

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Aiken County

S.C. Supreme Court

Honorable Doyet A. Early, III, Judge
05-CP-02-03

JOSEPH WALKER,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPENDIX

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INDEX

RECORD ON APPEAL	1
SCDC RECORDS.....	315
ANDERS BRIEF.....	318
REMITTITUR AND ORDER DIMISSING RESPONDENT'S DIRECT APPEAL.....	327
APPLICATION FOR POST-CONVICTION RELIEF	329
STATE'S RETURN.....	336
PCR HEARING TRANSCRIPT DATED MARCH 9, 2007	341
ORDER GRANTING RELIEF	438

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

02-GS-02-1294

02-GS-02-1295

02-GS-02-1296

THE STATE OF SOUTH CAROLINA

:

-VS-

:

: TRANSCRIPT OF RECORD

:

JOSEPH WALKER

:

JULY 22 AND 23, 2003

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES R. BARBER, III, JUDGE, AND
JURY.

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

BRENDA BRISBIN, ESQUIRE
EVERETT K. CHANDLER, ESQUIRE
BARBARA R. MORGAN, ESQUIRE
ATTORNEYS FOR THE STATE

KELLEY P. BROWN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DAPHNE D. HELMS
CIRCUIT COURT REPORTER

2

I N D E X

WITNESS

MARGARET ANN SANDERS

DIRECT EXAMINATION BY MS. BRISBIN.....45
CROSS-EXAMINATION BY MS. BROWN.....76
REDIRECT EXAMINATION BY MS. BRISBIN.....100

DR. ELIZABETH GIBBS

DIRECT EXAMINATION BY MS. BRISBIN.....102
CROSS-EXAMINATION BY MS. BROWN.....118
REDIRECT EXAMINATION BY MS. BRISBIN.....131
RECROSS EXAMINATION BY MS. BROWN.....133

MARGIE KAMINER

DIRECT EXAMINATION BY MS. BRISBIN.....134
CROSS-EXAMINATION BY MS. BROWN.....137

DIANE WARREN

DIRECT EXAMINATION BY MS. BRISBIN.....141

RHONDA R. BAMBERG

DIRECT EXAMINATION BY MS. BRISBIN.....149
CROSS-EXAMINATION BY MS. BROWN.....157
REDIRECT EXAMINATION BY MS. BRISBIN.....173

STUART GRAYBEAL

DIRECT EXAMINATION BY MS. BRISBIN.....176
CROSS-EXAMINATION BY MS. BROWN.....187
REDIRECT EXAMINATION BY MS. BRISBIN.....212
RECROSS EXAMINATION BY MS. BROWN.....214

JOSEPH WALKER (IN CAMERA)

EXAMINATION BY THE COURT.....221

1	OPENING STATEMENT BY MS. BRISBIN.....	37
2	OPENING STATEMENT BY MS. BROWN.....	39
3	DIRECTED VERDICT MOTION BY MS. BROWN.....	215
4	RENEWAL OF DIRECTED VERDICT MOTIONS BY MS. BROWN.....	224
5	CLOSING ARGUMENT BY MS. BRISBIN.....	225
6	CLOSING ARGUMENT BY MS. BROWN.....	235
7	COURT'S CHARGE ON THE LAW TO THE JURY.....	244
8	RECHARGE ON THE LAW BY THE COURT.....	260
9	VERDICT.....	262
10	MOTION FOR NEW TRIAL BY MS. BROWN.....	265

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-1	PHOTOGRAPH		66
4	S-2	PHOTOGRAPH (MARKED BY BRENDA SIGWALD)		
5	S-3	PHOTOGRAPH (MARKED BY BRENDA SIGWALD)		
6	S-4	VIDEOTAPE	44	63
7	S-5	PHOTOGRAPH	44	71
8	S-6	PHOTOGRAPH	44	74
9	S-7	PHOTOGRAPH	44	179
10	S-8	PHOTOGRAPH	44	67
11	S-9	PHOTOGRAPH	44	73
12	S-10	PHOTOGRAPH	101	115
13	S-11	PHOTOGRAPH	101	115
14	S-12	PHOTOGRAPH	101	115
15	S-13	VIDEOTAPE		174
16				
17	C-1	JURY QUESTION	261	
18				
19				
20				
21				
22				
23				
24				
25				

County: Aiken
Date: 7-22-03

VOIR DIRE

Case No: 02-65-02-1294, 1295, 1296 Judge: James Barber

Pl. / State: State

State/Pl's. Atty: Brenda Bushin
Everett Chandler

Defendant: Joseph Walker

Defense Atty: Kelley Brown

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes		Accept
					Plaintiff	Defense	
164	Anne Henry	F	W			✓	
167	Pamela Smith	F	W				✓
72	Stephen Kelly	M	W				✓
20	Monica Chalper	F	W				✓
165	Shirley Jackson	F	W				✓
156	Nicole Gantt	F	W				✓
23	Carolyn Rachels	F	W				✓
92	Barbara Martin	F	B			✓	
33	James Dalbarto	M	W				✓
87	Melrae Luft	F	W				✓
54	Kerry Hanner	M	W		✓		
101	Adam Morris	M	W				✓
58	Cynthia Hutton	F	W			✓	
157	Ronald Grooms	M	W			✓	
65	Bobbie Jackson	F	W			✓	
25	Onnie Coleman	F	B		✓		

* For the Court column, indicate who made the motion to strike the jurors "for cause."
C-Court, P-Plaintiff, D-Defense

page 2

County: Arden
Date: 7-22-03

VOIR DIRE

Case No: _____

Judge: _____

Pl. / State: State

State/Pl's. Atty: _____

Defendant: Joseph Wacker

Defense Atty: _____

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes		Acc
					Plaintiff	Defense	
160	James Pitts	M	W			✓	
166	John Rowe	M	B				2
88	Bernadette Lynn	F	W			✓	
143	Paul Waters	M	W				2
155	Rosemary Fields	F	W				2
	- Alternate #1 -						
115	Brenton Russo	M	W				2
	- Alternate #2 -						
8	Jessica Bartholomeu	F	W				2

* For the Court column, indicate who made the motion to strike the jurors "for cause."
C-Court, P-Plaintiff, D-Defense

1 (COURT REPORTER'S NOTE: THE COURT REPORTER FOR THE
2 FIRST PART OF THIS TRIAL WAS BRENDA SIGWALD. THE REMAINDER
3 OF THE TRIAL WAS TAKEN BY DAPHNE HELMS AS FOLLOWS:)

4 THE COURT: OKAY, LADIES AND GENTLEMEN. WE ARE --
5 WE ARE ABOUT TO SELECT A JURY AND COMMENCE THE TRIAL IN A
6 CASE ENTITLED THE STATE OF SOUTH CAROLINA VERSUS JOSEPH
7 WALKER WHO HAS BEEN CHARGED IN THREE SEPARATE BILLS OF
8 INDICTMENT BY THE GRAND JURY OF AIKEN COUNTY, AND THESE
9 INDICTMENTS CHARGE THE DEFENDANT WITH THE OFFENSE OF CRIMINAL
10 SEXUAL CONDUCT IN THE FIRST DEGREE. THE INDICTMENT STATES
11 THAT MR. WALKER DID IN AIKEN COUNTY ON OR ABOUT MARCH 2,
12 2002, COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT IN THE
13 FIRST DEGREE IN THAT THE DEFENDANT DID COMMIT A SEXUAL
14 BATTERY, TO WIT, SEXUAL INTERCOURSE, UPON AND WITH THE BODY
15 OF MARGARET ANN SANDERS AND SUCH SEXUAL BATTERY WAS
16 ACCOMPANIED BY THE USE OF FORCE OF A HIGH AND AGGRAVATED
17 NATURE AND/OR THE VICTIM SUBMITTED TO THE SEXUAL BATTERY
18 UNDER CIRCUMSTANCES WHERE SHE WAS ALSO THE VICTIM OF FORCIBLE
19 CONFINEMENT AND KIDNAPPING.

20 IN ADDITION TO THAT CHARGE, THE DEFENDANT HAS BEEN
21 CHARGED -- INDICTED FOR THE OFFENSE OF POSSESSION OF A
22 FIREARM OR KNIFE DURING THE COMMISSION OF OR ATTEMPT TO
23 COMMIT A VIOLENT CRIME, AND THAT INDICTMENT STATES THAT MR.
24 WALKER DID IN AIKEN COUNTY ON OR ABOUT MARCH 2, 2002, POSSESS
25 OR VISIBLY DISPLAY A FIREARM OR VISIBLY DISPLAY A KNIFE

1 DURING THE COMMISSION OR ATTEMPTED COMMISSION OF A VIOLENT
2 CRIME, TO WIT, CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

3 AND, IN ADDITION, LADIES AND GENTLEMEN, THE
4 DEFENDANT HAS BEEN CHARGED IN THE BILL OF INDICTMENT WITH THE
5 OFFENSE OF KIDNAPPING, AND THAT INDICTMENT STATES THAT MR.
6 WALKER DID IN AIKEN COUNTY ON OR ABOUT MARCH 2, 2002,
7 UNLAWFULLY SEIZE, CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT OR
8 CARRY AWAY MARGARET ANN SANDERS WITHOUT THE AUTHORITY OF LAW.

9 NOW, LADIES AND GENTLEMEN, TO THESE INDICTMENTS THE
10 DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY. AN INDICTMENT --
11 THESE THREE SHEETS OF PAPER THAT ARE -- USED FOR THE PURPOSE
12 OF PUTTING A DEFENDANT ON NOTICE OF THE PARTICULAR CHARGES.
13 THEY ARE NO MORE. THEY'RE NOT EVIDENCE OF A CRIME. THEY ARE
14 THE NOTICE DOCUMENT SO THAT THE DEFENDANT IN THIS CASE OR ANY
15 CASE KNOWS THE PARTICULAR CHARGE FOR WHICH THE STATE HAS
16 BROUGHT AGAINST HIM. AND AS I SAID, THE DEFENDANT HAS
17 ENTERED A PLEA OF NOT GUILTY TO ALL THESE AND WE ARE,
18 THEREFORE, HERE TO SELECT A JURY FOR THE JURY TO HEAR THE
19 EVIDENCE IN THE CASE AND ULTIMATELY DETERMINE THE VERDICT IN
20 THIS CASE.

21 NOW, LADIES AND GENTLEMEN, BEFORE WE BEGIN THE TRIAL
22 AND THE SELECTION OF THE JURY, I NEED TO INTRODUCE YOU TO
23 SOME INDIVIDUALS WHO MAY BE INVOLVED IN THIS TRIAL AND ALSO
24 TO ASK YOU SOME QUESTIONS, AND I REMIND YOU THAT YOU WERE
25 PREVIOUSLY UNDER OATH. SO IT IS INCUMBENT UPON YOU TO

1 RESPOND TO THE QUESTIONS THAT I ASK YOU IN A TRUTHFUL AND
2 ACCURATE MANNER.

3 FIRST, LADIES AND GENTLEMEN, LET ME INTRODUCE YOU TO
4 MR. WALKER. MR. WALKER, IF YOU WOULD PLEASE STAND AND FACE
5 THE JURY. LADIES AND GENTLEMEN, THIS IS THE DEFENDANT, MR.
6 JOSEPH WALKER, AND I WOULD INQUIRE AT THIS TIME: IS THERE
7 ANY MEMBER OF THIS JURY PANEL OR ANY MEMBER OF THE JURY
8 PANEL'S IMMEDIATE FAMILY -- MR. WALKER, IF YOU COULD TURN THE
9 OTHER WAY AS WELL. WE HAVE JURORS ON BOTH... IS THERE ANY
10 MEMBER OF THIS JURY PANEL OR ANY MEMBER OF THE JURY PANEL'S
11 IMMEDIATE FAMILY WHO IS RELATED BY BLOOD OR CONNECTED BY
12 MARRIAGE OR EITHER NOW OR IN THE PAST HAS HAD A CLOSE
13 PERSONAL RELATIONSHIP WITH MR. WALKER OR EITHER NOW OR IN THE
14 PAST HAS HAD AN EMPLOYMENT OR A BUSINESS RELATIONSHIP WITH
15 MR. WALKER? IF YOU HAVE, PLEASE STAND. ALL RIGHT. THANK
16 YOU, MR. WALKER.

17 LADIES AND GENTLEMEN, I NOW WANT TO READ YOU THE
18 NAMES OF SOME POTENTIAL WITNESSES WHO MAY TESTIFY IN THIS
19 TRIAL, AND IF ANY OF THOSE WITNESSES ARE IN THE COURTROOM I
20 WOULD ASK THAT THEY PLEASE STAND SO THAT THE JURY CAN SEE WHO
21 YOU ARE. MARGARET SANDERS. IF YOU WOULD FACE THE JURY, MS.
22 SANDERS. MARGIE KAMINER. GRETCHEN OVERSTOLZ. DR. ELIZABETH
23 GIBBS. LIEUTENANT RHONDA BAMBERG OF THE ORANGEBURG COUNTY
24 SHERIFF'S DEPARTMENT. INVESTIGATOR TODD WILLIAMS OF THE
25 ORANGEBURG COUNTY SHERIFF'S DEPARTMENT. INVESTIGATOR STUART

1 GRAYBEAL OF THE AIKEN COUNTY SHERIFF'S OFFICE. INVESTIGATOR
2 MARTIN REDD, FORMERLY OF THE AIKEN COUNTY SHERIFF'S OFFICE.
3 DIANE WARREN. ELIZABETH KEARSE.

4 LADIES AND GENTLEMEN, I WOULD INQUIRE AT THIS TIME:
5 IS THERE ANY MEMBER OF THIS JURY PANEL OR ANY MEMBER OF THE
6 JURY PANEL'S IMMEDIATE FAMILY WHO IS RELATED BY BLOOD OR
7 CONNECTED BY MARRIAGE OR EITHER NOW OR IN THE PAST HAS HAD A
8 CLOSE PERSONAL RELATIONSHIP OR EITHER NOW OR IN THE PAST HAS
9 HAD AN EMPLOYMENT OR A BUSINESS RELATIONSHIP WITH ANY OF THE
10 INDIVIDUALS WHOSE NAMES I JUST READ TO YOU? IF SO, PLEASE
11 STAND. ALL RIGHT.

12 LADIES AND GENTLEMEN, HAS ANY MEMBER OF THIS PETIT
13 JURY PANEL FORMED OR EXPRESSED AN OPINION AS TO THE GUILT OR
14 THE INNOCENCE OF THE DEFENDANT, MR. JOSEPH WALKER? IF SO,
15 PLEASE STAND. IS THERE ANY MEMBERS OF THIS JURY PANEL WHO
16 ARE CONSCIOUS OF ANY INTEREST, ANY BIAS, OR ANY PREJUDICE FOR
17 OR AGAINST THE DEFENDANT, MR. WALKER? IF SO, PLEASE STAND.
18 CAN EACH MEMBER OF THIS JURY PANEL GIVE THE STATE AND THE
19 DEFENDANT, MR. WALKER, A FAIR AND IMPARTIAL TRIAL? IF YOU
20 CANNOT, PLEASE STAND.

21 LADIES AND GENTLEMEN, IF YOU HAVE A RESPONSE TO THIS
22 QUESTION, I'M GOING TO ASK THAT YOU PLEASE COME DOWN AND MEET
23 WITH ME ON A PRIVATE BASIS. IS THERE ANY MEMBER OF THIS JURY
24 PANEL OR ANY MEMBER OF THE JURY PANEL'S IMMEDIATE FAMILY WHO
25 HAS EVER BEEN THE VICTIM OF A VIOLENT CRIME INCLUDING A CRIME

1 OF A SEXUAL NATURE OR HAS EVER BEEN ACCUSED OF A VIOLENT
2 CRIME OR A CRIME OF A SEXUAL NATURE? IF SO, IF YOU WOULD
3 PLEASE COME DOWN AND MEET WITH ME.

4 (WHEREUPON, THE FOLLOWING COLLOQUIES TOOK PLACE IN
5 THE PRESENCE AND HEARING OF THE COURT, COURT REPORTER,
6 ATTORNEYS, AND EACH INDIVIDUAL JUROR AS THEY APPROACHED THE
7 BENCH.)

8 THE COURT: ALL RIGHT. LET ME -- YES, MA'AM, IF YOU
9 WOULD COME DOWN HERE.

10 JUROR COLEMAN: HOW DO.

11 THE COURT: TELL ME YOUR NAME.

12 JUROR COLEMAN: ONNIE RUTH COLEMAN.

13 THE COURT: YOU OR A MEMBER OF YOUR FAMILY BEEN A
14 VICTIM OR WAS THAT YOU?

15 JUROR COLEMAN: YES.

16 THE COURT: WHO WAS IT?

17 JUROR COLEMAN: MY BROTHER.

18 THE COURT: IS THAT CHARGE STILL PENDING AGAINST
19 YOUR BROTHER OR IT'S BEEN RESOLVED?

20 JUROR COLEMAN: IT'S BEEN RESOLVED.

21 THE COURT: ALL RIGHT. HE WAS CONVICTED.

22 JUROR COLEMAN: UH-HUH. YES.

23 THE COURT: ALL RIGHT. THE FACT THAT YOUR BROTHER
24 HAD THIS SITUATION, WOULD THAT PREVENT YOU FROM LISTENING TO
25 THE EVIDENCE IN THIS CASE AND BASED UPON SUCH EVIDENCE

1 RENDERING A FAIR AND IMPARTIAL VERDICT?

2 JUROR COLEMAN: NO, IT WOULDN'T.

3 THE COURT: THANK YOU. HAVE A SEAT.

4 (JUROR COLEMAN LEAVES THE BENCH CONFERENCE, AND
5 JUROR HAZEL JOINS THE BENCH CONFERENCE.)

6 THE COURT: YES, MA'AM. TELL ME YOUR NAME.

7 JUROR HAZEL: JACQUELINE HAZEL.

8 THE COURT: MS. HAZEL, WHAT IS---

9 JUROR HAZEL: I WAS RAPED.

10 THE COURT: YOU WERE A VICTIM OF A RAPE?

11 JUROR HAZEL: UH-HUH.

12 THE COURT: ALL RIGHT. HAS THE MATTER BEEN
13 RESOLVED?

14 JUROR HAZEL: YES.

15 THE COURT: ALL RIGHT. THE FACT THAT A SEXUAL
16 ASSAULT OCCURRED, WOULD THAT PREVENT YOU FROM LISTENING TO
17 THE EVIDENCE IN THIS CASE AND BASED UPON SUCH EVIDENCE
18 RENDERING A FAIR AND IMPARTIAL VERDICT?

