in the kit.

21 Q. Now, was this protocol in the paperwork or the evidence
22 that came to you?

23 A. I believe so, but I would need to --

24 Q. Can you tell me what you need and I'll get it for you?

25 A. I would need to consult with my own paperwork just to

1 make sure that I did have a copy of that. Normally I do,
2 but --

3 THE COURT: Do you have it with you, Agent Taylor?

4 THE WITNESS: I have, yes.

5 THE COURT: All right. She can step down and
6 check it.

7 MR. COLLINS: She may step down.

8 THE WITNESS: I have it right here.

9 MR. COLLINS: Oh, you have it.

10 THE COURT: All right.

11 A. I have it right here. I do have a copy of that sexual
12 assault kit protocol.

13 BY MR. COLLINS:

14 Q. And if we can just take a moment to make sure. The
15 part I'm going to ask you about is the evidence checklist in
16 this position. And is yours the same thing?

17 A. It appears to be.

18 Q. Okay. Now, if you will look at number -- have you got
19 it?

20 A. I'm fine.

21 Q. Can you take a look at No. 9 for me?

22 A. Yes.

23 Q. And according to the evidence checklist and
24 disposition, it says that "rectal swabs and smear were not
25 collected," is that correct?

1 A. That's what it says.

2 Q. All right. But you mentioned testing a rectal smear in
3 your January '06 report, is that correct?

4 A. That is correct.

5 Q. All right. And that -- but that smear apparently is
6 marked as not having been collected?

7 A. To be honest, I believe that it was probably a
8 collection error.

9 There are three microscope slides provided in the kit
10 and we pre-label them vaginal, oral, and rectal. And it
11 happens sometimes that when we collect it, it would be put
12 on the wrong smear, especially when there is only one swab
13 collected. It happened several times, actually, in my
14 career, and yes, it was reported. I had to report it as was
15 indicated to me, but there was only one smear submitted and
16 one swab collected. That's why it was indicated to me to be
17 a vaginal swab, but the smear was labeled as a rectal smear.
18 I don't know why that would be, other than to speculate.

19 Q. But just to clarify, on the evidence checklist, of
20 those three that you mentioned, only one is indicated as
21 having been collected?

22 A. That is correct.

23 Q. But you report having tested two?

24 A. No, I report only having -- I tested one smear. I
25 looked at one smear, indicated as the rectal smear. That's

1 how it's labeled.

2 I tested one swab -- one set of swabs, actually, that
3 were indicated to me as being vaginal swabs.

4 One of each. Am I making myself clear?

5 Q. Yeah, I understand.

6 A. Smears to me -- or microscope slides are different than
7 a vaginal swab. That's two different tests. I look at one
8 under the microscope. The other I test chemically.

9 Q. But at least somewhere between these two there was a
10 mistake made by somebody?

11 A. A labeling -- it looks like a labeling issue perhaps.
12 I don't know. I really don't know.

13 Q. But there was -- there was nothing on either of those
14 two -- you indicated a negative result on both the smear and
15 the swab, is that correct?

16 A. That's correct. On the swab there was no semen
17 identified. And on the smear there were no spermatozoa, the
18 male sex cell that we would be looking for through the
19 microscope.

20 Q. And the smear is what they put on the slide? You are
21 looking to see whether or not there was --

22 A. Yes, and normally they are instructed -- normal
23 collection procedures would include collecting the swab and
24 then just rubbing it across that glass microscope slide as
25 being part of the collection, and then there are submitted

1 separately in separate envelopes.

2 MR. COLLINS: If I may have just one moment?

3 THE COURT: Yes, sir.

4 (Off the record)

5 (Back on the record)

6 BY MR. COLLINS:

7 Q. Just two different -- two more areas, if I can,
8 briefly.

9 You talked earlier about the amount of time that these
10 particular items could be in storage and how, for example,
11 blood is stored differently than say the undergarment that
12 you had, is that correct?

13 A. Actually, no, they are not stored differently. What I
14 alluded to earlier about blood is in the liquid form it's
15 not stable. We don't want to keep liquid blood for a long
16 period of time. The DNA will degrade or it will break up,
17 so we take the liquid blood and pour it onto filter paper
18 and dry it, allow it to dry. But then it's stored very much
19 the same, or exactly the same, actually, as the evidence.
20 They would be in two different pouches, as you have seen,
21 but placed in the freezer and stored there.

22 Q. All right. So once it's dried, then they are stored
23 exactly the same?

24 A. Yes.

25 Q. So the -- if the -- if those -- if the undergarments

1 were collected February the 28th of '05, went through
2 sometime the next couple of months to Mr. Bradstreet, and
3 eventually made it to you by January of '06, they have been
4 stored for about 11 months in the possession of law
5 enforcement, correct?

6 A. Yes.

7 Q. And a one or two week period for a dried sample is not
8 going to affect its viability or its testability, is that
9 correct?

10 A. Absolutely not. I do DNA tests on samples as old as 10
11 or 12 years old and get good profiles.

12 Q. And lastly, the only individuals that you tested -- or
13 that you had standards for were Minor [REDACTED] and Luther
14 Pearson, correct?

15 A. That is correct.

16 MR. COLLINS: Your Honor, those are all the
17 questions that we have at this time.

18 THE COURT: Thank you, Mr. Collins.

19 Solicitor, do you have anything on redirect?

20 MR. ANTHONY: Yes, sir. Thank you.

21 THE COURT: All right.

22 REDIRECT EXAMINATION BY MR. ANTHONY:

23 Q. Agent Taylor, is it part of your job to keep up with
24 the latest research and developments in DNA investigation?

25 A. Yes, sir. In fact, the DNA laboratory at SLED is

1 audited annually by other DNA analysts from around the
2 country, and we are required to keep up on reading. And, in
3 fact, probably all of us subscribe to different services
4 that send us news items and headlines from around the nation
5 and around the world.

6 Q. And in your reading and in your training and education,
7 have you ever heard of a situation where a mother and a
8 daughter shared a DNA profile?

9 A. I have never heard of such a situation, no.

10 Q. So if there were ever such a case, it would be the
11 first time that that had ever been reported?

12 A. It would.

13 MR. COLLINS: I would object to the base of
14 knowledge she would be required to have as to a reported
15 case. Maybe the first one she's ever heard of.

16 THE COURT: Rephrase your question, counsel.

17 BY MR. ANTHONY:

18 Q. If it were to happen, it would be the first -- in all
19 your training and experience, it would be the first case
20 that you had ever heard of where a mother and daughter had
21 an identical profile?

22 A. That's correct, it would be the first I would have ever
23 heard of any such incidence.

24 Q. And you testified about doing an initial report in this
25 case in January of 2006. You were asked about that on

1 cross-examination?

2 A. I was.

3 Q. All right. And when you did that report, you had -- at
4 that time that you did the report, you had a blood standard
5 from Mr. Pearson, is that correct?

6 MR. COLLINS: Objection.

7 THE COURT: Yes, sir, I would sustain that
8 objection.

9 MR. ANTHONY: May I be heard on that?

10 THE COURT: All right.

11 Mr. Foreman, ladies and gentlemen of the jury, if
12 you would please step to the jury room momentarily. Do not
13 discuss the case amongst yourself during this brief recess.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: All right. Who wanted to be heard?

17 MR. ANTHONY: I would like to --

18 THE COURT: Mr. Collins is standing and I think
19 you wanted to be heard, solicitor?

20 MR. COLLINS: Well, Your Honor, in addition to the
21 objection to that particular question in regards to this
22 point I move for a mistrial based on the mention of that
23 particular DNA test. We would ask the court to not only for
24 a mistrial, but dismiss the charges with prejudice, based on
25 that question and that line of inquiry by the solicitor.

1 THE COURT: All right. Solicitor, I will be glad
2 to hear from you.

3 MR. ANTHONY: Well, they -- very early in Mr.
4 Collins cross-examination he asked her did she do a report
5 in January of 2006, which was not mentioned at all by the
6 State in her direct. And then he made a reference to "you
7 did another report in January of 2007, once you got Mr.
8 Pearson's blood." And certainly the inference you could
9 draw from that line of questioning is that in some way or
10 another she did a report, and either something -- something
11 was wrong with the procedure she used, or something was
12 wrong about her report, or Mr. Pearson wasn't a suspect. I
13 don't know what they intend for the jury to think about
14 that, but they -- they certainly opened the door on allowing
15 us to clear up the fact that when she did her first report,
16 she had a blood sample. And I think we are entitled to do
17 basically the same kind of redirect that we did with
18 Investigator Nix, where I can ask her "you had a blood
19 sample in '05. You got a later blood sample in '06. It was
20 to be used for court purposes." And that's the sample that
21 I have shown her up here today when she testified, but I
22 never asked her about that January report. They did, Your
23 Honor.

24 THE COURT: Solicitor, I'll allow you to ask that
25 question, provided you can lay a complete chain of custody

1 on the blood sample that was tested for the January 6th, '06
2 report.

3 MR. ANTHONY: Well, I don't -- it's not my
4 intention to ask her a result. I just intend to ask her was
5 a blood sample provided to her purported to be from Mr.
6 Pearson.

7 THE COURT: I think -- I think this is what Mr.
8 Collins asked. If you are focused on the same area where I
9 think you are focused on, he was asking Agent Taylor about
10 Mr. Bradstreet's report of May 5th, and she, rightfully so,
11 would not have knowledge of the date Mr. Bradstreet
12 generated any report. He then went -- this is the area that
13 you were referring to?

14 MR. ANTHONY: I think so, Your Honor, yes, sir.

15 THE COURT: He then asked about, Agent Taylor, if
16 she generated a report 1-6 of '06, and he called it an
17 initial report.

18 And then he asked about a third report, which
19 Friday will be one year ago today, 2-15-07, and she tested
20 Luther Pearson's blood.

21 I do not think he referenced the report of January
22 6th of '06, to having or not having a sample of Mr.
23 Pearson's blood. I could be wrong in that recollection and
24 we can go back and look at that area.

25 And then Agent Taylor was referring to the fact

1 that obviously she does her testing before she does her
2 reporting and there was an issue about this occurring over a
3 two year span of time.

4 I think the issue -- in a sense the wound was kind
5 of self-inflicted, because -- I'm not saying the State is
6 wrong. I don't mean it like that at all, but because you
7 have these two samples of Mr. Pearson's blood: One that is
8 in evidence and one that is not in evidence. You didn't
9 object to that question and I don't think he -- I don't
10 recall he founded that question in having Mr. Pearson's
11 blood sample. I would be glad to have the court reporter go
12 back and look specifically at that area, solicitor.

13 MR. ANTHONY: My -- when he asked the question, I
14 felt it seemed to me like he was insinuating -- and maybe I
15 misheard what he said, but it seemed like he was insinuating
16 that she never matched up Mr. Pearson's blood to that
17 profile until 2007. And I -- and I -- that was just what I
18 took from, because he said something along the lines "you
19 didn't -- "you didn't do this January report until you
20 met -- "you didn't match up -- "you didn't do the January
21 report until you matched up Mr. Pearson's blood." That's
22 what I thought he said. And maybe I'm -- maybe I'm wrong.
23 I mean, I felt like he opened the door, and that's why I
24 thought I would be entitled to.

25 THE COURT: You felt like what, solicitor?

1 MR. ANTHONY: I felt like he opened the door to
2 when he referenced that -- when he made that statement or
3 asked that question.

4 THE COURT: I think that door has been kind of
5 swinging the whole trial, if you want to know the truth,
6 when it goes back to the fact that there were two samples.
7 I think the door has kind of swung back and forth. That's
8 no criticism at all to either the State or Mr. Collins or
9 Mr. Brannon, but what you are going to do is you are laying
10 the foundation and the -- if he insinuated, and the
11 counter-insinuation is that if she had the blood sample
12 prior to her January 6th, '06 report, which we all know she
13 did. I understand that. We all in this room know she did,
14 that she matched it up with Mr. Pearson. And because that
15 evidence is not admissible, the blood sample, that's
16 obviously the quandary for the court.

17 MR. ANTHONY: Yes, sir.

18 THE COURT: I mean, that's the quandary I'm
19 having, that underlying sample is not admissible because
20 there is not a proper chain --

21 MR. ANTHONY: Yes, sir.

22 THE COURT: -- or for whatever reason.

23 Proffer her testimony in-camera, solicitor. Let
24 me hear what you want to ask her.

25 MR. ANTHONY: I think the question I asked her was

1 before you did your report in January of 2006, had you been
2 provided a sample of Mr. Pearson's blood?

3 THE WITNESS: Yes, I did have one.

4 MR. ANTHONY: Okay. And when was that?

5 THE WITNESS: When did I receive it?

6 MR. ANTHONY: When was it provided to you?

7 THE WITNESS: I'm sorry?

8 MR. ANTHONY: Was it provided to you in 2005?

9 THE WITNESS: Sometime prior to January 6th, 2006.

10 MR. ANTHONY: And the sample that you have
11 testified about today, which is State's Exhibit No. 9, that
12 sample was provided to you in October of 2006, by the Union
13 Public Safety Department, is that correct, or submitted by
14 the Union Public Safety Department?

15 THE WITNESS: If that's the date indicated.

16 This heat sealed pouch does indicate a submission
17 on October 3rd, 2006.

18 MR. ANTHONY: And it was -- it was that
19 submission, State Exhibit No. 9, that provides the basis for
20 the testimony that you have given her today about the
21 correlation between the sample that you tested and Mr.
22 Pearson's blood?

23 THE WITNESS: That is the sample that I'm
24 testifying having matched back to the evidence submitted in
25 the case.

1 MR. ANTHONY: Your Honor, that's my -- that would
2 be my proffer.

3 THE COURT: Okay. All right. Did you want to be
4 heard further, Mr. Collins?

5 MR. COLLINS: Your Honor, we specifically in
6 cross-examining Ms. Taylor -- the way Mr. Anthony presented
7 Ms. Taylor's findings almost sounded as if they all came
8 from one batch of tests at one period of time.

9 In dealing with the different tests over time, we
10 had to be extremely cautious in what we talked about and how
11 we presented it. You were correct, in that when the mention
12 was made of 2006 test, we made absolutely no mention of Mr.
13 Pearson's blood being drawn at that particular time.

14 And it goes back to my motion to dismiss. The way
15 Mr. Anthony presented it again baits us into that swinging
16 door that you are talking about. He's presented evidence in
17 a way and then dares us to do anything in defense of our
18 client. And then when we defend our client and point out
19 the problems that they have with their particular case, he
20 then wants to backdoor this other inadmissible evidence.
21 And it's our position at this point, unfortunately Mr.
22 Anthony asked that question in the presence of the jury, and
23 you can't put that toothpaste back in the tube. We have
24 heard his proffer, but that original question is out there
25 to the jury now and it wasn't prompted by anything that we

1 did. It was entirely his doing. And with this particular
2 jury, we can't undo that question. And I think at this
3 point we would ask the court to mistry the case, and based
4 on his actions, dismiss it with prejudice.

5 THE COURT: All right. Well, I'm going to deny
6 your motion for a mistrial.

7 If you would like any type of curative instruction
8 concerning his question, I will certainly give them such a
9 curative instruction.

10 I'm not aware of a specific case that gave a
11 curative instruction based solely on an attorney's question.
12 I am aware of some where the answer was also given, but I'm
13 going to deny your motion for a mistrial, or, obviously it
14 go without saying, I would then deny your motion to dismiss
15 with prejudice in this particular case.

16 The solicitor's concern, of course, is -- I don't
17 assume to know what's in any of the minds of these fine
18 trial attorneys, but he doesn't want a hanging chad out
19 there. I mean, he doesn't want the case to go to the jury
20 and there be some period or some argument that there was
21 either an inconsistent test prior to 2-15 of '07, or
22 inconclusive test, a test that excluded Mr. Pearson.

23 Now, I think, and I will do some research tonight,
24 I think there is a recent case, I believe. Maybe even a DUI
25 case, which is among the most complicated cases in the State

1 to try nowadays, if any of you have tried any lately. I
2 have not been able to try one in about 15 years now it's
3 gotten so complicated. But be that as it may, none of the
4 attorneys -- and I know y'all wouldn't argue to the jury
5 something that we know is not fact or that we know is fact.
6 In other words, you can't get up here to the jury, any of
7 you in your closing, and argue something to this jury that
8 is inconsistent with the knowledge that we actually have in
9 the in-camera record of a prior test.

10 I would do some additional research on that
11 tonight, but I think -- I think it's a case where some
12 attorney tried to argue why didn't the State give a
13 datamaster, when the defendant had taken the datamaster and
14 failed the datamaster and the judge had thrown the
15 datamaster out. I'm not letting this evidence in for the
16 blood standard from '05. Y'all are not offering it, so you
17 can't get it in there and argue it. You can argue the dates
18 and such, but you can't argue anything inconsistent with
19 what those facts are based on what the court's ruling is.
20 Do you understand that?

21 MR. COLLINS: Oh, absolutely, absolutely.

22 And I guess, Your Honor, that our concern is the
23 State has created this hole in their particular case by not
24 presenting this chain of evidence. We are not going to
25 argue something inconsistent with -- we are not going to

1 present a lie to the jury.

2 THE COURT: And I wasn't implying, or whether that
3 was implication, or --

4 MR. COLLINS: Right. No, but what I am saying
5 is --

6 THE COURT: I wasn't implying that you were.

7 MR. COLLINS: We are ethically bound not to do
8 that. And I think it's a little inconsistent for the State
9 to then argue that they have got to fix that problem because
10 we might go do that. And that's basically been what their
11 argument today is, is we ought to be able to backdoor this
12 inadmissible evidence because they might go do something.

13 THE COURT: Well, I think it's a little different
14 when the issue came up with Mr. Nix, as opposed to Agent
15 Taylor.

16 MR. COLLINS: Yes, sir.

17 THE COURT: So do you have other areas that you
18 want to go into on the redirect of Agent Taylor, solicitor?

19 MR. ANTHONY: Yes, sir, I do. I have a couple
20 more things I'm going to ask her about.

21 THE COURT: All right. Is there anything that you
22 think they may argue about so we can clear that off before
23 the jury comes back in here?

24 MR. ANTHONY: I take it the court -- the court is
25 not going to allow me to ask her if she had blood standard

1 of '05?

2 THE COURT: Right, I have sustained his objection
3 in that regard.

4 MR. ANTHONY: All right. Of course, I don't know
5 what they will object to, but I don't think it's going --
6 it's not going to be anything about that '06 report. I'm
7 not going to ask anything about that.

8 THE COURT: All right.

9 MR. ANTHONY: I --

10 THE COURT: Let's try to press on with Agent
11 Taylor so we can finish with her testimony and then.

12 Y'all right, Mr. Reporter?

13 COURT REPORTER: I'm fine.

14 THE COURT: If you will bring --

15 Anything further, Mr. Collins? Anything further
16 before we bring back our jury?

17 MR. COLLINS: Nothing else, Your Honor.

18 THE COURT: If you would bring our jury, please.

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: Our jury is back present in the
22 courtroom.

23 Thank you, Mr. Collins.

24 Solicitor, you may continue with redirect, please.

25 BY MR. ANTHONY:

1 Q. Agent Taylor, your testimony today about the blood test
2 that you did -- or the DNA test that you did, and the
3 profile that you developed on Mr. Pearson, is it developed
4 from State's Exhibit No. 9?

5 A. Yes, State's Exhibit No. 9 is my item No. 7, and that
6 is the item that I extracted and developed the DNA profile
7 on from Mr. Pearson.

8 Q. And that -- and it's the blood that was in this bag,
9 that's what you used to make the match that you have
10 testified about today?

11 A. That's correct.

12 Q. Okay. And you were asked on cross-examination about
13 these three different types of instruments that you can use
14 to develop these DNA profiles, you do this separation, is
15 that correct?

16 A. I believe there was some discussion about the profiler
17 and cofiler. Is that what --

18 Q. Yes, that's what I'm taking about.

19 A. Those were actually kits.

20 Q. Three different types of kits that you could use.

21 Based on your experience and your training, do you have
22 any reason to believe that there is any technical problem
23 with the test that you did making this match and providing
24 the basis for your testimony today?

25 A. Absolutely not.

1 Q. Okay.

2 MR. ANTHONY: All right. Thank you.

3 That's all on redirect.

4 THE COURT: Thank you, solicitor.

5 Anything on recross, Mr. Collins?

6 MR. COLLINS: Very briefly, Your Honor, if I may.

7 THE COURT: All right.

8 RECROSS EXAMINATION BY MR. COLLINS:

9 Q. Ms. Taylor, you used -- you talked about matching stuff
10 up visually earlier. Is that different than the normal --
11 is a visual comparison different from a software or a
12 machine-based comparison, or do you do both, or just one?

13 MR. ANTHONY: Objection. That's beyond the scope
14 of redirect.

15 MR. COLLINS: Your Honor?

16 THE COURT: All right. Will y'all approach the
17 bench so I don't have to send the jury back out?

18 (Whereupon, the lawyers approached the bench for
19 an off-the-record discussion)

20 THE COURT: Thank you.

21 You may proceed, Mr. Collins.

22 BY MR. COLLINS:

23 Q. You stated that you visually did a comparison on one
24 particular sample. You did not use that particular term
25 with other samples. Are there different types of

1 comparisons that you do technically? Is there a visual
2 comparison, as opposed to a software comparison or something
3 that a machine would assist you with?

4 A. And I'm talking strictly about DNA.

5 Q. Yes.

6 A. I believe I explained semen identification procedure
7 earlier.

8 My function as a DNA analyst is, yes, to perform the
9 chemical things necessary to isolate my DNA. And I do load
10 it into a machine that uses electricity to separate it.
11 It's -- there is no need to go into that detail, I think,
12 but it generates a profile. It generates a piece of paper
13 that, yes, I do a visual comparison on. It is something
14 like a visual comparison aided by the technology that's
15 used, aided by software.

16 Again, I, as an analyst, the profile is generated and
17 from the known standard and a profile is generated from
18 evidence. I'm the one who looks at each location of that
19 DNA each of the 15. Now 15, 13 or 15 different locations
20 and determines, yes, at each of those locations I have a
21 match or don't have a match. That's my function to do that.

22 The machines aid me and the technology and the software
23 aid me in getting that profile, and there are a lot of
24 checks and balances in there to know that my system operated
25 correctly. I have all along the way places where I run

1 things along with that case to know that this system is
2 doing what it should do. There are checks all along the
3 way. And when I make my comparison, when I as a person sit
4 there and look at each different location and determine,
5 yes, at that location that matches, and then I'll cross the
6 entire profile that matches.

7 After I type it up and say yes, it matches, and I do
8 what I need to do and I generate this report, then there are
9 two more reviews that happen to my case, my entire file,
10 before it goes out of that laboratory.

11 So, yes, it is a visual comparison done by me of
12 machine-generated and software-generated profile.

13 Q. Okay.

14 A. If I answered your question very well.

15 Q. I mean, to break it down in the simplest terms, there
16 is a physical process where you do the portion of the
17 chemicals and you isolate the parts. You do that physical
18 function. Then there is a machine function where the
19 electricity is applied and the machine-generated report is
20 done, and then there is an interpretation by you.

21 A. I believe that pretty well covers it.

22 Q. Thank you.

23 MR. COLLINS: Your Honor, those are all the
24 questions that I have for Ms. Taylor.

25 THE COURT: Thank you very much, Agent Taylor.

1 You may step down and you may be excused.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you very much.

4 All right, solicitor, you may call your next
5 witness.

6 MR. ANTHONY: Your Honor, subject to just my
7 checking with the court reporter to make sure we have moved
8 all our exhibits in, I believe we have. That would be our
9 presentation of the evidence.

10 THE COURT: Mr. Foreman, ladies and gentlemen of
11 the jury, we have not -- I know that y'all have been in and
12 out of the courtroom twice already since we started back,
13 but the parties have not yet taken an afternoon recess. I'm
14 going to take a recess for about 15 minutes.

15 During this recess please do not discuss the case
16 with anyone or amongst yourselves. Remember to keep an open
17 mind about the case and do not begin your deliberations
18 until I advise you to do so.

19 If you would please go with our bailiff, please.

20 (The following takes place outside the presence of
21 the jury panel)

22 THE COURT: All right. Court would be in recess
23 15 minutes.

24 (Whereupon, proceedings were recessed)

25 (Whereupon, proceedings were reconvened)

1 THE COURT: All right, solicitor.

2 MR. ANTHONY: Your Honor, we rest our case.

3 THE COURT: All right. Mr. Brannon?

4 MR. BRANNON: Your Honor, on behalf of Mr. Luther
5 Pearson I would move for a directed verdict. Your Honor, I
6 believe the State has failed to prove one, or more, of the
7 elements necessary to each of the crimes that he's been
8 indicted for, and I would ask again for a directed verdict.

9 THE COURT: All right. Based on the standard I
10 must apply at this stage, I would respectfully deny your
11 motion for a directed verdict on both the criminal sexual
12 conduct in the second degree with a minor and the lewd act
13 upon a child. I think there is sufficient evidence in the
14 record, based on the testimony of all the State's witnesses,
15 both direct and substantial circumstantial evidence in the
16 case.

17 All right. Anything before we bring in our jury?

18 MR. BRANNON: No, Your Honor.

19 MR. ANTHONY: Not from the State, Your Honor.

20 THE COURT: All right. Solicitor, did you check
21 all your exhibits?

22 MR. ANTHONY: Yes, sir, we moved everything in
23 that we intended to move in. There was one exhibit that I
24 did not intend to move in, the chain of custody form.

25 THE COURT: That's State's 6 is not in.

1 MR. ANTHONY: Yes, sir. And I don't -- I don't
2 think under the rules I could move that in. So we moved in
3 everything that we intended to.

4 THE COURT: All right. Thank you.

5 All right. If you would bring us our jury,
6 please.

7 If you will formally rest, I'll note that your
8 motions have been heard and we can proceed.

9 MR. BRANNON: We are prepared, Your Honor.

10 (The following takes place in the presence of the
11 jury panel)

12 THE COURT: All right. It appears our jury is
13 back present in the courtroom.

14 Solicitor?

15 MR. ANTHONY: Your Honor, that would be the
16 State's case.

17 THE COURT: All right. Thank you. The State
18 rests, and your motions are noted for the record, Mr.
19 Brannon.

20 MR. BRANNON: Yes, Your Honor.

21 THE COURT: All right. Ladies and gentlemen of
22 the jury, the State has now rested.

23 At this stage the defense can present evidence, if
24 they choose to do so. They do not have to. The State has
25 the burden of proving this case beyond a reasonable doubt.

1 Again, however, they may present evidence, if they choose to
2 do so.

3 With that being said, Mr. Brannon?

4 MR. BRANNON: Your Honor, at this point I would
5 move the court for a directed verdict on the basis that has
6 already been heard.