19 JUROR HAZEL: NO.

20 THE COURT: ALL RIGHT. THANK YOU.

21 MS. BRISBIN: WHAT NUMBER IS SHE?

22 JUROR HAZEL: 98.

23 THE COURT: ALL RIGHT.

24 MS. BROWN: 98.

25 THE COURT: ALL RIGHT. THANK YOU. BE SEATED.

1 (JUROR HAZEL LEAVES THE BENCH CONFERENCE, AND JUROR
2 KNIGHT JOINS THE BENCH CONFERENCE.)

3 THE COURT: GOOD MORNING.

4 JUROR KNIGHT: GOOD MORNING.

5 THE COURT: TELL ME YOUR NAME.

6 JUROR KNIGHT: DENA KNIGHT.

7 THE COURT: MS. KNIGHT, WHAT IS THE SITUATION?

8 JUROR KNIGHT: MY BEST FRIEND WHEN I WAS 15 WAS SHOT
9 AND SEXUALLY ASSAULTED, AND SHE'S THE ONE WHO IS BABY-SITTING
10 MY CHILD RIGHT NOW AND I COULDN'T SIT AND LISTEN TO THIS.

11 THE COURT: IT WOULD BE DIFFICULT FOR YOU TO BE FAIR
12 AND IMPARTIAL?

13 JUROR KNIGHT: OH, YEAH.

14 THE COURT: WELL, I'M GOING TO EXCUSE YOU FROM THIS
15 TRIAL. TELL ME YOUR NAME.

16 JUROR KNIGHT: DENA KNIGHT.

17 THE COURT: MS. KNIGHT, YOU STAY WITH US.

18 JUROR KNIGHT: OKAY.

19 THE COURT: EVEN THOUGH YOU'RE EXCUSED FROM THIS
20 TRIAL, I CAN'T -- WE HAVE OTHER TRIALS YOU MIGHT BE A JUROR
21 ON. MS. KNIGHT HAS BEEN EXCUSED FROM THIS TRIAL.

22 MS. MORGAN: DID YOU EXCUSE THE ONE RIGHT BEFORE
23 THAT?

24 (JUROR KNIGHT LEAVES THE BENCH CONFERENCE, AND JUROR
25 SNIPES JOINS THE BENCH CONFERENCE.)

1 THE COURT: YOUR NAME?

2 JUROR SNIPES: KATIE SNIPES.

3 THE COURT: MS. SNIPES?

4 JUROR SNIPES: I WAS ASSAULTED AND BATTERED.

5 THE COURT: ALL RIGHT. IS THAT MATTER STILL
6 PENDING?

7 JUROR SNIPES: NO.

8 THE COURT: THE FACT THAT YOU WERE A VICTIM OF THAT,
9 WOULD THAT PREVENT YOU FROM LISTENING TO THE EVIDENCE IN THIS
10 CASE AND BASED UPON SUCH EVIDENCE RENDERING A FAIR AND
11 IMPARTIAL VERDICT?

12 JUROR SNIPES: NO, SIR.

13 THE COURT: ALL RIGHT. THANK YOU.

14 (JUROR SNIPES LEAVES THE BENCH CONFERENCE, AND JUROR
15 BARRINEAU JOINS THE BENCH CONFERENCE.)

16 THE COURT: GOOD MORNING.

17 JUROR BARRINEAU: HI. MARY JOHNSON BARRINEAU.

18 THE COURT: WHAT'S YOUR SITUATION?

19 JUROR BARRINEAU: ON MAY 20 OF THIS YEAR MY BROTHER
20 WAS ASSAULTED AND KIDNAPPED AND NOW IT IS GOING BEFORE THE
21 GRAND JURY.

22 THE COURT: THE FACT THAT THIS INCIDENT OCCURRED,
23 WOULD THAT PREVENT YOU FROM LISTENING TO THE EVIDENCE AND
24 BASED UPON SUCH EVIDENCE RENDERING A FAIR AND IMPARTIAL
25 VERDICT?

1 JUROR BARRINEAU: NO, SIR.

2 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

3 (JUROR BARRINEAU LEAVES THE BENCH CONFERENCE, AND
4 JUROR HENRY JOINS THE BENCH CONFERENCE.)

5 THE COURT: GOOD MORNING.

6 JUROR HENRY: HI.

7 THE COURT: TELL ME YOUR NAME.

8 JUROR HENRY: ANNE HENRY.

9 THE COURT: ANNE HENRY?

10 JUROR HENRY: UH-HUH.

11 THE COURT: MS. HENRY, WHAT IS YOUR SITUATION?

12 JUROR HENRY: MY MOTHER WAS A VICTIM OF SEXUAL
13 ABUSE.

14 THE COURT: ALL RIGHT.

15 JUROR HENRY: AS A CHILD.

16 THE COURT: THE FACT THAT YOUR MOTHER WAS THE VICTIM
17 OF SEXUAL ABUSE, WOULD THAT PREVENT YOU FROM LISTENING TO THE
18 EVIDENCE IN THIS CASE AND BASED UPON SUCH EVIDENCE RENDERING
19 A FAIR AND IMPARTIAL VERDICT?

20 JUROR HENRY: I DON'T BELIEVE SO.

21 THE COURT: ALL RIGHT. WELL, I NEED YOU TO BE FIRM.

22 JUROR HENRY: NO.

23 THE COURT: YOU CAN BE FAIR AND IMPARTIAL?

24 JUROR HENRY: YES.

25 THE COURT: ARE YOU THE LADY THAT GOES TO THE

1 UNIVERSITY?

2 JUROR HENRY: YES.

3 MS. MORGAN: SHE'S MY NEIGHBOR.

4 THE COURT: THANK YOU. YOU CAN HAVE A SEAT.

5 (JUROR HENRY LEAVES THE BENCH CONFERENCE, AND JUROR
6 BOYD-SIMMONS JOINS THE BENCH CONFERENCE.)

7 THE COURT: HEY.

8 JUROR BOYD-SIMMONS: HEY.

9 THE COURT: TELL ME YOUR FULL NAME, MA'AM.

10 JUROR BOYD-SIMMONS: DONNA FAITH SIMMONS.

11 THE COURT: TELL ME YOUR SITUATION.

12 JUROR BOYD-SIMMONS: I HAVE A COUSIN AND UNCLE THAT
13 HAVE BOTH BEEN CONVICTED SEVERAL TIMES FOR IT AND CHILD
14 MOLESTATION. ALSO MY STEPFATHER HAS BEEN A VICTIM OF SUCH A
15 CRIME.

16 THE COURT: THE FACT THAT YOU'VE HAD A RELATIVE WHO
17 HAS BEEN CONVICTED OF A CRIMINAL OFFENSE OR -- AND YOU'VE
18 BEEN A VICTIM, WOULD THAT PREVENT YOU FROM LISTENING TO THE
19 EVIDENCE IN THIS CASE AND BASED UPON SUCH EVIDENCE RENDERING
20 A FAIR AND IMPARTIAL VERDICT?

21 JUROR BOYD-SIMMONS: I CAN ONLY SAY THAT I CAN
22 REALLY...

23 THE COURT: YOU THINK YOU WOULD HAVE A DIFFICULT
24 TIME BEING FAIR AND IMPARTIAL?

25 JUROR BOYD-SIMMONS: YEAH.

1 THE COURT: ALL RIGHT. I'M GOING TO EXCUSE YOU FROM
2 THIS JURY. DO NOT LEAVE BECAUSE YOU MAY HAVE TO COME BACK
3 FOR ANOTHER TRIAL. MS. BOYD HAS BEEN EXCUSED FROM THIS JURY.

4 (JUROR BOYD-SIMMONS LEAVES THE BENCH CONFERENCE, AND
5 JUROR BOHRINGER JOINS THE BENCH CONFERENCE.)

6 THE COURT: YES, MA'AM.

7 JUROR BOHRINGER: JULIA BOHRINGER.

8 THE COURT: NUMBER 9.

9 JUROR BOHRINGER: MY EX-HUSBAND ATTEMPTED SEXUAL
10 RELATIONSHIPS WITH MY DAUGHTER AND I WOULD NOT BE A...

11 THE COURT: COULD NOT BE FAIR AND IMPARTIAL?

12 JUROR BOHRINGER: NO.

13 THE COURT: ALL RIGHT. THIS JUROR IS EXCUSED FROM
14 THIS JURY. THANK YOU, MA'AM. MS. BOHRINGER? MA'AM?

15 JUROR BOHRINGER: YES, SIR?

16 THE COURT: DON'T LEAVE. WE'RE GOING TO DEAL WITH
17 SOME OTHER MATTERS.

18 JUROR BOHRINGER: OKAY.

19 (JUROR BOHRINGER LEAVES THE BENCH CONFERENCE, AND
20 JUROR WILLIS JOINS THE BENCH CONFERENCE.)

21 THE COURT: GOOD MORNING. TELL ME YOUR NAME AGAIN.

22 JUROR WILLIS: SANDRA WILLIS.

23 THE COURT: SANDRA WILLIS.

24 JUROR WILLIS: I HAVE A C.D.V. CHARGE.

25 THE COURT: PENDING AGAINST YOU?

1 JUROR WILLIS: NO, IT WAS A YEAR AGO.

2 THE COURT: OH, YOU WERE CONVICTED?

3 JUROR WILLIS: YEAH.

4 THE COURT: FOR SIMPLE C.D.V.?

5 JUROR WILLIS: YEAH.

6 THE COURT: WELL, THE FACT THAT OCCURRED, WOULD THAT
7 PREVENT YOU FROM LISTENING TO THE EVIDENCE IN THIS CASE AND
8 BASED UPON SUCH EVIDENCE RENDERING A FAIR AND IMPARTIAL
9 VERDICT?

10 JUROR WILLIS: NO.

11 THE COURT: ALL RIGHT. YOU CAN HAVE A SEAT. THANK
12 YOU.

13 (JUROR WILLIS LEAVES THE BENCH CONFERENCE, AND JUROR
14 BUSBEE JOINS THE BENCH CONFERENCE.)

15 THE COURT: GOOD MORNING.

16 JUROR BUSBEE: KELLY BUSBEE. MY AUNT WAS SEXUALLY
17 ASSAULTED, BUT I WAS VERY SMALL AND BESIDES SO...

18 THE COURT: THE FACT THIS INCIDENT OCCURRED WITH ONE
19 OF YOUR RELATIVES, WOULD THAT PREVENT YOU FROM LISTENING TO
20 THE EVIDENCE IN THIS CASE AND BASED UPON SUCH EVIDENCE
21 RENDERING A FAIR AND IMPARTIAL VERDICT?

22 JUROR BUSBEE: NO.

23 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU CAN
24 HAVE A SEAT.

25 (WHEREUPON, THE COLLOQUIES AT THE BENCH CONCLUDED.)

1 THE COURT: ALL RIGHT. THANK YOU, LADIES AND
2 GENTLEMEN. ALL RIGHT. LADIES AND GENTLEMEN, ARE YOU OR ANY
3 OF YOUR CLOSE FRIENDS OR RELATIVES POLICE OFFICERS, STATE LAW
4 ENFORCEMENT DIVISION OFFICERS, OR EMPLOYED IN THE SOLICITOR'S
5 OFFICE OF THE SECOND JUDICIAL CIRCUIT, THE ATTORNEY GENERAL'S
6 OFFICE OR ANY FEDERAL LAW ENFORCEMENT AGENCY OR ANY OTHER
7 PROSECUTOR'S OFFICE? IF SO, PLEASE STAND. YES, SIR, YOUR
8 NAME.

9 JUROR PITTS: DOES---

10 THE COURT: TELL ME YOUR NAME.

11 JUROR PITTS: JIMMY PITTS.

12 THE COURT: ALL RIGHT, MR. PITTS.

13 JUROR PITTS: MY NEIGHBOR IS DETECTIVE JOE COUNT AT
14 NORTH AUGUSTA POLICE DEPARTMENT.

15 THE COURT: YOU HAVE A NEIGHBOR THAT IS A -- WORKS
16 FOR A LAW ENFORCEMENT AGENCY?

17 JUROR PITTS: YES.

18 THE COURT: THE FACT THAT YOU HAVE AN OFF -- I MEAN
19 A NEIGHBOR THAT WORKS FOR A LAW ENFORCEMENT AGENCY, WOULD
20 THAT PREVENT YOU FROM LISTENING TO THE EVIDENCE IN THIS CASE
21 AND BASED UPON SUCH EVIDENCE RENDERING A FAIR AND IMPARTIAL
22 VERDICT?

23 JUROR PITTS: NO, SIR.

24 THE COURT: THANK YOU, SIR. ARE ANY OF YOU OR YOUR
25 CLOSE RELATIVES OR FRIENDS -- NO, DISREGARD THE FRIENDS. I

1 DON'T CARE WHETHER... ANY OF -- ARE YOU OR ANY OF YOUR
2 IMMEDIATE FAMILY - THAT MEANS LIVING IN YOUR HOUSE -
3 AFFILIATED WITH OR CONTRIBUTORS TO ANY AUXILIARY POLICE
4 ORGANIZATION OR CITIZENS GROUP WHOSE PRIMARY AIM IS THE
5 PROSECUTION OR PURSUIT OF INDIVIDUALS INVOLVED IN CRIMINAL
6 ACTIVITY SUCH AS C.A.V.E., M.A.D.D., OR S.A.D.D.? IF SO,
7 PLEASE STAND.

8 HAS ANYONE WHO IS A MEMBER OF THIS JURY PANEL BEEN
9 APPROACHED BY ANYONE WITH REGARD TO THIS CASE? HAS ANY
10 MEMBER OF THIS JURY PANEL READ ANYTHING IN THE NEWSPAPER OR
11 SEEN ANYTHING ON TELEVISION OR HEARD ANYTHING ABOUT THIS CASE
12 ON THE RADIO? IF SO, PLEASE STAND. ALL RIGHT. ANY FURTHER
13 INQUIRY FROM THE STATE?

14 MS. BRISBIN: NOTHING, YOUR HONOR.

15 THE COURT: ANYTHING FROM THE DEFENSE?

16 MS. BROWN: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THERE
18 IS ONE OTHER THING. LET ME INTRODUCE YOU TO THE LAWYERS
19 INVOLVED IN THIS CASE. AS IN MOST CASES THAT COME TO COURT,
20 A LAWYER REPRESENTS THE STATE AND A LAWYER REPRESENTS THE
21 DEFENDANT. IN THIS INSTANCE, AS I TOLD YOU EARLIER, THE
22 LAWYERS REPRESENTING THE STATE ARE THE SECOND CIRCUIT
23 SOLICITOR'S OFFICE AND MS. MORGAN HAS ASSIGNED THIS CASE OR
24 HOW EVER THEY GET IT TO TWO LAWYERS WHO ARE -- WILL BE
25 RESPONSIBLE FOR PROSECUTING THE CASE. ONE IS MS. BRENDA

1 BRISBIN AND THIS IS MS. BRISBIN, AND ONE IS MR. EVERETT
2 CHANDLER. THIS IS MR. CHANDLER. THESE ARE THE SOLICITORS OF
3 THE SECOND CIRCUIT SOLICITOR'S OFFICE.

4 I WOULD INQUIRE AT THIS TIME: IS THERE ANY MEMBER
5 OF THIS JURY PANEL OR ANY MEMBER OF THE JURY PANEL'S
6 IMMEDIATE FAMILY WHO IS RELATED BY BLOOD OR CONNECTED BY
7 MARRIAGE OR HAS NOW OR IN THE PAST HAD A CLOSE PERSONAL
8 RELATIONSHIP WITH EITHER OF THESE INDIVIDUALS OR EITHER NOW
9 OR IN THE PAST HAS BEEN EMPLOYED BY OR WORKED WITH THESE
10 INDIVIDUALS OR THE SECOND CIRCUIT SOLICITOR'S OFFICE? IF SO,
11 PLEASE STAND.

12 ALL RIGHT. LADIES AND GENTLEMEN, REPRESENTING MR.
13 WALKER IS MS. KELLEY BROWN, AND THIS IS MS. BROWN RIGHT HERE.
14 MS. BROWN IS A MEMBER OF THE SOUTH CAROLINA BAR, LICENSED TO
15 PRACTICE IN SOUTH CAROLINA, AND I WOULD INQUIRE AT THIS TIME:
16 IS THERE ANY MEMBER OF THE JURY PANEL OR ANY MEMBER OF THE
17 JURY PANEL'S IMMEDIATE FAMILY WHO IS RELATED BY BLOOD OR
18 CONNECTED BY MARRIAGE OR EITHER NOW OR IN THE PAST HAS HAD A
19 CLOSE PERSONAL RELATIONSHIP WITH MS. BROWN OR EITHER NOW OR
20 IN THE PAST HAS HAD AN EMPLOYMENT OR A BUSINESS RELATIONSHIP
21 WITH MS. BROWN? IF SO, PLEASE STAND. ALL RIGHT. NOW,
22 ANYTHING FURTHER? ANYTHING FROM THE...

23 MS. BRISBIN: NOTHING FROM THE STATE, YOUR HONOR.

24 THE COURT: MS. BROWN?

25 MS. BROWN: NO.

1 THE COURT: ALL RIGHT. MADAM CLERK, IF WE COULD
2 DRAW THE JURY. Y'ALL WAIVE THE DRAWING OF THE JURY BY A
3 PERSON WHO IS BLIND OR UNDER 10?

4 MS. BRISBIN: YES, YOUR HONOR.

5 MS. BROWN: YES, YOUR HONOR.

6 THE CLERK: STRIKES, YOUR HONOR?

7 THE COURT: PARDON ME?

8 THE CLERK: STRIKES?

9 THE COURT: FIVE AND TEN AND WE'RE GOING TO HAVE TWO
10 ALTERNATES.

11 THE CLERK: LADIES AND GENTLEMEN, AS I CALL YOUR
12 NAME, PLEASE COME FORWARD TO THE FRONT OF THE COURTROOM.
13 STAND IN FRONT OF THE BENCH AND FACE THE BACK OF THE
14 COURTROOM. JUROR NUMBER 164, ANNE HENRY. WHAT SAY YE FOR
15 THE STATE, MADAM SOLICITOR?