7 THE COURT: All right. And I'll note your
8 motions, and we will renew my in-camera rulings and deny
9 those motions.

10 MR. BRANNON: Your Honor, I would call Ms. Delmar
11 Johnson to the witness stand.

12 THE COURT: All right, Ms. Johnson.

13 DELMAR JOHNSON, having been first duly sworn,
14 testified as follows:

15 THE COURT: All right. Mr. Brannon.

16 MR. BRANNON: May it please the court?

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION BY MR. BRANNON:

19 Q. How are you, ma'am?

20 A. Fine. Thank you.

21 Q. Would you please tell the jury your name?

22 A. Delmar Johnson.

23 Q. All right. And, ma'am, were you formerly known as
24 Delmar Eison?

25 A. Yes, I was.

1 Q. And is Minor your daughter?

2 A. Yes, she is.

3 Q. Ma'am, are you here today to testify on behalf of Mr.
4 Luther Pearson?

5 A. I'm here to testify to tell the truth.

6 Q. Thank you, ma'am.

7 Does Minor live with you?

8 A. Not now.

9 Q. In the past did Minor live with you?

10 A. Yes, she did.

11 Q. All right. Ma'am, on or about February the 28th of
12 2005, did you become aware that Minor had made an
13 allegation against Mr. Luther Pearson?

14 A. Yes, I did.

15 Q. On February the 28th of 2005, were you involved in a
16 relationship with Luther Pearson?

17 A. Yes, I was.

18 Q. On February the 28th of 2005, did Luther Pearson live
19 in your home?

20 A. No, he did not.

21 Q. Where did he live?

22 A. At

23 Q. I'm sorry, ma'am?

24 A.

25 Q. And who did he live there with?

1 A. His grandmother.

2 Q. Okay. And, ma'am, would you tell me where you lived in
3 February of 2005?

4 A. 1208 West Main Street.

5 Q. Okay. On February the 28th who lived in that apartment
6 with you?

7 A. Myself and my daughter Minor

8 Q. Did you also have a dog?

9 A. Yes.

10 Q. What's the dog's name?

11 A. Bandit.

12 Q. Okay. We will talk about Bandit in a little bit.

13 How long had it been since you and Minor father
14 had separated before February 28th of 2005?

15 A. We separated in December of 2004.

16 Q. December of '04?

17 A. Yes.

18 Q. Okay. All right. When did you move into your
19 apartment?

20 A. December 25th, 2004.

21 Q. So you moved in on Christmas day?

22 A. Yes, I did.

23 Q. Okay. And when you moved in, who moved in?

24 A. Myself and my daughter Minor

25 Q. Not Luther?

1 A. Not Luther.

2 Q. Okay. All right.

3 On February 28th did you receive a phone call from
4 someone about **Minor** allegations?

5 A. Yes, I did.

6 Q. When you received that phone call, where were you?

7 A. I was in my apartment.

8 Q. Okay. Where did you work?

9 A. Union County schools at Buffalo Elementary School.

10 Q. What did you do?

11 A. I'm a teacher assistant and a bus driver.

12 Q. Why weren't you home that day? Excuse me, why were you
13 at home that day and not at work?

14 A. I had taken a half a day because Luther and I was going
15 to go look for trailers, because I wanted to move out of the
16 apartment and get a better place for **Minor** because she
17 did not like the apartment, because she was used to being
18 raised in a home with a yard and everything. She didn't
19 like the apartment at all.

20 Q. Okay. Ma'am, when you received the phone call from --
21 well, back up.

22 Who called you?

23 A. Jerome Beatty.

24 Q. And he's a police officer, is that correct?

25 A. Yes, he's a school resource officer.

1 Q. What were you asked to do during that phone call?

2 A. He asked me to come to the school as soon as possible.

3 Q. Did you respond? Did you go?

4 A. And I asked him quickly, I said "what's wrong?" And he
5 said "Minor [REDACTED] has been into an incident."

6 Q. Okay.

7 A. And I asked him "what is that incident?" I said "she's
8 been into another fight?"

9 MR. ANTHONY: Objection, relevance.

10 THE COURT: Yes, I would sustain the objection.

11 Do not go into any matters not relevant to this
12 case, please.

13 MR. ANTHONY: I would move to strike that last
14 remark.

15 THE COURT: And strike that last remark.

16 Ladies and gentlemen, what that means, it is very
17 difficult to unring a bell. However, y'all -- I know you
18 will follow your oath and decide this case based on the
19 testimony that's presented to you in this courtroom. And if
20 testimony -- if I order it stricken from the record, that
21 means that you may not consider it in any part of your
22 deliberations, that it is not competent evidence.

23 As I say, it's very difficult to unring a bell,
24 but you must do so and not consider that response during
25 your deliberations in any manner.

1 All right. Thank you. Thank you very much.

2 You may proceed, Mr. Brannon.

3 MR. BRANNON: Thank you.

4 BY MR. BRANNON:

5 Q. Minor if you would just answer the questions that
6 I ask you and don't run on, okay?

7 A. Okay.

8 Q. My question I believe was when Officer Beatty called,
9 did you respond?

10 A. Yes.

11 Q. Did you go to the school, as he asked?

12 A. Yes.

13 Q. Okay. Who was at your apartment when you received the
14 phone call?

15 A. Luther and my dog.

16 Q. When you were talking with Officer Beatty on the phone,
17 did he tell you anything, other than an incident and police
18 come to the school?

19 A. He didn't tell me anything else. He said "please come
20 to the school."

21 Q. When you left your apartment, you did not know why you
22 were going to the school, correct?

23 A. Correct..

24 Q. When you left your apartment, Luther didn't know
25 anything about what Minor had said, correct?

1 A. Correct.

2 Q. All right. Now, Luther didn't live with you on
3 February the 28th, correct?

4 A. Correct.

5 Q. Did he spend the night there with you, or did he come
6 to your home in the early morning hours of February the
7 28th?

8 A. Yes, he did.

9 Q. Why did he do that?

10 A. He came there because he was going to stay with me that
11 night. He got there like about 12:00 or 12:30 and he stayed
12 there with me. And Minor didn't even know he was there,
13 because she was already in the bed.

14 And that morning I got up to get ready to leave, I went
15 in there to check on her and I told her that I was getting
16 ready to leave and for her to get up. And she said "well,
17 momma, I'm going to go to school. I'm going to ride with
18 the boys." And I said "well, y'all already made these
19 plans," and she said yes.

20 MR. ANTHONY: Objection. That's beyond the scope
21 of the question.

22 THE COURT: All right. And try, try very much,
23 Ms. Johnson, if you can, to respond. You may explain your
24 answers, of course, but try to respond to the specific
25 question that Mr. Brannon asks. All right?

1 THE WITNESS: Yes.

2 THE COURT: Thank you.

3 BY MR. BRANNON:

4 Q. All right. Again, though, my question was what time
5 did he get there, and you said around 12:30?

6 A. Correct.

7 Q. What was -- why did he stay that night, as opposed to
8 the night before or the night after?

9 A. Because I was going to be leaving out early that
10 morning, around 5:30, and we was going to leave as soon as I
11 got finished with my bus route. So he came right on and
12 stayed with me.

13 Q. You were going to run your bus route?

14 A. Right.

15 Q. And then do what?

16 A. And then we were going to leave to go look for a
17 trailer.

18 Q. And that's why you had taken half the day off, correct?

19 A. Yes.

20 Q. Okay. When you went in --

21 Excuse me, prior to your leaving to run your bus route,
22 did you go say good-bye to Minor

23 A. Yes, I did.

24 Q. Did you tell her that Luther was there?

25 A. No, I did not.

1 Q. Where was Bandit?

2 A. He was running around. He was in my bedroom.

3 Q. Okay. When you left, did you put Bandit in his cage?

4 A. I tried but he didn't want to go.

5 Q. Okay. Why did you have the cage? What was the purpose
6 for the cage for Bandit?

7 A. Because he did not like other people. He was very
8 protective of myself and my daughter.

9 Q. Okay. Did he like Luther?

10 A. No.

11 Q. If Luther had wanted to put him in the cage, do you
12 think that he could have?

13 A. Absolutely not.

14 Q. Okay. All right. Okay. Moving on.

15 You get to the school. Who do you first speak with?

16 A. The secretary.

17 Q. Then who?

18 A. The secretary told me where to go.

19 Q. Okay. And did you follow her directions?

20 A. Yes, I did.

21 Q. Okay. How long after you arrived at the school was it
22 before you saw your daughter?

23 A. Around about 30 to 45 minutes.

24 Q. Okay. Did you -- who did you talk to during that 30 to
25 45 minutes, other than the secretary?

1 A. Captain Freddie Gault and Charles, Lieutenant
2 Henderson.

3 Q. At some point, though, did they let you see Minor

4 A. Yes.

5 Q. Where was she when you first saw her?

6 A. She was in a little room with the female school
7 resource officer.

8 Q. Okay. That would be Officer Bowser, correct?

9 A. Correct.

10 Q. Ma'am, where was Minor sitting in the room?

11 A. She was sitting to my far right.

12 Q. Okay.

13 A. In the corner, near the wall.

14 Q. Okay. When you entered the room, what did you see?
15 What -- how did Minor respond to you?

16 A. She did not respond to me.

17 Q. Okay. During that 45 minutes before you saw Minor
18 did you learn what her allegation or what the incident was?

19 A. Yes.

20 Q. Okay. When you walked into that small room and you saw
21 Minor did you say anything about not believing it, or
22 anything like that, to Minor

23 A. No, I did not.

24 Q. Did she say anything to you?

25 A. No, she did not.

1 Q.. Did you -- or were you present when your daughter
2 Minor made a statement to the police about Luther
3 Pearson?

4 A. Yes, I was.

5 Q. Did you hear her make that statement?

6 A. Yes, I did.

7 Q. Did you see it being written?

8 A. Yes, I did.

9 Q. In fact, ma'am, didn't you sign that statement?

10 A. Yes, I did.

11 Q. Okay. After she gave her statement, were there some
12 additional instructions for you? Were you told to do
13 something else with or for Minor

14 A. Yes, I was.

15 Q. What was that?

16 A. I was instructed to take her straight to the hospital.

17 Q. And did you do that?

18 A. Yes, I did.

19 Q. After you -- at any point during that 45 minutes before
20 you saw Minor did you call Luther Pearson?

21 A. No, I did not.

22 Q. While you were in the room with Minor and she was
23 giving a statement, did you call Luther Pearson?

24 A. No, I did not.

25 Q. From the time that you left the school and went to the

1 hospital, during that drive time, did you call Luther
2 Pearson?

3 A. No, I did not.

4 Q. How long were you at the hospital?

5 A. I'm not accurate, but I believe it was a long time.

6 Q. Was it more than 30 minutes?

7 A. Yes.

8 Q. Was it more than an hour?

9 A. Yes.

10 Q. Was it more than two hours?

11 A. Yes.

12 Q. Was it more than an eight hours?

13 A. It wasn't eight hours.

14 Q. Okay. More than two, but less than eight?

15 A. Right.

16 Q. While you were at the hospital, did you call Luther
17 Pearson?

18 A. No, I did not.

19 Q. All right. Were you present when the sexual assault
20 examination was performed on your daughter?

21 A. Yes, I was.

22 Q. Were you provided any documents by hospital officials?

23 A. The only documents they gave me was just the forms that
24 you fill out for admission.

25 Q. Okay. Did they also talk to you about counseling for

1 your daughter?

2 A. Yes, they did.

3 Q. All right. After you left the hospital, what did you
4 do?

5 A. I went straight back to my apartment.

6 Q. And why did you go straight back to your apartment?

7 A. Because I was instructed that they would come to the
8 apartment to go through, to retrieve the items.

9 Q. Okay. They were coming to search, right?

10 A. Right.

11 Q. Okay. Isn't it also true that you consented, you
12 allowed them to search your apartment?

13 A. Yes, I did.

14 Q. Was it your desire for the truth to be found?

15 A. Yes, absolutely.

16 Q. When you got to the apartment, were you there before
17 the police officers or did you arrive at the same time?

18 A. I was there before them.

19 Q. When you got to the apartment, did you go in before law
20 enforcement got there?

21 A. Yes.

22 Q. Where was the dog when you got there?

23 A. He was running around.

24 Q. Did you put the dog away in order to allow strangers in
25 the house?

1 A. Yes.

2 Q. Did Bandit fight you as to going into the cage?

3 A. Yes.

4 Q. Were you able to get him in there?

5 A. I was able to get him.

6 Q. Okay. So are you personally aware that Bandit was ever
7 in his cage from 5:30 in the morning until whatever time it
8 was in the afternoon when they came to search your
9 apartment?

10 A. He was never in the cage.

11 Q. All right. You put him in there?

12 A. I put him in there, once we got back when they came.

13 Q. Ma'am, do you regularly keep condoms in your apartment?

14 A. No, never used condoms.

15 Q. When the police searched, did they find any condoms in
16 your apartment?

17 A. No, they did not.

18 Q. Did they find any condom wrappers in your apartment?

19 A. No, they did not.

20 Q. Luther Pearson came to your house midnight, or a little
21 after, February the 28th, correct?

22 A. Correct.

23 Q. After 12:30, or whatever time he got there, and before
24 you left to go to run your school bus route, did you have
25 sex with Luther Pearson?

1 A. Yes, I did.

2 Q. Did he use a condom during that lovemaking session?

3 A. No, I did not.

4 Q. After you had sex with Luther Pearson, what did you do?

5 A. I immediately wiped myself out with the towel, and I
6 handed Mr. Pearson the towel as well to clean himself up.

7 Once I arrived, got up out of the bed, I was still
8 discharging the drain. I used my panties to wipe myself
9 out. Got the towel from Luther, put my robe on, I went into
10 the bathroom.

11 Q. All right. What did you do with the towel and the
12 panties?

13 A. I put them in my dirty clothes hamper.

14 Q. Now, ma'am, where is the dirty clothes hamper?

15 A. In the bathroom.

16 Q. Is there another dirty clothes hamper anywhere in your
17 house?

18 A. No, it's not.

19 Q. Do you and your daughter share the same dirty clothes
20 hamper?

21 A. Yes.

22 Q. At any point during this investigation, from February
23 28th, until when you received that phone call until your
24 testimony here today, have you been asked to give a blood
25 sample for DNA testing?

1 A. Absolutely not.

2 Q. If you had been asked, would you have done it?

3 A. Yes, I would have.

4 Q. Thank you.

5 Who does the laundry, or who did the laundry in your
6 household for you and Minor

7 A. Myself and Minor

8 Q. Okay. Where is the washer and dryer?

9 A. I did not have a washer and dryer at that time.

10 Q. Okay. Where is it at?

11 A. Right now it's in my laundry room.

12 Q. Okay. Where did you do your laundry?

13 A. At the laundromat.

14 Q. Which one?

15 A. Right across from Hart's Restaurant.

16 Q. Across from Hart's?

17 A. Yes.

18 Q. Out there on the bypass?

19 A. Yes.

20 Q. All right. What was your standard -- how -- when did
21 you typically do laundry?

22 A. Every two weeks.

23 Q. Okay. In the every two week process, ma'am, how full
24 was that laundry hamper?

25 A. It was running completely over.

1 Q. Was it about time to do laundry?

2 A. Yes, I was supposed to go that weekend.

3 Q. Okay. Ma'am, how much do you weigh?

4 A. About 130.

5 Q. In February of 2005, did you and your daughter share
6 clothing?

7 A. Yes.

8 Q. Did you share undergarments?

9 A. Yes.

10 Q. Would your undergarments be in the same hamper as those
11 that she wore?

12 A. Absolutely.

13 Q. Would she sometimes wear a pair of panties that you
14 would also wear?

15 A. Yes, because we would just grab clothes.

16 Q. Okay. All right. Ma'am, I want to take you back to
17 the school and the period of time while you're present and
18 **Minor** is making her statement.

19 During the time that **Minor** was making her statement,
20 did she say some things that didn't make sense or, in your
21 opinion, were not true?

22 A. Yes.

23 THE COURT: Yes, sir.

24 MR. ANTHONY: Objection. That calls for a
25 conclusion. It also calls for hearsay.

1 THE COURT: Yes, sir, I would sustain the
2 objection.

3 MR. BRANNON: All right.

4 BY MR. BRANNON:

5 Q. Ma'am, in your apartment -- rephrase.

6 Would you please describe the interior of your
7 apartment for the jury? How many rooms were in your
8 apartment?

9 A. Well, we have a living room. When you first walk in
10 the house, you walk into the kitchen, if you come through
11 the back door. Then the living room. Two bedrooms,
12 bathroom.

13 Q. So really four main rooms and a bathroom, right?

14 A. Correct.

15 Q. If there was a conversation going on in your bedroom,
16 like you and I are talking, could that conversation be heard
17 in any other room in the house?

18 A. Right, in the bathroom and that close bedroom where my
19 daughter slept, yes.

20 Q. Tell me about the bathroom. Did it have a Jacuzzi tub?

21 A. Absolutely not.

22 Q. Ma'am, did it have a door that locked?

23 A. No, it did not.

24 Q. Why didn't the door lock?

25 A. I had already put in a statement with the landlord to

1 have it repaired because it wouldn't catch when you pull it
2 up. You could close it, but it wouldn't lock. There was a
3 wooden chip in it that needed repaired. It had been chipped
4 out. These are old apartments.

5 Q. Okay. Was the door to the bathroom repaired sometime
6 on or after February the 28th of 2005?

7 A. Yes, it was.

8 Q. Who fixed that bathroom door?

9 A. Wilson Horne.

10 Q. Thank you.

11 Ma'am, did Luther Pearson live with you on February
12 28th, 2005?

13 A. Absolutely not.

14 Q. After -- sometime after you left the school and the
15 police came to search your apartment, did you have an
16 occasion to speak with the Department of Social Services?

17 A. Yes, I did.

18 Q. Did you agree to have -- to allow no contact between
19 Luther Pearson and your daughter **Minor**

20 A. Absolutely.

21 MR. ANTHONY: Objection, relevance.

22 THE COURT: Rephrase the question, please, Mr.
23 Brannon.

24 BY MR. BRANNON:

25 Q. Did you sign a case plan?

1 A. Yes, I did.

2 MR. ANTHONY: Objection, relevance.

3 MR. BRANNON: Your Honor, I can make it relevant
4 with one more question.

5 THE COURT: All right. The question right now is
6 did she sign a case plan.

7 MR. ANTHONY: That's right. We don't see the
8 relevance of something happening in the DSS case after it
9 happened.

10 MR. BRANNON: It goes to the -- it goes to the
11 residence, Your Honor. It goes to Luther Pearson's
12 residence.

13 THE COURT: All right. Hand it up to the clerk
14 and let me look at it, please.

15 All right. You can have it marked for
16 identification at this time, but I would sustain the
17 objection at this time, as far as relevance.

18 MR. BRANNON: All right.

19 THE COURT: But you can mark it for identification
20 and make a proffer outside the presence of the jury, Mr.
21 Brannon.

22 (Case Plan marked as Defendant's Exhibit No. 1 for
23 identification)

24 BY MR. BRANNON:

25 Q. Was your residence on February the 28th the residence

1 of Luther Pearson?

2 A. Absolutely not.

3 Q. How was it that your daughter got to school on February
4 the 28th?

5 A. She rode to school with Luther's boys.

6 Q. With whose boys?

7 A. Mr. Pearson's boys.

8 Q. Who are they?

9 A. Luther and Lyle.

10 Q. When did you find out that she was going to take that
11 ride?

12 A. She had told me earlier that morning.

13 Q. Before you left to go do your bus route?

14 A. Yes.

15 Q. All right. And you knew Luther and Lyle?

16 A. Yes..

17 Q. And you were comfortable with your daughter riding with
18 them?

19 A. Yes.

20 Q. Okay. Fine.

21 MR. BRANNON: One second, Your Honor?

22 THE COURT: Yes, sir.

23 (Off the record)

24 (Back on the record)

25 BY MR. BRANNON:

- 1 Q. Where does Minor live today?
- 2 A. With her father.
- 3 Q. How did you meet Luther Pearson?
- 4 A. Through the children - Minor Luther and Lyle.
- 5 Q. How did you think Minor felt about Luther?
- 6 A. Oh, she was crazy with him.
- 7 Q. Okay. Do you know -- do you have personal knowledge
- 8 that Minor wanted to live with her father?
- 9 A. Yes.
- 10 Q. Did you witness your daughter do any things or say any
- 11 things to enable her to go and live with her father?
- 12 A. Yes.
- 13 Q. Ma'am, comparing yourself with Minor father, who
- 14 was a more strict disciplinarian?
- 15 A. Most definitely myself.
- 16 Q. You were?
- 17 A. Yes.
- 18 Q. Did you make Minor do homework?
- 19 A. Yes.
- 20 Q. Did you make her come home at a certain time?
- 21 A. Absolutely.
- 22 Q. Did you keep track of where she went and who she was
- 23 with?
- 24 A. You better believe it.
- 25 Q. Do you have personal knowledge that her father did not

1 do those same things?

2 A. Yes, I do.

3 Q. Ma'am, have you picked Luther Pearson, your boyfriend,
4 over **Minor** your daughter?

5 A. Absolutely not.

6 Q. I don't have anything further. Please answer any
7 questions from Mr. Anthony.

8 THE COURT: Thank you, Mr. Brannon.

9 Solicitor?

10 CROSS EXAMINATION BY MR. ANTHONY:

11 Q. How long have you been seeing Mr. Pearson, Ms. Johnson?

12 A. Probably about two and a half years now.

13 Q. Okay. At the time -- at the time this happened on
14 February 28th of '05, though, how long had you been seeing
15 him?

16 A. We started seeing each other in October.

17 Q. Okay. So you started seeing him in October of 2004?

18 A. Yes.

19 Q. And that was before your separation from your husband?

20 A. Yes.

21 Q. And you moved out, you said, on Christmas day in 2004?

22 A. Yes.

23 Q. So you had been living in that apartment for a little
24 bit over two months when this happened?

25 A. Yes.

1 Q. And during that time, that time would overlap? The
2 time that you were living in the apartment was also part of
3 the time that you were seeing Mr. Pearson?

4 A. Excuse me?

5 Q. You were seeing Mr. Pearson during that time that you
6 were living in the apartment from December of '04, to
7 February 28th of '05?

8 A. Yes.

9 Q. And would Mr. Pearson spend the night over there?

10 A. No.

11 Q. Well, he spent the night on the 28th --

12 A. Yes.

13 Q. -- correct?

14 A. Yes.

15 Q. And you are saying he never spent the night over there
16 before?

17 A. No. The only time he would spend the night -- my
18 daughter would go and spend time with her father. And the
19 weekends that she was gone with her father, he would.

20 Q. All right. So he would have -- and on those weekends
21 he would spend the night over there?

22 A. Right.

23 Q. But this wasn't a weekend night. This was a school
24 night, obviously?

25 A. Right.

1 Q. And your testimony is that that night was the very
2 first night that Mr. Pearson had ever spent at your
3 apartment?

4 A. Yes.

5 Q. And that would have been the first time -- well, it
6 wouldn't have been the first night that he ever spent there.
7 It would have been the first week night that he ever spent
8 there?

9 A. Right.

10 Q. Okay. And so that would have been the first time that
11 he ever spent the night there while Minor was there?

12 A. Right.

13 Q. And so when you got up to go to work that morning, you
14 left him alone in the house with her?

15 A. Right.

16 Q. And that, to your knowledge, would be the first time
17 that he would have been alone with her in an empty
18 residence?

19 A. Yes.

20 Q. And you went and did your bus route that morning, is
21 that correct?

22 A. Yes.

23 Q. And then you came home?

24 A. Yes.

25 Q. And when you got home, Mr. Pearson was still there?

1 A. Yes.

2 Q. And when you two -- when you and Mr. Pearson had had
3 relations, your testimony was that was that night, the night
4 before that you had relations?

5 A. No.

6 Q. Maybe -- I just want to make sure I'm clear on that.

7 A. No, the morning before I got ready to leave to go to
8 work, go drive bus.

9 Q. Okay. So your testimony is you had relations with him
10 when you got up that morning?

11 A. Right.

12 Q. And so you get up that morning, you go do your bus
13 route and you come home and Mr. Pearson is still there?

14 A. Yes.

15 Q. Is that correct?

16 A. Yes.

17 Q. And he is still there when you get the call from the
18 school?

19 A. Yes.

20 Q. And so you go to the school and see Minor there, is
21 that correct?

22 A. That's correct.

23 Q. All right. And then you take Minor to the hospital?

24 A. Yes.

25 Q. Is that correct?

1 A. Yes.

2 Q. And then -- and when you are at the hospital, I take it
3 that you were aware they had done this sexual assault
4 examination?

5 A. Yes.

6 Q. Is that correct?

7 A. Yes.

8 Q. You were aware that they had taken the underwear she
9 was wearing?

10 A. Yes.

11 Q. Okay. And then you went -- you and Minor went back
12 to the apartment, is that right?

13 A. That's right.

14 Q. And then the police came to the apartment?

15 A. That's right.

16 Q. And the police did a search of the apartment?

17 A. Right.

18 Q. Is that correct?

19 A. Yes.

20 Q. Okay. And they took certain things from the apartment?

21 A. Right.

22 Q. They took the bed sheets, is that correct?

23 A. That's correct.

24 Q. All right. And they took the clothes that Minor was
25 wearing that morning, is that correct?

1 A. I never saw them take the clothes, but that's what they
2 said they took.

3 Q. Did they present a list to you of the things that they
4 were taking?

5 A. Yes.

6 Q. And I'm going to show you a document. This is a list
7 here. Do you -- is that your signature on that document?

8 A. Yes.

9 Q. Okay. And that's a list of things that the police took
10 from the house that evening, is that right?

11 A. Yes.

12 Q. And included on that list is one pair of panties,
13 purple flowers?

14 A. Yes.

15 Q. And you were aware that the police were taking that
16 pair of panties?

17 A. I wasn't aware of they were taking the purple panties
18 until they were taking the panties. I didn't look at the
19 panties. I wasn't there when they retrieved the panties. I
20 was talking to Officer Nix in the bedroom.

21 Q. Well, I mean, the list says -- the list said purple
22 flowers, right?

23 A. Yes.

24 Q. So it was identified to you that they were taking a
25 pair of panties with purple flowers?

1 A. They identified and told me what they were taking, but
2 I did not see them.

3 Q. Okay. And would it be customary for Minor -- I
4 assume that, you know, you were pretty familiar with
5 Minor habits, as far as bathing and taking care of her
6 grooming and that type of thing?

7 A. Absolutely.

8 Q. All right. And would it be customary for Minor when
9 she takes a bath to put on a pair of clean panties?

10 A. Of course.

11 Q. And you testified that Minor wanted to live with her
12 father at that time?

13 A. Yes.

14 Q. And after this incident, Minor the next day she
15 went to live with her father?

16 A. Yes.

17 Q. Okay. And she has lived with her father since the
18 incident, to your knowledge?

19 A. Yes.

20 Q. Okay. Which was almost three years ago?

21 A. Yes.

22 Q. And now Minor is 17?

23 A. Yes.

24 Q. So basically now she can live wherever she wants to?

25 A. According to the law, she could have lived where she

1 wanted to then.

2 Q. She could -- okay. Do you think she could live where
3 she wanted to then?

4 A. That's what I was told.

5 Q. So that being the case, you don't know of any reason
6 why now Minor would say one thing or another to affect
7 her living situation?

8 A. Can you rephrase that question?

9 Q. You don't know of any reason why now Minor would say
10 something happened with Mr. Pearson just to influence her
11 living situation?

12 A. I can't really answer that.

13 Q. But you know now she's 17 years old and she's not going
14 to have to live with you?

15 A. Right. I knew she didn't want to live with me.

16 Q. And did you -- you said that Mr. Pearson left the
17 residence. Well, you left the residence to go to the school
18 and you left Mr. Pearson there?

19 A. Yes.

20 Q. Is that correct?

21 A. Yes.

22 Q. Okay. And then when you get home, which is probably
23 5:30, six o'clock in the evening, something like that, is
24 that a pretty good estimate about when you got home?

25 A. Yes.

1 Q. Okay. When you get home that evening and Mr. Pearson
2 was gone?

3 A. No.

4 Q. Okay.

5 A. Rephrase that. Go back, because -- no, that's not
6 correct, because when I came home from my bus route, it was
7 about an hour later.

8 Q. Okay. Well, no, my question is -- I don't want -- I
9 don't mean to -- I'm not trying to confuse you about the
10 time.

11 My question is when you got home from the hospital with
12 Minor that was about 5:30, six o'clock in the evening?

13 A. Correct.

14 Q. And Mr. Pearson wasn't there then?

15 A. Right.

16 Q. Okay. That's -- I mean when you left the house to go
17 to the school to check on Minor that morning, he was
18 there?

19 A. Right.

20 Q. When you got home from the hospital with Minor he
21 was gone?

22 A. Right.

23 Q. Okay. Did you have any other contact with him that
24 night?

25 A. No.

1 Q. He never -- he never called you?

2 A. He called, but I never answered.

3 Q. Why didn't you answer?

4 A. Because I was busy trying to console my daughter,
5 trying to find out absolutely what was going on, but she was
6 trying to tell me in bits and breaks. I questioned her and
7 trying to find out exactly her statement and what was being
8 said.

9 Q. So you never -- you never tried to contact Mr. Pearson
10 that night?

11 A. No.

12 Q. And, to your knowledge, **Minor** wouldn't have known
13 that Mr. Pearson was spending the night there?

14 A. Right.

15 Q. Until that morning, right?

16 A. Right.

17 Q. All right.

18 MR. ANTHONY: If I could have a moment, please?

19 THE COURT: Yes, sir.

20 (Off the record)

21 (Back on the record)

22 BY MR. ANTHONY:

23 Q. I'm going to show you Exhibit No. 4. Do you recognize
24 these panties?

25 A. No, I do not.

1 Q. Okay. Do these look like the kind of panties that
2 Minor would wear?

3 A. She had some similar to those, but I have never seen --
4 she has about two blue with the flowers.

5 Q. Okay. So you think -- you recall Minor having some
6 panties similar to these?

7 A. Yes.

8 Q. These would not be panties I take it that you would
9 wear?

10 A. Right.

11 Q. All right. I'll show you now State's Exhibit No. 2 and
12 I would ask you if you recognize these panties?

13 A. Yes, I do.

14 Q. And how do you recognize those?

15 A. Because we both have panties just alike.

16 Q. Okay. I mean, do you have panties this size?

17 A. We both wear the same size panties.

18 Q. Okay. So your testimony is that you would have worn
19 these panties?

20 A. Yes.

21 Q. Are you -- are you aware of -- would you recall the
22 panties that you were wearing when you had intercourse with
23 Mr. Pearson that morning?

24 A. Absolutely not. That's been three years.

25 Q. Okay.

1 MR. ANTHONY: If I could have just one more
2 moment, Your Honor?

3 THE COURT: Yes, sir.

4 (Off the record)

5 (Back on the record)

6 MR. ANTHONY: Thank you. That's all on cross.

7 THE COURT: Thank you, solicitor.

8 Anything on redirect?

9 MR. BRANNON: Very briefly.

10 THE COURT: All right.

11 REDIRECT EXAMINATION BY MR. BRANNON:

12 Q. Ms. Johnson, Delmar, when you got to the apartment
13 after the hospital and the police were there to search, what
14 did you do while the police were there?

15 A. Officer Nix, he came in and he told me he said "I want
16 to talk to you for a few minutes," and I said "sure." So he
17 carried me into my bedroom. And Charles Henderson and my
18 daughter, they were in the front talking, and they wouldn't
19 let me close the door, and he asked me did I believe my
20 daughter.

21 Q. Okay. Where -- did you ever see them search?

22 A. I did not.

23 Q. Did you ever see anything that they took from your
24 house?

25 A. All I saw was a big bag where they were putting things

1 into.

2 Q. Okay. When you were shown these two pairs of panties
3 today, is that the first time that you have seen them?

4 A. Yes.

5 Q. As far as you know?

6 A. Yes.

7 Q. Okay. Now, ma'am, that -- the pair of white panties
8 that were shown, the ones that you said that they were of
9 type that you would wear, if you had to describe those,
10 would you say purple flowers? Is that how you would
11 describe that pair of panties?

12 A. No.

13 Q. So given the description written on that search warrant
14 or that document that you signed, if you had even paid
15 attention to purple flowers, would you have known which pair
16 of panties it was?

17 A. Absolutely not.

18 Q. Ma'am, is it possible that these panties are the ones
19 that you had on February the 28th?

20 MR. ANTHONY: Objection, leading.

21 THE COURT: I'll allow her to answer.

22 A. Yes.

23 BY MR. BRANNON:

24 Q. It's possible. Thank you.

25 MR. BRANNON: I have nothing further.

1 THE COURT: Recross?

2 MR. ANTHONY: One moment, please.

3 (Off the record)

4 (Back on the record)

5 RECROSS EXAMINATION BY MR. ANTHONY:

6 Q. Your daughter was with the -- she was with the officers
7 when they were taking those -- when they were taking that
8 evidence, right?

9 A. Yes.

10 Q. And your daughter obviously would not have known what
11 kind of panties that you were wearing when you were having
12 sex with Mr. Pearson?

13 A. No, but they were all in the dirty clothes hamper.
14 Everything came from the dirty clothes hamper.

15 Q. Okay. And you and Mr. Pearson are still together?

16 A. Yes.

17 Q. Correct.

18 And have you been since this incident?

19 A. Yes.

20 MR. ANTHONY: That's everything on recross.

21 THE COURT: Thank you, Ms. Johnson. You may step
22 down.

23 MR. BRANNON: Your Honor, we call Wilson Horne.

24 THE COURT: Mr. Horne, please come in and be
25 sworn.

1 WILSON HORNE, having been first duly sworn,
2 testified as follows:

3 THE COURT: All right, Mr. Brannon.

4 MR. BRANNON: Thank you, Your Honor.

5 May it please the court?

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION BY MR. BRANNON:

8 Q. Sir, please state your full name for the record.

9 A. Woodrow Wilson Horne, Jr..

10 Q. Where you did live, sir?

11 A. , apartment -- I mean

12 Q. How long have you lived there?

13 A. I have lived there for about a year, but I have lived
14 in the apartment complex five years.

15 Q. Okay. So you have lived in the same complex, but moved
16 apartments?

17 A. Yes.

18 Q. Okay. Sir, back in 2004, did you work at the apartment
19 complex?

20 A. Yes.

21 Q. What did you do?

22 A. I was doing maintenance work out there until I come
23 down with my MS.

24 Q. All right. And in 2004, were you -- was your health
25 better than it is today?

1 A. Yes.

2 Q. And you were able to do repair work and maintenance
3 work in the apartments?

4 A. Yes, and I was roofing full time with Brown's Roofing.

5 Q. Okay. Sir, did you at some point receive a request for
6 repair to the apartment of Delmar Johnson or Delmar Eison?

7 A. I did.

8 Q. Okay. What was that request to repair?

9 A. The bathroom door.

10 Q. Before you made --

11 Well, did you, in fact, repair the bathroom door?

12 A. I did.

13 Q. Before you made the repair, would the door lock?

14 A. Well, it would lock, but there was a little piece of
15 wood on both sides of the piece that I brought in.

16 MR. BRANNON: May I approach the witness, Your
17 Honor?

18 THE COURT: Yes, sir.

19 A. Okay. This slides in the door. And then the door --

20 MR. ANTHONY: Your Honor, I would object.

21 THE COURT: Wait. Wait just a minute.

22 MR. ANTHONY: I mean there has not been any
23 foundation laid for that. It hasn't been marked. It's
24 obvious that's just being --

25 THE COURT: Mr. Foreman, ladies and gentlemen, if

1 you will step momentarily to your jury room. Do not discuss
2 the case amongst yourself, please.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: All right. Your objection is no
6 foundation?

7 MR. ANTHONY: Yes, sir. That is my initial
8 objection.

9 THE COURT: All right. Mr. Brannon?

10 MR. BRANNON: Your Honor, I would agree that there
11 wasn't a proper foundation laid. I fully anticipated his
12 testimony to be over. I just wanted him to say he repaired
13 the door. He actually brought that piece with him because
14 that's what he repaired. I would be more than happy to ask
15 him additional questions about what he did to repair the
16 door, but really all I wanted him say was he fixed the door.
17 A. Yes, I did fix the door.

18 THE COURT: You just don't want him using the
19 object? That would be for demonstrative purposes,
20 solicitor.

21 MR. ANTHONY: Well, yes, sir. I just don't -- he
22 just got some object up there that hasn't been marked as --

23 THE COURT: Well, he's a handyman. He testified I
24 was a handyman before I got MS.

25 You have MS, Mr. Horne?

1 THE WITNESS: Yes.

2 THE COURT: If he is just using it for
3 demonstrative purposes, I don't think it needs to be marked,
4 but --

5 MR. BRANNON: And I had no intentions of
6 introducing it.

7 THE COURT: You have objection to that?

8 MR. ANTHONY: Well, I think he's got to at least
9 lay some kind of foundation as to why that object he's got
10 up there has some relevance to what he's supposed to be
11 testifying to.

12 THE COURT: Well, ask him that question. Ask him
13 why that object has some relevance to what he's testifying
14 to.

15 MR. BRANNON: Sir, does that thing that you have
16 in your hand have something to do with the repair that you
17 made to Delmar's door?

18 THE WITNESS: Well, I just brought this to help
19 y'all understand what was wrong with the door.

20 Okay. This, as you say, it slides in in the front
21 of the door. Okay. You got two holes and then the doorknob
22 goes through it and it works with this right here. And then
23 that sleeve that I put on there, it covers this and it
24 screws into this and into the door.

25 And then on the side -- on the -- back in front of

1 the door you also screw that plate at the top and at the
2 bottom on both sides the front door and back. That's the
3 only reason I brought this.

4 THE COURT: All right. Do you have objection to
5 that?

6 MR. ANTHONY: Not if he basically -- if he
7 basically says that in front the jury, I think that --

8 THE COURT: All right.

9 MR. ANTHONY: -- would lay the foundation.

10 THE COURT: All right. If you would bring our
11 jury back in, please, sir.

12 Thank you, Mr. Horne.

13 THE WITNESS: Is that it?

14 THE COURT: No, no, we just don't -- we are going
15 to do it in front of the jury.

16 THE WITNESS: Okay.

17 THE COURT: The jury is coming back out. Thank
18 you.

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: All right. It appears our jury is
22 back present in the courtroom.

23 Thank you, solicitor.

24 Mr. Brannon, you may proceed.

25 BY MR. BRANNON:

1 Q. Mr. Horne, I was asking you what you did to repair the
2 door, and I believe you brought something kind of as a
3 demonstration.

4 A. Yes.

5 Q. Would you please tell the jury what did you do to fix
6 the door?

7 A. Okay. I had to take the doorknob off, okay? And I got
8 a new doorknob and I put it back together. And then the
9 sleeve, one of them big wide brass sleeves, like that wide,
10 they go over the door like this. And your doorknob, it's
11 got a hole made in that brass sleeve for the doorknob to go
12 through on both sides. And then that brass sleeve, it
13 screws to the back and to the front of the door and it
14 screws in here too.

15 Q. And is that the repair that you made to the door?

16 A. That's the repair I made to the door.

17 Q. Now, I asked you initially before that device was made
18 apparent if the door would lock. Do you remember that?

19 A. Yeah, it would lock, but there was -- there was a piece
20 of wood, because them doors in them apartments is old.

21 Q. Right. Let me stop you. The door handle on the door
22 would lock, right?

23 A. Yes.

24 Q. But the door itself wouldn't latch?

25 THE COURT: No, sir, let him answer the question,

1 Mr. Brannon.

2 MR. BRANNON: All right.

3 BY MR. BRANNON:

4 Q. Go ahead, I'm sorry.

5 A. What's the question?

6 Q. Okay. The door handle would lock, correct?

7 A. Yes.

8 MR. ANTHONY: Well, that's leading. I mean, he's
9 answered that question twice. It's asked and answered and
10 leading.

11 THE COURT: Yes, sir, ask your next question.

12 BY MR. BRANNON:

13 Q. Okay. Would the door itself, with the knob locked,
14 would the door still come open?

15 MR. ANTHONY: Well, objection. That's leading
16 too.

17 THE COURT: Ask him what the condition of the door
18 was that he had to repair.

19 BY MR. BRANNON:

20 Q. If you hadn't repaired the door, what was the condition
21 of the door and the lock?

22 A. Okay. It wouldn't -- it wouldn't have stayed locked.

23 MR. BRANNON: Nothing further. Thank you very
24 much.

25 THE COURT: All right. Thank you, Mr. Brannon.

1 Solicitor?

2 This gentleman is going to ask you some questions.

3 CROSS EXAMINATION BY MR. ANTHONY:

4 Q. Mr. Horne, you said Ms. Johnson asked you to repair the
5 door?

6 A. Yes.

7 Q. And do you know when she did that?

8 A. It was right after she moved in in February, and it was
9 towards the end of the month.

10 Q. All right. In February?

11 A. Yes.

12 Q. All right. So you would have fixed the door before
13 February 28th?

14 A. No, it was close -- it was close to the end of the
15 month when I fixed the door.

16 Q. Well, February doesn't have but 28 days, does it?

17 A. Well, okay. So it must have been then.

18 Q. Unless it's leap year.

19 So it would have been before the last day of the month?

20 A. Yeah.

21 Q. And did you know -- do you know Mr. Pearson?

22 A. Yes.

23 Q. All right. And did you see him over at Ms. Johnson's
24 apartment?

25 A. Yes.

1 Q. You see him over there a good bit?

2 A. Yes.

3 Q. Did you see him there like all through the week?

4 A. Yes.

5 Q. Did you see him there all weekend?

6 A. Yes.

7 Q. Would you have figured he was living there with her?

8 A. Yes.

9 MR. ANTHONY: If I may have just a moment?

10 (Off the record)

11 (Back on the record)

12 MR. ANTHONY: Thank you. That's everything on
13 cross.

14 THE COURT: Thank you, solicitor.

15 Anything on redirect, Mr. Brannon?

16 MR. BRANNON: No, Your Honor.

17 THE COURT: Thank you very much, Mr. Horne. You
18 may step down and you may be excused and good luck to you,
19 sir.

20 THE WITNESS: Thank you.

21 THE COURT: Yes, sir.

22 Mr. Brannon, you may call your next witness.

23 MR. BRANNON: Call Luther Pearson, Jr.. Luther
24 Pearson, Jr..

25 THE COURT: All right. If you would come around,

1 please, Mr. Pearson. Thank you.

2 LUTHER PEARSON, JR., having been first duly sworn,
3 testified as follows:

4 THE COURT: All right, Mr. Brannon.

5 DIRECT EXAMINATION BY MR. BRANNON:

6 Q. Sir, please state your full name for the record.

7 A. Luther Bernard Pearson, Jr..

8 Q. Is that your dad?

9 A. Yes, sir.

10 Q. How old are you?

11 A. 19.

12 Q. Do you go to school now?

13 A. No, sir.

14 Q. What do you do?

15 A. I'm a mechanic, work on cars.

16 Q. Okay. Did you graduate from high school?

17 A. Yes, sir.

18 Q. From where?

19 A. Union County.

20 Q. And in 2004, were you a student at Union County High
21 School?

22 A. Yes, sir.

23 Q. Do you know Minor

24 A. Yes, sir.

25 Q. Do you remember the date of February 28th, 2004?

1 A. Yes, sir.

2 Q. On that date did you give Minor [REDACTED] a ride to
3 school?

4 A. Yes, sir.

5 Q. All right. Do you remember her coming down and getting
6 into your car?

7 A. Yes, sir.

8 Q. What kind of mood was she in?

9 A. Smiling, giggling, like she always do.

10 Q. Did she do anything else during the ride to school?

11 A. Just liked listening to music.

12 Q. Did she sing along, dance along?

13 A. Yes, sir.

14 Q. No tears?

15 A. No. No, sir.

16 Q. Any signs of fear?

17 A. No, sir.

18 MR. ANTHONY: Objection. Objection to the
19 leading.

20 THE COURT: Yes, sir. I would sustain the
21 objection.

22 MR. BRANNON: Okay.

23 BY MR. BRANNON:

24 Q. Did you see anything in her mood that was different
25 than you had seen at any other time?

1 A. No, sir.

2 MR. BRANNON: Your Honor, I have no further
3 questions.

4 Sir, the solicitor may have a question.

5 THE COURT: Thank you, Mr. Brannon.

6 Solicitor?

7 CROSS EXAMINATION BY MR. ANTHONY:

8 Q. Mr. Pearson, you're Luther Pearson's son, correct?

9 A. Yes.

10 Q. All right. And you have obviously stayed in touch with
11 your father since this happened?

12 A. Excuse me?

13 Q. You still have contact with your father since this
14 happened?

15 A. Yeah, I just see him Sunday. Every Sunday.

16 Q. And you talked to him about coming and testifying
17 today?

18 A. My stepmother said she wanted me to come to court to
19 testify.

20 Q. I'm sorry?

21 A. My stepmother.

22 Q. Your stepmother said that?

23 A. Yes.

24 Q. Ms. Johnson?

25 A. Yes.

1 Q. She wanted you to come to court and testify?

2 A. Uh-huh.

3 Q. Okay.

4 MR. ANTHONY: If I could have one moment?

5 THE COURT: Yes, sir.

6 (Off the record)

7 (Back on the record)

8 BY MR. ANTHONY:

9 Q. It would be accurate to say, wouldn't it, if **Minor**
10 would have something that she needed to talk to somebody
11 about, she would have been more comfortable talking to one
12 of her girlfriends about it?

13 MR. BRANNON: Objection. It calls for
14 speculation.

15 THE COURT: Well, if you lay the foundation,
16 solicitor. If you lay the foundation of his knowledge of
17 **Minor** and what her habits may be. I just don't know. I
18 don't know that foundation.

19 MR. ANTHONY: I'll withdraw it. That's fine.

20 THE COURT: Thank you.

21 Anything further, solicitor?

22 MR. ANTHONY: No, sir.

23 THE COURT: Anything in redirect, Mr. Brannon?

24 MR. BRANNON: Very briefly, Your Honor.

25

1 REDIRECT EXAMINATION BY MR. BRANNON:

2 Q. Luther, you were served with a subpoena to come to
3 court, right?

4 A. Yes, sir.

5 Q. Now, you said Ms. Johnson told you she wanted to you
6 come to court, right?

7 A. Yes, sir.

8 Q. Didn't she really tell you that you were going to be
9 subpoenaed to come to court?

10 MR. ANTHONY: Objection.

11 A. Yes, sir.

12 MR. ANTHONY: Objection, leading.

13 THE COURT: I would sustain the objection. A,
14 it's leading and B, it's hearsay.

15 MR. BRANNON: All right.

16 BY MR. BRANNON:

17 Q. You were served a subpoena to come to court?

18 A. Yes.

19 Q. And did you tell any lies today?

20 A. No, sir.

21 MR. BRANNON: Nothing further.

22 MR. ANTHONY: No recross.

23 THE COURT: Thank you, solicitor.

24 Thank you, Mr. Pearson. You may step down. You
25 may be excused.

1 MR. BRANNON: Your Honor, may we approach?

2 THE COURT: Yes, sir.

3 (Whereupon, the lawyers approached the bench for
4 an off-the-record discussion)

5 THE COURT: Have y'all figured out generally what
6 that means when the lawyers approach the bench about this
7 time of day, where y'all be headed shortly?

8 Ladies and gentlemen, I believe it would be the
9 appropriate time for us to take our evening recess.

10 I would, once again, remind you during this
11 process please do not discuss this case with anyone. That
12 includes your family, your friends, your fellow jurors, or
13 anyone involved -- anyone involved in the case.

14 If anyone tries to talk with you about the case,
15 please let me know.

16 Do not read, watch, listen to any news reports
17 about the trial. Do not do any independent research or any
18 research on the Internet. And remember to keep an open mind
19 about the case and do not begin your deliberations until I
20 instruct you to do so.

21 I would ask you to please be back in your jury
22 room promptly at 9:30 in the morning. At 9:30 in the
23 morning if you please be back and we will get started
24 promptly thereafter.

25 You are now excused for the evening and I hope

1 y'all have a pleasant evening. Thank you very much.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: All right. Anything further from the
5 State?

6 MR. ANTHONY: No, sir.

7 THE COURT: From the defense?

8 MR. BRANNON: No, Your Honor. Thank you.

9 THE COURT: All right. Thank y'all very much.
10 Court would be in recess until 9:30.

11 (Whereupon, proceedings were adjourned to February
12 14, 2008)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF UNION) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 LUTHER BERNARD PEARSON,) 2007-GS-44-416
7 SR.,) 2007-GS-44-417
8) FEBRUARY 14, 2007
9) Union, South Carolina
10 Defendant.

11 (VOLUME III)

12 B E F O R E:

13 THE HONORABLE R. KNOX MCMAHON, JUDGE. ; and a jury.

14
15 A P P E A R A N C E S:

16 JOHN ANTHONY, ASSISTANT SOLICITOR
17 MISTY HORTON, ESQUIRE
Attorneys for the State

18 N. DOUGLAS BRANNON, ESQUIRE
19 DAVID COLLINS, ESQUIRE
Attorneys for the Defendant

20
21 Michael R. Watts
22 Circuit Court Reporter
23
24
25

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1 (PROCEEDINGS, February 14, 2008)

2 THE COURT: All right, anything from the State
3 before we bring in our jury?

4 MR. ANTHONY: No, sir.

5 THE COURT: From the defense?

6 MR. BRANNON: Yes, Your Honor, a couple of
7 matters.

8 The first one, I'm sure the court would question
9 my client as to his desire to testify or not testify. It is
10 my understanding, Your Honor, that he will testify.

11 I had a conversation with Solicitor Anthony
12 yesterday as to any convictions that he may be questioned
13 about if he takes the stand. Mr. Anthony indicated to me
14 that there was nothing on my client's criminal record that
15 would be discussed in testimony, and I just want him to
16 clarify that for the record, Your Honor.

17 THE COURT: All right. Thank you, Mr. Brannon.

18 All right. Mr. Pearson, if you would please
19 stand.

20 Mr. Clerk, would you place Mr. Pearson under oath,
21 please?

22 THE CLERK: I will.

23 LUTHER BERNARD PEARSON, SR., having been first
24 duly sworn, testified as follows:

25 THE COURT: Mr. Pearson, I need to go over some

1 things with you. I do this with everyone who is on trial
2 and I need your responses to be under oath.

3 We have reached the stage of the trial where the
4 State has rested. The defense -- your defense has already
5 called several witnesses. I believe three witnesses were
6 called yesterday in your defense.

7 You have an opportunity -- your side has an
8 opportunity to call additional witnesses. Do you understand
9 that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand the stage of the
12 trial we are at?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: In that regard you may testify
15 yourself. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: No one can force you to testify. You
18 have an absolute right to remain silent. And if you choose
19 not to testify, I will tell the jury that they could not
20 hold your silence against you in any way. I will tell them
21 that they are not to discuss that in the jury room. Do you
22 understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, I have heard your attorney
25 announce to me that you have no criminal record that would

1 be subject to impeachment. Let's get that clear on the
2 record.

3 Is that correct, solicitor?

4 MR. ANTHONY: That is correct, Your Honor.

5 THE COURT: All right. That would not be an issue
6 at all.

7 The decision about whether you testify or not is
8 your decision to make and yours alone, Mr. Pearson. I
9 expect that you have conferred with your attorneys or with
10 others whose opinion you value on important decisions, but
11 the decision about whether or not you testify or not is your
12 call, your decision. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has anyone exercised any undue
15 influence over you to get you to choose to testify or not to
16 testify?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you today under the influence of
19 any medication, drugs, or alcohol, or anything that
20 adversely affects your thinking ability?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you suffer from any physical,
23 emotional or mental problem that affects your thinking
24 ability today?

25 THE DEFENDANT: No, sir.

1 THE COURT: Whatever decisions that you have made
2 about whether to testify or not, is it your decision that
3 you have made of your own free will and accord?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has anybody twisted your arm to get
6 you to testify or not testify?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you have any questions you would
9 like to ask me about your right to testify or not to
10 testify?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you understand your absolute right
13 to testify or not testify?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you need any further time to talk
16 with your attorney about whatever decision that you have
17 made to testify or not to testify?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you need any additional time?

20 THE DEFENDANT: Yes, sir, I would like to talk to
21 my attorney for a minute, please.

22 THE COURT: All right. About how much time do you
23 need, Mr. Pearson?

24 THE DEFENDANT: Just five minutes, sir.

25 THE COURT: Five minutes. All right. Well, we

1 will be on standby for five minutes. I will give him the
2 opportunity to speak with his attorney.

3 MR. BRANNON: Thank you, Your Honor.

4 THE COURT: All right.

5 (Off the record)

6 (Back on the record)

7 THE COURT: All right. We are back on the record.

8 Mr. Pearson is back present in the courtroom with his two
9 attorneys, Mr. Brannon and Mr. Collins.

10 Have you an opportunity to speak with your
11 attorneys during this brief recess?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you need any more time to talk with
14 your attorneys concerning your right to testify --

15 THE DEFENDANT: No, sir.

16 THE COURT: -- or not testify?

17 THE DEFENDANT: No, sir.

18 THE COURT: Did you understand your talks with
19 your attorneys?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions that you
22 would like to ask me about your right to testify or not to
23 testify?

24 THE DEFENDANT: No, sir.

25 THE COURT: I find that Mr. Pearson knowingly and

1 intelligently understands his right to testify or not to
2 testify.

3 And what is your decision, Mr. Pearson?

4 THE DEFENDANT: To testify.

5 THE COURT: All right. Have you made that
6 decision of your own free will and accord?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Thank you. You may be seated.

9 I find that Mr. Pearson has made the decision to
10 testify of his own free will and accord and that decision is
11 made knowingly, freely, and voluntarily.