16 MS. BRISBIN: PLEASE PRESENT MS. HENRY.

17 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

18 MS. BROWN: PLEASE EXCUSE THE JUROR.

19 THE CLERK: YOU MAY RETURN TO YOUR SEAT, MA'AM.
20 THANK YOU. JUROR NUMBER 167, PAMELA SMITH. WHAT SAY YE FOR
21 THE STATE, MADAM SOLICITOR?

22 MS. BRISBIN: PLEASE PRESENT MS. SMITH.

23 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

24 MS. BROWN: PLEASE SEAT THE JUROR.

25 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY

1 BOX TO YOUR LEFT. JUROR NUMBER 72, STEPHEN KELLY. WHAT SAY
2 YE FOR THE STATE, MADAM SOLICITOR?

3 MS. BRISBIN: PLEASE PRESENT MR. KELLY.

4 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

5 MS. BROWN: PLEASE SEAT THE JUROR.

6 THE CLERK: YOU MAY HAVE A SEAT, SIR, IN THE JURY
7 BOX TO YOUR LEFT. JUROR NUMBER 20, MONICA CHALKER. WHAT SAY
8 YE FOR THE STATE, MADAM SOLICITOR?

9 MS. BRISBIN: PLEASE PRESENT MS. CHALKER.

10 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

11 MS. BROWN: PLEASE SEAT THE JUROR.

12 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY
13 BOX TO YOUR LEFT. JUROR NUMBER 165, SHIRLEY JACKSON. WHAT
14 SAY YE FOR THE STATE, MADAM SOLICITOR?

15 MS. BRISBIN: PLEASE PRESENT MS. JACKSON.

16 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

17 MS. BROWN: PLEASE SEAT THE JUROR.

18 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY
19 BOX TO YOUR LEFT. JUROR NUMBER 156, NICOLE GANTT. WHAT SAY
20 YE FOR THE STATE, MADAM SOLICITOR?

21 MS. BRISBIN: PLEASE PRESENT MS. GANTT.

22 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

23 MS. BROWN: PLEASE SEAT THE JUROR.

24 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY
25 BOX TO YOUR LEFT. JUROR NUMBER 23, CAROLYN RACHELS. WHAT

1 SAY YE FOR THE STATE, MADAM SOLICITOR?

2 MS. BRISBIN: PLEASE PRESENT MS. RACHELS.

3 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

4 MS. BROWN: PLEASE SEAT THE JUROR.

5 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY
6 BOX TO YOUR LEFT. JUROR NUMBER 92, BARBARA MARTIN. WHAT SAY
7 YE FOR THE STATE, MADAM SOLICITOR?

8 MS. BRISBIN: PLEASE PRESENT MS. MARTIN.

9 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

10 MS. BROWN: PLEASE EXCUSE THE JUROR FROM THE TRIAL
11 OF THIS CASE.

12 THE CLERK: YOU MAY RETURN TO YOUR SEAT, MA'AM.
13 THANK YOU. JUROR NUMBER 33, JAMES DAL SANTO. WHAT SAY YE FOR
14 THE STATE, MADAM SOLICITOR?

15 MS. BRISBIN: PLEASE PRESENT MR. DAL SANTO.

16 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

17 MS. BROWN: PLEASE SEAT THE JUROR.

18 THE CLERK: YOU MAY HAVE A SEAT, SIR, IN THE JURY
19 BOX TO YOUR LEFT. JUROR NUMBER 87, MELRAE LUFT. WHAT SAY YE
20 FOR THE STATE, MADAM SOLICITOR?

21 MS. BRISBIN: PLEASE PRESENT MS. LUFT.

22 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

23 MS. BROWN: PLEASE SEAT THE JUROR.

24 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY
25 BOX TO YOUR LEFT. JUROR NUMBER 54, KERRY HANNON. WHAT SAY

1 YE FOR THE STATE, MADAM SOLICITOR?

2 MS. BRISBIN: PLEASE EXCUSE MR. HANNON.

3 THE CLERK: YOU MAY RETURN TO YOUR SEAT, SIR. THANK

4 YOU. JUROR NUMBER 101, ADAM MORRIS. WHAT SAY YE FOR THE

5 STATE, MADAM SOLICITOR?

6 MS. BRISBIN: PLEASE PRESENT MR. MORRIS.

7 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

8 MS. BROWN: PLEASE SEAT THE JUROR.

9 THE CLERK: YOU MAY HAVE A SEAT, SIR, IN THE JURY

10 BOX TO YOUR LEFT. JUROR NUMBER 58, CYNTHIA HATTON. WHAT SAY

11 YE FOR THE STATE, MADAM SOLICITOR?

12 MS. BRISBIN: PLEASE PRESENT MS. HATTON.

13 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

14 MS. BROWN: PLEASE EXCUSE THE JUROR FROM THE TRIAL

15 OF THIS CASE.

16 THE CLERK: YOU MAY RETURN TO YOUR SEAT, MA'AM.

17 THANK YOU. THE STATE HAS EXHAUSTED ONE STRIKE, DEFENSE

18 THREE. JUROR NUMBER 157, RONALD GROOMS. WHAT SAY YE FOR THE

19 STATE, MADAM SOLICITOR?

20 MS. BRISBIN: PLEASE PRESENT MR. GROOMS.

21 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

22 MS. BROWN: PLEASE EXCUSE THE JUROR.

23 THE CLERK: YOU MAY RETURN TO YOUR SEAT, SIR. THANK

24 YOU. JUROR NUMBER 65, BOBBIE JACKSON. WHAT SAY YE FOR THE

25 STATE, MADAM SOLICITOR?

1 MS. BRISBIN: PLEASE PRESENT MS. JACKSON.

2 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

3 MS. BROWN: PLEASE EXCUSE THIS JUROR.

4 THE CLERK: YOU MAY RETURN TO YOUR SEAT, MA'AM.

5 JUROR NUMBER 25, ONNIE COLEMAN. WHAT SAY YE FOR THE STATE,
6 MADAM SOLICITOR?

7 MS. BRISBIN: PLEASE EXCUSE MS. COLEMAN FROM THIS
8 TRIAL.

9 THE CLERK: YOU MAY RETURN TO YOUR SEAT, MA'AM.
10 THANK YOU. JUROR NUMBER 160, JAMES PITTS, JR. WHAT SAY YE
11 FOR THE STATE, MADAM SOLICITOR?

12 MS. BRISBIN: PLEASE PRESENT MR. PITTS.

13 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

14 MS. BROWN: PLEASE EXCUSE THE JUROR.

15 THE CLERK: YOU MAY RETURN TO YOUR SEAT, SIR. THANK
16 YOU. JUROR NUMBER 166, JOHN ROWE. WHAT SAY YE FOR THE
17 STATE, MADAM SOLICITOR?

18 MS. BRISBIN: PLEASE PRESENT MR. ROWE.

19 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

20 MS. BROWN: PLEASE SEAT THE JUROR.

21 THE CLERK: YOU MAY HAVE A SEAT, SIR, IN THE JURY
22 BOX TO YOUR LEFT. JUROR NUMBER 88, BERNADETTE LYNN. WHAT
23 SAY YE FOR THE STATE, MADAM SOLICITOR?

24 MS. BRISBIN: PLEASE PRESENT MS. LYNN.

25 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

1 MS. BROWN: PLEASE EXCUSE THE JUROR.

2 THE CLERK: YOU MAY RETURN TO YOUR SEAT, MA'AM.

3 THANK YOU. STATE HAS EXHAUSTED TWO STRIKES, DEFENSE SEVEN.
4 JUROR NUMBER 143, PAUL WATERS. WHAT SAY YE FOR THE STATE,
5 MADAM SOLICITOR?

6 MS. BRISBIN: PLEASE PRESENT MR. WATERS.

7 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

8 MS. BROWN: PLEASE SEAT THE JUROR.

9 THE CLERK: YOU MAY HAVE A SEAT, SIR, IN THE JURY
10 BOX TO YOUR LEFT. JUROR NUMBER 155, ROSEMARY FIELDS. WHAT
11 SAY YE FOR THE STATE, MADAM SOLICITOR?

12 MS. BRISBIN: PLEASE PRESENT MS. FIELDS.

13 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

14 MS. BROWN: PLEASE SEAT THE JUROR.

15 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY
16 BOX TO YOUR LEFT. ALTERNATES, YOUR HONOR?

17 THE COURT: TWO, PLEASE. TWO AND ONE.

18 THE CLERK: JUROR NUMBER 115, BRENTON RUSSO. WHAT
19 SAY YE FOR THE STATE, MADAM SOLICITOR?

20 MS. BRISBIN: PLEASE PRESENT MR. RUSSO.

21 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

22 MS. BROWN: PLEASE SEAT THE JUROR.

23 THE CLERK: YOU MAY HAVE A SEAT, SIR, IN THE JURY
24 BOX TO YOUR LEFT. JUROR NUMBER 8, JESSICA BARTHOLOMEW. WHAT
25 SAY YE FOR THE STATE, MADAM SOLICITOR?

1 MS. BRISBIN: PLEASE PRESENT MS. BARTHOLOMEW.

2 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

3 MS. BROWN: PLEASE SEAT THE JUROR.

4 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY
5 BOX TO YOUR LEFT.

6 THE COURT: WHAT WAS THE JURY NUMBER?

7 THE CLERK: JUROR NUMBER 8.

8 (WHEREUPON THE JURY WAS IMPANELED AT 12:03 P.M.)

9 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE WITH
10 RESPECT TO THE COMPOSITION OF THE JURY?

11 MS. BRISBIN: NO, YOUR HONOR.

12 THE COURT: ANYTHING FROM THE DEFENDANT?

13 MS. BROWN: NO, YOUR HONOR.

14 THE COURT: OKAY.

15 (PAUSE IN PROCEEDINGS WHILE REMAINING JURORS NOT
16 IMPANELED WERE EXCUSED BY THE COURT FROM THE COURTROOM.)

17 THE COURT: ALL RIGHT. MADAM CLERK, CAN WE SWEAR
18 THE JURY?

19 (WHEREUPON, THE JURY WAS SWORN AT 12:05 P.M.)

20 THE COURT: OKAY. LADIES AND GENTLEMEN, IT'S A FEW
21 MINUTES AFTER 12 AND BEFORE WE BREAK FOR LUNCH WE'RE GOING TO
22 DO A COUPLE OF THINGS. I THINK WHAT WE'RE GOING TO DO -- I'M
23 GOING TO TAKE A FEW MINUTES AND EXPLAIN TO YOU A LITTLE BIT
24 ABOUT WHAT'S INVOLVED IN THE COURSE OF THE TRIAL, HOW IT WILL
25 UNFOLD, SO YOU WILL HAVE SOME IDEA ABOUT THIS PROCESS IN CASE

1 YOU'VE NOT SERVED ON A JURY BEFORE OR IN CASE IT'S BEEN SOME
2 TIME SINCE YOU'VE HAD THE OPPORTUNITY TO SERVE ON A JURY.
3 AFTER I MAKE MY OPENING REMARKS, I THINK WE'LL LET THE
4 ATTORNEYS MAKE THEIR OPENING STATEMENTS AND AT THAT TIME
5 WE'LL PROBABLY BREAK FOR LUNCH AND THEN COME BACK AND BEGIN
6 THE PRESENTATION OF THE EVIDENCE AFTER LUNCH.

7 NOW, LADIES AND GENTLEMEN, THIS CASE IS VERY
8 IMPORTANT BOTH TO THE STATE AND THE DEFENDANT, SO WE WANT TO
9 DO EVERYTHING WE CAN TO MAKE SURE THAT BOTH SIDES RECEIVE A
10 FAIR AND IMPARTIAL TRIAL. THE WAY WE DO THAT OR AT LEAST WE
11 GIVE IT OUR BEST EFFORT IS THE FIRST THING WE WANT TO DO IS
12 I'M GOING TO ASK THAT YOU BE VERY ATTENTIVE THROUGHOUT THE
13 COURSE OF THE TRIAL SO THAT THE STATE AND THE DEFENSE HAVE
14 THE OPPORTUNITY TO PUT FORWARD IN FRONT OF YOU EVERYTHING
15 THAT THEY ARE ABLE TO DO SO FOR YOUR CONSIDERATION DURING THE
16 COURSE OF YOUR DELIBERATIONS.

17 THE OTHER THING IS WE DON'T WANT TO MAKE ANY
18 PREMATURE DECISIONS IN THIS CASE OR BEGIN TO FORMULATE AN
19 OPINION ABOUT THIS CASE UNTIL YOU'VE HEARD ALL THE EVIDENCE
20 THAT BOTH SIDES WISH TO OFFER IN THIS CASE. SO I'M GOING TO
21 ASK, LADIES AND GENTLEMEN, THAT YOU NOT DISCUSS THE CASE WITH
22 EACH OTHER OR WITH ANYONE ELSE AT ANY TIME DURING THE COURSE
23 OF THE TRIAL UNTIL YOU'VE BEEN GIVEN INSTRUCTIONS THAT YOU
24 CAN BEGIN YOUR DELIBERATIONS. SO THAT MEANS IF WE TAKE A
25 BREAK AND YOU'RE BACK IN THE JURY ROOM, DON'T DISCUSS

1 ANYTHING ABOUT THE CASE WITH EACH OTHER. IF YOU GO TO LUNCH
2 AND YOU SEE SOMEBODY THAT YOU MIGHT KNOW, DON'T DISCUSS THE
3 CASE. IF THIS CASE GOES BEYOND TODAY WHICH I ANTICIPATE IT
4 WILL, WHEN YOU GO HOME TONIGHT DO NOT DISCUSS THE CASE WITH
5 ANYBODY THAT YOU MAY COME IN CONTACT WITH.

6 THE REASON I ASK THAT YOU DO THIS IS BECAUSE IF YOU
7 DISCUSS THE CASE WITH SOMEBODY, A COUPLE OF THINGS COULD
8 HAPPEN AND THEY ARE NOT GOOD. ONE, YOU COULD BE INFLUENCED
9 BY THAT PERSON AND YOU -- THIS IS YOUR DECISION. YOU, BASED
10 ON YOUR OWN CONSCIENCE AND THE COLLECTIVE WISDOM OF THE JURY,
11 ARE TO MAKE DECISIONS IN THIS CASE, NOBODY ELSE. YOU'RE THE
12 ONLY ONES THAT WILL HEAR ALL THE EVIDENCE. YOU'RE THE ONLY
13 ONES THAT WILL KNOW EXACTLY WHAT'S GOING ON IN THE TRIAL. SO
14 DO NOT DISCUSS IT WITH ANYBODY AND ALLOW THEM TO DISCUSS IT
15 WITH YOU WHERE YOU MIGHT BE INFLUENCED.

16 THE SECOND THING IS: IF YOU DISCUSS THIS CASE WITH
17 ANYBODY, INCLUDING YOURSELVES, YOU MAY BEGIN TO FORMULATE AN
18 OPINION ABOUT THE CASE BEFORE ALL THE EVIDENCE IS IN AND
19 THAT'S NOT FAIR TO EITHER THE STATE OR THE DEFENDANT. I
20 PROMISE YOU DURING THE COURSE OF YOUR DELIBERATIONS YOU'LL BE
21 ABLE TO DISCUSS THE CASE AS LONG AS YOU BELIEVE THAT YOU NEED
22 TO DO IT, AND AFTER THE CASE IS OVER, IF YOU WOULD LIKE AND
23 YOU'RE NOT OBLIGATED BUT IF YOU WOULD LIKE, THEN YOU CAN
24 DISCUSS IT WITH ANYBODY OUTSIDE THE CASE THAT YOU WANT TO
25 TALK TO.

1 IF YOU DON'T WANT TO TALK ABOUT THE CASE AND
2 SOMEBODY APPROACHES YOU ABOUT IT, YOU TELL THEM YOU DON'T
3 WANT TO TALK ABOUT IT. IF THEY CONTINUE TO PURSUE IT, THEN
4 YOU CONTACT ME AND LET ME KNOW THAT, AND I WILL DEAL WITH
5 THAT PERSON WHO WAS ATTEMPTING TO HAVE DISCUSSIONS. BUT AT
6 THE END OF THE CASE IT WILL BE YOUR DECISION TO TALK ABOUT
7 WHATEVER YOU WANT WITH RESPECT TO THIS CASE.

8 NOW, LADIES AND GENTLEMEN, THE WAY A TRIAL TAKES
9 PLACE IS THAT THE STATE IS GIVEN THE OPPORTUNITY TO FIRST GET
10 UP AND MAKE AN OPENING STATEMENT TO YOU. AFTER THE STATE HAS
11 MADE ITS OPENING STATEMENT, THE DEFENDANT IS GIVEN AN
12 OPPORTUNITY THROUGH THEIR ATTORNEYS TO MAKE AN OPENING
13 STATEMENT AND THESE OPENING STATEMENTS ARE A CHANCE FOR BOTH
14 SIDES TO ATTEMPT TO EDUCATE YOU OR INFORM YOU A LITTLE BIT
15 ABOUT WHAT THEY THINK WILL COME OUT DURING THE COURSE OF THE
16 TRIAL. IT IS TO LET YOU HAVE SOME PRE-EVIDENCE KNOWLEDGE
17 ABOUT THE CASE SO THAT YOU WILL HAVE SOME UNDERSTANDING OF
18 THE OVERALL STORY OF THIS CASE SO YOU CAN CONSIDER THAT
19 DURING THE COURSE OF THE TRIAL.

20 NOW, THERE ARE A COUPLE OF BASIC PRINCIPLES THAT YOU
21 NEED TO KEEP IN MIND THROUGHOUT THE COURSE OF THIS TRIAL.
22 THEY ARE THE BEDROCKS FROM WHICH OUR CRIMINAL JUSTICE SYSTEM
23 WAS FORMED. FIRST IS IN EVERY INSTANCE, LADIES AND
24 GENTLEMEN, THE DEFENDANT COMES INTO THE COURTROOM PRESUMED TO
25 BE INNOCENT, AND THAT PRESUMPTION OF INNOCENCE REMAINS WITH

1 THE DEFENDANT THROUGHOUT THE COURSE OF THIS TRIAL AND ONLY
2 CHANGES IF THE JURY, AFTER HEARING ALL THE EVIDENCE,
3 DETERMINES THAT THE DEFENDANT MAY BE GUILTY. IT IS A STRONG
4 PRESUMPTION AND YOU NEED TO KEEP THAT IN MIND.