12 Anything further, Mr. Brannon?

13 MR. BRANNON: One item, Your Honor, and this would
14 go to the closing statements by counsel, Your Honor. I
15 don't know if you want me to take that up now. I don't
16 imagine that Mr. Pearson's testimony will be, you know,
17 hours long. My concern about closing arguments would be the
18 State's closing argument and any reference being made to DNA
19 testing done before February 15th, 2007, in the closing
20 argument. I don't know how this court feels about
21 objections during closing arguments. I would certainly do
22 everything that I can to make no objectionable arguments in
23 my closing. I would simply ask the court to direct the
24 State to make no mention of DNA testing prior -- or the
25 results of testing prior to February 15th, 2007.

1 THE COURT: Solicitor?

2 MR. ANTHONY: I don't -- there is nothing in the
3 record about results of testing prior to -- well, I think I
4 think February 15th, 2007 is the date of the final report.

5 MR. BRANNON: Correct.

6 MR. ANTHONY: I don't -- all I intend to do is go
7 back through what is in the record in regards to what Mr.
8 Nix said as to the time table of how this -- of how this
9 case developed. And I intend to say that there was a blood
10 sample sent in 2005; there was an arrest warrant issued
11 January of 2006; there was another blood sample taken in
12 September of 2006 at the request the solicitor's office;
13 that sample was sent to SLED in October of 2006; that sample
14 that was sent in October of 2006, provides a basis for the
15 comparison. All that's in the record and I intend to go
16 back through that, but I'm not going to talk about there
17 being a test based on another sample, because there is not
18 anything in the record about there being an actual test
19 based on another sample.

20 THE COURT: All right. And as far as my feelings,
21 they are kind of irrelevant. My position, of course, is
22 that if you feel, or the solicitor feels, that once you need
23 to object during the other side's closing argument, you may
24 do so. And typically if it's a factual issue, I just tell
25 the jury they are the finders of the facts. It's the facts

1 as they determine them to be, based on the evidence that's
2 in the record and any reasonable inferences to be drawn
3 therefrom.

4 If it's an improper argument, of course, that's
5 obviously a different issue. If you object and I sustain an
6 objection based on shifting of the burden, or something,
7 just as an example, Mr. Brannon, but, you know, obviously as
8 a trial attorney I never liked to be interrupted during my
9 closing, but, you know, obviously you have to represent your
10 client, and you certainly will be allowed to do so by me, as
11 the solicitor has to represent the State of South Carolina
12 and he would be allowed to do so by me. All right?

13 MR. BRANNON: Thank you, Your Honor.

14 Nothing further.

15 THE COURT: All right. Thank you.

16 With that being said, if you would bring our jury
17 please, Mr. Bailiff.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: All right. It appears our jury is
21 present in the courtroom.

22 Good morning, ladies and gentlemen of the jury. I
23 hope you all had a pleasant evening.

24 We are now continuing the trial of the case with
25 the presentation of testimony by the defense.

1 Mr. Brannon, you may call your next witness.

2 MR. BRANNON: Thank you, Your Honor.

3 I call Luther Pearson.

4 THE COURT: Mr. Pearson, if you would please come
5 forward and be sworn.

6 LUTHER BERNARD PEARSON, SR., having been first
7 duly sworn, testified as follows:

8 THE COURT: All right, Mr. Brannon.

9 DIRECT EXAMINATION BY MR. BRANNON:

10 Q. Sir, please state your full name for the record.

11 A. Luther B. Pearson.

12 Q. What's that B stand for?

13 A. Bernard.

14 Q. How old are you, sir?

15 A. 42.

16 Q. Okay. Luther, do you remember February 2005?

17 A. Yes, sir.

18 Q. Would you please tell the court or the jury what you
19 were doing for a living then?

20 A. I was working construction out of place called Tucker
21 Materials out of Greenville.

22 Q. That was Tucker Materials?

23 A. Yes, sir.

24 Q. And what did you do for Tucker Materials?

25 A. I was what was considered a boom operator. We dealt

1 with drywall, stocking houses.

2 Q. Did you work some strange hours or long hours?

3 A. Yes, usually we start at six in the morning. Like one
4 shift was on the construction site. You know, you might a
5 thousand sheets and you have to put them in the building.
6 Sometimes it consisted in walking them up steps. Sometimes
7 you just drag them through a window, or whatever. And once
8 on the job you had to complete the job. So sometimes I get
9 off at ten, eleven, twelve o'clock at night.

10 Q. Okay. The late night hours of February the 27th, or
11 early morning hours of February the 28th, did you work?

12 A. Yes, sir.

13 Q. After work did you go to Delmar's house?

14 A. Yes, sir.

15 Q. Did you live with Delmar then?

16 A. No, sir.

17 Q. Why did you go to Delmar's house that night?

18 A. We had been talking on the phone earlier that day. We
19 was supposed to be going to looking at houses the following
20 morning.

21 Q. You were going to go to look at trailers, right?

22 A. Yes, sir.

23 Q. Do you remember the early morning and the -- do you
24 remember the day of February the 28th, 2005?

25 A. Yes, sir.

1 Q. Please tell the jury your recollection of February the
2 28th, 2005.

3 A. Well, that morning me and her, we got up, we had sex
4 that morning. She got on up, went into the bathroom and
5 showered, whatever like that, come and told me she was
6 leaving and getting ready to go to work, whatever. I laid
7 there, dozed back off for a little while.

8 Finally I got up, I went to the bathroom. The door was
9 shut, you know, but that room of Courtney's, the door was
10 opened. I knock on the bathroom door and I said "I need to
11 use the bathroom." Talked to her for a minute and told her
12 to come on out. She said she would be out in a minute.
13 About 15 minutes later, or so, she came out of the bathroom
14 fully dressed.

15 Q. Okay. When she came out of the bathroom fully dressed,
16 was that the first time that you had seen Minor that day?

17 A. That morning, yes.

18 Q. All right. Then I'm assuming you that used the
19 bathroom?

20 A. When she came out of the bathroom, I went in the
21 bathroom and used the restroom for a little while. And then
22 I took a bath and waited around, put my clothes on and stuff
23 on and waited on her for her to come back to the house.

24 Q. Do you know how Minor got to school that day?

25 A. Yes, sir.

1 Q. How did she get to school?

2 A. My sons come and picked her up. I had called one of
3 them because they were running kind of late. Luther. I
4 called Luther to come and get her. He said "I will be there
5 in a minute." He waited a while, 15 minutes, or -- I don't
6 know exactly how long, but we waited. So I called him again
7 and said "hey, man, where are you at?" Second time I called
8 him, he said "I'm in the parking lot, dad," you know.

9 Q. Okay. Did you see Minor leave the apartment?

10 A. Oh, I was standing in the door when Luther -- when --
11 like I say, when I called him the second time and he say --
12 well, I asked him where he was. He said "I'm in the parking
13 lot." When I peaked out the little blinds in the kitchen, I
14 could see him in the parking lot. I was standing in the
15 door and Minor came by me.

16 Q. Okay. Did you say good-bye to Minor as she went
17 out?

18 A. Yeah, she give me a little hug. And I said she would
19 see me later, "see me later." She have a good day -- I told
20 her to "have a good day." Opened the door and she went on
21 out. I stood in the door and waved at Luther like that and
22 I closed the door. I didn't go outside, but I was standing
23 there. We had the door and the screen door, so I was
24 looking through the door and I seen my son. I call him
25 Luther. I waved at him. I seen her get in the car. I

1 watched them until they drove off and then I shut the door.

2 Q. All right. And then at sometime after that did Delmar
3 come back home?

4 A. Yes, a little while after that she came back home. She
5 went that morning to her bus route. She drive a bus, so she
6 came back, she came in the house, and, you know, we
7 proceeded to get our things together. We was going to go
8 look for trailers later on that day.

9 Q. And before you could go look for the trailer did she
10 get a phone call?

11 A. Yeah, she got a phone call from someone from the school
12 saying that --

13 MR. ANTHONY: Objection.

14 BY MR. BRANNON:

15 Q. Can't say what they said.

16 Did she get a phone call?

17 A. She got a phone call from them, yes.

18 Q. And as the result of that phone call did she leave?

19 A. Yes, sir.

20 Q. Did you know what that phone call -- I mean, did you
21 know what was going on as a result of that phone call?

22 A. No, sir..

23 Q. Did you offer to go with Delmar to the school?

24 A. Yes, I asked her if she wanted me to go along with her.

25 She said "no, that's all right, it won't take but a few

1 minutes."

2 Q. Did it turn out taking longer than a few minutes?

3 A. Yes, sir.

4 Q. And then did you later on leave the apartment?

5 A. Yes. I called her a few times on the phone to find out
6 what was going on, but I figured she was going -- doing some
7 running around a little like that. She had a cell phone.
8 So I figured if she wanted me, she was going to do what she
9 was going to do, she was going to call me, or whatever.
10 Yes, I ended up leaving later.

11 Q. When did you talk to Delmar next?

12 A. Which I had called her all that time, but she wouldn't
13 never answer the phone. I didn't know if the phone was
14 going through or whatever, if she was in a bad area, or
15 whatever. I talked to her I think the next day or the day
16 after.

17 Q. Okay.

18 A. It wasn't that day.

19 Q. Luther Pearson, on February the 28th of 2005, did you
20 sexually assault **Minor**

21 A. No, sir.

22 Q. Have you ever had sex with that child in your life?

23 A. No, sir. No, sir.

24 MR. BRANNON: Your Honor, I have nothing further.

25 A. No, sir.

1 THE COURT: Thank you, Mr. Brannon.

2 Solicitor?

3 MR. ANTHONY: Thank you, Your Honor.

4 If I could have one moment?

5 THE COURT: Yes, sir.

6 (Off the record)

7 (Back on the record)

8 CROSS EXAMINATION BY MR. ANTHONY:

9 Q. Mr. Pearson, you said that you weren't living there
10 when this happened?

11 A. Excuse me?

12 Q. You said that you weren't living at Ms. Johnson's
13 residence when this happened?

14 A. No, sir.

15 Q. All right. Had you ever spent the night there before?

16 A. I came there before, but I never like spent the night
17 with her. I mean, I visited. You know, sometimes I come in
18 like -- if I got off four o'clock in the evening, where it
19 was like that, me and her would meet somewhere. You know,
20 maybe eat dinner or something. I really stayed at my
21 grandmother's at 103.

22 Q. All right. And is your grandma here in the courtroom?

23 A. Yes, sir.

24 Q. This is her on the front row?

25 A. That's my grandma, yes, sir.

1 Q. The lady with the blanket over her --

2 A. Yes, sir.

3 Q. -- leg?

4 A. Yes, sir.

5 Q. Okay. And you -- that's who you really stayed with?

6 A. Yes, sir.

7 Q. All right. And she would know that you really stayed
8 with her?

9 A. Yes, sir. She -- I did help her around -- you know,
10 reason -- I was living in D.C. at the time for a few years
11 back. I came home to visit one time and she had -- she's --
12 like you see, she's old. She went to sleep in the chair.
13 She had one of them lift-up chairs.

14 Q. Well, I'm just asking if you lived there.

15 A. Yes, I lived there. You asked me, yes, sir.

16 Q. All right. And you had -- you say that was the first
17 time that you had ever spent the night?

18 A. Yes, sir.

19 Q. There at Ms. Johnson's apartment?

20 A. I would come by, or whatever like that, but I had never
21 really woke up there. I had never slept there.

22 Q. And that would include on the weekends? You never
23 slept there on the weekend?

24 A. Oh, on the weekends -- Minor would go live with her
25 daddy every other weekend, and I would go there then, or

1 whatever like that, but that was just then.

2 Q. Okay. So there were some nights that you spent there
3 on the weekend?

4 A. Yes, sir.

5 Q. All right. But your testimony today is that that's the
6 first night that you had ever spent in that house on a
7 weeknight?

8 A. As far as laying down going to sleep there, yes, sir.

9 Q. It's the first time that you had ever got up in the
10 morning there?

11 A. Yes, sir.

12 Q. Is that a fair way to put it?

13 A. Yes, sir.

14 Q. Okay. And that would be the first time that you had
15 ever gotten up in the morning and **Minor** would actually be
16 in the house too?

17 A. Yes, sir.

18 Q. And it would be the first time that you had ever gotten
19 up in the morning and Ms. Johnson wouldn't be in the house
20 and **Minor** would be in the house?

21 A. Well, that morning we both -- when we woke up that
22 morning, everybody was in the house. I don't know what you
23 are trying to ask me.

24 Q. But then there was a time where Ms. Johnson left to go
25 to work, is that correct?

1 A. That's correct. That's correct.

2 Q. So that created a situation where you were in the house
3 and Minor was in the house and Ms. Johnson wasn't in the
4 house?

5 A. Correct.

6 Q. And your testimony is that that morning, I guess you
7 described that as just basically a completely normal
8 morning?

9 A. Yes, sir.

10 Q. And all that happened was you got up, Minor got up,
11 Minor got dressed, you called your son about picking her
12 up, and she was out the door?

13 A. She -- she was up before me. She was already in the
14 bathroom. I was still in the bedroom when I came out of the
15 bedroom.

16 Q. Now, did you know -- when -- that morning did you know
17 your son was going to go pick her up; was supposed to come
18 and pick her up?

19 A. Yes.

20 Q. You knew that ahead of time?

21 A. Yes.

22 Q. Why did you call your son?

23 A. Because I felt like he was running late.

24 Q. All right. But you don't know of anything --

25 nothing -- there was no hostility between you and Minor

1 that morning?

2 A. No, sir.

3 Q. No reason why she would have left the apartment that
4 morning with any kind of bad feeling about you?

5 A. No, sir.

6 Q. Okay. And you were never really in any kind of, what I
7 guess you would consider, a custodial situation with

8 **Minor** is that correct? I mean, you never were in a
9 position where you would be disciplining her, or making sure
10 she behaved, or anything like that?

11 A. No. No, sir. If she wanted something or wanted to go
12 somewhere or do something, she always asked her mom. She
13 never asked me. I never played the father role to her.

14 Q. Because you didn't really have that much exposure to
15 her?

16 A. No, sir.

17 Q. So you didn't have enough exposure to her for her to
18 really develop any type of resentment towards you?

19 A. I mean, we would all go out together. Her, my lady, my
20 sons, we would all -- we did. We spent time together. I
21 mean, I don't know whether you would say a family. You
22 know, we did hang out together.

23 Q. Uh-huh.

24 A. You know, we would sit down and watch TV together
25 and --

1 Q. Uh-huh.

2 A. I mean, you know, I talked to her about her little
3 boyfriends or whatever. I mean, I talked to her. I mean,
4 it wasn't like -- I don't know what you are trying to ask
5 me.

6 Q. Well, I'm just saying the experiences that you had with
7 Minor you would characterize them as mainly positive
8 kind of experiences?

9 A. Yes, sir.

10 Q. And they would be positive for you, correct?

11 A. Yes.

12 Q. They would be positive for her?

13 A. Yes, sir.

14 Q. So she would not -- she never -- nothing really ever
15 happened between you and her where you would be even
16 forced -- just being an adult where you would be forced to
17 do something that would cause her to think of you in a
18 negative way?

19 A. No. No, sir.

20 MR. ANTHONY: If I could have one moment?

21 THE COURT: Yes, sir.

22 (Off the record)

23 (Back on the record)

24 BY MR. ANTHONY:

25 Q. Mr. Pearson, the next day after this incident allegedly

1 occurred you went to the Union Public Safety Department, is
2 that correct?

3 A. Excuse me? I didn't understand. Excuse me.

4 Q. The next day, the day after this incident was supposed
5 to have occurred, you went to the Union Public Safety
6 Department, is that correct?

7 A. Yes, sir.

8 Q. And you were there that morning, is that right?

9 A. Yes, sir.

10 Q. And you talked to a couple of investigators there, is
11 that correct?

12 A. Yes.

13 Q. And one of those was Captain Gault with the Public
14 Safety Department?

15 A. Yes.

16 Q. Is that correct?

17 A. Yes.

18 Q. Now, do you -- and do you remember having that
19 conversation with them the morning of March 1st?

20 A. Yes, sir.

21 Q. And do you recall that you gave them a statement?

22 A. Yes, sir.

23 Q. And you gave them an account of what you said happened?

24 A. Uh-huh.

25 Q. Is that correct?

1 A. Yes, sir.

2 Q. And in that statement you said that "about one month
3 ago I started staying at her apartment, 13-D, 49 West
4 Apartments." And you were saying -- well, let me just back
5 up.

6 You said "I have been dating Delmar Eison since right
7 after Thanksgiving. About one month ago I started staying
8 at her apartment, 13-D, 49 West Apartments."

9 Is that accurate that you said that?

10 A. When I said staying, I meant I was like coming by. I
11 wasn't like living there. I mean, I wasn't staying. I
12 mean, I had started coming by.

13 I mean, I don't know how he asked the questions, but as
14 far as like living there, having my clothes there and stuff
15 like that, it was none of that. I didn't have clothes there
16 or nothing, shoes or nothing, so I couldn't have been living
17 there.

18 Q. Okay. But I'll show you the statement I'm referring
19 to. And that is -- that is your signature there on the
20 statement, is that correct?

21 A. Yes, sir.

22 Q. All right. And the first -- if you would -- I would
23 ask you to just read the first three lines to yourself. And
24 that statement says that you were staying there?

25 A. Yes, sir.

1 Q. Okay. And --

2 A. I wasn't living there. I was -- you know.

3 Q. And --

4 A. I don't know what you are trying to ask me.

5 Q. Then your testimony is that you didn't talk to Ms.
6 Johnson about this at all that day, but you didn't -- you
7 didn't talk to her about the accusation that had been made
8 at all on February 28th, is that correct?

9 A. That's correct. Later -- I mean, I had been calling
10 her that day but she wouldn't answer the phone. But later
11 that day I found out she was at the police station, or
12 something, when I was calling her, but I didn't know that
13 then.

14 Q. But your testimony is you never spoke to her?

15 A. No. That day, no, sir.

16 Q. And I want to also just mention -- just take you back
17 to when you gave that statement that morning -- the next
18 morning. In that statement you said "I did not hear
19 anything again until about six p.m.. When I talked to
20 Delmar on the cell phone, she told me that there had been
21 some allegations and that the police needed to talk to me."

22 Is that correct that you said that?

23 A. I believe so. Might be.

24 Q. Okay.

25 MR. ANTHONY: If I could have one moment?

1 THE COURT: Can you -- he can explain his answer.
2 If you want to explain your answer.

3 A. I -- well, she had called me -- I mean, I was trying to
4 call her all that day and she would never answer the phone.
5 Later I found -- when I called her that evening, she said
6 she couldn't talk to me. Mr. Gault had told her not to talk
7 to me, there had been some allegations. She hung up the
8 phone.

9 So, as far getting to talk to her, talk to her like we
10 normally do, I did not do that. I mean, I tried to get her
11 on the phone and she didn't answer that phone all that day I
12 had been calling her. And the deputies themselves told her
13 not to talk to me. I didn't know that then, though.

14 BY MR. ANTHONY:

15 Q. So it would be correct to say that going back to the
16 first thing I asked you about, your definition of staying
17 doesn't mean living with, is that correct?

18 A. Right, I didn't live with her.

19 Q. And your definition of talking doesn't mean actually
20 talking? It means something more than that?

21 A. I mean, I got her on the telephone. That's what you
22 are asking me, but as far as having a conversation like we
23 do, she said she couldn't talk to me. She told me words
24 like that.

25 Q. So you talked to her? You just didn't really talk to

1 her?

2 A. I mean -- yes, I mean, -- yes.

3 Q. Okay.

4 MR. ANTHONY: If I could have one moment?

5 THE COURT: Yes, sir.

6 (Off the record)

7 (Back on the record)

8 MR. ANTHONY: All right, that's everything on
9 cross. Thank you.

10 THE COURT: Anything on redirect?

11 MR. BRANNON: Yes, sir, briefly.

12 THE COURT: All right.

13 REDIRECT EXAMINATION BY MR. BRANNON:

14 Q. Luther, did you have clothes at Delmar Johnson's house?

15 A. Not at that.

16 Q. I'm sorry?

17 A. No, sir.

18 Q. You started dating Delmar around Thanksgiving of '03,
19 correct?

20 A. I think so. It was around Thanksgiving, yes. I don't
21 know --

22 Q. Well, I mean, **Minor** made her allegations in February
23 of '04, right?

24 A. I think -- yes, sir.

25 Q. Okay. So you started dating her mother --

1 Excuse me, '05, I'm sorry.

2 Minor made her allegations in --

3 A. In '04 then.

4 Q. You started dating her mother the Thanksgiving right
5 before she made the allegations, correct?

6 A. Correct. That's correct.

7 Q. Okay. Now, did you fall in love with Delmar the first
8 time that you went out with her?

9 A. No, sir.

10 MR. ANTHONY: Objection. That's beyond the scope
11 of cross.

12 THE COURT: Sustained.

13 Wait just a minute, Mr. Pearson.

14 Yes, sir, I would sustain that objection, Mr.
15 Brannon.

16 MR. BRANNON: Withdraw the question.

17 THE COURT: All right.

18 BY MR. BRANNON:

19 Q. Was your relationship with Delmar progressing or
20 becoming more serious on or about February the 28th?

21 A. Yes, sir.

22 MR. ANTHONY: Well, same objection.

23 THE COURT: I would overrule that objection.

24 A. Okay. When I first met her, I was introduced to her by
25 my sons. At the time I had just moved here from Washington

1 D.C.. I had another woman I was seeing there. I mean, she
2 was here at the time. Then me and her split up. She was
3 still coming in every other weekend. So as far as -- like I
4 say, as far as living there and all that, I couldn't have
5 done that, because I had another woman that I was still
6 involved with.

7 BY MR. BRANNON:

8 Q. Okay. Were you becoming more serious with Delmar?

9 A. In February, yes, sir.

10 Q. And were you and Delmar talking about purchasing a home
11 together?

12 A. Correct.

13 MR. ANTHONY: Objection. Once again that's beyond
14 the scope.

15 THE COURT: That's been asked and answered.
16 That's been asked and answered several times.

17 You may ask your next question, though, Mr.
18 Brannon.

19 BY MR. BRANNON:

20 Q. You and Minor were getting along pretty well from a
21 friendship standpoint, is that correct?

22 A. Correct.

23 Q. Was your relationship with her mother to the exclusion
24 of her father? In other words --

25 MR. ANTHONY: Objection. That's leading.

1 Objection.

2 THE COURT: Well, I didn't understand the
3 question. I don't know if Mr. Pearson did or not, but if
4 you --

5 MR. BRANNON: I'll re-ask the question.

6 THE COURT: All right, thank you.

7 BY MR. BRANNON:

8 Q. If you became more serious and began to live with
9 Delmar in a home that you were going to buy, would that have
10 excluded any possibility for Minor mom and dad getting
11 back together?

12 MR. ANTHONY: Well, objection. That calls for a
13 conclusion answer.

14 THE COURT: Well, yes, sir. I don't think -- I
15 would sustain the objection, Mr. Brannon.

16 BY MR. BRANNON:

17 Q. You and Minor got along? There was no bad blood
18 between the two of you, as far as you knew, correct?

19 A. Correct.

20 Q. But you were becoming more serious with her mother,
21 correct?

22 A. Correct.

23 MR. BRANNON: Nothing further, Your Honor.

24 THE COURT: Anything in recross, solicitor?

25 MR. ANTHONY: If I could have one moment?

1 (Off the record)

2 (Back on the record)

3 MR. ANTHONY: No recross.

4 THE COURT: All right. Thank you.

5 Thank you very much, Mr. Pearson. You may step
6 down.

7 All right. Mr. Brannon, you may call your next
8 witness.

9 MR. BRANNON: Your Honor, I have no other
10 witnesses.

11 THE COURT: All right. Solicitor, would you have
12 any reply testimony?

13 MR. ANTHONY: No, sir, we don't.

14 THE COURT: All right. Thank you.

15 Mr. Foreman, ladies and gentlemen of the jury, you
16 have now heard all of the testimony that you are going to
17 hear by both of the parties during the trial of this case.
18 All the exhibits that are going to be introduced have been
19 introduced.

20 Shortly the attorneys will get to make closing
21 arguments to you. These will be different from the opening
22 statements. These will be true arguments. They may argue
23 the facts, the reasonable inferences to be drawn from the
24 facts, and how that may apply to the law.

25 At this stage I have to take up one legal matter

1 outside of your presence prior to the closing arguments, so
2 I'm going to ask you if you would please step to your jury
3 room for about a 15 minute recess. I will take up these
4 legal matters, and thereafter we will then go into the
5 closing argument stage.

6 With that being said, if you would please go to
7 the bailiff.

8 (The following takes place outside the presence of
9 the jury panel)

10 THE COURT: All right. Do you have motions, Mr.
11 Brannon?

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

13 I would renew my motion for a directed verdict at
14 this time. I believe after all the evidence is in, the
15 State has once again failed to prove at least one, or more,
16 of the elements of each of the crimes that my client now
17 faces.

18 THE COURT: All right. Thank you, Mr. Brannon.

19 Again, I would deny your motion, based on the
20 standard that I must apply. I only look at the presence of
21 evidence and not the weight to be given to it. I think
22 there is sufficient direct and substantial circumstantial
23 evidence for which a jury could return a verdict on both the
24 criminal sexual conduct with a minor in the second degree
25 and committing a lewd act on a child under the age of 16.

1 Any specific requests to charge?

2 MR. BRANNON: No, Your Honor.

3 If I could address one other issue?

4 THE COURT: Yes, sir.

5 MR. BRANNON: Your Honor, I would just renew all
6 of our motions and objections for the record in this matter.

7 THE COURT: All right. And I would renew my trial
8 rulings.

9 I do want to put one other thing on the record. I
10 can do that after closing argument concerning Ms. Balkum's
11 testimony and another case that was cited, State v. Major,
12 but I will do that at the appropriate time. I'm going to
13 reaffirm my ruling anyway. I just wanted to cite that
14 particular case.

15 MR. BRANNON: Your Honor, as to requests to charge
16 from the defense, and forgive me if I'm jumping out of line
17 here.

18 THE COURT: That's fine.

19 MR. BRANNON: I would simply ask you to charge
20 straight from the statutes as to the offenses. And, Your
21 Honor, other than that we would have no specific requests to
22 charge.

23 THE COURT: All right. Thank you, Mr. Brannon.
24 Solicitor?

25 MR. ANTHONY: Your Honor, we don't have any

1 specific requests. I expect just your general charges would
2 certainly suffice in this case.

3 THE COURT: All right. Thank you, solicitor.

4 MR. BRANNON: There was one clerical issue.

5 Your Honor, yesterday it was discussed that we
6 would put copies of the DNA test results as Court's
7 Exhibits, but, Your Honor, all of the copies that Mr.
8 Collins and I have have been marked on or highlighted and we
9 were going to ask the State -- I believe it was mentioned
10 yesterday that the State would produce a clean copy of those
11 to be presented as Court's Exhibits.