5 THE SECOND BASIC PRINCIPLE IS: IN EVERY CRIMINAL
6 CASE THE STATE HAS THE BURDEN OF PROOF. THE STATE HAS TO
7 PROVE A DEFENDANT GUILTY OF ANY AND ALL CHARGES BEYOND A
8 REASONABLE DOUBT WHICH IS A STIFF BURDEN BUT A BURDEN THAT
9 THE STATE GENERALLY GLADLY ACCEPTS. THE DEFENDANT HAS NO
10 BURDEN. THE DEFENDANT DOESN'T HAVE TO DO ANYTHING IN A
11 TRIAL, DOESN'T HAVE TO OFFER ANY EVIDENCE. IF THE DEFENDANT
12 BELIEVES THAT THE STATE HAS FAILED TO MEET ITS BURDEN, THE
13 DEFENDANT MAY NOT OFFER ANY EVIDENCE; I DON'T KNOW. BUT THE
14 DEFENDANT HAS NO OBLIGATION TO DO ANYTHING. THE WHOLE BURDEN
15 FALLS UPON THE STATE TO PROVE A DEFENDANT GUILTY AND TO PROVE
16 A DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

17 NOW, BECAUSE THE STATE HAS THAT BURDEN, THE STATE
18 GETS TO GO FIRST THROUGHOUT THE COURSE OF THE TRIAL. AS I
19 TOLD YOU, THE STATE WILL MAKE ITS OPENING STATEMENT FIRST.
20 THE STATE WILL GO FIRST WITH THE PRESENTATION OF THE EVIDENCE
21 IN THIS CASE AND THAT OCCURS AFTER WE HAVE CONCLUDED THE
22 OPENING STATEMENTS.

23 NOW, MOST OF THE EVIDENCE IN THIS CASE, LADIES AND
24 GENTLEMEN, I WOULD IMAGINE WILL COME IN BY WAY OF LIVE
25 TESTIMONY. WITNESSES WILL BE PUT UNDER OATH. THEY WILL GET

1 IN THIS WITNESS BOX RIGHT BESIDE THE BENCH HERE AND TELL YOU
2 WHAT INFORMATION THAT WITNESS HAS ABOUT THIS CASE, AND WE
3 HAVE GENERALLY TWO TYPES OF WITNESSES. ONE IS A FACT
4 WITNESS. THE WITNESS WILL GET UP AND TELL YOU WHAT HE OR SHE
5 KNOWS FROM HAVING FIRSTHAND KNOWLEDGE. HE OR SHE HAS
6 OBSERVED SOMETHING, FELT SOMETHING, TASTED SOMETHING, SMELLED
7 SOMETHING, HEARD SOMETHING, LEARNED SOMETHING FROM ONE OF HIS
8 OR HER SENSES. THEY HAVE FIRSTHAND KNOWLEDGE ABOUT IT.

9 THE SECOND TYPE OF WITNESS IS WHAT WE CALL AN EXPERT
10 WITNESS AND I DON'T KNOW THAT THERE WILL BE ANY EXPERTS IN
11 THIS CASE OR NOT. AN EXPERT IS SOMEBODY WHO HAS SPECIAL
12 KNOWLEDGE OR TRAINING OR EXPERIENCE IN SOME FIELD AND IN AN
13 AREA WHERE ASSISTANCE MIGHT BE HELPFUL TO THE FINDER OF THE
14 FACT. THAT EXPERT, IF THAT EXPERT IS DETERMINED TO BE AN
15 EXPERT, CAN OFFER AN OPINION IN HIS OR HER AREA OF EXPERTISE
16 BECAUSE OF THEIR TRAINING OR EXPERIENCE.

17 NOW, AFTER -- OTHER TYPES OF EVIDENCE THAT MAY BE
18 INTRODUCED IN THIS CASE, LADIES AND GENTLEMEN, ARE WHAT WE
19 CALL EXHIBITS AND THOSE ARE THINGS LIKE PHOTOGRAPHS OR
20 DOCUMENTS. THOSE ARE ACTUALLY INTRODUCED AND GO WITH THE
21 JURY TO THE JURY ROOM DURING YOUR DELIBERATIONS. TESTIMONY
22 GOES WITH YOU IN YOUR MEMORY. SO YOU NEED TO PAY CLOSE
23 ATTENTION. YOU DON'T HAVE A TRANSCRIPT OF THE TESTIMONY
24 DURING THE COURSE OF YOUR DELIBERATIONS, SO PAY CLOSE
25 ATTENTION.

1 THE THIRD TYPE OF EVIDENCE THAT MAY COME IN, LADIES
2 AND GENTLEMEN, IS WHAT WE CALL STIPULATIONS AND THAT'S WHERE
3 THE PARTIES STIPULATE OR AGREE AS TO SOME MATTER. IF THERE
4 IS A STIPULATION, YOU ARE TO ACCEPT THAT AS THOUGH THAT FACT
5 HAS BEEN PROVEN, AND IF THERE IS ONE I'M SURE THE LAWYERS
6 WILL TELL ME AND I WILL TELL YOU.

7 AFTER THE STATE HAS CONCLUDED THE PRESENTATION OF
8 ALL THE EVIDENCE, THE DEFENDANT IS GIVEN AN OPPORTUNITY TO
9 PUT UP ANY EVIDENCE THE DEFENSE WISHES TO. THE DEFENSE, AS I
10 SAID EARLIER, HAS NO OBLIGATION TO OFFER ANY SORT OF EVIDENCE
11 BECAUSE THE BURDEN FALLS ON THE STATE.

12 NOW, LADIES AND GENTLEMEN, WHEN ALL THE EVIDENCE HAS
13 BEEN PRESENTED, THEN THE PARTIES WILL MAKE WHAT WE CALL
14 CLOSING ARGUMENTS, AND CLOSING ARGUMENTS ARE DIFFERENT FROM
15 OPENING STATEMENTS IN THAT CLOSING ARGUMENTS ARE THE CHANCE
16 FOR THE LAWYERS TO ATTEMPT TO CONVINCE OR PERSUADE YOU AS TO
17 WHY YOU SHOULD RETURN A RESPECTIVE -- I MEAN A VERDICT FOR
18 THEIR RESPECTIVE CLIENT. BOTH SIDES WILL PROBABLY POINT OUT
19 STRENGTHS OR WEAKNESSES OF THEIR RESPECTIVE CASE OR THE OTHER
20 CASE. THEY'LL TELL YOU THINGS THAT YOU NEED TO CONSIDER THAT
21 THEY THINK ARE VERY IMPORTANT DURING THE COURSE OF YOUR
22 DELIBERATION. THIS IS THEIR CHANCE TO SUMMARIZE, TO TELL YOU
23 WHY WHEN YOU GO BACK IN THAT VERDICT ROOM TO BEGIN YOUR
24 DELIBERATION YOUR VERDICT OUGHT TO ULTIMATELY BE FOR THEIR
25 CLIENT.

1 NOW, WHEN BOTH SIDES HAVE CONCLUDED THE CLOSING
2 ARGUMENTS, THEN I WILL CHARGE YOU OR INSTRUCT YOU AS TO THE
3 LAW IN SOUTH CAROLINA IN THIS TYPE OF CASE. YOU WILL THEN
4 RETIRE TO THE JURY ROOM, BEGIN YOUR DELIBERATIONS, DETERMINE
5 THE FACTS, APPLY THE LAW THAT I GIVE YOU, AND ULTIMATELY
6 REACH YOUR VERDICT.

7 NOW, LADIES AND GENTLEMEN, YOUR ROLE IN THIS CASE IS
8 UNIQUE. YOU'RE THE ONLY ONES THAT WILL PARTICIPATE IN YOUR
9 ROLE AND THAT IS YOU ARE THE FACT-FINDER. IT IS YOUR
10 RESPONSIBILITY TO LISTEN TO ALL THE EVIDENCE AND ULTIMATELY
11 DETERMINE WHAT YOU BELIEVE TO BE THE FACTS. WEIGH THE
12 CREDIBILITY OF WITNESSES AND DETERMINE WHAT YOU BELIEVE TO BE
13 THE FACTS.

14 MY ROLE IS DIFFERENT FROM YOURS. MINE IS THAT OF,
15 ONE, I'M THE REFEREE. SO EVERY STRUCTURED EVENT GENERALLY
16 HAS SOMEBODY THAT SEES TO IT THAT THE RULES ARE FOLLOWED. WE
17 HAVE RULES FOR WHICH TRIALS ARE CONDUCTED IN SOUTH CAROLINA,
18 AND IT'S MY RESPONSIBILITY TO SEE TO IT THAT THESE RULES ARE
19 COMPLIED WITH. IN THAT REGARD YOU MAY HEAR A LAWYER GET UP
20 AND SAY, "I OBJECT, YOUR HONOR," AND I'LL HAVE TO RULE. I
21 MAY SUSTAIN THE OBJECTION OR OVERRULE THE OBJECTION. YOU ARE
22 NOT TO INFER ANYTHING BY THE WAY I RULE. I PROBABLY WILL
23 RULE FOR AND AGAINST BOTH LAWYERS AT SOME POINT IN TIME
24 THROUGHOUT THE COURSE OF THE TRIAL. MY SECOND ROLE IS TO
25 TELL YOU WHAT THE LAW IS, INSTRUCT YOU IN THE LAW AT THE END

1 OF THE CASE SO THAT YOU CAN APPLY THAT LAW TO THE FACTS.

2 NOW, LADIES AND GENTLEMEN, LISTEN VERY CAREFULLY TO
3 WHAT THE LAWYERS TELL YOU IN THIS CASE. THE LAWYERS -- WHAT
4 THEY TELL YOU IS IMPORTANT, BUT UNDERSTAND THAT THEY ARE NOT
5 GIVING YOU EVIDENCE. WHAT THEY TELL YOU IS NOT EVIDENCE IN
6 THIS CASE. SO PAY CLOSE ATTENTION, BUT UNDERSTAND THEIR ROLE
7 IS TO REPRESENT THEIR RESPECTIVE CLIENTS IN THIS MATTER.

8 AS I TOLD YOU, THE DEFENDANT IN THIS CASE HAS BEEN
9 CHARGED WITH THREE DISTINCT CRIMINAL OFFENSES: ONE, CRIMINAL
10 SEXUAL CONDUCT IN THE FIRST DEGREE. THE SECOND: POSSESSION
11 OF A FIREARM OR KNIFE DURING THE COMMISSION OR ATTEMPT TO
12 COMMIT A VIOLENT CRIME AND THE THIRD IS KIDNAPPING. AND AS I
13 SAID, THE DEFENDANT HAS PLED NOT GUILTY TO THESE INDICTMENTS
14 AND, THEREFORE, THE BURDEN NOW FALLS UPON THE STATE TO
15 ATTEMPT TO PROVE THE DEFENDANT GUILTY OF THESE. THE
16 DEFENDANT IS PRESUMED TO BE INNOCENT. THESE -- AS I SAID
17 EARLIER, THESE INDICTMENTS ARE SOLELY NOTICE DOCUMENTS,
18 CHARGE DOCUMENTS. THEY ARE NOT EVIDENCE, NOT TO BE
19 CONSIDERED BY YOU FOR ANY PURPOSE OTHER THAN THAT THEY HAVE
20 NOW PUT THE DEFENDANT ON NOTICE OF THESE RESPECTIVE CHARGES.

21 ALL RIGHT. WITH THAT SAID, I THINK I'LL CALL ON THE
22 SOLICITOR AND ASK IF SHE WOULD PLEASE GO FORWARD WITH HER
23 OPENING STATEMENT.

24 MS. BRISBIN: MAY IT PLEASE THE COURT?

25 THE COURT: YES, MA'AM.

1 MS. BRISBIN: MS. BROWN? LADIES AND GENTLEMEN OF
2 THE JURY, JOSEPH WALKER IS CHARGED WITH KIDNAPPING AN ELDERLY
3 WOMAN, SEXUALLY ASSAULTING HER, AND HAVING A GUN IN HIS
4 POSSESSION WHILE THESE CRIMES WERE COMMITTED. ON MARCH 2ND
5 OF 2002 MARGARET SANDERS WAS SHOPPING FOR CURTAIN RODS AT THE
6 DOLLAR STORE IN DENMARK, SOUTH CAROLINA. SHE LIVED IN
7 NORWAY, SOUTH CAROLINA.

8 AFTER SHE BOUGHT CURTAIN RODS AT THE DOLLAR STORE,
9 SHE STOPPED AT THE B.P. STATION WHERE SHE WAS ALSO IN
10 DENMARK, SOUTH CAROLINA. WHEN SHE CAME OUT OF THE B.P.
11 STATION, HER CAR WOULDN'T START. SHE ASKED A STRANGE MAN WHO
12 WAS OUTSIDE THE B.P. STATION TO HELP HER START HER CAR. HE
13 DID HELP HER START HER CAR, AND THEN HE TOLD HER SHE OWED HIM
14 \$30 FOR FIXING HER CAR. SHE DIDN'T HAVE \$30 WITH HER AND SHE
15 OFFERED TO GIVE HIM THE \$30 IF HE WOULD FOLLOW HER BACK TO
16 HER HOME IN NORWAY WHICH HE DID.

17 WHEN HE GOT TO HER HOME IN NORWAY, HE WAS NOT
18 INVITED IN. SHE WENT IN TO GET THE MONEY. HE CAME UP BEHIND
19 HER, GRABBED HER INSIDE HER HOUSE, FORCED HER INTO HIS TRUCK,
20 BLINDFOLDED HER, AND DROVE HER TO HIS HOME IN SALLEY. HE
21 TOOK THE BLINDFOLD OFF INSIDE THE HOME. HE RAPED HER
22 REPEATEDLY THROUGH THE NIGHT. HE TOOK THE BLINDFOLD OFF OF
23 HER, PUT THE BLINDFOLD BACK ON HER AND DROVE HER HOME BACK TO
24 NORWAY, PUSHED HER OUT OF THE CAR AND TOLD HER HE WOULD KILL
25 HER IF SHE TOLD ANYONE WHAT HAPPENED. HE ALSO DURING THE

1 NIGHT SHOWED HER A GUN AND THREATENED TO KILL HER IF SHE
2 DIDN'T COOPERATE.

3 THE NEXT MORNING WHEN SHE GOT HOME ABOUT 5:00 IN THE
4 MORNING AT FIRST SHE DIDN'T THINK SHE WAS GOING TO REPORT IT
5 BECAUSE SHE WAS AFRAID, BUT SHE EVENTUALLY WENT TO HER
6 COUSIN'S HOUSE LATER THAT MORNING AND HER COUSIN INSISTED
7 THAT SHE NEEDED TO REPORT THIS. SHE WAS TAKEN TO A MEDICAL
8 CENTER IN CHARLESTON FOR SEXUAL ASSAULT EXAMINATION, AND YOU
9 WILL HEAR FROM A DOCTOR THERE ABOUT THE INJURIES TO HER
10 GENITALS.

11 SHE ALSO AT A LATER DATE WAS SHOWN A VIDEOTAPE FROM
12 THE B.P. SURVEILLANCE CAMERA AND SHE WAS ABLE TO PICK OUT THE
13 PERSON WHO DID THIS TO HER. THAT VIDEOTAPE WAS ALSO SHOWN TO
14 THE MANAGER OF THE B.P. STORE WHO RECOGNIZED THE PERSON THAT
15 SHE HAD POINTED OUT AS JOSEPH WALKER BECAUSE HE WAS A REGULAR
16 CUSTOMER AT THE STORE. WITH THAT INFORMATION, LAW
17 ENFORCEMENT MADE A SIX-PHOTO LINE-UP WHICH THEY ALSO SHOWED
18 TO MS. SANDERS AND SHE AGAIN WAS ABLE TO PICK OUT THE
19 DEFENDANT AS THE PERSON WHO HAD SEXUALLY ASSAULTED HER.

20 KNOWING THE NAME OF THE PERSON NOW, LAW ENFORCEMENT
21 WENT TO MR. WALKER'S HOUSE AND TOOK PICTURES OF THE INSIDE OF
22 HIS HOUSE. MRS. SANDERS HAD ALREADY GIVEN LAW ENFORCEMENT A
23 DESCRIPTION OF THE PERSON WHO DID THIS, A DESCRIPTION OF HIS
24 VEHICLE, AND A DETAILED DESCRIPTION OF THE INSIDE OF HIS
25 HOUSE. LAW ENFORCEMENT FOUND THAT THE TRUCK MATCHED HER

1 DESCRIPTION PERFECTLY, THE INSIDE OF HIS HOUSE MATCHED HER
2 DESCRIPTION PERFECTLY, AND THIS WAS A MAN THAT SHE DIDN'T
3 EVEN KNOW. HAD NEVER MET, DIDN'T KNOW HIS NAME PRIOR TO THAT
4 DAY.

5 MRS. SANDERS WILL DO SOMETHING THAT WOULD BE
6 EXTREMELY DIFFICULT FOR ANYONE TO DO. SHE WILL GET ON THAT
7 STAND AND TELL YOU IN DETAIL WHAT THIS MAN DID TO HER. I'M
8 CONFIDENT THAT WHEN YOU'VE HEARD ALL THE EVIDENCE YOU WILL
9 KNOW BEYOND A REASONABLE DOUBT THAT JOSEPH WALKER IS GUILTY.
10 THANK YOU.

11 THE COURT: ALL RIGHT. MS. BROWN?

12 MS. BROWN: THANK YOU, YOUR HONOR. MAY IT PLEASE
13 THE COURT? LADIES AND GENTLEMEN, THERE ARE A COUPLE OF LEGAL
14 TERMS THAT THE JUDGE JUST SPOKE WITH YOU ABOUT A FEW MINUTES
15 AGO AND THEY'RE TERMS THAT WE'RE FAMILIAR WITH AND THAT WE
16 HEAR A LOT AND WE HAVE SOME CONCEPTIONS ABOUT. SOMETIMES
17 THERE ARE MORE POPULAR TERMS THAN OTHERS, DEPENDING ON WHO'S
18 BEEN ARRESTED IN THE MEDIA LATELY.

19 THE FIRST THING IS PRESUMPTION OF INNOCENCE. MR.
20 WALKER, LIKE EVERY OTHER INDIVIDUAL WHO IS EVER ACCUSED OF A
21 CRIME IN THIS COUNTRY, IS BY LAW PRESUMED TO BE INNOCENT.
22 THAT PRESUMPTION OF INNOCENCE AND THAT PHRASE, IT MEANS A LOT
23 TO US AS AMERICANS. SOMETIMES IT'S ONE OF THOSE
24 UNCOMFORTABLE REALITIES OF LIFE THAT WE HAVE TO DEAL WITH
25 WHEN WE THINK WE KNOW WHAT HAPPENED IN A SITUATION AND WE SEE

1 A JURY FAR AWAY FROM HERE ISSUE THE WORDS NOT GUILTY. THOSE
2 ARE TIMES WHEN IT MAKES US REALLY UNCOMFORTABLE WITH THAT
3 PRESUMPTION THAT WE'RE ALL GUARANTEED TO.

4 THERE ARE OTHER TIMES WHEN WE'RE REALLY PROUD OF
5 THAT AND WE'RE GRATEFUL FOR THAT. THERE ARE TIMES THAT THAT
6 PRECEPT OF OUR SOCIETY IS RAISED AS A BANNER AND SOMETHING
7 THAT WE SHOW TO THE REST OF THE WORLD AS -- AS TO WHY WE'RE
8 MORALLY SUPERIOR AND WHY OUR CITIZENS HAVE THE RIGHTS THAT WE
9 THINK THAT THE REST OF THE WORLD SHOULD HAVE. SO IT'S ONE OF
10 THOSE THINGS: SOMETIMES WE LOVE IT; SOMETIMES WE'RE KIND OF
11 UNCOMFORTABLE WITH IT. IT'S SOMETHING THAT, DEPENDING ON
12 WHO'S BEEN ARRESTED AND WHAT MEDIA OUTLET IS COMMENTATING ON
13 A SITUATION, GETS KIND OF DIFFERENT PLAY. A C.N.N.
14 COMMENTATOR OR AN E.S.P.N. COMMENTATOR MAY PUT A DIFFERENT
15 SPIN ON IT RIGHT NOW WITH THE VARIOUS INDIVIDUALS WHO ARE IN
16 FRONT OF US IN THE NEWS, AND SOMETIMES IT'S EVEN MORE AMAZING
17 TO THINK THAT THOSE THINGS THAT WE SEE OUT THERE GO ON AND WE
18 KNOW ARE THINGS THAT HAPPEN RIGHT HERE IN THIS COURTROOM.
19 RIGHT HERE IN THIS COURTROOM YOU ARE FACED WITH THE AWESOME
20 RESPONSIBILITY OF UPHOLDING ONE OF THE GREATEST TENETS OF
21 AMERICAN LIFE.

22 THE OTHER IS THE STANDARD OF PROOF IN A CRIMINAL
23 TRIAL, PROOF BEYOND A REASONABLE DOUBT, AND YOU'VE PROBABLY
24 HEARD THAT PHRASE A LOT. ANYONE WHO WATCHES ANY OF THE
25 VARIOUS LAWYER SHOWS ON T.V. OR EVEN A LOT OF TIMES ON THE

1 NEWS YOU'LL HEAR THAT PHRASE. AND AT THE END OF THE TRIAL
2 WHEN THE JUDGE GIVES YOU THOSE INSTRUCTIONS OF THE LAW, HE'S
3 GOING TO TELL YOU MORE ABOUT WHAT THAT MEANS, ABOUT PROOF
4 BEYOND A REASONABLE DOUBT. BUT THE ESSENTIAL THING THAT THAT
5 MEANS IS THAT THE STATE HAS THE BURDEN OF PROVING TO EACH AND
6 EVERY ONE OF YOU BEYOND A REASONABLE DOUBT THAT JOSEPH WALKER
7 COMMITTED THESE OFFENSES, THAT THIS HAPPENED.

8 A LOT OF TIMES A TRIAL IS LIKE A PUZZLE AND THE
9 WITNESSES AND THE EVIDENCE AND EVERYTHING YOU'LL SEE FROM
10 RIGHT HERE ARE PIECES OF THE PUZZLE, AND IT'S GOING TO BE
11 YOUR JOB AS JURORS TO LOOK AT THOSE PIECES AND SEE IF THEY
12 FIT. THE JUDGE IS GOING TO TELL YOU AT THE END OF THIS TRIAL
13 THAT ONE OF YOUR JOBS IS TO DECIDE THE CREDIBILITY OF
14 WITNESSES, THE BELIEVABILITY OF WITNESSES, AND ONE OF THE
15 THINGS HE'S GOING TO TELL YOU IS THAT YOU CAN BELIEVE
16 EVERYTHING THAT A WITNESS TELLS YOU. YOU CAN BELIEVE NONE OF
17 WHAT A WITNESS TELLS YOU. YOU CAN BELIEVE SOME OF IT AND NOT
18 BELIEVE THE REST OF IT, BUT YOU'RE THE ONLY ONES WHO CAN
19 DECIDE IF YOU'RE HEARING EVERYTHING WHAT HAPPENED. DID HE DO
20 IT? ALL THAT'S FOR YOU TO DECIDE.

21 HE SITS THERE TODAY AND HE'S PLED NOT GUILTY. HE
22 SAYS, I DIDN'T DO WHAT THEY SAY THAT I DID. AND THIS IS
23 GOING TO BE A TOUGH CASE TO HEAR BECAUSE WE DON'T LIKE TO
24 THINK -- WE DON'T LIKE TO THINK THAT THINGS LIKE THIS COULD
25 HAPPEN. WE DON'T LIKE TO THINK THAT PEOPLE MIGHT NOT BE

1 TRUTHFUL ABOUT SOMETHING LIKE THIS, AND QUITE FRANKLY SOME OF
2 THE STUFF THAT WE'RE GOING TO HAVE TO TALK ABOUT A LOT OF
3 PEOPLE JUST DON'T LIKE TO TALK ABOUT. THEY'RE PRIVATE
4 MATTERS.

5 BUT I ASK YOU TO LISTEN TO EVERYTHING. KEEP AN OPEN
6 MIND ABOVE ALL ELSE. REMEMBER WHAT THE JUDGE TOLD YOU: THAT
7 YOU'RE GOING TO HAVE TO HEAR EVERY PIECE OF INFORMATION, HEAR
8 THE LAW AS THE JUDGE GIVES IT BEFORE YOU CAN EVEN START TO
9 MAKE UP YOUR MIND BECAUSE IF YOU START TO THINK THAT YOU KNOW
10 THE END OF THE STORY, THEN YOU MIGHT MISS SOMETHING VITAL
11 THAT WOULD MAKE YOU SAY, WELL, WAIT A MINUTE; MAYBE I DON'T
12 KNOW. THAT'S WHY WE ASK YOU NOT TO TALK ABOUT IT, NOT EVEN
13 AMONGST YOURSELVES UNTIL YOU HAVE EVERYTHING.

14 AND AFTER YOU HAVE EVERYTHING, THEN WE'RE -- ALL OF
15 US IN THIS ROOM ARE GOING TO ASK YOU TO DO THE MOST DIFFICULT
16 JOB OF ALL AND SIFT THROUGH IT AND TO DECIDE WHETHER OR NOT
17 YOU'RE FIRMLY CONVINCED THAT HE'S DONE WHAT THE STATE SAYS
18 HE'S DONE. THAT'S GOING TO BE YOUR JOB. AND WE ASK YOU NOT
19 TO LEAVE ALL THAT OTHER STUFF THAT YOU KNOW OUT THERE. YOU
20 BRING IT WITH YOU. YOU BRING YOUR EXPERIENCES WITH YOU. YOU
21 BRING IN HERE WHAT YOU KNOW MAKES SENSE TO YOU AND WHAT
22 DOESN'T MAKE SENSE TO YOU. YOU DON'T HAVE TO FORGET YOUR
23 COMMON SENSE. AND AT THE END OF ALL OF THIS WE'LL STAND UP
24 IN FRONT OF YOU AGAIN AND WE'RE GOING TO ASK THAT YOU LOOK AT
25 THE PUZZLE AND WE'RE GOING TO ASK THAT YOU FIND MR. WALKER

1 NOT GUILTY. THANK YOU.

2 THE COURT: OKAY. THANK YOU. LADIES AND GENTLEMEN,
3 AS I SAID, I THINK WE'RE GOING TO GO AHEAD AND BREAK NOW AND
4 COME BACK. I'M GOING TO ASK THAT -- TWO THINGS. ONE: DON'T
5 DISCUSS THE CASE WITH ANYBODY THAT YOU MAY COME IN CONTACT
6 WITH. I KNOW YOU HAVE A FAIRLY LIMITED KNOWLEDGE, BUT DON'T
7 DISCUSS ANYTHING ABOUT IT. I'LL ATTEMPT TO REMIND YOU OF
8 THAT EACH AND EVERY TIME YOU LEAVE THE COURTROOM.

9 I'M GOING TO ASK YOU TO BE BACK HERE AT QUARTER TILL
10 2. THAT WILL GIVE YOU A LITTLE MORE THAN AN HOUR TO HAVE
11 LUNCH. ONCE WE GET BACK, WE'LL GO AHEAD AND BEGIN THE
12 PREPARATION AND THE PRESENTATION OF THE EVIDENCE IN THE CASE.
13 THE BAILIFFS WILL SHOW YOU HOW TO GET OUT OF THE COURTHOUSE
14 AND GET BACK INTO THE JURY ROOM WHEN YOU COME BACK. Y'ALL
15 HAVE A NICE LUNCH AND WE'LL SEE YOU IN AN HOUR AND 12
16 MINUTES. THANK YOU. YOU'RE FREE TO GO TO LUNCH.

17 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO
18 GO TO LUNCH AT 12:31 P.M.)

19 THE COURT: OKAY. WE'LL COME BACK IN AN HOUR AND 15
20 MINUTES -- I MEAN QUARTER TILL 2. Y'ALL HAVE A NICE LUNCH.
21 NOTHING ELSE WE NEED TO TAKE UP AT THIS TIME, IS THERE?

22 MS. BRISBIN: NOTHING FROM THE STATE, YOUR HONOR.

23 MS. BROWN: NOTHING FROM THE DEFENDANT, YOUR HONOR.

24 THE COURT: ALL RIGHT. Y'ALL HAVE A NICE LUNCH AND
25 WE'LL SEE YOU IN A LITTLE WHILE.

1 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

2 THE COURT: THANK YOU. PLEASE BE SEATED IF YOU
3 WOULD. ALL RIGHT. STATE READY?

4 MS. BRISBIN: YES, YOUR HONOR.

5 THE COURT: DEFENDANT READY?

6 MS. BROWN: THEY'RE BRINGING HIM OUT.

7 THE COURT: ONE LITTLE PROBLEM?

8 MS. BROWN: JUST NO DEFENDANT.

9 THE COURT: NO CLIENT, HUH?

10 MS. BROWN: NO CLIENT.

11 (THE DEFENDANT, MR. WALKER, WAS BROUGHT INTO THE
12 COURTROOM.)

13 THE COURT: ALL RIGHT. Y'ALL READY NOW?

14 MS. BROWN: YES, SIR.

15 THE COURT: ALL RIGHT. CAN WE BRING THE JURY IN,
16 PLEASE, MR. WHITTLE?

17 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
18 1:49 P.M. STATE'S EXHIBITS 4 THROUGH 9 WERE MARKED FOR
19 IDENTIFICATION ONLY.)

20 THE COURT: OKAY. LADIES AND GENTLEMEN, I HOPE YOU
21 HAD A NICE LUNCH. AS I TOLD YOU EARLIER, WE'RE NOW IN THE
22 PORTION OF THE TRIAL WHERE WE'LL BEGIN THE PRESENTATION OF
23 THE EVIDENCE. THE STATE HAS THE OPPORTUNITY TO GO FIRST WITH
24 THIS. I'LL ASK, MADAM SOLICITOR, IF YOU WOULD PROCEED TO
25 CALL YOUR FIRST WITNESS.

1 MS. BRISBIN: THANK YOU, YOUR HONOR. THE STATE
2 CALLS MARGARET SANDERS.

3 MARGARET ANN SANDERS, AFTER BEING DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
6 YOUR FULL NAME FOR THE COURT, SPELLING YOUR LAST.

7 THE WITNESS: MARGARET SANDERS. S-A-N-D-E-R-S.

8 DIRECT EXAMINATION

9 BY MS. BRISBIN:

10 Q. MS. SANDERS, WHERE WERE YOU LIVING ON MARCH 2ND OF
11 2002?

12 A. ON HEBERT (PHONETIC) ROAD.

13 Q. IN WHAT TOWN?

14 A. NORWAY.

15 Q. AND WHAT WERE YOU DOING THAT AFTERNOON?

16 A. I HAD GONE TO DENMARK TO GET SOME CURTAIN RODS TO
17 PUT CURTAINS UP AND---

18 Q. WHERE DID YOU GO TO DO THAT?

19 A. DOLLAR GENERAL.

20 Q. OKAY. AND WHAT DID YOU DO AFTER THAT?

21 A. I STOPPED BY THE LITTLE B.P. AND RAN IN AND GOT ME A
22 CUP OF ICE AND PAID FOR IT AND CAME BACK OUT, AND MY CAR
23 CRANKED UP BUT IT CUT OFF HALFWAY AROUND THE BACK OF THE
24 STATION OR AROUND AT THE END OF THE STATION.

25 Q. OKAY. AND THEN WHAT HAPPENED?

1 A. THERE WAS TWO PEOPLE PUMPING GAS AND I ASKED THE
2 WHITE GUY ABOUT HELPING ME AND HE SAID HE DIDN'T KNOW
3 ANYTHING ABOUT CARS, AND THEN I ASKED THE BLACK MAN AND HE
4 SAID, YEAH, LET HIM FINISH WITH HIS GAS AND PAY FOR IT AND
5 THEN HE WOULD -- WOULD LOOK AT IT FOR ME.

6 Q. OKAY. AND DID HE DO THAT?

7 A. YES.

8 Q. OKAY. WHAT HAPPENED AFTER THAT?

9 A. I HAD THE HOOD UP ALREADY LOOKING AND HE GOT IN HIS
10 TRUCK AND PULLED OVER AND HE LOOKED AND HE SAID, "HERE'S THE
11 PROBLEM RIGHT HERE," AND IT LOOKED LIKE THE WIRE WAS CUT. I
12 DON'T KNOW. BUT THAT WIRE HAS NOT BEEN FOUND AND HE PUT
13 ANOTHER ONE BACK ON THERE.

14 Q. OKAY. WHERE DID HE GET ANOTHER WIRE?

15 A. I DON'T KNOW.

16 Q. DID HE LEAVE?

17 A. YEAH.

18 Q. OKAY. AND THEN WHAT HAPPENED?

19 A. THEN HE CAME BACK AND HE PUT THE WIRE ON AND HE TOLD
20 ME THE WIRE WOULDN'T BE BUT ABOUT \$9, AND THEN I ASKED HIM
21 LATER AND HE SAID 30. I SAID, "WELL, I DON'T HAVE \$30 WITH
22 ME." AND SO I DIDN'T THINK MUCH ABOUT IT AND I SAID, "WELL,
23 JUST FOLLOW ME BACK BY THE HOUSE AND I'LL GIVE IT TO YOU."
24 WHEN I GOT BACK TO THE HOUSE AND I RAN ON IN AND WAS GETTING
25 THE MONEY AND WHEN I CAME BACK, I TURNED AROUND AND HE WAS

1 RIGHT THERE IN THE ROOM.

2 Q. OKAY.

3 A. AND HE TOOK THE MONEY OUT OF MY HAND, ALL I HAD.

4 Q. HAD YOU ASKED HIM TO COME INTO THE HOUSE?

5 A. NO.

6 Q. OKAY. WHERE WERE YOU IN THE HOUSE?

7 A. IN MY BEDROOM.

8 Q. OKAY. AND YOU SAID WHEN YOU TURNED AROUND HE WAS

9 THERE?

10 A. RIGHT.

11 Q. WAS HE IN THE BEDROOM AS WELL?

12 A. YEAH.

13 Q. OKAY. AND THEN WHAT HAPPENED?

14 A. WELL, IT SHOCKED ME SO UNTIL I DIDN'T KNOW WHAT TO

15 DO. I JUST KIND OF SPACED OUT I GUESS, AND HE JUST GOT A --

16 GRABBED A HOLD TO ME AND TOOK ME ON OUT OF THE HOUSE.

17 Q. OKAY. AND THEN WHAT HAPPENED?

18 A. HE BLINDFOLDED ME AND PUT ME IN THE TRUCK AND TOOK

19 ME AND I---

20 Q. WHOSE TRUCK?

21 A. HIS TRUCK.

22 Q. OKAY. WHAT KIND OF TRUCK WAS IT? WHAT DID IT LOOK

23 LIKE?

24 A. WELL, FROM WHAT I CAN REMEMBER AT THE GAS STATION,

25 IT WAS A SMALL BLACK TRUCK AND IT HAD SOME KIND OF RED ON THE

1 SIDE OF IT.

2 Q. OKAY. DID YOU SEE THE INSIDE OF THE TRUCK?

3 A. NO.

4 Q. DID YOU NOTICE ANYTHING ABOUT THE SOUNDS OR THE ODOR
5 OF THE INSIDE OF THE TRUCK?

6 A. HAD AN ODOR AND HE WAS---

7 Q. WHAT KIND OF AN ODOR?

8 A. ---SHIFTING GEARS.

9 Q. WHAT DO YOU MEAN BY AN ODOR?

10 A. IT SMELLED.

11 Q. OKAY.

12 A. NOT CLEAN.

13 Q. OKAY. AND HE WAS SHIFTING GEARS.

14 A. UH-HUH.

15 Q. OKAY. AND THEN WHAT HAPPENED AFTER YOU GOT IN THE
16 TRUCK?

17 A. HE JUST KEPT DRIVING AND DRIVING AND DRIVING. I WAS
18 TRYING TO REMEMBER WHERE I WAS GOING, YOU KNOW, AND WHICH WAY
19 I TURNED AND CROSSED THE RAILROAD TRACKS AND I WAS TRYING TO
20 REMEMBER BECAUSE I WAS SCARED.