12 THE COURT: All right.

13 MR. BRANNON: We would ask that that be done.

14 MR. ANTHONY: We don't -- we certainly don't have
15 any problem doing that.

16 THE COURT: All right. Thank you.

17 Mr. Clerk, would you hand me the indictments,
18 please?

19 Let me ask y'all something. These indictments,
20 his middle name on the indictment is Bradford. I heard Mr.
21 Pearson, Jr. Testify it was Bernard, and I have heard now
22 Mr. Pearson testify it was Bernard.

23 Of course, I don't send the indictments into the
24 jury. I have a form of verdict -- a form or verdict form
25 that I send into the jury room, and I'll certainly provide

1 y'all with copies of it, but as to this indictment, are
2 there any motions?

3 MR. ANTHONY: I think it would be appropriate for
4 us to make a motion to amend the indictment to conform the
5 middle name change, the middle name from Bradford to
6 Bernard.

7 If I could have one moment?

8 THE COURT: All right.

9 (Off the record)

10 (Back on the record)

11 MR. ANTHONY: The information we have, though,
12 Captain Gault was just showing me the booking sheet. He was
13 booked into the jail under the middle name of Bradford, but
14 then I was -- I was looking at the NCIC and it comes back
15 under the name Bernard. So if the he -- he says his middle
16 name is Bernard, we would move to amend the indictment to
17 reflect that.

18 THE COURT: All right. Do you have any
19 objections?

20 MR. BRANNON: No, Your Honor. I would have no
21 objection to conforming the indictments to the proper name.

22 For the record, Your Honor, when my client was
23 arrested, when he got booked in, they had his name on the
24 documents already. And then at a prior hearing, I don't
25 know if it was a prelim, or some other hearing, my client

1 tells me that he attempted to correct the middle name on the
2 record in some prior hearing. So, Your Honor, I certainly
3 don't believe an improper middle name is a substantive
4 default or defect in the indictment and would, therefore,
5 consent to its amendment.

6 THE COURT: All right. And it would be -- how
7 would he spell Bernard? How is it spelled?

8 MR. BRANNON: B-E-R-N-A-R-D.

9 THE COURT: So his name would be Luther Bernard
10 Pearson, Sr.?

11 MR. BRANNON: Senior.

12 THE COURT: Okay. And since you have no
13 objections, I will amend that on both 2007-GS-44-416 and
14 417, and that would be the name that would appear on the
15 form of verdict Luther Bernard Pearson, Sr.. All right.

16 All right. Court will be in recess. I need to
17 print out my charge, so we will be in recess about 15
18 minutes.

19 MR. BRANNON: I'm sorry, about how long?

20 THE COURT: About 15 minutes while I print out my
21 charge.

22 MR. BRANNON: Thank you, Your Honor.

23 (Whereupon, proceedings were recessed)

24 (Whereupon, proceedings were reconvened)

25 THE COURT: All right. Anything from the State

1 before we bring in our jury?

2 MR. ANTHONY: I just would like to advise the
3 court and defense I intend to open very briefly on the law.

4 THE COURT: All right. Thank you. You are going
5 to open on the law. Then Mr. Brannon and/or -- Mr. Brannon
6 or Mr. Collins will close, and then you are going to close,
7 correct?

8 MR. ANTHONY: Yes, sir.

9 THE COURT: All right. Anything from the defense?

10 MR. BRANNON: No, Your Honor.

11 THE COURT: All right. I would ask the bailiffs,
12 I don't allow any movement in and out of the courtroom
13 during the closing arguments. I have no objections if
14 someone wants to leave between the arguments or if someone
15 wants to come in between the arguments. In other words,
16 when the solicitor is addressing the jury, or when Mr.
17 Brannon is addressing the jury, I don't want anybody moving
18 about. I don't want anybody coming in. I don't want
19 anybody leaving.

20 At the close of all the arguments, prior to my
21 charge, you can leave, but once I start charging the jury, I
22 don't want anyone moving about either. So I want to say you
23 have to leave either between the arguments or after the
24 arguments before I begin my charge.

25 All right. Thank you, Mr. Bailiff.

1 If you would bring our jury, please.

2 (The following takes place in the presence of the
3 jury panel)

4 THE COURT: All right. The jury is back present
5 in the courtroom.

6 Mr. Foreman, ladies and gentlemen of the jury, as
7 I told you before I recessed, we are now at the stage of the
8 closing arguments. The procedure we will follow is the
9 State has the right to open on the law briefly. Thereafter,
10 Mr. Brannon will -- Mr. Brannon, is that correct?

11 MR. BRANNON: Yes.

12 THE COURT: Mr. Brannon will present the closing
13 argument on behalf of the defendant Mr. Pearson.

14 Thereafter, the solicitor will be able to present
15 the final closing argument on behalf of the State, the State
16 having the burden of proving the case beyond a reasonable
17 doubt.

18 I have advised all the individuals in the
19 courtroom, the spectators and such, they are not to move
20 about during the time the attorneys are addressing you or
21 during the time after all the closing arguments when I
22 charge you or tell you what the law is you are to apply to
23 the facts of this case as you find them to be.

24 I would ask you to please give the attorneys your
25 complete and undivided attention during the closing

1 arguments, as you have done to all the parties throughout
2 this proceeding.

3 With that being said, solicitor you may address
4 the jury.

5 MR. ANTHONY: Thank you, Your Honor.

6 I just want to talk to you just a couple of
7 minutes about the actual charges and the actual law in this
8 case.

9 Mr. Pearson is charged with two crimes. He's
10 charged with second degree criminal sexual conduct with a
11 minor and he's charged with lewd act on a minor.

12 To find somebody guilty of a criminal sexual
13 conduct offense, you have to find that what's called a
14 sexual battery occurred. The judge will define what that
15 term sexual battery means, but it includes sexual
16 intercourse. So if you find that there is sexual
17 intercourse - penetration of the vagina by a penis - then
18 that's a sexual battery.

19 And the only other thing that you have to find in
20 a criminal sexual conduct with a minor charge is that the
21 victim is under the age of 16, and that the defendant is
22 older than the victim.

23 The one thing that is important that kind of
24 distinguishes criminal sexual conduct with a minor is that
25 you don't have to find, because once a person is 16, it

1 becomes a situation where the state has to prove lack of
2 consent. But in a case where the victim is under 16,
3 consent is not an issue. The only thing that matters is
4 whether or not a sexual battery occurred.

5 The other crime that Mr. Pearson is charged with
6 is what's called lewd act on a minor. And essentially it's
7 pretty much the same situation. A lewd act, rather than
8 some sexual battery or something that involves sexual
9 intercourse, penetration, a lewd act just involves a sexual
10 touching.

11 So, if you find that during the course of this
12 assault a sexual touching occurred, along with the actual
13 sexual intercourse, that would be a lewd act.

14 And, once again, consent is not an issue. All you
15 have to find is that the victim is under the age of 16 and
16 the defendant is over the age of 14. And that makes this a
17 lewd act. And whether or not the victim consented in this
18 type of crime where there is proof of someone -- of the
19 victim being under 16, that person's consent is not an
20 issue.

21 So that's just an overview of the two charges that
22 you will be deciding on when you go back to the jury room.

23 The defense attorney is going to make his closing
24 arguments. Then I will come back and talk to you at some
25 length about the actual facts of the case and the evidence

1 that you have heard and why we believe you should find Mr.
2 Pearson guilty. Thank you very much.

3 THE COURT: Thank you, solicitor.

4 Mr. Brannon, you may address the jury.

5 MR. BRANNON: May it please the court, Your Honor?

6 THE COURT: Yes, sir.

7 MR. BRANNON: Ladies and gentlemen, I first want
8 to take this time to thank you for your time, your patience
9 and your attention. Trials like this are difficult. I have
10 never had the opportunity to serve as a juror in a trial
11 like this, but I know how it is from the defense side. I
12 know that you are tired and I know that you want this to be
13 over with. Thank you for your time and your patience.
14 Please just give us a little bit longer.

15 Mr. Collins, would you come up here for just a
16 minute?

17 (Whereupon, Mr. Collins approached the jury box)

18 MR. BRANNON: If you would rub your hand across
19 where I just rubbed mine?

20 Rub your hand where I just did?

21 Would you do the same thing?

22 Thank you.

23 (Whereupon, Mr. Collins returned to the defense
24 table)

25 MR. BRANNON: On February 28th of 2004, Minor

1 **Minor** made an allegation that Luther Pearson had sex with
2 her. She made that allegation. She wrote a statement. She
3 testified. She said that in the morning he came into her
4 bedroom, he had sex with her. He pulled her pants halfway
5 down, pulled his pants halfway down, had on a condom and had
6 sex with her. That's what she said.

7 She also said that after this allegedly occurred,
8 that she went into the bathroom, because the bathroom door
9 locked, but her bedroom door didn't. The bathroom didn't
10 lock. Mr. Horne sat on the witness stand and explained to
11 you how he fixed the door. He said he fixed the door at the
12 end of the month of February. You heard Delmar Johnson
13 testify that she had the door fixed the day that **Minor**
14 made this allegation. The bathroom door didn't lock at 6:30
15 or 6:40 on the morning of February the 28th.

16 You heard **Minor** say, yeah, we had a dog
17 named Bandit, but Bandit was in the cage. You heard Delmar
18 Johnson say Bandit wasn't in the cage. She tried to put him
19 in that morning before she left for work to make her bus
20 route, but he didn't want to go in and she just went off to
21 work.

22 You heard Delmar Johnson say that there was no way
23 that Luther could put that dog in the cage, because that dog
24 would eat him up. You heard Delmar Johnson testify that the
25 dog was very protective of both her and her daughter.

1 Delmar Johnson testified to that.

2 You heard Minor tell you that Luther
3 Pearson had on a condom. She saw it. She also testified
4 that after she alleged he finished having sex, that he got
5 up and she didn't see any bodily fluids. She testified to
6 that.

7 Then you heard Donald Ray Nix, a guy that used to
8 be a police officer, get on the witness stand and testify
9 about a search warrant. They got a search warrant. Even
10 though Delmar Johnson consented to letting them search, he
11 got a search warrant. Then he had to a consent to search.
12 They went there and they were first off looking for condoms
13 or condom wrappers. But you also heard Donald Ray Nix say
14 we didn't find either, nothing. That's important to know,
15 because then you found out that Luther Pearson didn't know
16 anything about these allegations until six o'clock or 6:30
17 on the night or evening of February the 28th. And at that
18 point all he knew was that Delmar couldn't talk to him
19 because that man right there told her not to talk to him.
20 So, yeah, he was in the apartment by himself after Minor
21 left for school. But if he had used a condom, and if this
22 had happened, he wouldn't have had any knowledge to remove
23 the condoms or the condom wrappers. He wouldn't have known
24 that he needed to hide something. The police didn't find
25 the condoms or the condom wrappers. They weren't there.

1 You heard Delmar Johnson and Luther Pearson
2 testify that before she left for her bus route, the two of
3 them made love. You heard her explanation. She used the
4 towel in the bedroom. She felt some more discharge. She
5 used a pair of panties to wipe herself, and she put both the
6 towel and the panties in the common laundry hamper in the
7 only bathroom in the apartment. There was no laundry.
8 There was no washer or dryer in the apartment. Every two
9 weeks Delmar and her daughter **Minor** would go to the
10 laundromat right out there in on the bypass right across
11 from Hart's and do their laundry. You heard Delmar say it
12 was getting close to laundry time. The basket, the hamper
13 was overflowing. There was semen and panties from Luther
14 Pearson in the dirty clothes hamper in that apartment.

15 Now, ladies and gentlemen, you heard all that. If
16 he had on a condom, there wouldn't be any semen in **Minor**
17 **Minor** If it happened, she didn't see any bodily fluid.
18 There wouldn't be any bodily fluid for the testing.

19 Now, when they did that search, they not only
20 looking for condoms and condom wrappers, they were looking
21 for her clothing. Remember, they took a pair of pajama
22 bottoms. They took a T-shirt. They took two pair of
23 panties, actually; one from the apartment and one from the
24 hospital, but they also took a bed sheet and a comforter.
25 Do you remember when Agent Bradstreet testified, here is

1 the -- here is the search warrant. They took a white
2 T-shirt. You saw it, or you saw the envelope that it was
3 in.

4 MR. ANTHONY: Your Honor, I don't believe that's
5 in evidence. I think that's what -- I apologize if I'm
6 mistaken, but I think he's referring to a document that's
7 not in evidence.

8 THE COURT: All right. Ladies and gentlemen, the
9 facts are as you determine the facts to be. What's in
10 evidence is those facts that the witnesses testified to
11 under oath from this witness stand and any inferences that
12 may be reasonably drawn therefrom and any and all exhibits
13 that were introduced into evidence.

14 MR. ANTHONY: And I don't think he is referring --
15 I think he's pointing to something that's not been made an
16 exhibit and it's not been admitted.

17 THE COURT: All right. Well, that certainly -- if
18 you are pointing to something that's not admitted, it cannot
19 be published to the jury, of course. You can refer to it,
20 but it cannot be shown to the jury, Mr. Brannon.

21 MR. BRANNON: That's all I'm doing.

22 THE COURT: All right.

23 MR. BRANNON: Ladies and gentlemen of the jury,
24 this is the list of stuff that Donald Ray Nix took from the
25 apartment. It was signed by Delmar Johnson. She testified

1 to that. They took one white T-shirt. You saw it, or the
2 envelope. They took a pair of panties, the white ones with
3 the flowers. You saw those. A pair of sleep bottoms, those
4 Dr. Seuse bottoms. They took the comforter, the sheet and
5 the mattress cover.

6 You didn't hear any testimony, none whatsoever,
7 about DNA on a bed sheet. You didn't -- there is no
8 evidence, none whatsoever, that Luther Pearson was ever in
9 the bed. None. None. They come -- they checked those bed
10 sheets for hair. None. When you lay on a bed or when you
11 touch a piece of wood, you put DNA on it. The bed sheet
12 didn't have any. They tested it. There was none. They
13 looked for hair. They didn't find any. They looked at her
14 pajama bottoms. They didn't find anything. They looked at
15 her T-shirt. They didn't find anything. There is no
16 evidence that Luther Pearson was anywhere but in her
17 mother's bedroom and then on the panties that momma put in
18 the laundry. That's it.

19 Now, ladies and gentlemen, a question might be in
20 your mind how long can DNA stay alive, how long can it stay
21 active, how long is it viable for testing. You heard Agent
22 Taylor yesterday testify she's tested specimens that were 10
23 or 12 years old that were still active, that were still
24 viable for testing. The DNA in the dirty clothes is viable
25 for testing. The DNA on the bed sheets, you can't test what

1 ain't there, and there was none there.

2 After Delmar got the call and went to the school,
3 she went there and she talked for a few minutes with some
4 officers and then she goes to see her daughter. Please
5 remember the testimony. Her daughter was sitting in a chair
6 and would not look at her. Would not look at her. She is
7 in there. Delmar is in there while Minor gives her
8 statement. She hears her daughter giving the statement.
9 She then signs the statement as the parent, and she's told
10 take your daughter to the hospital. They leave the school
11 and they go to the hospital. At the hospital the mother is
12 there. She's given documents. She's given directives as to
13 who she might take her daughter to see for counseling.
14 Counseling is recommended by the hospital officials, but yet
15 you heard Minor say she's never been to a
16 counselor. Never. Never been to a counselor.

17 At the hospital they collect evidence. They take
18 those long Q-Tips, and I can only imagine, but they swab
19 parts of the body looking for evidence. When they test the
20 vaginal swab taken at the hospital of Minor there
21 was no semen detected. None. None. Keep in mind, Minor
22 Minor already said he had on a condom and when he was done,
23 according to her, she didn't see any bodily fluids. None.
24 Vaginal swab, no DNA.

25 But then, and you will remember the doctor, she

1 testified yesterday morning, she went down that evidence
2 list of the stuff that was collected. There is a -- there
3 is a line that says rectal swab. Now, this is the doctor
4 from the hospital. Rectal swab, none taken. Then you hear
5 Agent Taylor from SLED testify. Now, she's the expert in
6 DNA. Gets on the witness stand and she says there was a
7 test done on a rectal swab. A rectal smear is what she
8 said, but ladies and gentlemen, how do you test something
9 that wasn't there? They didn't take a rectal swab. How did
10 they test it? It was a mistake. Remember that? The expert
11 said it was a mistake.

12 Let's talk just a little bit more about this
13 expert. This expert, she's an expert, because she's got
14 special training and experience. She's an expert that works
15 for the State of South Carolina. She's an expert that was
16 paid by the State of South Carolina to sit in that chair and
17 testify in this trial. And, oh, by the way, it's the State
18 of South Carolina prosecuting Luther Pearson. She says she
19 made -- or they made a mistake. They say they tested
20 something that wasn't collected from the hospital.

21 Now, when you question somebody about DNA, it's
22 hard to do because it's so technical. And as attorneys, we
23 go to school for awhile, but we don't learn about that
24 stuff, and so it's hard to question those people. But when
25 Mr. Collins was questioning Agent Taylor, he got her to

1 explain that there is really three parts to DNA testing.
2 There is the part where -- there is the physical part, where
3 you cut the evidence and you place it into the tube and you
4 put the fluids in. There is the physical part. Then there
5 is the electronic part, if you will, or the mechanical part
6 where the machine does whatever it does. But then there is
7 the human part, where you take the information that the
8 machine provides to you and you compare it. There is the
9 human part. So we have got the human that works for the
10 State of South Carolina, that was paid by the State of South
11 Carolina to be here.

12 MR. ANTHONY: I would object to that. She's --
13 that's not in evidence. It's not accurate. She is not just
14 paid specifically to be here.

15 THE COURT: All right. Again, ladies and
16 gentlemen, the facts are as you recall the facts to be and
17 whatever evidence is in the record, plus any reasonable
18 inferences to be drawn therefrom. It's as you remember the
19 testimony of the witnesses testifying under oath and any
20 reasonable inferences to be drawn therefrom.

21 Thank you, solicitor.

22 You may continue, Mr. Brannon.

23 MR. BRANNON: It was that expert witness, who
24 works for the State, who is paid by the State, and who had
25 already admitted that there was one mistake made in the DNA

1 testing. One mistake made; we tested something that wasn't
2 collected by the hospital. Who is then required to put that
3 personal touch, that personal comparison of the information
4 that the machines have generated.

5 Now, there was some more testimony from Agent
6 Taylor. She said that because panties, underwear, are of a
7 personal nature, she didn't put specific information about
8 Minor [REDACTED] and her DNA on her reports. They are
9 Minor [REDACTED] underwear, it's got to be Minor [REDACTED]
10 DNA. It's not on the report. But Agent Taylor and Officer
11 Nix and the ladies at the hospital, all they know are what
12 Minor [REDACTED] told them.

13 Officer Nix didn't know when he collected those
14 panties from the apartment that Minor [REDACTED] and her mother
15 shared linen, share a laundry bag. He also didn't know that
16 they shared underwear. He didn't know that. Therefore, he
17 couldn't tell the ladies -- or the people at SLED. It went
18 to SLED as Minor [REDACTED] underwear.

19 This expert witness is assuming that because
20 panties are of such a personal nature, that they have to be
21 the victim's panties. She said it, they're of a personal or
22 an intimate nature. So all you know is -- all she assumed
23 was that any feminine DNA would be that of Minor [REDACTED]
24 She didn't have the knowledge to know that although most of
25 the time panties are of a personal nature, in this instance

1 they weren't. There was at least two people that could have
2 and probably did wear those panties.

3 Again, she tested a substance or a subject 10 or
4 12 years later and got a viable sample. These panties could
5 have been in the hamper for a day, an hour, or almost two
6 weeks. The laundry hadn't been done.

7 Ladies and gentlemen, there is no DNA on the bed
8 sheets. There is no DNA on anything but the panties.

9 Now, keep in mind, ladies and gentlemen, that
10 although Agent Taylor testified about a mixture, two things
11 to remember. There was no DNA, no semen found in the
12 vaginal swab; and that the DNA, the feminine DNA in are
13 found on the panties. She said it could be vaginal
14 secretions. But, ladies and gentlemen, it could also be
15 perspiration. It could also be urine. It could also be any
16 other bodily fluid secreted by a body. And one thing that
17 DNA cannot tell you is how old something is. It cannot date
18 a subject. It does not date evidence. So you have got
19 semen or one bodily fluid. You have got another bodily
20 fluid. You don't know how long one was there or how long
21 the other one was there, and you certainly don't know that
22 they got there at the same time. You don't know it. They
23 can't prove it. What we do know is clothes were in the
24 laundry hamper. What we do know is the only reason that
25 those panties were identified as being Minor [REDACTED] Eison's, and

1 only Minor is because Minor told them it
2 was.

3 Ladies and gentlemen, earlier on I know that you
4 think I was crazy, but I touched here and here and down
5 there, and then Mr. Collins went behind me and did the same
6 thing. Ladies and gentlemen, we come back and test for DNA
7 right here and right here and right here, you are going to
8 find DNA from Doug Brannon and you are going to find DNA
9 from David Collins, but you know what we are missing all
10 this big equation; is Delmar Eison -- Delmar Johnson.
11 Nobody ever took her DNA. Nobody ever took a blood sample
12 from Delmar. Nobody did that. What we know is the mixture
13 sample tested was consistent with, consistent with, Luther
14 Pearson and Minor Consistent. Not the same. Not
15 the same. Consistent. Remember, you get half of your DNA
16 from your momma and half from your daddy. I submit to you
17 that DNA from Delmar is consistent with DNA from Minor
18 and they never tested Delmar. Never.

19 Luther Pearson went to the apartment of Delmar
20 Johnson in the early morning hours of February 28th, after
21 work, because they were going the next day to buy a house,
22 or to look to buy a house. He made love with his girlfriend
23 that morning. They were going to look for a house. You go
24 to look for a house with somebody that you want to be
25 involved with. When there is a child in the middle, when

1 there is a child in the middle that wants mommy and daddy
2 back together, they do what they have to do to get mommy and
3 daddy back together and get the odd man out of the picture.
4 That's what's happened here.

5 Ladies and gentlemen, there was no semen in the
6 vaginal swab. There is no DNA that puts Luther Pearson on
7 her bed. There is no DNA that puts Luther Pearson in her
8 bedroom. And, ladies and gentlemen, she says he had on a
9 condom.

10 Please look at my client. She says he pulled her
11 pants to here. She says he pulled his pants to here. Think
12 about it, ladies and gentlemen. Is it even possible? Is it
13 even -- here and here. Is it possible?

14 The doctor saw no bruising, no medical evidence of
15 a sexual assault. None. She didn't see it. It wasn't
16 there. And then, ladies and gentlemen, I stood right there
17 and she went down the feminine body parts that she checked.
18 Everything was WNL. Within normal limits. Everything.

19 Ladies and gentlemen, at the very beginning of my
20 opening argument I said that the State has the burden to
21 prove beyond a reasonable doubt that Luther Pearson
22 assaulted or committed a lewd act on **Minor**
23 Remember, the judge will tell you about a reasonable doubt,
24 but a reasonable doubt is a doubt that would make a
25 reasonable person hesitate to act. It's that doubt that

1 would make you stop and go huh.

2 Ladies and gentlemen, make the State prove beyond
3 a reasonable doubt. Make the State make you hesitate to
4 act. Make the State make you say huh.

5 Ladies and gentlemen, he's not guilty.

6 THE COURT: Thank you, Mr. Brannon.

7 Solicitor, you may address the jury.

8 MR. ANTHONY: Thank you, Your Honor.

9 When you make your assessment of whether this
10 happened, you really have to look at two things.

11 The first thing that you have to look at is how
12 this assault all came to light. You heard from Minor
13 friend, Shytyma H. And you heard from Ms. Balkum, the teacher
14 that she told this to that morning. They both said that
15 Minor was upset, that Minor was crying. When Ms.
16 Balkum said that when she took Minor and Shytyma H. out in
17 the hall, that Minor was so distraught she couldn't even
18 talk about it. She couldn't even tell her what had
19 happened.

20 Now, they want you to think their whole defense
21 hinges on you thinking that this is just a sham, this is
22 just a big put-on by Minor it was just an act.
23 Well, Ms. Balkum didn't seem to think it was an act. You
24 know, she's been teaching for eight years. She's a teacher
25 that all the students go to to talk. She's probably heard a

1 whole lot of stuff from students; probably heard a whole lot
2 of lies; but what did she do? When she heard Minor talk
3 to her that morning, Minor told her happened, she got
4 Minor straight to the guidance counselor. She got her
5 straight somewhere where she could talk to somebody who
6 could get her to listen. So is Ms. Balkum not believable?
7 Do you think Ms. Balkum didn't believe what Minor said?
8 Minor told the same thing about what happened to Shytyma H.
9 to Ms. Balkum, to Officer Bowser, to Nurse Linder, and to
10 Dr. Patrick.

11 And Dr. Patrick, who didn't talk to her until that
12 afternoon, even Dr. Patrick said that that afternoon when
13 she asked Minor what happened, she characterized Minor
14 as being upset and as being distraught.

15 And you saw Minor testify. You know, that's
16 part of what you do is you make credibility judgments, and
17 you saw this girl testify. And just ask yourself do you
18 think she's the kind of girl who is going to be able to be
19 that calculating and that devious, is she going to get to
20 school that morning and decide "well, I think I'm just going
21 to start acting all sad and crying and I'm just going to go
22 in this morning and I'm going to tell my best friend I have
23 been raped. And then I'm going to get it out to a teacher I
24 have been raped. I'm going to get it out to a guidance
25 counselor. I'm going to go tell the police. I'm going to

1 go to the hospital, let somebody do a pelvic examination and
2 take these swabs and all that kind of thing and tell a
3 doctor that I have been raped.", Did she really seem to you
4 like a person who is that sophisticated to do something like
5 that? Because you have to ask yourselves those are the
6 judgments that you have to make about this, is why would she
7 make this up? Because according to her mother, when her
8 mother testified, she said she was crazy about Luther. She
9 actually was involved in setting her mother up with Luther.
10 So why would she make this story up if it wasn't true?

11 Well, Ms. Johnson tried to say that Minor
12 didn't like her, said Minor thought that she was too
13 strict. But then she turns around and says "well, Minor
14 could have gone to live with her father if she wanted to."
15 So why would Minor need to make this up just to get away
16 from her mother? There is -- there has been definitely no
17 reason why today, three years later, when she is 17 years
18 old that she needs to come in here and say anything for any
19 reason having to do with who she's going to live with.
20 She's 17 years old.

21 So the defense has tried -- you know, they have
22 tried -- they have tried to come up with some reason why
23 Minor would make this up. But they failed. There is no
24 reason. They haven't proven any reason why Minor would
25 make this up. And the reason they can't figure out a reason

1 why she made this up is because she didn't make it up. She
2 went to school and she told exactly what Luther Pearson did
3 to her that morning.

4 But aside from evaluating Luther Pearson's or
5 Minor behavior, there is a second aspect to this
6 case. And if after thinking about Minor disclosure in
7 this case you might still be -- I mean, you go back there
8 and when you start talking about it, you might still be kind
9 of like a man who lived about 2000 years ago. And this man
10 heard some eyewitness testimony, but he still just wasn't
11 quite convinced. He still had just a little bit of doubt.
12 Now, that man's name was Thomas. And he has come down
13 through history as being renown for his doubt, he's come
14 through history as being known as Doubting Thomas, but
15 Doubting Thomas saw some evidence. Doubting Thomas saw some
16 scars. And when Doubting Thomas saw the scars, he knew that
17 the eyewitness testimony that he heard was true.

18 These two pairs of panties, these are the scars of
19 this case. These are the evidence that let's you know
20 beyond any reasonable doubt that Luther Pearson committed a
21 sexual battery; that he had sexual intercourse with Minor
22 Minor

23 You have two pairs of panties with very small
24 cuttings. You saw those cuttings. We put them to that
25 projector yesterday. Agent Taylor showed you those. About

1 the size of a fingernail. You know, it's very, very small
2 cuttings off both of these panties.

3 And, first of all, on both of those cuttings there
4 is semen. We know there is semen on both of those middle
5 areas.

6 And second of all, in both of those middle areas
7 there is a combination of Luther Pearson's DNA and Minor
8 Eison's DNA.

9 And there is only one possible explanation for how
10 Luther's semen got on these two little pairs of underwear
11 mixed up with a 14 year old girl's DNA. When Luther Pearson
12 raped Minor while she was wearing these panties,
13 his semen was deposited on those panties. That gave the
14 stronger profile of the two sets of panties.

15 Minor went to the bathroom where she can
16 lock that door that Mr. Horne had already fixed. She put
17 the panties -- put these in the clothes hamper. She takes a
18 bath. She puts on the clean panties, the ones with the
19 smiley faces on them. And a little more semen -- after
20 she's taken a bath, she stood back up, a little more semen
21 drains out onto these panties. So you have got semen
22 draining out on the pair she was wearing when she was
23 assaulted, and then you have got some semen draining out on
24 the pair she was wearing after she took a bath. And when
25 she goes to the hospital, she has a sexual assault kit done

1 and these panties get collected. And then she goes home
2 that night and the police come to the apartment and these
3 panties get collected.

4 The evidence gets taken to SLED about two days
5 later. These panties and other evidence is taken to SLED by
6 Investigator Nix in 2005. They send Mr. Pearson's blood to
7 SLED later on in 2005. They get a report from SLED in
8 January of 2006. Mr. Pearson gets charged in January of
9 2006. And in September of 2006, the solicitor's office
10 asked for a court order for another blood sample of Mr.
11 Pearson to use in court, and that's what Agent Taylor
12 testified that she used for the comparison that she did
13 yesterday.

14 Now, they want to talk -- they have raised a
15 couple of issues trying to explain this away. First of all,
16 they want to talk about how these could be Ms. Johnson's
17 panties. Well, Ms. Johnson even testified, when she
18 testified, she said these weren't hers. She said that. She
19 said these weren't her panties. And I will just let y'all
20 be the judge of whether Ms. Johnson, who is a 130 pound
21 woman, could fit into those, because that's what she said.
22 You heard her yesterday afternoon when she said "well, I had
23 sex with Mr. Pearson. I might have been wearing these
24 panties when I had sex with him." So you just be the judge
25 of that.

1 But Ms. Johnson let the police come to her house
2 the night of this incident and she signed a list of the
3 things that they were taking. And she knew on that list
4 that it says they were taking a pair of panties. She knew
5 they were taking a pair of panties from the clothes hamper.
6 And knowing that they were doing that, and also knowing
7 that, according to her, she just put a pair of panties with
8 his semen on them in her hamper that morning, she still let
9 the police take a set of panties from the clothes hamper.

10 Now, would she let -- if she had just thrown a
11 pair of panties with his semen in there that morning, don't
12 you think maybe she would have said something to somebody
13 about it? Don't you think maybe she would have said "hey,
14 let me check those panties, because, you know, I wore a pair
15 of panties with his semen in there," but she didn't do that.
16 She -- if she had really put a pair of panties with his
17 semen in that clothes hamper that morning, she would have
18 asked to look at what they were taking, because she knew
19 they were taking a pair, but she didn't. And she didn't ask
20 to see a pair of panties, because she didn't put a pair of
21 panties in that clothes hamper that morning.

22 But the key thing is in both of these pairs of
23 panties is not Ms. Johnson's profile that's found in the
24 very same place as Mr. Pearson's semen. It's **Minor**
25 Eison's. It's just like Agent Taylor told you. There has

1 never been a reported situation where a mother and daughter
2 have had the same DNA profile. And the DNA profile that --
3 your DNA profile is the combination of your mother and your
4 father. It doesn't just come from one parent. It comes
5 from both. So Mr. Pearson's semen isn't mixed up with Ms.
6 Johnson's DNA profile. It's mixed up with Minor
7 DNA profile. And that's what Agent Taylor said. She said
8 the profile -- the female portion of the profile in these
9 two panties is a match to Minor DNA profile. And
10 the DNA profile, there has never been a reported incident of
11 a mother and a daughter having the same one. So if it's a
12 match to Minor that means it's not a match to Ms.
13 Minor -- it's not a match to Ms. Johnson. It's Mr. Pearson
14 and Minor together, their DNA on that little swatch of
15 cloth and you know there is semen.

16 The other thing they want to talk about is
17 Minor reporting that Mr. Pearson was wearing a condom.
18 And they made a big deal out of that. And they say that
19 means he didn't do it, because he was wearing a condom, but
20 that's not right for a couple of reasons. For one thing
21 condoms don't always work. Sometimes the condom fails.
22 Sometimes they are not used properly.

23 And for another possibility, Minor could maybe
24 just be wrong. I mean, you are talking here about a 14 year
25 old girl in a dark room getting raped. And I would be the

1 first to admit to you that some of the things that she said
2 about this incident don't exactly reconcile as far as her
3 account of the actual rape itself. She's testified that she
4 felt drainage, which wouldn't be consistent with Luther
5 Pearson using a condom, or at least a condom that was
6 working. She said she didn't see fluid. So Minor
7 obviously thought that Luther Pearson had a condom, but
8 maybe she was wrong about that.

9 But there is one thing that you can tell about
10 Minor from this, and that is that she's telling you the
11 truth as best she can, because if she were trying to frame
12 up Mr. Pearson, she would have come in here on Tuesday
13 afternoon and gotten on the stand and said "well, maybe he
14 didn't have on a condom. Maybe I was wrong about that."
15 Now, that would be a whole lot more consistent with what the
16 physical evidence is in this case. It would be one less
17 thing to worry about, if she said "well, I was wrong. He
18 didn't have on a condom," but Minor didn't do that. You
19 know, she came in here she swore to tell the truth, and her
20 recollection of this, her impression of this, was that Mr.
21 Pearson was wearing a condom, and she got up and that's what
22 she testified to, "I thought he was wearing a condom."

23 But the bottom line in this is, ladies and
24 gentlemen, we don't have to prove whether the condom broke.
25 We don't have to prove whether or not he was wearing a

1 condom, because whatever happened here, we have proven that
2 his semen is on these two pairs of panties mixed up with
3 Minor [REDACTED] DNA.

4 You know, Doubting Thomas was told something that
5 didn't seem completely likely either, but when he saw the
6 evidence, he knew that it was true. And when you evaluate
7 the scars of this case, whether or not anything was on Mr.
8 Pearson's penis or not, these scars, these panties, prove
9 beyond any reasonable doubt that Minor [REDACTED] told you the
10 truth about what Luther Pearson did to her on February 28th
11 of 2005.

12 You know, it would be nice if the only scars from
13 this case were these two pairs of panties, but they are not,
14 because the biggest scar from this case would be worn by
15 Minor [REDACTED] for the rest of her life.

16 And, you know, the most despicable thing that they
17 have done in this whole case is they have tried to convince
18 you, they have tried to insinuate that you can't believe
19 Minor [REDACTED] because she didn't get counseling. Now, you
20 know, this man over here, he rapes her. He rapes her and
21 then they want to make a negative comment about how she
22 chooses to deal with it. Well, you know, some people just
23 don't want to talk about their private business with total
24 strangers. And, you know, some people just want to keep
25 things private. And Minor [REDACTED] has a right, she has a

1 right to deal with this however she wants to, whatever way
2 is best for her. And the fact that she decided to keep this
3 private, that doesn't have a thing to do. That is not the
4 least bit relevant of whether or not this happened. And
5 it's just despicable that they try and insinuate that.

6 You know, that song was wrong. "You ain't lived
7 until you have got scars." But Minor she's going
8 to have to live the rest of her life with the kind of scar
9 that nobody, nobody, ought to ever have to have, especially
10 not a 14 year old girl, a 14 year old girl who was sleeping
11 in a little T-shirt, a little T-shirt from Foster Parker
12 Elementary School, and when she was in the 9th grade and
13 this is what she would sleep in. That's what size she was.
14 And this fella, when she's sleeping, this little T-shirt,
15 she's got this fellow in here coming in her bedroom and
16 getting on top of her and raping her, and that's what
17 she's -- that's what she's going to have to live with for
18 the rest of her life.

19 You know, there are only twelve people in this
20 whole world who are ever going -- who are forever going to
21 be able to do anything about this. Only twelve people.
22 When you go back to that jury room, look at that evidence
23 and talk about the testimony and come back out here and let
24 Luther Pearson know that you have seen the scars and you
25 know what they mean. Your doubt is gone and you know the

1 truth. And you are going to do the right thing. Once you
2 evaluate this case, every one of you is going to know the
3 right thing to do. Every one of you. And I'm just asking
4 you to do it. When you go back to that jury room, you find
5 Mr. Pearson guilty of criminal sexual conduct with a minor
6 and lewd act on a minor. Thank you very much.

7 THE COURT: Thank you, solicitor.

8 (Whereupon, at 11:20 a.m., the Court gave the jury
9 panel the jury instructions)

10 THE COURT: Mr. Foreman, ladies and gentlemen of
11 the jury, I would ask you to please give me your complete
12 and undivided attention, as you have done the attorneys
13 during the trial of this case. My charge will take
14 approximately 20 minutes. I will give you an outline of the
15 paragraph I'm going to cover, as far as the law is
16 concerned. I will cover the general law that applies to all
17 criminal cases to start with. Then I will go into specific
18 statutes involved in this case.

19 The indictments in this case allege different
20 offenses against the defendant. The charges are criminal
21 sexual conduct with a minor in the second degree and lewd
22 act upon a child under 16 years of age.

23 Each indictment charges a separate and distinct
24 offense. You must decide each indictment separately and
25 distinctly, uninfluenced by your decision as to the other

1 indictment. The defendant may be convicted or acquitted on
2 either of the offenses charged. You will be asked to write
3 a separate verdict of guilty or not guilty for each
4 indictment.

5 I'll remind you that the fact the defendant was
6 arrested, charged, and indicted in this case is not evidence
7 in the case and cannot be considered by you as evidence in
8 the case, nor does it create any presumption or inference of
9 guilt. These documents, these indictments, are simply the
10 formal written instruments which contain the charges made
11 against the defendant. They are the formal documents by
12 which this case is brought into court.

13 Presumption of innocence. The defendant has pled
14 not guilty to these indictments. And that plea puts the
15 burden on the State to prove the defendant guilty.

16 A person charged with committing a criminal
17 offense in South Carolina is never required to prove himself
18 innocent. I charge you that it is an important rule of the
19 law that the defendant in a criminal trial, no matter what
20 the seriousness of the charge may be, will always be
21 presumed to be innocent of the crime for which the
22 indictments were issued, unless guilt has been proven
23 satisfying you of that guilt beyond a reasonable doubt.

24 This presumption of innocence does not end when
25 you begin your deliberations, but it accompanies the

1 defendant throughout the trial, until you reach a verdict of
2 guilt, based on evidence satisfying you of that guilt beyond
3 a reasonable doubt.

4 The presumption of innocence is like a robe of
5 righteousness placed about the shoulders of the defendant,
6 which remains with the defendant until it has been stripped
7 from the defendant by evidence satisfying you of the
8 defendant's guilt beyond a reasonable doubt.

9 The presumption of innocence is not a mere legal
10 theory. It is not just a legal phrase. It is a substantial
11 right to which every defendant is entitled, unless you, the
12 jury, are satisfied from the evidence of the defendant's
13 guilt beyond a reasonable doubt.

14 Reasonable doubt. The State has the burden of
15 proving the defendant guilty beyond a reasonable doubt.

16 Some of you may have served as jurors in civil
17 cases, where you were told that it is only necessary to
18 prove that a fact is more likely true than not true, such as
19 by the greater weight or preponderance of the evidence. In
20 criminal cases the State's proof must be more powerful than
21 that. It must be proof beyond a reasonable doubt. Proof
22 beyond a reasonable doubt is proof that leaves you firmly
23 convinced of the defendant's guilt.

24 There are very few things in this world that we
25 know with absolute certainty, and in criminal cases the law

1 does not require proof that overcomes every possible doubt.

2 If, based on your consideration of the evidence,
3 you are firmly convinced the defendant is guilty of the
4 crime charged, you must find the defendant guilty.

5 If, on the other hand, you think there is a real
6 possibility that the defendant is not guilty, you must give
7 the defendant the benefit of the doubt and find him not
8 guilty.

9 A reasonable doubt is the kind of doubt that would
10 cause a reasonable person to hesitate to act.

11 Duties of the judge and the jury.

12 I'll remind you that during this trial you and I
13 have certain duties to perform. As the trial judge, it is
14 my responsibility to preside over the trial of this case,
15 and I also have the duty to rule on the admissibility of
16 evidence offered during the trial.

17 You are to consider only the competent evidence
18 before you. If there was any testimony ordered stricken
19 from the record in this case, during this trial, you must
20 disregard that testimony. You are to consider only the
21 testimony which has been presented from this witness stand
22 and any exhibits which have been made a part of the record
23 in this case.

24 I have the additional duty to the charge you the
25 law applicable to the case. As the presiding judge, I am

1 the sole judge of the law for this case, and it is your duty
2 as jurors to accept and apply the law as I now state it to
3 you.

4 If you already have any idea as to what the law is
5 or what the law ought to be and it does not agree with what
6 I now tell you the law is, you must abandon this idea,
7 because you are sworn to accept the law and apply the law
8 exactly as I state it to you.

9 In every case tried in this court before a jury,
10 the jury becomes the sole and exclusive judge of the facts
11 in a case. A trial judge cannot intimate, state, comment
12 on, or make any statement to a trial jury about the facts in
13 the case.

14 Since you, the jury, are the sole judge of the
15 facts in this case, you are not to infer from what I have
16 said during the progress of this trial in ruling upon the
17 admissibility of evidence, or otherwise, or anything that I
18 say now during the course of this instruction to you that I
19 have any opinion about the facts in this case. The law does
20 not allow me to have an opinion about the facts in this
21 case. This is a matter solely for you to determine.

22 As jurors, it is your duty to determine the
23 effect, the value, the weight and the truth of the evidence
24 presented during this trial.

25 Direct and circumstantial evidence.

1 There are two types of evidence which are
2 generally presented during a trial: Direct evidence and
3 circumstantial evidence.

4 Direct evidence is the testimony of a person who
5 claims to have actual knowledge of a fact, such as an
6 eyewitness. It is evidence which immediately establishes
7 the main fact to be proved.

8 Circumstantial evidence is proof of a chain of
9 facts and circumstances indicating the existence of a fact.
10 It is evidence which immediately establishes collateral
11 facts from which the main fact may be inferred.

12 Circumstantial evidence is based on inference and
13 not on personal knowledge or observation.

14 The law makes absolutely no distinction between
15 the weight or the value to be given to either direct or
16 circumstantial evidence, nor is there a greater degree of
17 certainty required of circumstantial evidence than of direct
18 evidence.

19 Weigh all the evidence in the case. And after
20 weighing all of the evidence, if you are not convinced of
21 the guilt of the defendant beyond a reasonable doubt, you
22 must find the defendant not guilty.

23 Credibility of witnesses.

24 Necessarily you must determine the credibility of
25 the witnesses who have testified in this case. Credibility

1 simply means believability.

2 It becomes your duty as jurors to analyze and to
3 evaluate the evidence and determine which evidence convinces
4 you of its truth.

5 In determining the believability of witnesses who
6 have testified in this case, you may believe one witness
7 over several witnesses, or several witnesses over one.

8 You may believe a part of the testimony of a
9 witness and reject the remaining part of the testimony of
10 that same witness.

11 You may believe the testimony of a witness in its
12 entirety, or reject the testimony of a witness in its
13 entirety.

14 You may consider whether any witness has exhibited
15 to you any interest, bias, prejudice, or other motive in
16 this case.

17 You may also consider the appearance and the
18 manner of a witness while on the witness stand.

19 Expert witnesses.

20 The Rules of Evidence do not ordinarily permit
21 witnesses to testify to opinions or conclusions. And
22 exception to this rule exists for witnesses we call expert
23 witnesses.

24 A witness, who by education and experience, has
25 become an expert in some art, science, profession, or

1 calling may state an opinion as to relevant and material
2 matter in which the witness claims to be an expert, and may
3 also state the reasons for the opinion.

4 You should consider any expert opinion received in
5 evidence in this case. And like any other evidence, give it
6 the weight you think it deserves.

7 If you decide that the opinion of an expert
8 witness is not based on sufficient education and experience,
9 or if you conclude that the reasons given in support of the
10 opinion are not sound, or that the opinion is outweighed by
11 other evidence, you may disregard the opinion entirely.

12 An expert witness' opinion or testimony is to be
13 given no greater weight than that of other witnesses simply
14 because the witness is an expert.

15 Further, you are not required to accept an
16 expert's opinion, even though it is not contradicted.

17 Intent.

18 In order to establish criminal liability, criminal
19 intent is required. For example, the mental state required
20 to be proved by the State for a particular crime might be
21 purpose, intent, knowledge, recklessness, or criminal
22 negligence.

23 Criminal intent must be proven by the State beyond
24 a reasonable doubt.

25 Criminal intent is always a matter that must be

1 determined by the jury from the circumstances surrounding
2 the situation.

3 There is no way to prove intent to a mathematical
4 certainty. There is no way medical science can dissect a
5 person's brain and determine what the person had in mind, so
6 the law says that criminal intent may be inferred from the
7 circumstances shown to have existed. This is how you make a
8 determination of whether or not the element requiring intent
9 was present.

10 It is not necessary to establish intent by direct
11 and positive evidence, but intent may be established by
12 inference, in the same manner as any other fact, by taking
13 into consideration the acts of the party and all the facts
14 and circumstances of the case.

15 Criminal intent is a mental state, a conscious
16 wrongdoing.

17 It is up to you to determine what the defendant
18 intended to do, based on the circumstances shown to have
19 existed.

20 As to the substantive offenses, first I will cover
21 criminal sexual conduct with a minor in the second degree,
22 which is a statute in South Carolina. You do not have to
23 remember the number, but it is Section 16-3-655(b)(2).

24 The statute specifically reads "a person is guilty
25 of criminal sexual conduct with a minor in the second degree

1 if the actor engages in sexual battery with a victim who is
2 at least 14 years of age, but who is less than 16 years of
3 age, and the actor is older than the victim."

4 The defendant is charged with second degree
5 criminal sexual conduct with a minor. The State must prove
6 beyond a reasonable doubt that the defendant engaged in a
7 sexual battery with the victim.

8 A sexual battery is defined by our statute as
9 sexual intercourse, cunnilingus, fellatio, anal intercourse,
10 or any intrusion, however slight, of any part of a person's
11 body, or of any object into the genital or anal openings of
12 another person's body, except when the intrusion is
13 accomplished for medically-recognized treatment or
14 diagnostic purpose.

15 I also used the term actor. The term actor is
16 defined by our statute as the person accused of criminal
17 sexual conduct.

18 And the term victim is defined as meaning the
19 person alleged to have been subjected to the criminal sexual
20 conduct.

21 The State must then prove beyond a reasonable
22 doubt that there was a sexual battery, and that the victim
23 was less than 16 years old, but at least 14 years old, and
24 that the defendant, the actor, was older than the victim.

25 Consent, willingness, indifference, or ignorance

1 on the part of the minor, if any, as to what was taking
2 place does not in any way affect the charge of criminal
3 sexual conduct with a minor, because an unmarried woman
4 under the age of 16, but at least 14 years old, cannot
5 legally consent to a sexual battery in South Carolina.

6 That is the charge of criminal sexual conduct with
7 a minor in the second degree.

8 The next charge is committing a lewd act upon a
9 child under 16. That is also a statute in South Carolina,
10 16-15-140.

11 The statute reads "it is unlawful for any person
12 over the age of 14 years to willfully and lewdly commit, or
13 attempt, a lewd or lascivious act upon or with the body, or
14 its parts, of a child under the age of 16 with the intent of
15 arousing, appealing to, or gratifying the lust or passions
16 or sexual desires of the person or of the child."

17 The defendant is charged with committing a lewd
18 act upon a child under 16.

19 The State must first prove beyond a reasonable
20 doubt that the defendant was over the age of 14.

21 Next, the State must prove that the defendant
22 willfully and lewdly committed, or attempted, a lewd or
23 lascivious act on or with the body, or its parts, of a child
24 under the age of 16 years, with the intent to arouse, appeal
25 to, or gratify the lust, passions or sexual desires of the

1 defendant or the child.

2 Willfully means voluntarily and intentionally with
3 the specific intent to do something the law forbids.

4 Lewd means obscene, lustful, indecent or
5 lecherous.

6 Lascivious means tending to insight lust, lewd,
7 indecent, obscene, or tending to deprave the morals in
8 respect to sexual relations.

9 That is the charge committing a lewd act upon a
10 child under the age of 16.

11 Mr. Bailiff, would you hand this form to our
12 foreperson while I go over it with him?

13 You will have this form in the jury room with you.
14 There are two possible verdicts as to each charge. As you
15 recall, I said that you will consider these separately and
16 distinctly.

17 There is absolutely no significance in the order I
18 have them listed on the verdict form, nor in the order in
19 which I now explain them to you. It's only that -- it's
20 simply that one must be stated first, ladies and gentlemen.

21 If you will note on the verdict form, Mr. Foreman,
22 it's just got captioned the indictment number, verdict form,
23 and it has the instructions, and I have listed, only because
24 numerically the number, as to the charge of criminal sexual
25 conduct with a minor in the second degree, we, the jury,

1 unanimously find:

2 Your verdicts, ladies and gentlemen, must be
3 unanimous. All twelve of you must agree on the verdict.

4 If, after your evaluation of the evidence, as to
5 the facts as to criminal sexual conduct in the second
6 degree, if you find that the State has proved its case
7 beyond a reasonable doubt, based on the facts as you find
8 them to be, the law as I tell you, you reach a unanimous
9 verdict of guilty, I would ask you, Mr. Foreman, to check on
10 the line guilty and to circle both what you check and the
11 word guilty.

12 If, after your evaluation of the evidence, you
13 find the State has failed to prove its case beyond a
14 reasonable doubt, you would check to the left of not guilty
15 and I would ask you to circle that.

16 The next is the same as to the charge of lewd act
17 upon a child under the age of 16.

18 Again, if your verdict is unanimous, you find the
19 defendant guilty, check to the left and circle.

20 If your verdict is unanimous, you find the
21 defendant not guilty, check to the left of not guilty and
22 circle.

23 After you have reached a unanimous verdict on each
24 charge, on both charges, Mr. Foreman, I would ask you to
25 please sign your name and date it the date that you have

1 reached your verdict.

2 Again, all twelve of you must agree on the
3 verdict.

4 Your verdict cannot be based on sympathy, passion,
5 prejudice, emotion, or any other consideration not in
6 evidence in this case.

7 Mr. Foreman, when the jury has agreed on the
8 verdict and you have appropriately checked, circled, signed
9 and dated your verdict form, I would ask you to please then
10 knock on the jury room door and inform the bailiff that you
11 have reached a verdict. At that time we will receive you
12 back into the courtroom.

13 I'm going to ask you now momentarily to return to
14 your jury room. Leave the form with the bailiff. What will
15 happen is the bailiff will deliver that form and all the
16 items of evidence that was introduced into evidence and the
17 clerk will inform you then to begin your deliberations.

18 Do not begin your deliberations until you are
19 informed to do so by either the bailiff or the clerk.

20 If during your deliberations you have any
21 questions, Mr. Foreman, if you would just write them out for
22 me, I will, of course, be here. If you will give the
23 question to the bailiff, he will bring it to my attention.
24 If it's something I need to bring you back into the
25 courtroom for, I certainly will.

1 If you have any questions, if you need anything,
2 concerns, just please let me know.

3 I have to confer -- the law requires that I confer
4 with the attorneys one last time outside of your pre sense.

5 Again, if you would now go to your jury room with
6 our bailiff. Do not begin your deliberations until you are
7 directed to do so. Thank you very much. You may go now
8 with our bailiff.

9 (Whereupon, at 11:45 a.m., the jury panel retired
10 to the jury room, awaiting instructions to begin
11 deliberations)

12 THE COURT: Any exceptions or additions from the
13 State?

14 MR. ANTHONY: No, sir.

15 THE COURT: Defense?

16 MR. BRANNON: None, Your Honor.

17 THE COURT: All right. If y'all would please
18 check the exhibits on the -- and let's get that on the
19 record. And also if you would look at this.

20 Mr. Clerk, would you hand this to Mr. Brannon?

21 If y'all would look at the verdict form and let me
22 know if you do or do not have any objection to the verdict
23 form.

24 MR. BRANNON: Your Honor, we have no objection to
25 this.

1 MR. ANTHONY: We have no objection.

2 THE COURT: Thank you.

3 And you may also want to look, after you check the
4 evidence, I have corrected both indictments as to Mr.
5 Pearson's middle name and put senior on there, and I have
6 initialed it in all areas, I think, because it was on there
7 four times, I think.

8 MR. ANTHONY: Yes, sir, we have no objection to
9 the amendment.

10 THE COURT: And they're not going to the jury. I
11 just wanted to make sure that we got that on the record.
12 Thank you, solicitor.

13 Do you have any objections, Mr. Brannon?

14 MR. BRANNON: No, sir.

15 Your Honor, everything that's been admitted is
16 accounted for.

17 THE COURT: All right. That would be what,
18 States's 1 through 9, with the exclusion of 6?

19 MR. ANTHONY: Yes, sir.

20 THE COURT: All right. And you are satisfied with
21 that, solicitor?

22 MR. ANTHONY: Yes, sir.

23 THE COURT: And you are satisfied with that, Mr.
24 Brannon?

25 MR. BRANNON: Yes, sir, Your Honor.

1 THE COURT: All right. If the clerk or bailiff
2 would please deliver the form of verdict and all the
3 exhibits that are in evidence to the jury.