21 Q. DID YOU STILL HAVE THE BLINDFOLD ON?

22 A. YES.

23 Q. CAN YOU REMEMBER HOW MUCH TIME WENT BY OR DO YOU
24 KNOW HOW MUCH TIME WENT BY IN THE TRUCK?

25 A. I DON'T KNOW.

1 Q. OKAY.

2 A. I CAN'T REMEMBER. IT SEEMED LIKE A LONG TIME.

3 Q. OKAY. DID HE SAY ANYTHING TO YOU ANY OF THAT TIME?

4 DID HE SAY ANYTHING TO YOU WHEN HE PUT YOU IN THE TRUCK?

5 A. I DON'T REMEMBER.

6 Q. OKAY. DID HE SAY ANYTHING -- DO YOU REMEMBER HIM
7 SAYING ANYTHING ALONG ON THE DRIVE?

8 A. YEAH. HE WAS TALKING. HE SAID SOMETHING ABOUT, "I
9 FISH THERE."

10 Q. OKAY. DO YOU REMEMBER HIM SAYING ANYTHING ELSE ON
11 THE DRIVE?

12 A. NO.

13 Q. NO? OKAY. AND THEN WHAT HAPPENED?

14 A. THEN WE FINALLY STOPPED AND HE TOOK ME INTO THIS
15 HOUSE AND---

16 Q. DID YOU STILL HAVE THE BLINDFOLD ON AT THAT POINT?

17 A. YES.

18 Q. OKAY.

19 A. AND IT WAS TAKEN OFF AFTER I GOT IN THAT ROOM.

20 Q. WHAT ROOM?

21 A. IT WAS A BEDROOM.

22 Q. OKAY. AND DID HE HAVE A WEAPON?

23 A. YEAH.

24 Q. WHAT KIND OF WEAPON? DID YOU SEE IT?

25 A. YEAH, BUT I DIDN'T PAY THAT MUCH ATTENTION TO IT.

1 Q. WHAT WAS IT?

2 A. IT WAS A SMALL PISTOL.

3 Q. OKAY. WHAT DID HE DO WITH IT?

4 A. WELL, HE FLASHED IT AROUND A LITTLE WHILE, YOU KNOW,
5 AND THEN...

6 Q. DID HE SAY ANYTHING TO YOU ABOUT IT, ANY KIND OF
7 THREATS OR...

8 A. YEAH. HE SAID THAT HE WOULD KILL ME.

9 Q. OKAY. AND WHAT DID HE USE TO BLINDFOLD YOU? DO YOU
10 REMEMBER?

11 A. IT WAS A SCARF OF SOME TYPE LIKE YOU SEE
12 CONSTRUCTION WORKERS WEAR. THEY TIE THEM AROUND THEIR HEADS.

13 Q. OKAY. DID YOU GO WITH HIM WILLINGLY?

14 A. NO.

15 Q. AND WHAT HAPPENED NEXT? YOU'RE IN THE BEDROOM. WAS
16 THE BLINDFOLDS TAKEN OFF AT SOME POINT?

17 A. YEAH.

18 Q. OKAY. AND THEN WHAT HAPPENED?

19 A. HE TOOK MY CLOTHES OFF.

20 Q. HE TOOK THEM OFF?

21 A. (WITNESS NODDED HEAD UP AND DOWN.)

22 Q. OKAY. WHAT -- WHAT WAS HE WEARING?

23 A. IT LOOKED LIKE A MECHANIC'S UNIFORM.

24 Q. OKAY.

25 A. TO ME THAT'S WHAT I THOUGHT HE WAS AT THE STATION.

1 Q. OKAY. AND WHAT WERE YOU WEARING?

2 A. A JOGGING OUTFIT.

3 Q. JOGGING OUTFIT?

4 A. UH-HUH.

5 Q. OKAY. DO YOU MEAN LIKE SHORTS OR SWEAT---

6 A. NO, NO. LONG JOGGING PANTS AND A JOGGING SHIRT.

7 Q. OKAY.

8 A. LONG-SLEEVED.

9 Q. AND AFTER HE TOOK YOUR CLOTHES OFF, WHAT HAPPENED?

10 A. HE RAPED ME.

11 Q. OKAY. WHEN YOU SAY HE RAPED YOU, WHAT EXACTLY DO

12 YOU MEAN BY THAT?

13 A. HE PUT HIS PENIS IN THE VAGINA AREA OR TRIED TO.

14 Q. DID HE ACTUALLY PUT HIS PENIS IN YOUR VAGINA?

15 A. HE TRIED, BUT HE WAS A BIG MAN AND HE HURT ME REAL

16 BAD.

17 Q. DID ANY PART OF HIS PENIS GO INSIDE YOUR VAGINA EVEN

18 A SLIGHT AMOUNT?

19 A. YES.

20 Q. OKAY. HOW MANY -- DID THIS HAPPEN ONE TIME OR MORE

21 THAN ONE TIME?

22 A. MORE THAN ONE TIME.

23 Q. DO YOU REMEMBER HOW MANY TIMES IT HAPPENED?

24 A. NOT -- NOT -- NO, NOT EXACTLY.

25 Q. OKAY. WAS IT MORE THAN THREE TIMES?

1 A. I WOULD THINK SO, YES.

2 Q. OKAY. DID HE DO ANYTHING ELSE TO YOU OTHER THAN
3 PUTTING HIS PENIS INSIDE YOUR VAGINA?

4 A. HE WAS WANTING ME TO PUT IT IN MY MOUTH.

5 Q. OKAY. DID HE FORCE YOU TO DO THAT?

6 A. YES.

7 Q. OKAY. DO YOU RECALL HOW MANY TIMES THAT HAPPENED?

8 A. ONCE OR TWICE.

9 Q. DID HE SAY ANYTHING TO YOU WHILE HE WAS DOING THESE
10 THINGS?

11 A. YEAH. HE WAS CALLING ME A BITCH, THINGS LIKE THAT.

12 Q. WAS HE TELLING YOU WHAT TO DO?

13 A. YEAH.

14 Q. WHAT DID HE TELL YOU TO DO?

15 A. HE TOLD ME TO SUCK ON IT.

16 Q. SUCK ON WHAT?

17 A. THE PENIS.

18 Q. DO YOU REMEMBER WHAT HE CALLED IT?

19 A. NO.

20 Q. OKAY. DO YOU REMEMBER HIM SAYING ANYTHING ELSE TO
21 YOU?

22 A. HE JUST KEPT CALLING ME A BITCH. DO THIS, BITCH; DO
23 THAT.

24 Q. DID YOU AT ANY TIME HAVE CONSENSUAL SEXUAL RELATIONS
25 WITH HIM?

1 A. NO.

2 Q. DID YOU EVER TRY TO GET AWAY FROM HIM?

3 A. I THOUGHT OF WAYS, BUT I REALLY DIDN'T KNOW WHERE I
4 WAS AT, YOU KNOW.

5 Q. DID YOU EVER ASK HIM TO LET YOU GO?

6 A. YES.

7 Q. ONE TIME---

8 A. AND I BEGGED AND FINALLY HE DID.

9 Q. OKAY. WHEN DID HE LET YOU GO?

10 A. SOMETIME WHEN I GOT HOME AND I LOOKED AT MY CLOCK IT
11 WAS ABOUT 5:00.

12 Q. AT NIGHT OR IN THE MORNING?

13 A. IN THE MORNING.

14 Q. OKAY. SO IT WAS -- WAS THAT THE NEXT MORNING?

15 A. YES, THAT WAS THE NEXT MORNING.

16 Q. OKAY. WAS HE WITH YOU THROUGHOUT THE NIGHT THEN?

17 A. YES.

18 Q. AND WHEN HE LET YOU GO, WERE YOU BLINDFOLDED WHEN
19 YOU -- WHERE DID HE LET YOU GO?

20 A. IN MY YARD.

21 Q. OKAY. HOW DID YOU GET BACK TO YOUR YARD?

22 A. HE TOOK ME BACK BECAUSE I BEGGED HIM AND PLEADED TO
23 TAKE ME BACK.

24 Q. OKAY. WERE YOU BLINDFOLDED ON THE DRIVE BACK?

25 A. YES.

1 Q. OKAY. AT SOME POINT DID HE TAKE THE BLINDFOLD OFF?

2 A. YES, WHEN HE PUSHED ME OUT OF THE TRUCK.

3 Q. OKAY. HE PUSHED YOU OUT OF THE TRUCK?

4 A. UH-HUH.

5 Q. AT YOUR HOUSE?

6 A. YES.

7 Q. DID HE SAY ANYTHING TO YOU THEN?

8 A. HE SAID, "IF YOU TELL ANYBODY, I'LL COME BACK AND
9 KILL YOU."

10 Q. OKAY. DID YOU TELL ANYONE RIGHT AWAY?

11 A. NOT RIGHT AWAY.

12 Q. WHO WAS THE FIRST PERSON YOU TOLD?

13 A. I WENT UP TO MY COUSIN'S AND TOLD HER.

14 Q. WHAT'S YOUR COUSIN'S NAME?

15 A. MARGIE KRAMER (SIC).

16 Q. OKAY. WERE YOU PLANNING TO REPORT IT?

17 A. I STARTED NOT TO BECAUSE I WAS SCARED, BUT THEN I
18 WAS BLEEDING AND I GOT REAL UPSET.

19 Q. WERE YOU IN PAIN?

20 A. YES.

21 Q. OKAY. WHERE WERE YOU WHEN YOU DECIDED TO REPORT IT
22 TO LAW ENFORCEMENT? WERE YOU ALREADY AT YOUR COUSIN'S OR---

23 A. NO, NO. I WAS SITTING AT MY HOUSE AND THAT'S WHY I
24 WENT UP THERE.

25 Q. OH, OKAY. AND DID YOU TELL YOUR COUSIN WHAT HAD

1 HAPPENED?

2 A. YES, I DID.

3 Q. OKAY. AND DID -- HAD YOU WASHED UP AT THAT POINT?

4 A. I HAD WIPE OFF AND CHANGED MY UNDERCLOTHES, YES.

5 Q. HAD YOU WASHED YOUR GENITAL AREA?

6 A. SOME, YES.

7 Q. OKAY. DO YOU KNOW WHY YOU DID THAT?

8 A. BECAUSE I WASN'T GOING TO TELL ANYBODY TO START

9 WITH.

10 Q. OKAY.

11 A. AND THEN I DECIDED I BETTER.

12 Q. OKAY. DID YOU HAVE -- WERE YOU IN GOOD PHYSICAL
13 HEALTH BEFORE THIS HAPPENED?

14 A. WELL, I WAS DIAGNOSED WITH SCLERODERMA AND REYNARD'S
15 AND I HAVE SOME HEART PROBLEM, BUT IT'S GOTTEN WORST (SIC).

16 Q. HAD YOU HAD A STROKE AT THAT POINT?

17 A. YES.

18 MS. BROWN: YOUR HONOR, I OBJECT TO RELEVANCY OF
19 THIS LINE OF QUESTIONING.

20 THE COURT: WHAT'S THE RELEVANCE OF THAT?

21 MS. BRISBIN: I THINK IT'S RELEVANT TO THE DANGER
22 THAT SHE WAS IN FROM BEING SEXUALLY ASSAULTED UNDER THOSE
23 CIRCUMSTANCES.

24 THE COURT: WELL, I'M GOING TO SUSTAIN THE
25 OBJECTION.

1 MS. BRISBIN: OKAY.

2 BY MS. BRISBIN:

3 Q. WHEN YOU REPORTED THIS INCIDENT TO LAW ENFORCEMENT,
4 DID YOU -- WHO DID YOU GO TO IN THE BEGINNING? WHICH LAW
5 ENFORCEMENT DEPARTMENT?

6 A. WELL, MY SON TOOK ME TO THE HOSPITAL AT ORANGEBURG.

7 Q. OKAY.

8 A. AND I DON'T REMEMBER THE NAMES OF THE PEOPLE THAT
9 WERE THERE.

10 Q. OKAY. WHAT HAPPENED AT THE HOSPITAL IN ORANGEBURG?

11 A. THEY DID NOT CHECK ME THERE. THEY SENT ME TO
12 CHARLESTON TO THE RAPE CENTER.

13 Q. OKAY.

14 A. DID A RAPE KIT.

15 Q. OKAY. AND AT SOME POINT DID YOU TALK TO LAW
16 ENFORCEMENT ABOUT WHAT HAD HAPPENED?

17 A. YES.

18 Q. OKAY. WAS THAT BEFORE OR AFTER YOU HAD HAD THE RAPE
19 KIT DONE?

20 A. IT WAS AFTER.

21 Q. OKAY. DO YOU REMEMBER HOW MUCH AFTER YOU TALKED TO
22 LAW ENFORCEMENT? DID LAW ENFORCEMENT COME TO THE HOSPITAL?
23 DO YOU KNOW?

24 A. YEAH.

25 Q. OKAY.

1 A. THE ORANGEBURG POLICE CAME.

2 Q. AND DID YOU TALK TO THEM THERE?

3 A. YES.

4 Q. AND DID YOU GIVE THEM A DESCRIPTION OF THE PERSON
5 WHO DID THIS TO YOU?

6 A. I DON'T THINK I DID AT THAT TIME.

7 Q. OKAY. WHEN DID YOU GIVE LAW ENFORCEMENT A
8 DESCRIPTION?

9 A. I THINK WHEN MS. BAMBERG -- I TALKED TO HER.

10 Q. OKAY. LIEUTENANT BAMBERG WITH THE ORANGEBURG
11 SHERIFF'S DEPARTMENT?

12 A. RIGHT.

13 Q. DO YOU REMEMBER WHEN YOU TALKED TO HER THE FIRST
14 TIME?

15 A. IT WAS ABOUT A WEEK, I THINK, AFTER OR A FEW DAYS.

16 Q. OKAY. DO YOU REMEMBER TALKING TO HER ON -- WHAT DAY
17 OF THE WEEK DID THE ASSAULT HAPPEN?

18 A. IT WAS ON A SATURDAY EVENING.

19 Q. OKAY. DO YOU REMEMBER TALKING WITH HER ON THE
20 FOLLOWING MONDAY?

21 A. I'M NOT SURE.

22 Q. OKAY. WHEN YOU DID TALK WITH HER, DID YOU GIVE HER
23 A DESCRIPTION OF THE MAN WHO DID THIS TO YOU?

24 A. I GAVE HER AS MUCH AS I COULD REMEMBER AT THAT TIME.

25 Q. DID YOU KNOW HIS NAME?

1 A. I NEVER -- NO, I DID NOT KNOW HIS NAME UNTIL AFTER I
2 HAD LOOKED AT TWO DIFFERENT SETS OF PICTURES AND I FINALLY
3 ASKED HER -- I SAID, "WHAT IS HIS NAME?"

4 Q. OKAY. THAT WAS AFTER YOU HAD PICKED HIM OUT.

5 A. YEAH.

6 Q. OKAY. AND DID YOU GIVE HER A DESCRIPTION OF THE
7 HOUSE WHERE YOU WERE SEXUALLY ASSAULTED?

8 A. THE INSIDE, YES.

9 Q. OKAY. YOU DIDN'T ACTUALLY SEE THE OUTSIDE?

10 A. HUH-UH.

11 Q. OKAY. AND DID YOU GIVE HER A DESCRIPTION OF THE
12 VEHICLE THAT HE WAS DRIVING?

13 A. YES.

14 Q. OKAY. WHAT DESCRIPTION DID YOU GIVE OF HIM -- OF
15 THE MAN WHO DID THIS TO YOU?

16 A. I TOLD HER THAT HE WAS A BIG MAN AND HAD SOME FACIAL
17 HAIR AND HE -- I TOLD HER HE WAS ABOUT SIX FOOT AND 200
18 POUNDS.

19 Q. 200 POUNDS?

20 A. YES.

21 Q. OKAY.

22 A. I ESTIMATED IT THAT.

23 Q. DID YOU REMEMBER ANYTHING ABOUT HIS TEETH?

24 A. HE DIDN'T HAVE ANY.

25 Q. OKAY. DID YOU REMEMBER ANYTHING ABOUT -- DID YOU

1 TELL THEM WHAT HE WAS WEARING?

2 A. I TOLD THEM THAT HE LOOKED LIKE HE WAS WEARING A
3 MECHANIC'S UNIFORM.

4 Q. OKAY. AND WHAT COLOR WAS IT?

5 A. BLUE.

6 Q. OKAY. AND WHAT ABOUT HIS SHOES OR BOOTS?

7 A. THEY WERE BLACK BOOTS.

8 Q. OKAY. DID LIEUTENANT BAMBERG EVER SHOW YOU A VIDEO?

9 A. YES.

10 Q. DID YOU SEE YOURSELF IN THE VIDEO?

11 A. YES, I SAW MYSELF WHEN I WENT IN AND GOT A CUP OF

12 ICE.

13 Q. AND WHERE WAS THAT VIDEO FROM?

14 A. IT WAS FROM THE B.P. IN DENMARK.

15 Q. OKAY. DID YOU RECOGNIZE ANYONE ELSE IN THAT VIDEO?

16 A. THE GUY THAT FIXED MY CAR AND---

17 Q. AND WHAT ELSE?

18 A. AND RAPED ME.

19 Q. OKAY. DID YOU EVER PICK ANYONE ELSE OUT OF THE

20 VIDEO?

21 A. NO.

22 Q. WERE YOU A HUNDRED PERCENT SURE THAT THAT WAS THE
23 MAN FROM LOOKING AT THE VIDEO?

24 A. I WASN'T A HUNDRED PERCENT SURE AT FIRST, BUT I WAS
25 PRETTY SURE THAT WAS HIM.

1 Q. ABOUT HOW MUCH?

2 A. ABOUT 90 PERCENT, YES, I WAS PRETTY SURE---

3 Q. ABOUT 90 PERCENT SURE THAT WAS HIM.

4 A. YES.

5 Q. OKAY. AND AFTER YOU PICKED HIM OUT OF THE VIDEO

6 DID -- WELL, LET ME ASK YOU THIS: DID YOU GET A GOOD LOOK AT
7 THE PERSON WHO DID THIS TO YOU THAT AFTERNOON WHEN HE WAS
8 FIXING YOUR CAR?