4 (Whereupon, at 11:48 a.m., the jury panel was
5 instructed to begin deliberations)

6 THE COURT: Bring out the alternates.

7 THE BAILIFF: Bring the alternates out?

8 THE COURT: Yes, sir, bring the alternate out of
9 the jury room. I'm not sure how it's set up back there.
10 Bring them out of the jury room.

11 (Whereupon, the jury alternates were brought into
12 the courtroom)

13 THE COURT: Mr. And Ms. Alternate, thank you so
14 much for your service this week. It's very important for
15 you to serve. You would not realize how often the case is
16 tried that lasts just more than one day that we have to call
17 you in as alternates. We cannot get a verdict with less
18 than twelve. Therefore, many times alternates called go
19 from alternate status to sitting on the primary jury. I
20 appreciate your time, your attention, and your willingness
21 to serve this week. I'm sorry that you didn't get selected
22 for the primary jury or get promoted to the primary jury,
23 but, again, I do appreciate it very much. It's been my
24 pleasure to be here in Union County and work with y'all this
25 week. Thank you very much. I guess the check is in the

1 mail, is that right?

2 THE CLERK: It would be soon.

3 THE COURT: The check would be soon in the mail,
4 but thank you very much for the time of your service. You
5 are released from your jury duty for the remainder of the
6 week. Thank you very much.

7 (Whereupon, the alternate jurors were discharged)

8 THE COURT: Anything further from the State?

9 MR. ANTHONY: No, sir.

10 THE COURT: From the defense?

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

12 (Whereupon, at 11:50 a.m., proceedings were
13 recessed, pending the verdict of the jury panel)

14 (Whereupon, at 1:00 p.m., proceedings were
15 reconvened)

16 (SLED Report, dated 1/6/06, marked as Court's
17 Exhibit No. 6 for identification)

18 (SLED Report, dated 2/15/07, marked as Court's
19 Exhibit No. 7 for identification)

20 THE COURT: Mr. Anthony and Mr. Brannon, I have
21 received this note from the jury. The note, I believe you
22 may have both seen. I'm not sure. It says "please give us
23 a copy of Minor [REDACTED] testimony."

24 I happen to have a copy of Minor [REDACTED] testimony
25 here.

1 There is no in-camera, is that correct?

2 COURT REPORTER: No, sir.

3 THE COURT: Do y'all have a position in this
4 matter on behalf of the state?

5 MR. ANTHONY: No, sir, we are fine if the court
6 just wants to send the transcript back there.

7 MR. BRANNON: Your Honor, I have no objection to
8 sending her testimony or the transcript of her testimony
9 back.

10 I would ask that the court -- does that include
11 both direct and cross examination, redirect and recross?

12 THE COURT: I think this is totally and complete.
13 Yes, I see recross. It's totally and complete. It was
14 provided to me by our certified court reporter, and I have
15 also had my clerk read over it. Our court reporter said
16 there was no in-camera, and it's a totally and complete
17 testimony. My law clerk also read it and there is no
18 in-camera and it appears to be direct, cross, redirect and
19 recross.

20 MR. BRANNON: And then, Your Honor, I would ask
21 that you consider making 12 copies, so that each juror can
22 have a copy of that, rather than having to pass one copy
23 around the room.

24 MR. ANTHONY: I don't have any objection to that.

25 THE COURT: I don't have any objection to that, as

1 long as I don't have to make the copies.

2 MR. BRANNON: And I would be more than happy to
3 make those copies.

4 THE COURT: We will send you the bill?

5 MR. BRANNON: Sir?

6 THE COURT: Send you the bill?

7 MR. BRANNON: Well, just make sure that I get it
8 in time to file my OID form, Your Honor.

9 THE COURT: All right. Well, I think that's the
10 prudent thing to do, if we can make copies.

11 MR. BRANNON: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. BRANNON: May we go back? Lunch is actually
14 sitting on the table of ours.

15 THE COURT: Yes.

16 MR. BRANNON: Thank you.

17 THE COURT: Thank you, solicitor.

18 (Jury Note marked as Court's Exhibit No. 8 for
19 identification)

20 (Whereupon, at 1:05 p.m., proceedings were
21 recessed, pending the verdict of the jury panel)

22 (Whereupon, at 2:50 p.m., proceedings were
23 reconvened)

24 THE COURT: All right. It's my understanding that
25 the jury wants to rehear the testimony of Dr. Patrick and

1 Agent Taylor.

2 MR. BRANNON: Your Honor, I was going to ask if we
3 could bring him out.

4 (Defendant brought into the courtroom)

5 THE COURT: All right. Mr. Pearson and his
6 attorneys are present, along with the deputy and assistant
7 solicitor. All parties are present in the courtroom.

8 It was my understanding that the jury has
9 requested a transcript of the DNA expert's testimony and Dr.
10 Patrick's testimony, but the transcript is not available. I
11 advised them that it was not available on my note and that
12 if they wanted to rehear any testimony, they would need to
13 let me know. All parties agreed to that. They have now
14 sent out a note that says "we would like to hear the
15 testimony of these two witnesses."

16 I understand the court reporter has it keyed up
17 and it would be presented in the order in which they were
18 presented during the trial of the case. Dr. Patrick would
19 be first and then Agent Taylor.

20 There is some in-camera testimony with Agent
21 Taylor and the court reporter has advised me that he has
22 that segregated out to where that would not be played to the
23 jury.

24 Any objection on behalf of the State?

25 MR. ANTHONY: No, sir.

1 THE COURT: Defense?

2 MR. BRANNON: None, Your Honor.

3 THE COURT: All right. If you would bring the
4 jury in, please.

5 (Whereupon, at 2:52 p.m., the jury panel returned
6 to the courtroom)

7 THE COURT: I believe one of our juror wants a
8 pad.

9 UNKNOWN JUROR: You gave me my notes off the pad
10 and you have the pad.

11 THE COURT: All right. It appears our jury is
12 back present in the courtroom.

13 I received the initial second note, Mr. Foreman,
14 responded to it. And then I received your response "we
15 would like to hear the testimony of these two witnesses,"
16 being Dr. Patrick and DNA expert Agent Taylor's testimony.

17 We will hear those now. Dr. Patrick was about 15,
18 20 minutes. Agent Taylor was hour and a half, something
19 like that. If you get to a point that you have heard all
20 you need to hear, if there is a certain point, let me know.
21 If not, we will just go straight through. It's about two
22 hours.

23 JURY FOREMAN: Your Honor, with the DNA expert,
24 the question is concerning --

25 THE COURT: Yes, sir, I would rather you write

1 that down for me.

2 JURY FOREMAN: Okay.

3 THE COURT: I apologize to you for that.

4 (Whereupon, the Jury Foreman wrote a note to the
5 judge)

6 THE COURT: I can't respond to the question. I
7 think you would have to hear the testimony. If you get to
8 the point in your testimony that you think that you have
9 heard the response and y'all agreed you don't want to sit
10 any longer, you let me know.

11 You kind of indicated, I think from this, that you
12 would want to hear DNA testimony first, is that correct?

13 JURY FOREMAN: Yes, sir.

14 THE COURT: And then maybe thereafter you would or
15 would not want to hear Dr. Patrick's, is that correct?

16 JURY FOREMAN: That's correct, sir.

17 THE COURT: Okay. If we could start with the DNA
18 expert. Thank you.

19 MR. BRANNON: Your Honor?

20 THE COURT: Yes, sir.

21 MR. BRANNON: Would it be appropriate for counsel
22 to see the question?

23 THE COURT: It's not going to be much of a pad
24 left. We can have some more brought up. We will get you
25 one before we start back.

1 If you would approach the bench.

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 THE COURT: All right. It appears we are ready
5 now with the recording of Agent Taylor's testimony.

6 (Whereupon, the requested testimony of SLED Agent
7 Robin Taylor was replayed to the jury panel)

8 JURY FOREMAN: Your Honor, I think that we have
9 covered the item that we had in debate.

10 If we may adjourn to the jury room and try to
11 deliberate again?

12 THE COURT: All right, sir. And if you have any
13 more questions or requests, again, if you will just write
14 them out. I think one of our jurors at least still has some
15 paper to write on and you just let me know.

16 All right. Do you want to hear anymore?

17 JURY FOREMAN: I think that's it for her. Thank
18 you.

19 (Whereupon, Dr. Patrick's testimony was replayed
20 to the jury panel)

21 THE COURT: That was just the request to hear Dr.
22 Patrick.

23 All right. Thank you very much, ladies and
24 gentlemen of the jury. You may now go with our bailiff to
25 the jury room and continue your deliberations.

1 (Whereupon, at 3:38 p.m., the jury panel returned
2 to the jury room to continue deliberations)

3 THE COURT: All right. I'm going to have all
4 these notes marked in the order in which I received them.
5 The last note I got was "could we listen to Dr. Patrick."
6 And that was the only note and we done that. All right.
7 Y'all can be on standby awaiting the verdict?

8 Yes, sir?

9 MR. BRANNON: Your Honor, if I may, just for the
10 record, note that the jury asked that the tape or the
11 testimony of Agent Taylor be stopped at the point that Mr.
12 Collins objected, and the basis for his objection, what we
13 believed her deviation in oral testimony from the written
14 documentation. That was the basis for his objection and
15 that was the point at which the tape was stopped.

16 THE COURT: All right. Do you care to put
17 anything on the record in that regard, solicitor?

18 MR. ANTHONY: No, sir, Your Honor.

19 THE COURT: All right. Thank you.

20 (Jury Note marked as Court's Exhibit No. 9 for
21 identification)

22 (Jury Note marked as Court's Exhibit No. 10 for
23 identification)

24 (Jury Note marked as Court's Exhibit No. 11 for
25 identification)

1 (Whereupon, at 3:40 p.m., proceedings were
2 recessed, pending the verdict of the jury panel)

3 (Whereupon, at 4:05 p.m., proceedings were
4 reconvened)

5 THE COURT: Mr. Brannon, is Mr. Pearson's family
6 in the courtroom now?

7 MR. BRANNON: Yes, Your Honor.

8 THE COURT: Are you ready for the jury?

9 MR. BRANNON: Yes, Your Honor.

10 THE COURT: And the State, are you ready,
11 solicitor?

12 MR. ANTHONY: Yes, sir, we are.

13 THE COURT: All right. If you bring our jury
14 please, Mr. Bailiff.

15 (Whereupon, at 4:07 p.m., the jury panel returned
16 to the courtroom)

17 THE COURT: All right. All parties and attorneys
18 are present. The jury is back in the courtroom.

19 Mr. Foreman, I received your note "we humbly
20 apologize that this jury is hung."

21 Mr. Foreman, ladies and gentlemen of the jury,
22 having stated -- I realize that you have stated that you
23 have been unable to reach a verdict in this case.

24 As I instructed you earlier, the verdict of the
25 jury must be unanimous. When a matter is in dispute, it

1 isn't always easy for even two people to agree. So when
2 twelve people must agree, it becomes even more difficult.
3 In most cases absolute certainty cannot be reached or
4 expected. However, you have a duty to make every reasonable
5 effort to reach a unanimous verdict. In doing this, you
6 should consult with one another, express your own views and
7 listen to the opinions of your fellow jurors. Tell each
8 other how you feel and why you feel that way. Discuss your
9 differences with open minds.

10 Although the verdict of the jury must be
11 unanimous, every one of you has the right to your own
12 opinion. The verdicts you agree to must be your own verdict
13 as the result of your own convictions, and you should not
14 give up your firmly held beliefs merely to be in agreement
15 with your fellow jurors.

16 The majority should consider the minority's
17 position, and the minority should consider the majority's
18 position. You should carefully consider and respect the
19 opinions of each other and reevaluate your position for
20 reasonableness, correctness, and impartiality. You must lay
21 aside all outside matters and reexamine the question before
22 you, based on the law and evidence in this case.

23 Mr. Foreman, ladies and gentlemen, if you do not
24 agree on a verdict in this case, I must declare a mistrial.
25 In that case it does not mean anybody wins. It just means

1 that at some future time I, or some other judge, will try
2 this case with some other jury, sitting where you now sit.
3 The same participants will come and the same lawyers will
4 ask basically the same questions and get basically the same
5 answers and we will go through this whole process again.

6 I know of no other twelve people that would be
7 more prepared to reach a verdict in this case. Y'all were
8 focused. Y'all were attentive. Y'all have asked questions.
9 Y'all have reviewed the transcript of the testimony of one
10 witness. You have requested and heard the testimony of
11 another and the part of the testimony of a third.

12 You were selected in the same manner and from the
13 same source as any future will be and there is no reason for
14 me to suppose that the case will ever be submitted to twelve
15 more intelligent and more impartial, more conscientious or
16 more competent jurors than you, or that more clearer
17 evidence will be produced on one side or the other.

18 I, therefore, respectfully ask that you return and
19 continue your deliberations, with the hope that you can
20 arrive at a verdict within a reasonable time.

21 Mr. Foreman, ladies and gentlemen, if you would
22 please go with our bailiff and continue your deliberations.
23 Thank you very much.

24 (Whereupon, at 4:10 p.m., the jury panel returned
25 to the jury room to continue deliberations)

1 THE COURT: Any exceptions from the State?

2 MR. BRANNON: No.

3 THE COURT: From the defense?

4 MR. BRANNON: No.

5 THE COURT: I have had -- the court reporter has
6 now marked the exhibit and we will be awaiting our jury.

7 (Jury Note marked as Court's Exhibit No. 12 for
8 identification).

9 (Whereupon, at 4:12 p.m., proceedings were
10 recessed, pending the verdict of the jury panel)

11 (Whereupon, at 6:23 p.m., proceedings were
12 reconvened)

13 THE COURT: All right. All the parties are
14 present.

15 I understand we have a verdict.

16 Anything from the State before we bring in our
17 jury?

18 MR. ANTHONY: No, sir.

19 THE COURT: From the defense?

20 MR. BRANNON: No, Your Honor.

21 THE COURT: All right, Mr. Bailiff, if you will
22 bring our jury, please.

23 (Whereupon, at 6:20 p.m., the jury panel returned
24 to open court to report its verdict)

25 THE COURT: All right. I would remind all

1 spectators in the courtroom that many times in the taking
2 and publishing of a verdict, it could be very emotional for
3 one side, or the other, or for both. If you do not think
4 that you can contain your emotions when the verdict is
5 published, I would ask you to please leave the courtroom
6 now, because if there is any outburst, I would ask the
7 sheriff to take those individuals into custody for contempt
8 the court.

9 With that being said, Mr. Clerk.

10 THE CLERK: Mr. Foreman, ladies and gentlemen,
11 have y'all reached a verdict in this case?

12 JURY FOREMAN: Yes, we have.

13 THE CLERK: Would you please pass the verdict
14 forms forward, please?

15 THE COURT: All right. It appears that the
16 verdict form is in the proper form.

17 Mr. Clerk, you may publish our verdict.

18 THE CLERK: State of South Carolina, County of
19 Union versus Luther Bernard Pearson, Sr., as to the charge
20 of criminal sexual conduct with a minor in the second
21 degree, we, the jury, unanimously find the defendant not
22 guilty.

23 As to the charge of lewd act upon a minor under
24 the age of 16, we, the jury, unanimously find the defendant
25 guilty.

1 Mr. Foreman, ladies and gentlemen, if this is your
2 verdict, please raise your right hand?

3 All raised in the affirmative.

4 THE COURT: All right. Thank you, Mr. Clerk.

5 Anything from the State for the jury?

6 MR. ANTHONY: No, sir.

7 THE COURT: Anything further for the jury from the
8 defense?

9 MR. BRANNON: No, Your Honor.

10 THE COURT: All right. Thank you, Mr. Brannon,
11 solicitor.

12 Mr. Foreman, ladies and gentlemen of the jury, I
13 never criticize nor commend a jury for its particular
14 verdict. However, I will say that I have not seen a jury
15 anymore focused or attentive or hard working and willing to
16 work as y'all have been. I observed that throughout the
17 trial of the case, and the questions that you asked and
18 wanting to review transcripts of testimony and listening to
19 testimony of witnesses.

20 I hope that you never find yourself part of the
21 system again. However, if you ever do by way of witness or
22 otherwise, I hope that the individuals that are selected to
23 serve on the jury would be as focused and as attentive and
24 civic minded as you have been to all the parties throughout
25 the trial of this case. I salute you for your citizenship

1 and your responsibility and your hard working ethics that
2 you have here in this courtroom and here in Union County.
3 It has been my pleasure, my privilege to be assigned and
4 serve with you in Union County this week. I hope I can do
5 it again in the future if our paths ever cross.

6 With that being said, you are now excused from
7 your jury service for the remainder of the week. You have a
8 protection from state court of record for jury service with
9 the remainder that's here. It doesn't protect you from city
10 court, or magistrate court, or Federal Court. If you get
11 called for city, magistrate, Federal Court, I suggest that
12 you go buy a lottery ticket, because your name is sure
13 coming out of a lot -- off a lot of lists and such like
14 that. But, again, thank you very much. It's been my honor
15 and privilege to be here.

16 With that being said, you are now excused. The
17 check is almost in the mail. Thank you very much.

18 (Whereupon, at 6:28 p.m., the jury panel was
19 discharged)

20 THE COURT: All right. Any motions from the
21 State?

22 MR. ANTHONY: Not from the State, Your Honor.

23 THE COURT: From the defense?

24 MR. BRANNON: Your Honor, I would move for a
25 judgment notwithstanding the verdict.

1 THE COURT: All right. I would respectfully deny
2 that motion.

3 MR. BRANNON: I would then make a motion for a new
4 trial, Your Honor.

5 THE COURT: And I would respectfully deny that
6 motion also. I think there is ample evidence in the record
7 for the jury to reach the verdict which it did reach and I
8 would deny that motion.

9 MR. BRANNON: Thank you, Your Honor.

10 At this point I would again move to renew all of
11 my objections and motions made during the trial.

12 THE COURT: All right. Your motions are noted for
13 the record, Mr. Brannon, and I would reaffirm all my trial
14 rulings in that regard on evidentiary motions throughout the
15 course of the trial.

16 MR. BRANNON: Thank you, Your Honor.

17 THE COURT: All right. Anything further?

18 MR. BRANNON: No, Your Honor.

19 THE COURT: All right. Sheriff, if you would take
20 Mr. Pearson, please, into custody. I would sentence him in
21 the morning.

22 Court will be in recess until ten a.m..

23 MR. BRANNON: Thank you.

24 THE COURT: Thank you very much.

25 Will that give you time, Mr. Brannon, as far as

1 your --

2 MR. BRANNON: Yes, Your Honor. Should anything
3 come up, I would certainly call and make you aware.

4 THE COURT: All right. I'll have some other work
5 to do also. Thank you very much.

6 Court will be in recess until ten a.m..

7 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for UNION County, South Carolina, on the 12TH, 13TH AND 14TH days of February, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

JULY 13, 2008



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF UNION

2006-GS-44-416, -417

2007-GS-44-512

THE STATE of SOUTH CAROLINA

-vs-

LUTHER B. PEARSON,

Defendant.

TRANSCRIPT OF RECORD

February 15, 2008

Union, South Carolina

Ordered: March 13, 2008

Delivered: May 15, 2007

B E F O R E:

THE HONORABLE R. KNOX MCMAHON, Presiding Judge.

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

MR. JOHN ANTHONY, Esquire
Deputy Solicitor for the StateMS. MISTY HORTON, Esquire
Assistant Solicitor for the StateMR. DOUGLAS BRANNON, Esquire
MR. DAVID COLLINS, Esquire
Attorneys for the DefendantPamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

I N D E X

State's Witnesses:

(None)

Defendant's Witnesses:

(None)

State's Exhibits:

Marked:

Received:

(None)

Defendant's Exhibits:

Marked:

Received:

(None)

Court's Exhibits:

Marked:

Received:

(None)

Luther B. Pearson Sentencing:

Page:

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February 15, 2008 P R O C E E D I N G 10:35 A.M.

BAILIFF: All rise.

(Court audience complies with instruction.)

THE COURT: Thank you. Please, be seated.

(Court audience complies with instruction.)

(Off-the-Record Comments)

THE COURT: Before we proceed with sentencing this morning, I wanted to put one further matter on the record or clarify one matter on the record on one of my rulings.

And that was an issue in the proffer of testimony in camera of Ms. Balkum concerning -- that's Balkum, B-a-l-k-u-m, I believe -- concerning the events that had occurred at the school based on a -- a document that Mr. Brannon produced.

And these events occurred I believe on February ---

MR. BRANNON: It was February 3rd, Your Honor.

THE COURT: --- February 3rd of '05. And there's an entry on February 10th of '05 they evolved around the -- the victim, Ms. Eisen (phonetic). They indicated excessive talking, not paying attention during the viewing of *Romeo and Juliet* and putting on make up in class.

And Mr. Brannon, on behalf of his client, wanted to offer those under Rule 405 of the South Carolina Rules of Evidence specifically citing 405(b), Specific Incidences of Conduct.

I reviewed that. I reviewed both State v. Brooms (phonetic), State v. Majors, M-a-j-o-r and State v. Amburgey,

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1 A-m-b-u-r-g-e-y, 34 SE Second, 779, a 1945 case.

2 And the way I interpret that rule, in reversing the
3 parties because the rule is basically saying in cases in which
4 the character of a person is an essential element of a
5 defense, is basically out of the posture. "Proof may also be
6 made of specific instances of a person's conduct -- or that
7 person's conduct."

8 So, I think the Defense's theory was that these specific
9 incidences of conduct somehow would be essential to the
10 Defendant's -- to Mr. Pearson's defense. I just do not see
11 how they're relevant.

12 I do not see how the talking in class, not paying
13 attention to *Romeo and Juliet* and putting on make up would be
14 relevant to the issue of truthfulness or untruthfulness.

15 So, under those cases as I read then, and applying to
16 Rule 405(b), I would also say that they would not be
17 admissible under Rule 401 because there would be no
18 connection.

19 There is no connection between excessive talking in
20 school and any character trait of the victim that would be
21 essential to the Defendant's defense.

22 The other issue I wanted to get clear for the record is
23 the SLED reports and whether or not the SLED reports have been
24 marked.

25 MR. BRANNON: Your Honor, at some point yesterday, Misty

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1 I did not necessarily believe that the school records were
2 relevant in this matter until Ms. Balkum got on the witness
3 stand and testified that **Minor** Eisen (phonetic) was a
4 wonderful student and had never exhibited any disciplinary
5 problems in the classroom other than being loud and
6 boisterous.

7 Your Honor, it was my feeling that, at that point, when I
8 asked Ms. Balkum if she had ever been disciplined in her
9 classroom and Ms. Balkum responded no, that I could use --
10 those specific instances became relevant.

11 THE COURT: All right. And I understand that. I
12 believe, as I recall her response -- as I recall her response,
13 it was "Not that I recall." However, the -- the record will
14 bear out what the exact response was.

15 MR. BRANNON: Yes, sir.

16 THE COURT: But that would have been an issue, in my
17 opinion, Mr. Brannon, for an attempt to impeach Ms. Balkum,
18 not to go to the character of the victim, Ms. -- Ms. Eisen.
19 And -- and, of course, I did not -- not -- not rule on that
20 issue at the time.

21 But I think you are protected for the record ---

22 MR. BRANNON: Thank you, Your Honor.

23 THE COURT: --- in that regard, Mr. -- Mr. Brannon. All
24 right, Solicitor, unless there's anything further from the
25 Defense, or from the State for the record, we'll now go into

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1 gave me a copy of the 2006 report, a clean copy of that. I
2 gave that to Mr. Watson for marking. However, Misty didn't
3 have the '07 report; said that John had that.

4 I asked John for a copy of that. I -- I don't have the
5 -- he provided a copy, but I just never saw that. So, there's
6 -- there's still a possibility the February '07 SLED report
7 has not yet been marked for the record, Your Honor.

8 MR. ANTHONY: I gave Mr. Watson a copy ---

9 THE COURT: All right.

10 MR. ANTHONY: --- of the '07 report.

11 THE COURT: Well, for purposes of the record, I'm sure
12 Misty and John are on a first-name basis with all the justices
13 on the Court of Appeals and the Supreme Court, but just for
14 purposes of the record, I would point out that you're
15 referring to Deputy Solicitor Mr. Anthony and Assistant
16 Solicitor Ms. -- Ms. Horton. As I say, I'm sure they're on a
17 first-name basis.

18 All right. Is there anything else you all wanted to put
19 on the record, Mr. Brannon?

20 MR. BRANNON: Yes, Your Honor. And ---

21 THE COURT: And not as far as sentencing at this point,
22 but just as far as motions?

23 MR. BRANNON: Correct. Your Honor, I would like -- I
24 understand your ruling as for the school records and am not
25 asking you to reconsider that, but for the record, Your Honor,

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1 Sims (phonetic). I believe they would -- they would like to
2 be heard.

3 THE COURT: All right. If you would, have them, please,
4 come around and be sworn.

5 (Whereupon, Mr. Eisen was sworn.)

6 THE COURT: And what is -- and swear them both now,
7 Madam Clerk. I'm sorry.

8 MADAM CLERK: Whatever you want, Your Honor.

9 THE COURT: Yes, you -- you may proceed to swear them
10 now.

11 (Whereupon, Ms. Sims was sworn.)

12 THE COURT: All right. And what is -- who is going to
13 speak first?

14 MR. EISEN: I will, sir.

15 THE COURT: What is your name, sir?

16 MR. EISEN: Greg Eisen.

17 THE COURT: All right. And, Mr. Eisen, I'll be glad to
18 hear from you. I will just remind you to -- to direct your
19 comments to me, to the Court ---

20 MR. EISEN: Yes, sir.

21 THE COURT: --- and not to anyone else in the courtroom.
22 All right?

23 MR. EISEN: For the last three years, Your Honor, me and
24 my child have gone through this. My child will never forget
25 this as long as she lives, sir. And I don't want you to have

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1 sentencing.

2 MR. ANTHONY: Judge, there's nothing further from the
3 State at this time, Your Honor.

4 THE COURT: All right. Anything -- anything additional
5 as far as sentencing is concerned?

6 MR. ANTHONY: Yes, sir. We have -- we have some
7 evidence we would like to present.

8 THE COURT: All right.

9 MR. ANTHONY: First, Your Honor, I'll -- I'll give the
10 Court Mr. Pearson's history, and then, we do have some of the
11 victim's family members who would like to speak.

12 The victim has -- has written a statement that Ms. Horton
13 would like to read. And, then, I -- I think Ms. Horton would
14 like to be heard by the Court. And I would like to be heard
15 by the Court.

16 THE COURT: All right.

17 MR. ANTHONY: First of all, as to -- as to Mr. Pearson's
18 record, he has two (2) federal convictions; one in 1993 for
19 distribution of cocaine and one in 1996 for -- for possession
20 of cocaine or -- well, possession of a controlled substance.

21 And in 2000 he has a misdemeanor assault conviction in
22 Virginia for -- for assaulting a family member. And that's
23 the -- the extent of his -- his criminal record, Your Honor.

24 And we have two family members who would like to be
25 heard, her father Greg Eisen and her grandmother, Margaret

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1 no mercy on him; I want you to give him the full sentence.

2 And that he -- I'm talking to you.

3 He'll be in and out of court. He'll plead guilty, and
4 then, he'll get a lawyer. But he's back and forth all for
5 three years.

6 He been going around saying he ain't touch her. Your
7 Honor, please, don't have any sympathy for this man because my
8 -- my child will never forget this as long as she lives on
9 earth.

10 And now, she goes to school and they say like nobody made
11 you; you did this. But you heard the trial. And, please, in
12 your heart, please, don't let him -- don't have any sympathy
13 for him, Your Honor. Thank you.

14 THE COURT: All right. Thank you, Mr. Eisen. And your
15 name, please, ma'am?

16 MS. SIMS: Margaret Sims.

17 THE COURT: Ms. Sims?

18 MS. SIMS: Yes.

19 THE COURT: All right. And, again, I'd just -- I'll be
20 glad to hear from you, just direct your comments to me and not
21 to anyone else in the courtroom.

22 MS. SIMS: Yes, sir.

23 THE COURT: All right.

24 MS. SIMS: Your Honor, on February 28th, two thousand,
25 five (2005), my granddaughter's life changed forever. She was

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1 victimized by someone she knew.

2 This person was becoming a part of her life, but he took
3 this one opportunity, being left alone with Minor to scar
4 her for life. I've seen her change from a happy, fun loving
5 child to a crying one. That big grin she always sported
6 disappeared.

7 She would not look at you when she spoke. It took my
8 family and I some time to get her to hold her up and smile.

9 This was not the only change. At school, my
10 granddaughter -- my granddaughter was disciplined sometimes,
11 but it wasn't for the aggression she was beginning to display,
12 or that, "I don't care," attitude, "leave me alone; no one
13 cares." I remember her saying "No one cares."

14 My granddaughter may push this to the back of her mind,
15 but we continue to talk with her about this in counseling,
16 something he should be made to pay for.

17 My family and I ask that you give him the maximum
18 sentence that the law allows. Thank you.

19 THE COURT: Thank you, Ms. Sims. All right. Solicitor?

20 MS. HORTON: Your Honor, I spoke with Minor this
21 morning and she said she felt that she would not be able to
22 address the Court and make it through, so, she wrote a
23 statement and she would -- that she asked me to read.

24 Ms. Eisen says that, "On February the 28th of two
25 thousand, five (2005), my life was changed. I was scared to

LUTHER B. PEARSON SENTENCING - February 15, 2008 Page 11

1 talk about what happened, but I know it wasn't my fault now.

2 "He should not have done what he did, so, he will have
3 to do the time. It has messed mine and my mother's
4 relationship up; things will never be the same like it used to
5 be before all of this.

6 "This has been going on for three (3) years on the 28th of
7 this month. And I am proud to say we can put it to rest. But
8 God always told his children, "The truth will set you free."

9 "But, don't get me wrong, I will never forget what he has
10 done to me or what he did to me on February 28th two thousand,
11 five (2005)."

12 Your Honor, I met Ms. Eisen back in two thousand, six
13 (2006), the year after the assault. From the time that I met
14 her, and I've spoke with her many times since that day, she
15 has never expressed any hatred or ill will toward Mr. Pearson.

16 She has only wanted the truth to be heard and for
17 somebody with authority to believe her and for justice to be
18 served.

19 As a hundred pound, 14-year old child on February 28th,
20 two thousand, five (2005), she could not put up too much of a
21 fight, but since that day she has been fighting for people to
22 believe her and for justice to be served. And I would just
23 join Deputy Solicitor Anthony in his request of the Court to
24 fashion a sentence that recognizes that.

25 THE COURT: Thank you, Solicitor Horton. Yes, sir?

LUTHER B. PEARSON SENTENCING - February 15, 2008 Page 12

1 MR. ANTHONY: Your Honor, just -- just briefly. There's
2 also a pending Family Court case involving this incident.

3 And we -- we just ask the Court, beside the registration
4 on the sex offender registry, we -- we would ask that the
5 Court, in its sentence, require inclusion on the DSS Child
6 Abuse Registry because that's -- that will I believe be
7 dispositive of the Family Court case.

8 As to the sentence, Your Honor, as Mr. Eisen said, you --
9 you sat here for three days and heard this case. We -- we
10 believe the Court is fully aware of the extent of Mr.
11 Pearson's conduct here. And the State would just ask the
12 Court to fashion the most severe penalty it can given the
13 charge he was convicted of.

14 Thank you very much, Your Honor.

15 THE COURT: Thank you very much, Mr. Anthony.

16 MR. ANTHONY: Thank you very much, Your Honor.

17 THE COURT: Thank you. All right, Mr. Brannon?

18 MR. BRANNON: Thank you, Your Honor. The first thing
19 that I would address, Your Honor, is something that -- that
20 caught me off guard there just a moment ago.

21 Solicitor Anthony asked you to require that he -- that
22 Mr. Pearson's name be placed on the DSS registry for child
23 abusers and -- and molesters. Your Honor, I would ask the
24 Court to not even consider that request.

25 Your Honor, the Department of Social Services has a

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LUTHER B. PEARSON SENTENCING - February 15, 2008 Page 13

1 burden within its finding within its -- its cases that they
2 have to make a finding that the perpetrator, the alleged
3 perpetrator, was acting in loco parentis.

4 Your Honor, I don't believe the Department of Social
5 Services can make that finding. And I believe the testimony
6 in this matter bears that out.

7 Mr. Pearson never had parental authority over **Minor**
8 Eisen. Your Honor, there's case law abounding in this state
9 that says even babysitters cannot be found to be acting in
10 loco parentis.

11 I would ask the Court not to consider that. That DSS
12 case is still pending. It will be tried, at some point in the
13 future, if DSS pursues it.

14 And -- and -- and, if they make the finding that there's
15 -- that there was in loco parentis action taken on behalf of
16 -- of Mr. Pearson, then, his name will be entered. But, Your
17 Honor, I would ask this Court not to consider that request.

18 Your Honor, my client is forty-four (44) years of age.
19 He was working in the construction industry at the time that
20 this allegation was made.

21 Your Honor, he does have a prior criminal history, but --
22 but it is no way related to this. There's no pattern of
23 actions here, Your Honor. He -- he's not been charged with or
24 convicted with any other crimes that are any way related to
25 that that the jury found him guilty of.

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LUTHER B. PEARSON SENTENCING - February 15, 2008 Page 14

1 Your Honor, Mr. Pearson has several children. His two
2 youngest children are in the courtroom today, his -- his twin
3 sons.

4 Mr. Pearson was arrested on January of two thousand and
5 six (2006) and -- and was able to make bond almost immediately
6 after his arrest. And, Your Honor, he was not, then, been re-
7 arrested or apprehended until July 16, two thousand and seven
8 (2007), when he turned himself in based on a bench warrant.

9 Your Honor, a bench warrant was issued because a prior
10 attorney had apparently negotiated a guilty plea but didn't
11 tell Mr. Pearson about it. And, when Mr. Pearson did not
12 appear for that guilty plea, there was a bench warrant issued.

13 So, he has been incarcerated since July 16th, two
14 thousand, seven (2007) on this charge, Your Honor. But,
15 between January of two thousand and six (2006) and July of two
16 thousand and seven (2007), he was out on bond.

17 There were no problems with his bond. There was no
18 contact between Mr. Pearson and Ms. Eisen.

19 Your Honor, the potential sentence -- the sentence in the
20 range for lewd act in this case is zero to fifteen (15) years.
21 It also requires central registry, Your Honor. We would ask
22 that the Court be as lenient as possible for this Defendant.
23 Thank you.

24 THE COURT: Thank you. Any -- anything further, Mr.
25 Brannon?

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LUTHER B. PEARSON SENTENCING - February 15, 2008 Page 15

1 MR. BRANNON: No, Your Honor.

2 THE COURT: All right. I'm -- I'm a little -- I'm not
3 quite sure on the issue on the central registry of child abuse
4 and neglect.

5 MR. BRANNON: Your Honor, if I -- if I could explain.
6 We're talking about two different registries, Your Honor. The
7 -- the sex offender registry, that this charge carries, is a
8 statewide registry that is published and maintained through
9 the sheriff's departments in each county. It is a mandatory
10 requirement for an individual convicted of this crime, lewd
11 act.

12 The central -- the -- the registry that Mr. Anthony asked
13 you about, in reference to the DSS case, is a registry that is
14 maintained by the Department of Social Services. It is not a
15 public registry, Your Honor.

16 It is a -- for instance, day cares and -- and other
17 agencies can tap, into the DSS website, and find out if an
18 individual has been accused or found to -- there has been a
19 finding made, in the Family Court, that that person's name
20 should be entered on that list.

21 Your Honor, quite frankly, I don't think this Court has
22 jurisdiction to put his name on it. I think that is a list
23 maintained and controlled by the Family Court.

24 THE COURT: Well, that's -- that's why I was a -- a
25 little unsure of what you were referring to. The sentencing

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1 sheet has a box that I just checked.

2 The statute that we're talking about, the central
3 registry of child abuse and neglect, pursuant to 17-25-135
4 states, "When a person is convicted of or pleads guilty or
5 nolo contendere to an offense against a person..." as
6 provided for in various titles, but one is Title 16, Chapter
7 15, and he was convicted of 16-15-140.

8 It goes on down to say, "...and the act on which the
9 conviction or a plea involves sexual or physical abuse of a
10 child, the Court shall order the person's name to be included
11 on the central registry of child abuse and neglect,
12 established by 20-7-680." And, then, it defines sexual abuse
13 meaning, "...actual or attempted sexual conduct -- contact
14 with a child."

15 I'm -- I'm unclear of any other issue in that regard to
16 where I wouldn't have jurisdiction. It's on our sentencing
17 sheet.

18 The -- this statute does not reference the parental
19 aspect of it that you referred to unless I'm looking at the
20 wrong statute.

21 MR. BRANNON: Your Honor, I -- in Family Court, for a
22 person to be entered on the central registry, the Court has to
23 have made a finding against the defendant and, included in
24 that finding, it must be that it was his or her child or that
25 they were acting in loco parentis while committing the act.

LUTHER B. PEARSON SENTENCING - February 15, 2008 Page 17

1 THE COURT: Well, that -- that have to do -- and I -- I
2 don't know; I'm -- I'm not a Family Court judge. But that may
3 have to do with jurisdiction in Family Court.

4 But, if I'm missing something here on the statute,
5 please, tell me.

6 MR. BRANNON: Your Honor, I -- I -- I've given you my
7 knowledge of the Family Court in DSS actions. And I -- I
8 would have been more than happy to have been better prepared
9 had I known that was coming up. Forgive me.

10 THE COURT: All right. Solicitor, do you -- do you have
11 a position on that?

12 MR. ANTHONY: Yes, yes, sir. We -- I -- I think it's
13 fair plain that the statute makes a conviction for lewd act on
14 a minor a -- a conviction for which inclusion on the central
15 registry is -- is mandatory.

16 And -- and there's not any -- DSS might have a
17 requirement in Family Court they have to show he acted as a
18 parent; I really don't know.

19 But, obviously, if you go to General Sessions Court, and
20 you get convicted of lewd act on a minor, the -- the
21 registration on this -- on this registry, along with sex
22 offender registry, is -- is mandatory.

23 (Brief pause while Court examines documents.)

24 THE COURT: Yes, sir, it -- I mean, it appears to me,
25 based also on the memorandum that I have, from the South

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LUTHER B. PEARSON SENTENCING - February 15, 2008 Page 18

1 Carolina Court Administration dated June 5th of 1998, that 17-
2 25-135 requires that this Court order a person, who is
3 convicted of an offense under 16 -- Title 16, Chapter 15, to
4 be included on that registry.

5 All right. You'll certainly be protected in that regard.
6 The statute, as I understand it, is 17-25-135.

7 (Brief Pause)

8 THE COURT: And I take it the Defendant does not want to
9 address the Court; is that correct?

10 MR. BRANNON: No, Your Honor. Thank you.

11 THE COURT: Yes, sir.

12 (Brief pause while the Court fills out documents.)

13 THE COURT: In 2007-GS-44-416, Luther Bernard Pearson,
14 Sr., (phonetic), having been convicted on February 14th of two
15 thousand and eight (2008), by a Union County jury for lewd act
16 upon a child under the age of sixteen (16), the Defendant is
17 committed to the State Department of Corrections for the
18 determinate term of fifteen (15) years.

19 He shall be given credit for the time served since seven,
20 sixteen (7/16) of '07. He has got to be placed on the sex
21 offender registry. He shall also be placed on the child --
22 the central registry of child abuse and neglect pursuant to
23 17-25-135.

24 Thank you, sheriff. And good luck to you, Mr. Pearson.

25 MR. ANTHONY: Thank you, Your Honor.

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LUTHER B. PEARSON SENTENCING - February 15, 2008 Page 19

1 THE COURT: Thank you.

2 (Whereupon, the proceeding concluded at 11:03 a.m.)

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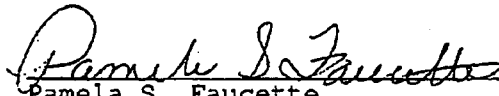
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REPORTER'S CERTIFICATE

I, the undersigned PAMELA FAUCETTE, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 19, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

May 15, 2008


Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

2010 -CP-44-

410

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

FILE FOR RECORD

County of

UNION

2010 NOV -8 PM 1:34

LUTHER BERNARD PERKINS SR
327560

Full name and prison number, if any, of applicant.

APPLICATION FOR

WILLIAM F. GAULT
CLERK OF COURT
UNION, SC

v.

POST-CONVICTION RELIEF

STATE

Name of Respondent

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 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. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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.

- Place of detention Ridgeland Correctional Institution
Ridgeland South Carolina
- Name and location of Court which imposed sentence UNION South Carolina
UNION County "COVENANT" Court House West Main St UNION
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - 2007-65-44-416
 - 2007-65-44-417
 - NO # ON FILE FOR CSC 1
- The date upon which sentence was imposed and the terms of the sentence:
 - February 15 2008 15 YR straight sentence
 - February 14 2008
 - February 14 2008

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of 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. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Appeal denied
 ii. _____
 iii. _____

(c) the date of each such result:

- i. MARCH 15 2010
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Ineffective Counseling for client
 ii. Rule 608, SCRE Rule 405 (a) SCRE
 iii. McKissick v. J.F. Checkley and Co, STATE

8. If you answered "no" to (6), state your reasons for not so appealing: Hill and STATE v Crawley

- (a) X
 (b) X
 (c) X

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) on back of PAGE
 (b) _____
 (c) _____

A) Not given a fair and speedy trial
to my constitutional rights and was imprisoned
unjustly for an inappropriate Bench
warrant while represented by legal
counsel.

113) Not properly represented by law or
my legal representatives throughout
my entire case

(C) Not properly sentenced according to
~~being~~ justice as am alleged first time
offender for the alleged crime which
I was not originally indicted on
given THE MAX

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) on back of page

(b) on back of page

(c) on back of page

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

YES

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction 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.

ii.

iii.

iv.

the South Carolina Court of appeals
Direct appeal

(b) the name and location of the Court in which each was filed:

i.

ii.

iii.

iv.

South Carolina Court of appeals
P.O. Box 11629 Columbia SC 29211

(c) the disposition thereof:

i.

ii.

iii.

iv.

Direct appeal denied

H) (2021) was arranged for me to get me to plea
guilty to prevent a trial, wanted for

failure to appear for court a while
having an attorney who admitted to the
court that he failed to notify me for
court hearings. This caused me to be
arrested and was repeatedly denied bond
after turning myself in. This caused me
not to be able to seek appropriate counsel
which resulted in my imprisonment.

(B) Not only did my attorney fail to notify
me for court. He also failed to tell me that
he was a member of the family of the alleged victim.
This he admitted also on court records. This
rendered him unable to represent my
family appropriately. Legit motions on my behalf that
could have had case dismissed. Also not objecting
to 2nd DNA test after already admitted to
botchery.

(C) Initially arrested for Criminal Sexual Conduct
I and II. Not 1st act. But was ~~and~~
read my indictment for 1st act against a
minor on the 1st day of trial. Then given
the maximum sentence for the crime as a first
time offender for a non violent offense. Being
found not guilty of CSC I and CSC II. Not to
forget the repeated human rights that was forced to be

(d) the date of each such disposition:

i. MARCH 15 2010

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. defectory legal counseling

ii. rule 608, SCRE

iii. McKissick v JF Cleckley and Co State

iv. Hill and State v Cranley

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? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. W/A

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. W/A

iii. _____

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) Being a family member of the victim

(b) my attorney failed to represent me which

(c) made me the victim

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO

(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 application with respect to this conviction, which you filed? NO

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. ON BACK OF PHOTO
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. after arraignment to prepare for trial
- ii. during bond hearing
- iii. during trial

18. State clearly the relief you seek in filing this application.

ON BACK OF PHOTO

19. Are you now under sentence from any other court that you have not challenged?

NO

(14)

ALBERT SMITH, JR.

Magnolia St, Spartanburg SC

(15)

ROSS BUCKTON, Public Defender
of Union County, Columbia, South Carolina

(16)

Douglas Brannon, Magnolia St
Spartanburg South Carolina, Public
Defender for Union

(17)

Larvelle Cantley Purant, Appellate
Defender.

P.O. Box 11589 Columbia SC 29211

(18)

Justice for improper counseling as well
as ineffective counsel made on my
behalf to be considered for relief of
conviction of the maximum sentence
allowed. Sentence to be reconsidered. Not
having to register as a sex offender due
to the unjust of my attorney.
Name and Character restored with a chance
to have a normal life.

STATE OF SOUTH CAROLINA)
COUNTY OF Union)

VERIFICATION

I, LUTHER BERNARD PEARSON SR, 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.

Luther B Pearson

Sworn to and subscribed before me

This 3rd day of Nov, 2010.

Paul K Day L.S.

Notary Public for South Carolina

My Commission Expires 2/5/2017

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, LUTHER BERNARD PEARSON SR, 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 or 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 proceeding or give security therefor.

Luther B Pearson
Applicant

Sworn to and subscribed before me

This 3rd day of Nov, 2010.

Paul K Day L.S.

Notary Public for South Carolina

My Commission Expires: 2/5/2017

STATE OF SOUTH CAROLINA
COUNTY OF UNION

Luther Bernard Pearson, Sr., #327560,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2010-CP-44-410

RETURN AND PARTIAL
MOTION TO DISMISS

FILE FOR

2011 MAY -5 P.

WILLIAM F. GAULT
CLERK OF COURT
UNION, SC

FILE FOR RECORD

2011 MAY -5 PM 4:36

WILLIAM F. GAULT
CLERK OF COURT
UNION, SC

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 8, 2010, 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 Clerk of Court for Union County. The Applicant was charged by direct indictments for Lewd Act Upon a Child (2007-GS-44-0416), and Criminal Sexual Conduct with a Minor, second degree (2007-GS-44-0417). The Applicant was represented by Douglas Brannon, Esquire, and David Collins, Esquire. On February 12, 2008, the Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. On February 14, 2008, the jury found the Applicant not guilty of Criminal Sexual Conduct with a Minor, and guilty of Lewd Act Upon a Child. On February 15, 2008, Judge McMahon sentenced the Applicant to confinement for fifteen (15) years.

A notice of appeal was filed, and an appeal was perfected on the Applicant's behalf by Lanelle C. Durant, Esquire.¹ The South Carolina Court of Appeals affirmed. State v. Pearson, 2010-UP-216 (filed March 15, 2010). The Remittitur was sent on March 31, 2010.

Attached herewith and incorporated herein by reference are the records of the Union County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges he is being held unlawfully for the following reasons:

1. "Not given a fast and speedy trial . . . and was incarcerated unjustly for an inappropriate bench warrant while represented by legal counsel"
 - a) "Case was dragged out to get me to plead guilty, arrested for failure to appear for court while having an attorney who admitted to the courts that he failed to notify me for court hearings. This caused me to be arrested and was repeatedly denied bond after turning myself in. This caused me not to be able to seek affordable counsel which resulted in my imprisonment."

¹ The following issues were raised on appeal:

- (1) Did the trial court err in not allowing appellant to question the victim concerning her fifteen pages of school disciplinary actions under Rule 608 SCRE because the records were indicative of her credibility as a witness and character for truthfulness?
- (2) Did the trial court err in not allowing appellant to cross examine the victim's teacher, Ms. Balkum, on specific instances of the victim's conduct after the teacher testified that the victim had no disciplinary actions in her class room when the school records indicated that the victim did?
- (3) Did the trial court err in not granting a mistrial or providing a curative instruction when the State introduced a statement about the first blood sample taken from appellant in 2005 which was not admissible based on an insufficient chain of custody?

2. "Not properly represented by law by my legal representatives throughout my entire case"
 - a) "Attorney failed to notify me for court"
 - b) "He also failed to tell me that he was a member of the family of the alleged victim"
 - c) "Not filing appropriate legal motions on my behalf"
 - d) "Also not objecting to 2nd DNA test after State admitted to botching"
3. "Not properly sentence according to justice as an alleged first time offender for the alleged crime which I was not originally indicted on given the max"
 - a) "Initially arrested for Criminal Sexual Conduct I and II, not Lewd Act. But was read my indictment for Lewd Act against a minor on the third day of trial. Then given the maximum sentence for the crime as a first time offender for a nonviolent offense being found not guilty of CSC I and CSC II. Not to mention the repeated hung jury that was forced to [illegible]."

III.

In his first and third claims for relief, the Applicant alleges he was not given a fast and speedy trial, and he was improperly sentenced to the maximum punishment for crime he was found guilty of. Respondent submits these claims are entirely without merit, and further submits these allegations should be summarily dismissed on the grounds they raise direct appeal issues procedurally barred by the Uniform Post-Conviction Procedure Act. See S.C. Code Ann. § 17-27-20(b) (1976) ("[PCR] is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction"). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have

been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised these issues at trial or on appeal. His failure to do so waived these allegations as grounds for relief.

IV.

Respondent interprets the Applicant's second claim to be an allegation he received ineffective assistance of trial 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." Butler at 442, 334 S.E.2d at 814 (quoting Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984)).

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 at 690, 466 U.S. 2066. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (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 prevailing professional norms." Cherry at 117, 386 S.E.2d at 625 (quoting Strickland at 688, 104 S.Ct. at 2065). 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 at 117-18, 386 S.E.2d at 625.

Respondent submits the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, 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 hereinbefore expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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By: 
ATTORNEYS FOR RESPONDENT

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April 21, 2011.

1 STATE OF SOUTH CAROLINA

2 -----x

3 LUTHER BERNARD PEARSON, SR.,

4 Applicant,

5 Case No.

6 -against-

2010-CP-44-0410

7 STATE OF SOUTH CAROLINA,

8 Respondent.

9 -----x

10 October 8, 2012

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE EDGAR W. DICKSON

15

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

17 J. RUTLEDGE JOHNSON, Esquire

18 Attorney for the State

19

20 SHAWN CAMPBELL, Esquire

21 Attorney for the Petitioner

22

23 Aileen Butler

24 Official Court Reporter

25

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Luther Pearson				
4	Mr. Campbell	6			
5	Mr. Johnson		17		
6					
7	Douglas Brannon				
8	Mr. Campbell	19			
9	Mr. Johnson		28		
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NO EXHIBITS MARKED

1 THE COURT: All right Mr. Johnson.

2 MR. JOHNSON: Yes, sir. May it please the
3 Court.

4 THE COURT: Yes, sir.

5 MR. JOHNSON: This is the case of Luther
6 Bernard Pearson, versus State of South
7 Carolina. It is 2010-CP-44-0410. Mr. Pearson
8 was indicted directly for lewd act upon a child
9 and criminal sexual conduct with a minor in the
10 second degree. He was represented by Doug
11 Brannon and David Collins on February 12, 2008
12 and proceeded to trial before Judge McMahon.
13 He was found not guilty of the criminal sexual
14 conduct with a minor but guilty of a lewd act
15 upon a child on February 15th of 2008.

16 Judge McMahon sentenced Mr. Pearson to
17 confinement for 15 years.

18 There was a Notice of Appeal filed on the
19 appellant's behalf and the Court of Appeals
20 affirmed his conviction and sentence. The
21 Remittitur was thereafter issued on March 31,
22 2010.

23 Mr. Pearson thereafter filed a timely PCR
24 application November 8, 2010. The State filed
25 its return on May 3, 2011 and he is represented

1 here today by Mr. Shawn Campbell.

2 THE COURT: All right. Mr. Campbell, how
3 are you sir?

4 MR. CAMPBELL: I am good. How are you doing
5 today?

6 THE COURT: I am doing well. It is good to
7 make a trip to York.

8 MR. CAMPBELL: This is my first time here.

9 THE COURT: Mine too. Are you ready?

10 MR. CAMPBELL: We are ready to go, Your
11 Honor.

12 THE COURT: All right.

13 MR. CAMPBELL: And we will call Luther
14 Pearson.

15 THE COURT: All right. Mr. Pearson.

16 LUTHER BERNARD PEARSON, called as a witness,
17 having been duly sworn by The Clerk, was examined
18 and testified as follows:

19 THE COURT: All right, Mr. Campbell, your
20 witness.

21 MR. CAMPBELL: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. CAMPBELL:

24 Q. Luther, please state your full name for the
25 record?

1 A. Luther Bernard Pearson, Sr.

2 Q. Luther you are currently incarcerated, correct?

3 A. Yes.

4 Q. And you filed an application for post conviction
5 relief?

6 A. Yes, sir.

7 Q. And that is because on or about February 2010 you
8 were convicted of a crime, correct?

9 A. Yes

10 Q. And what were you convicted --

11 A. It was 2008.

12 Q. What were you convicted of?

13 A. Lewd act.

14 Q. Lewd act upon a minor, correct?

15 A. Yes.

16 Q. And you were initially charged with criminal
17 sexual conduct?

18 A. Yes.

19 Q. And then you were subsequently directly indicted
20 for the lewd act charge?

21 A. Yes.

22 Q. Is that correct?

23 A. Yes, sir.

24 Q. Okay. Now, I am going to go into some details of
25 this incident and I want you to testify as to the

1 reasons why you filed this application for post
2 conviction relief.- Okay?

3 A. Yes.

4 Q. Now, you filed this petition against Doug Brannon
5 and David Collins, your trial counsel, correct?

6 A. Yes.

7 Q. And you believe that they were ineffective in
8 your representation?

9 A. Yes, sir.

10 Q. Now, you were alleged to have molested your
11 finance's daughter, correct?

12 A. Yes.

13 Q. What is her name?

14 A. Minor

15 Q.

16 A. Yes.

17 Q. And this occurred on or about February 28, 2005?

18 A. Yes.

19 Q. If you don't mind why don't tell us what Minor
20 said you did.

21 A. Minor said that I had held her down and ripped
22 her clothes off and then put a condom on and raped her.

23 Q. As a matter of fact I think she specifically
24 stated that you pulled her pants half-way down?

25 A. Half-way down. That was her statement.