9 A. YES---

10 Q. WAS IT DAYLIGHT?

11 A. ---AND NO. I WROTE -- YOU KNOW, I SAW HIM.

12 Q. OKAY. WAS IT DAYLIGHT?

13 A. YES, IT WAS LIGHT OUT.

14 Q. HOW FAR AWAY WERE YOU FROM HIM?

15 A. I WASN'T ANY FARTHER THAN I AM FROM HER.

16 Q. WHICH IS ABOUT HOW FAR?

17 A. TWO OR THREE FEET, YEAH.

18 Q. OKAY. DID YOU SEE HIS FACE?

19 A. WELL, YES, I LOOKED AT HIM AND, YOU KNOW -- BUT I

20 DIDN'T THINK ANYTHING LIKE THIS WAS GOING TO HAPPEN---

21 Q. SURE.

22 A. ---SO I DIDN'T...

23 Q. OKAY. ABOUT HOW MUCH TIME WERE YOU WITH HIM THAT

24 AFTERNOON BEFORE HE TOOK YOU OFF IN THE TRUCK?

25 A. REPEAT THAT NOW. WHERE?

1 Q. ABOUT HOW MUCH TIME WOULD YOU SAY YOU SPENT WITH HIM
2 BEFORE AND AFTER HE FIXED YOUR TRUCK DURING DAYLIGHT HOURS?

3 A. WELL, I SAW HIM THERE AT THE STATION AND HE TOOK OFF
4 AND HE WAS GONE A GOOD WHILE AND CAME BACK AND FIXED THE CAR
5 AND THEN I SAID, THANK YOU, BUT I DIDN'T HAVE THAT MUCH
6 MONEY.

7 Q. RIGHT. SO HOW LONG DID IT TAKE FOR ALL OF THAT TO
8 HAPPEN---

9 A. WELL, HE WAS GONE---

10 Q. ---BEFORE HE TOOK YOU AND BLINDFOLDED YOU,
11 APPROXIMATELY? THIRTY MINUTES? AN HOUR?

12 A. WELL, BETWEEN 30 MINUTES AND AN HOUR BECAUSE WE HAD
13 TO DRIVE FROM DENMARK TO NORWAY AND...

14 Q. TO GET BACK TO YOUR HOUSE?

15 A. RIGHT.

16 Q. OKAY. AND AFTER THE -- YOU PICKED HIM OUT OF THE
17 VIDEO, DID -- WHEN YOU PICKED HIM OUT OF THE VIDEO, DID
18 ANYONE SUGGEST TO YOU WHO YOU SHOULD PICK?

19 A. NO.

20 Q. OR GIVE YOU ANY HINTS?

21 A. NO.

22 Q. OKAY. AFTER YOU PICKED HIM OUT FROM THE VIDEO, DID
23 ANYONE SHOW YOU A PHOTO LINE-UP?

24 A. YES.

25 Q. AND DID YOU RECOGNIZE ANYONE IN THAT PHOTO LINE-UP?

1 A. I PICKED HIM OUT, HIS PICTURE.

2 Q. OKAY. DID ANYONE TELL YOU WHO TO PICK OUT OF THAT
3 PHOTO LINE-UP OR SUGGEST OR HINT?

4 A. NO.

5 Q. DID YOU EVER PICK ANYONE ELSE OUT OF THAT PHOTO
6 LINE-UP?

7 A. NO.

8 Q. AND HOW SURE WERE YOU? WERE YOU A HUNDRED PERCENT
9 SURE THAT THAT WAS HIM IN THE PICTURE IN THE PHOTO LINE-UP?

10 A. I WAS ABOUT 90 PERCENT SURE THAT THAT WAS HIM.

11 Q. OKAY. WAS THERE ANYTHING IN PARTICULAR ABOUT HIM
12 THAT -- THAT YOU FOCUSED ON THAT HELPED YOU TO KNOW WHO IT
13 WAS?

14 A. WELL, THE FACIAL HAIR AND THE -- AND THE EYE PART,
15 YOU KNOW.

16 Q. THE EYES?

17 A. YES.

18 Q. OKAY. DO YOU RECOGNIZE THIS?

19 A. YES.

20 Q. HAVE YOU WATCHED THIS---

21 A. YES.

22 Q. ---BEFORE? WHAT IS THIS?

23 A. THAT'S THE TAPE OF THE B.P. STORE AND US GOING IN.

24 MS. BRISBIN: OKAY. YOUR HONOR, I WOULD ASK AT THIS

25 TIME THAT THIS BE ADMITTED INTO EVIDENCE AND SHOWN TO THE

1 JURY.

2 MS. BROWN: NO OBJECTION, YOUR HONOR.

3 THE COURT: SO ADMITTED WITHOUT OBJECTION.

4 (STATE'S EXHIBIT 4 WAS RECEIVED IN EVIDENCE.)

5 BY MS. BRISBIN:

6 Q. CAN YOU SEE THAT? MS. SANDERS, AFTER WE GET THIS
7 GOING, I'D LIKE YOU TO STEP DOWN AND POINT OUT TO THE JURY
8 THE PERSON WHO DID THIS. WOULD YOU STEP DOWN HERE, PLEASE?
9 OKAY. DON'T STAND IN FRONT OF THE JURY IF YOU CAN AVOID IT
10 BECAUSE THEY WON'T BE ABLE TO SEE. OKAY. IF YOU WOULD JUST
11 POINT TO YOURSELF WHEN YOU SEE YOURSELF, IF YOU SEE YOURSELF,
12 ON THE VIDEO AND THEN TO HIM. (STATE'S EXHIBIT 4 BEGINS TO
13 BE PLAYED FOR THE JURY.)

14 A. THAT'S ME COMING UP AND PAYING FOR MY ICE.

15 BAILIFF: YOUR HONOR?

16 THE COURT: YES, SIR.

17 BAILIFF: ONE OF OUR JURORS IS ILL. CAN I TAKE HER
18 TO THE REST ROOM?

19 THE COURT: NO. LET'S TAKE THE WHOLE JURY AND THEN
20 YOU CAN---

21 BAILIFF: OKAY.

22 THE COURT: LADIES AND GENTLEMEN, WHY DON'T Y'ALL
23 STEP OUT? PLEASE DON'T DISCUSS THE CASE AND...

24 MS. BRISBIN: YOU CAN SIT DOWN.

25 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT

1 2:23 P.M.)

2 THE COURT: ALL RIGHT. WE'RE GOING TO STAND IN
3 RECESS A FEW MINUTES UNTIL WE FIND OUT WHAT THE SITUATION IS.
4 MA'AM, YOU MAY STEP DOWN, BUT PLEASE DON'T DISCUSS THE
5 TESTIMONY AT ALL WHILE WE'RE ON BREAK. OKAY?

6 THE WITNESS: YES, SIR.

7 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

8 THE COURT: PLEASE KEEP YOUR SEATS. THE JUROR HAS
9 INDICATED THAT SHE SHALL PROCEED -- Y'ALL BE SEATED -- THAT
10 SHE WOKE UP NOT FEELING WELL THIS MORNING, BUT SHE THINKS SHE
11 IS GOING TO BE ABLE TO CONTINUE AND SHE WILL TRY TO DO SO.
12 SO WE'LL PROCEED WITH... ALL RIGHT. MA'AM, DO YOU WANT TO
13 COME BACK UP TO THE STAND, PLEASE? ALL RIGHT. LET'S BRING
14 THE JURY IN IF WE COULD.

15 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
16 2:35 P.M.)

17 THE COURT: OKAY. IF YOU FEEL BAD, JUST LET US KNOW
18 AND WE'LL---

19 JUROR: I'M SORRY.

20 THE COURT: ---WORK WITH YOU. ALL RIGHT. IF YOU
21 WOULD, PLEASE, MADAM SOLICITOR.

22 MS. BRISBIN: THANK YOU, YOUR HONOR.

23 BY MS. BRISBIN:

24 Q. MS. SANDERS, IF YOU WOULD STEP DOWN AGAIN, PLEASE.

25 (STATE'S EXHIBIT 4 CONTINUES TO BE PLAYED FOR THE JURY.)

1 A. THAT'S HIM RIGHT THERE.

2 Q. IS THAT THE SAME PERSON YOU PICKED OUT BACK IN MARCH
3 OF 2002? WHICH ONE? TOUCH THE T.V.

4 A. (WITNESS COMPLIES.)

5 Q. OKAY. YOU CAN HAVE A SEAT AGAIN, PLEASE. HAD YOU
6 EVER MET JOSEPH WALKER BEFORE MARCH 2ND OF 2002?

7 A. NOT THAT I CAN EVER REMEMBER.

8 Q. OKAY. DID YOU KNOW HIS NAME?

9 A. NO.

10 Q. I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT -- FOR
11 IDENTIFICATION STATE'S EXHIBIT NUMBER 1. DO YOU RECOGNIZE
12 THIS? NO, JUST DO YOU RECOGNIZE WHAT THIS IS?

13 A. YES. UH-HUH.

14 Q. OKAY. HAVE YOU SEEN THIS BEFORE?

15 A. YES.

16 Q. WHAT IS IT?

17 A. SHE BROUGHT THAT FOR ME TO PICK OUT.

18 Q. WHO? WHO DID?

19 A. LIEUTENANT BAMBERG.

20 Q. SHE BROUGHT THIS TO YOU TO PICK OUT?

21 A. ANYBODY THAT I THOUGHT, YOU KNOW, COULD HAVE BEEN
22 THE ONE.

23 Q. OKAY. AND IS THIS THE SAME OR A FAIR AND ACCURATE
24 REPRESENTATION OF WHAT SHE SHOWED YOU, THE PHOTO LINE-UP THAT
25 SHE SHOWED YOU?

1 A. YES.

2 MS. BRISBIN: OKAY. I'D ASK THAT THIS BE ADMITTED
3 INTO EVIDENCE AT THIS TIME, YOUR HONOR.

4 MS. BROWN: NO OBJECTION.

5 THE COURT: SO ADMITTED WITHOUT OBJECTION.

6 (STATE'S EXHIBIT 1 WAS RECEIVED IN EVIDENCE.)

7 BY MS. BRISBIN:

8 Q. AND DID YOU RECOGNIZE SOMEONE IN THIS PHOTO LINE-UP?

9 A. YES.

10 Q. WHO DID YOU RECOGNIZE?

11 A. THIS MAN RIGHT HERE, THE ONE THEY CALL JOSEPH
12 WALKER.

13 Q. OKAY. WOULD YOU POINT FOR -- FOR THE JURY SO THEY
14 CAN SEE WHICH ONE YOU RECOGNIZED?

15 A. (WITNESS COMPLIES.)

16 Q. OKAY. DID YOU DESCRIBE FOR LAW ENFORCEMENT THE
17 VEHICLE THAT THE PERSON WHO ASSAULTED YOU WAS DRIVING?

18 A. YES.

19 Q. AND WAS THAT BACK IN MARCH---

20 A. YES.

21 Q. ---THAT YOU DID THAT? AND HOW DID YOU DESCRIBE THAT
22 VEHICLE?

23 A. I DESCRIBED IT AS A SMALL BLACK TRUCK AND IT HAD A
24 RED TRIM OR SOMETHING ON THE SIDE OF IT.

25 Q. OKAY. DO YOU RECOGNIZE WHAT'S BEEN MARKED STATE'S

1 EXHIBIT NUMBER 8 FOR IDENTIFICATION?

2 A. YES. THAT LOOKS JUST LIKE IT.

3 Q. OKAY. IS THAT AN ACCURATE REPRESENTATION OF WHAT
4 YOU SAW---

5 A. YES.

6 Q. ---ON MARCH 2ND?

7 A. YES.

8 MS. BRISBIN: I'D ASK THAT STATE'S EXHIBIT NUMBER 8
9 BE ADMITTED INTO EVIDENCE.

10 MS. BROWN: NO OBJECTION.

11 THE COURT: SO ADMITTED WITHOUT OBJECTION.

12 (STATE'S EXHIBIT 8 WAS RECEIVED IN EVIDENCE.)

13 BY MS. BRISBIN:

14 Q. DOES THIS LOOK LIKE THE SAME TRUCK THAT YOU RODE IN
15 WITH THE PERSON WHO SEXUALLY ASSAULTED YOU BACK IN MARCH?

16 A. IT LOOKS LIKE IT, YES.

17 Q. OKAY. SHOWING YOU STATE'S EXHIBIT NUMBER 7, DID YOU
18 GIVE THE LAW ENFORCEMENT A DESCRIPTION OF WHAT YOU HEARD OR
19 SMELLED INSIDE THE VEHICLE THAT THE PERSON WHO SEXUALLY
20 ASSAULTED YOU WAS DRIVING?

21 A. I TOLD THEM IT SMELLED DIRTY AND THAT IT WAS
22 SHIFTING GEARS. I DIDN'T KNOW WHETHER IT WAS FOUR-SPEED OR
23 FIVE-SPEED BUT IT WAS -- THERE WAS GEAR SHIFTING. IT WASN'T
24 AUTOMATIC.

25 Q. OKAY. SHOWING YOU STATE'S EXHIBIT NUMBER 7, IS THAT

1 A FAIR AND ACCURATE REPRESENTATION OF WHAT YOU HEARD -- WELL,
2 WHAT YOU SAW?

3 A. WELL, I DIDN'T ACTUALLY SEE IT, BUT IT'S WHAT -- THE
4 GEARS AND ALL IT -- AND THE CLEANLINESS OF IT, I'M SURE
5 THAT'S THE ODOR.

6 MS. BRISBIN: I'D ASK THAT STATE'S EXHIBIT NUMBER 7
7 BE ADMITTED INTO EVIDENCE.

8 MS. BROWN: YOUR HONOR, I WOULD OBJECT TO THIS -- TO
9 THIS COMING IN. THERE'S BEEN NO FOUNDATION. A FOUNDATION
10 HAS NOT BEEN LAID THAT THAT PICTURE REPRESENTS WHAT MS.
11 SANDERS SAW. SHE JUST SAID SHE DIDN'T SEE---

12 MS. BRISBIN: OKAY.

13 MS. BROWN: ---WHAT SHE IS DESCRIBING.

14 THE COURT: IF SHE SAID SHE DIDN'T SEE IT, HOW CAN
15 SHE IDENTIFY IT?

16 MS. BRISBIN: I'LL WAIT ON THAT ONE.

17 BY MS. BRISBIN:

18 Q. WHAT DESCRIPTION -- DID YOU GIVE THAT DESCRIPTION OF
19 THE INSIDE -- OR OF WHAT YOU SMELLED AND SAW OR HEARD RATHER
20 TO LAW ENFORCEMENT?

21 A. YES.

22 Q. OKAY. DID YOU GIVE A DESCRIPTION TO LAW ENFORCEMENT
23 BACK IN MARCH OF WHAT THE INSIDE OF THE HOUSE LOOKED LIKE OF
24 THE PERSON WHO SEXUALLY ASSAULTED YOU?

25 A. I TOLD THEM WHAT THE ROOM LOOKED LIKE.

1 Q. OKAY. WHICH ROOM?

2 A. THE BEDROOM THAT I WAS IN.

3 Q. OKAY.

4 A. AND THE BATHROOM.

5 Q. HOW DID YOU DESCRIBE IT?

6 A. I TOLD THEM THAT I WENT THROUGH SOMETHING HANGING AT
7 THE DOOR AND THAT THERE WAS A HEATER ON IN THERE---

8 Q. THAT SOMETHING WAS HANGING AT THE BEDROOM DOOR?

9 A. LIVING ROOM, BEDROOM, ALL THE WAY AROUND IN THERE.
10 THERE WAS -- WINDOWS HAD A SHEET OR A QUILT OR SOMETHING
11 HANGING ON THEM.

12 Q. OKAY.

13 A. AND THERE WAS A GAS HEATER IN THERE.

14 Q. IN WHAT ROOM?

15 A. IN THAT PARTICULAR ROOM. THAT'S THE ONLY ROOM I
16 SAW.

17 Q. AND WHAT KIND OF ROOM IS THAT?

18 A. I GUESS IT WAS HIS BEDROOM.

19 Q. WHAT ELSE WAS IN THAT ROOM?

20 A. THERE WAS A LITTLE BATHROOM RIGHT AT THE END OF
21 THE -- OF THE BEDROOM THERE.

22 Q. OKAY. WAS THERE A BED?

23 A. YES.

24 Q. WHAT SIZE BED? DO YOU REMEMBER? SINGLE? DOUBLE?

25 A. DOUBLE.

1 Q. OKAY. WHERE WAS THE BATHROOM LOCATED IN RELATION TO
2 THE BED?

3 A. AT THE FOOT OF THE BED.

4 Q. DO YOU REMEMBER WHICH SIDE? IF YOU'RE -- IF YOU'RE
5 IN THE BED, IT'S -- YOU SAID IT'S AT THE FOOT OF THE BED.

6 A. STRAIGHT.

7 Q. TO WHICH SIDE? OH, IT'S MORE STRAIGHT?

8 A. STRAIGHT, YEAH.

9 Q. OKAY. WAS THERE ANYTHING ELSE THAT YOU DESCRIBED TO
10 LAW ENFORCEMENT ABOUT THE INSIDE OF THAT BEDROOM?

11 A. THERE WAS A TABLE, ASHTRAY, A CHAIR, AND THE HEATER
12 ON THE LEFT AS I WAS -- AS I WAS GOING IN THE FRONT DOOR
13 THERE OR COMING THROUGH THAT COMFORTER OR WHATEVER WAS
14 HANGING AT THAT DOOR.

15 Q. OKAY. WAS THERE A DOOR ON THE DOORWAY?

16 A. NO, NO. HUH-UH. IT WAS A COMFORTER OR A SHEET
17 HANGING.

18 Q. OKAY.

19 A. I DON'T REMEMBER WHICH.

20 Q. AND YOU SAID THERE WAS A HEATER?

21 A. THERE WAS A GAS HEATER, YES.

22 Q. OKAY. AND WHAT DID YOU SAY WAS OVER THE WINDOW?

23 A. A SHEET, I THINK.

24 Q. OKAY. AND SHOWING YOU -- WHEN DID YOU TELL LAW
25 ENFORCEMENT ABOUT THAT?

1 A. WHENEVER I WENT DOWN TO MAKE A STATEMENT.

2 Q. OKAY. WAS THAT BEFORE THEY SHOWED YOU THE VIDEO AND
3 THE PHOTO LINE-UP?

4 A. I'M SURE IT WAS. I'M PRETTY SURE IT WAS.

5 Q. OKAY. IT WAS BEFORE YOU KNEW HIS NAME?

6 A. RIGHT.

7 Q. OKAY. SHOWING YOU STATE'S EXHIBIT NUMBER 5, DO YOU
8 RECOGNIZE THIS?

9 A. IT LOOKS FAMILIAR, YES.

10 Q. HAVE YOU SEEN IT BEFORE?

11 A. YES.

12 Q. IS THIS A FAIR AND ACCURATE DEPICTION OF WHAT YOU
13 SAW?

14 A. YES.

15 Q. OKAY. AND WHAT HAPPENED IN THIS ROOM?

16 A. I WAS RAPED IN THAT ROOM.

17 MS. BRISBIN: OKAY. I WOULD ASK THAT STATE'S
18 EXHIBIT NUMBER 5 BE ADMITTED INTO EVIDENCE AT THIS TIME.

19 MS. BROWN: NO OBJECTION.

20 THE COURT: SO ADMITTED WITHOUT OBJECTION.

21 (STATE'S EXHIBIT 5 WAS RECEIVED IN EVIDENCE.)

22 BY MS. BRISBIN:

23 Q. WHAT DO YOU RECOGNIZE ABOUT THIS ROOM? CAN YOU

24 POINT OUT FOR THE JURY WHAT YOU -- WHAT YOU RECOGNIZE IN THAT
25 ROOM?

1 A. THE SHOES.

2 Q. WHAT ABOUT THE SHOES?

3 A. THEY'RE BLACK SHOES.

4 Q. ARE THEY SHOES OR...

5 A. OR BOOTS LIKE. THE SHEET ON THE WINDOW.

6 Q. OKAY.

7 A. AND I REMEMBER THE BED WAS LIKE THAT AND THE

8 TABLE---

9 Q. WHAT DO YOU MEAN BY IT WAS LIKE THAT?

10 A. IT HAD THE BOOKCASE LIKE ABOVE IT.

11 Q. OKAY. AND WHAT ABOUT THE TABLE?

12 A. THE NIGHTSTAND BESIDE THE TABLE.

13 Q. IS THERE ANYTHING ON THE NIGHTSTAND THAT YOU
14 RECOGNIZE?

15 A. THE ASHTRAY.

16 Q. OKAY. DO YOU RECOGNIZE WHAT'S BEEN MARKED STATE'S
17 EXHIBIT NUMBER 9?

18 A. YES. THAT WAS THE BATHROOM.

19 Q. IS THAT A FAIR AND ACCURATE DEPICTION OF WHAT YOU
20 SAW?

21 A. YEAH.

22 Q. OKAY. AND WHAT HAPPENED -- WHAT ROOM IS THIS?

23 A. THAT'S THE BEDROOM, AND THE BATHROOM WAS AT THE --
24 LIKE I SAID, AT THE FOOT OF THE BED.

25 MS. BRISBIN: OKAY. YOUR HONOR, I'D ASK THAT

1 STATE'S EXHIBIT NUMBER 9 BE ADMITTED INTO EVIDENCE.

2 MS. BROWN: NO OBJECTION.

3 THE COURT: SO ADMITTED WITHOUT OBJECTION.

4 (STATE'S EXHIBIT 9 WAS RECEIVED IN EVIDENCE.)

5 BY MS. BRISBIN:

6 Q. WHAT DO YOU RECOGNIZE ABOUT THIS ROOM IN THIS --
7 THIS PICTURE? YOU WERE JUST SAYING IT, BUT I NEED YOU TO SAY
8 IT AGAIN.

9 A. I SAID THE BATHROOM IS DOWN AND IT WAS A BLOCK
10 HOUSE, A WHITE BLOCK---

11 Q. OKAY. HOW CAN YOU TELL THAT?

12 A. I CAN SEE THE BLOCKS.

13 Q. OKAY. AND WHERE WAS THE BATHROOM IN RELATION TO THE
14 BED?

15 A. IT WAS AT THE FOOT.

16 Q. OKAY. AND SHOWING YOU STATE'S EXHIBIT NUMBER 6, DO
17 YOU RECOGNIZE THIS?

18 A. THIS IS THE DOOR I---

19 Q. IS THIS -- DO YOU RECOGNIZE IT?

20 A. YES.

21 Q. YES OR NO? IS THIS A FAIR AND ACCURATE
22 REPRESENTATION OF WHAT YOU SAW?

23 A. YES.

24 MS. BRISBIN: OKAY. I'D ASK THAT STATE'S EXHIBIT
25 NUMBER 6 BE ADMITTED INTO EVIDENCE.

1 MS. BROWN: NO OBJECTION.

2 THE COURT: SO ADMITTED.

3 (STATE'S EXHIBIT 6 WAS RECEIVED IN EVIDENCE.)

4 BY MS. BRISBIN:

5 Q. WHAT ROOM IS THIS?

6 A. THAT'S THAT BEDROOM.

7 Q. THE SAME BEDROOM?

8 A. UH-HUH.

9 Q. AND WHAT DO YOU RECOGNIZE IN THIS PICTURE?

10 A. THAT HEATER AND THEN, OF COURSE, THAT NIGHTSTAND AND
11 THOSE SAME SHOES ARE RIGHT THERE.

12 Q. OKAY. AND ARE THOSE THE -- DO THOSE APPEAR TO BE
13 THE SAME BOOTS THAT MR. WALKER WAS WEARING THAT NIGHT?

14 A. YES.

15 Q. AND DO YOU RECOGNIZE THE LOCATION OF THE SPACE
16 HEATER?

17 A. YES.

18 Q. WHERE -- WHERE WAS IT IN RELATION TO THE DOORWAY AS
19 YOU CAME IN THE BEDROOM?

20 A. THERE WAS A BLANKET OR A SHEET OR SOMETHING UP AT
21 THIS DOOR. THAT'S THE ONE I WAS BROUGHT INTO.

22 Q. OKAY.

23 A. AND I REMEMBER THE HEATER BEING THERE TO MY LEFT.

24 Q. WAS THERE A DOOR ON THE DOOR FRAME?

25 A. NO.

1 Q. OKAY. AND DID YOU GIVE THAT DESCRIPTION TO LAW
2 ENFORCEMENT BACK IN MARCH OF 2002?

3 A. YEAH.

4 Q. OKAY. MS. SANDERS, IS THE MAN WHO SEXUALLY
5 ASSAULTED YOU IN THIS COURTROOM TODAY?

6 A. YES.

7 Q. WOULD YOU PLEASE POINT HIM OUT FOR THE JURY?

8 A. SITTING OVER THERE BY HIS -- BY THE ATTORNEY.

9 Q. WHAT DOES HE LOOK LIKE? IF YOU COULD DESCRIBE WHAT
10 HE'S WEARING, HOW HE LOOKS.

11 A. RIGHT NOW HE'S GOT ON A PLAID SHIRT AND GLASSES.

12 Q. OKAY. THANK YOU.

13 A. HE DOESN'T HAVE FACIAL HAIR LIKE HE DID.

14 Q. OKAY. IS THIS THE SAME PERSON WHO SEXUALLY---

15 THE COURT: ARE YOU---

16 Q. ---ASSAULTED YOU?

17 A. YES.

18 THE COURT: ARE YOU POINTING TO THE MAN -- THE BLACK
19 MAN THAT'S SEATED---

20 THE WITNESS: YES.

21 THE COURT: ---AT THE DEFENSE TABLE OVER THERE?

22 THE WITNESS: RIGHT THERE.

23 THE COURT: ALL RIGHT. LET THE RECORD REFLECT SHE'S
24 IDENTIFIED THE DEFENDANT.

25 MS. BRISBIN: THANK YOU. I DON'T HAVE ANY FURTHER

1 QUESTIONS, MS. SANDERS. PLEASE ANSWER ANY THE DEFENSE HAS.

2 CROSS-EXAMINATION

3 BY MS. BROWN:

4 Q. MS. SANDERS, WHAT TIME WAS IT WHEN YOU WENT OUT TO
5 GO GET THE CURTAIN RODS THAT DAY?

6 A. IT WAS IN THE AFTERNOON.

7 Q. EARLY? MID? LATE AFTERNOON?

8 A. ABOUT MID AFTERNOON.

9 Q. ABOUT HOW LONG DID IT TAKE YOU TO GET THOSE
10 CURTAINS?

11 A. NOT VERY LONG. I JUST RAN IN AND GOT THEM. AND I
12 KNEW WHAT I WANTED, SO I JUST GOT THEM AND PAID FOR THEM AND
13 CAME OUT.

14 Q. SO ABOUT WHAT TIME WAS IT THAT YOU GOT TO THE B.P.
15 STATION?

16 A. WASN'T VERY LONG. MAYBE FIVE MINUTES, TEN MINUTES.
17 I DON'T KNOW.

18 Q. SO WE'RE TALKING BETWEEN 3 AND 5 IN THE AFTERNOON?

19 A. YEAH, SOMEWHERE ALONG IN THERE. IT'S BEEN A LONG
20 TIME AND I DON'T REMEMBER THE EXACT TIMES.

21 Q. DO YOU REMEMBER WHAT TIME YOU TOLD THE POLICE ALL
22 THIS HAPPENED BACK WHEN YOU ORIGINALLY TALKED TO THEM?

23 A. YES, I REMEMBER, BUT I DIDN'T GO TO ANYBODY UNTIL
24 THE NEXT MORNING OR THE NEXT DAY AND THEN I WAS TAKEN TO
25 ORANGEBURG HOSPITAL.

1 Q. AND WHAT TIME DID YOU -- WHEN YOU TOLD THEM THE NEXT
2 DAY, WHAT TIME DID YOU SAY YOU WENT TO GET THE CURTAIN RODS
3 AND GO TO THE B.P. STATION?

4 A. I TOLD THEM THAT AFTERNOON.

5 Q. AND WHAT TIME WAS IT WHEN YOU GOT BACK TO YOUR HOUSE
6 AFTER BEING AT THE B.P. STATION THAT AFTERNOON?

7 A. THIRTY MINUTES, 45 MINUTES BECAUSE IT TOOK HIM A
8 LITTLE WHILE TO GO GET THE PART AND PUT IT ON THE CAR.

9 Q. OKAY. WHAT TIME DID YOU GO IN YOUR HOUSE TO GET THE
10 MONEY?

11 A. AS SOON AS I GOT BACK TO THE HOUSE.

12 Q. DO YOU REMEMBER WHAT TIME THAT WAS?

13 A. NO, I DON'T.

14 Q. WAS IT DARK OR WAS IT LIGHT OUTSIDE?

15 A. IT WAS STILL LIGHT.

16 Q. HOW FAR DOES IT -- HOW LONG DOES IT TAKE FOR YOU TO
17 DRIVE FROM YOUR HOUSE TO THIS B.P. STATION IN DENMARK?

18 A. THAT'S LIKE ABOUT EIGHT OR NINE MILES.

19 Q. SO ABOUT A 10, 15-MINUTE DRIVE?

20 A. SOMETHING LIKE THAT.

21 Q. DEPENDING ON HOW MUCH OF A HURRY YOU'RE IN?

22 A. UH-HUH.

23 Q. NOW, IT WAS DARK WHEN YOU ARRIVED AT THIS STRANGER'S
24 HOUSE; CORRECT?

25 A. RIGHT.

1 Q. IN FACT, WHEN THE BLINDFOLD CAME OFF AND YOU WERE IN
2 THE HOUSE, IT WAS DARK.

3 A. RIGHT.

4 Q. AND I BELIEVE YOU TOLD LAW ENFORCEMENT THAT HE DID
5 NOT TURN ON THE LIGHT.

6 A. NO, HE DIDN'T.

7 Q. WAS IT DARK THE ENTIRE TIME YOU WERE AT THE HOUSE?

8 A. YES. THE ONLY LIGHT -- FROM THE GAS HEATER.

9 Q. YOU'RE TALKING A PILOT LIGHT?

10 A. NO, I'M TALKING---

11 Q. LIGHT OR---

12 A. HEAT.

13 Q. THE HEAT LIGHT---

14 A. YES.

15 Q. ---FROM THE GAS HEATER. NOW, I WANT TO GO BACK TO
16 THE B.P. STATION FOR A MINUTE. I BELIEVE THAT YOUR TESTIMONY
17 WAS THAT YOU CAME IN THE STORE AND WE SAW THAT ON THE VIDEO.
18 YOU PAID FOR YOUR STUFF AND WENT OUT TO YOUR CAR. IS THAT
19 RIGHT?

20 A. RIGHT.

21 Q. THE CAR CRANKED UP.

22 A. UH-HUH.

23 Q. YOU DROVE AROUND, AND ABOUT TO THE OTHER SIDE OF THE
24 BUILDING THE CAR CUT OFF ON YOU.

25 A. RIGHT.

1 Q. AND YOU ASKED TWO MEN TO GIVE YOU SOME HELP.

2 A. RIGHT.

3 Q. WHITE GUY SAID?

4 A. NO.

5 Q. DID HE JUST IGNORE YOU OR DID HE SAY ANYTHING TO
6 YOU?

7 A. HE JUST SAID, "I DON'T KNOW ANYTHING ABOUT CARS."

8 Q. AND HE JUST DROVE OFF AND LEFT YOU.

9 A. RIGHT.

10 Q. AND THEN THE OTHER GUY SAID WHAT?

11 A. HE SAID, "LET ME FINISH PUTTING GAS IN MY CAR AND
12 GET MY TRUCK AND GO PAY FOR IT AND THEN I'LL SEE."

13 Q. OKAY. DID YOU NOTICE A HIGHWAY PATROL OFFICER THERE
14 AT THE B.P. STATION?

15 A. I DID ON THE VIDEO, BUT I DIDN'T PAY ANY ATTENTION
16 TO HIM BEING IN THE STORE.

17 Q. YOU DIDN'T NOTICE HIS CAR AROUND THERE THAT DAY.

18 A. I DIDN'T PAY ANY ATTENTION.

19 Q. WHEN YOU GOT TO YOUR HOUSE ON THIS AFTERNOON---

20 A. UH-HUH.

21 Q. ---YOU WERE GOING TO GO IN, GIVE THIS MAN THE MONEY
22 FOR THE PART FOR FIXING YOUR CAR; RIGHT?

23 A. RIGHT.

24 Q. AND IT WAS STILL DAYLIGHT; RIGHT?

25 A. YEAH, I COULD SEE. YES.

1 Q. WAS IT BRIGHT DAYLIGHT OR CLOSE TO GETTING DARK OR
2 DO YOU REMEMBER THAT?

3 A. WELL, IT WAS CLOSE TO GETTING DARK. YOU KNOW, IT
4 WAS GETTING LATER. THE SUN WASN'T OUT BRIGHT, SO IT WAS---

5 Q. WELL, ABOUT HOW LONG WAS IT -- BY THE TIME YOU GOT
6 BACK TO YOUR HOUSE, HOW LONG HAD IT BEEN SINCE YOU HAD LEFT
7 TO GET THE CURTAIN RODS?

8 A. AN HOUR? HOUR AND A HALF? I DON'T KNOW; IT'S BEEN
9 SO LONG.

10 Q. YOU DIDN'T NOTICE WHAT TIME IT WAS WHEN YOU CAME
11 IN---

12 A. NO.

13 Q. ---IN YOUR HOUSE?

14 A. HUH-UH.

15 Q. NOW, YOU SAID THAT WHEN YOU WENT IN YOUR BEDROOM TO
16 GET THE MONEY, YOU TURNED AROUND AND THERE HE WAS.

17 A. YEAH.

18 Q. PUT A BLINDFOLD AROUND YOU.

19 A. YEAH.

20 Q. HOW TIGHT DID HE TIE IT?

21 A. JUST TIGHT ENOUGH WHERE I COULDN'T SEE AND TOOK THE
22 MONEY OUT OF MY HAND WHICH WAS ALL I HAD.

23 Q. AND HE GRABBED YOU AND DRAGGED YOU OUT?

24 A. UH-HUH.

25 Q. DID HE GRAB YOU HARD?

1 A. WELL, YEAH. YES.

2 Q. WHICH ARM?

3 A. WELL, KIND OF PULLED ME, YOU KNOW.

4 Q. SO HE GRABBED YOU. BOTH HANDS?

5 A. UH-HUH.

6 Q. BOTH ARMS. WAS HE FACING YOU OR WAS HE BEHIND YOU?

7 A. HE WAS BEHIND ME AT THAT TIME.

8 Q. AND THEN -- SO HE'S BEHIND YOU, GRABBED A HOLD OF

9 YOU.

10 A. UH-HUH.

11 Q. TAKES YOU OUT OF THE HOUSE.

12 A. RIGHT.

13 Q. DID YOU STUMBLE AT ALL?

14 A. I DON'T REMEMBER.

15 Q. TRIP UP?

16 A. I DON'T REMEMBER.

17 Q. THEN YOU GOT IN THE TRUCK.

18 A. YES. HE PUSHED ME IN THE TRUCK.

19 Q. ANYBODY LIVE AROUND YOU, MS. SANDERS?

20 A. NOT AT THAT TIME.

21 Q. HOW FAR IS THE NEAREST NEIGHBOR?

22 A. MARGIE IS ABOUT THE CLOSEST.

23 Q. MARGIE - YOUR COUSIN?

24 A. YES.

25 Q. AND ABOUT HOW FAR IS HER HOUSE FROM YOURS?

1 A. ABOUT A HALF A MILE.

2 Q. SO YOU CAN'T SEE HER HOUSE---

3 A. NO.

4 Q. ---FROM YOURS. CAN YOU SEE ANY HOUSES---

5 A. YEAH.

6 Q. ---FROM YOUR HOUSE?

7 A. THERE WAS A MOBILE HOME RIGHT NEXT DOOR, BUT NOBODY
8 HAD MOVED IN IT YET. THEY WERE SUPPOSED TO, BUT THEY HADN'T
9 GOTTEN IN THERE YET.

10 Q. SO NO ONE WAS LIVING THERE.

11 A. NO. I WAS BACK THERE BY MYSELF.

12 Q. ALL RIGHT. SO YOU'RE BY YOURSELF. HOW MANY CARS DO
13 YOU HAVE?

14 A. I HAVE ONE.

15 Q. YOU GOT ANY OTHER CARS HANGING AROUND YOUR HOUSE,
16 JUNK CARS, ANYTHING LIKE THAT?

17 A. HUH-UH.

18 Q. SO YOU'RE IN THE TRUCK AND YOU'RE RIDING. HOW LONG
19 WOULD YOU ESTIMATE?

20 A. A LONG TIME. AN HOUR MAYBE.

21 Q. UH-HUH.

22 A. A LONG TIME BEFORE HE STOPPED.

23 Q. AND YOU DON'T SAY ANYTHING TO HIM THIS WHOLE TIME?

24 A. WELL, YES.

25 Q. WHAT ARE YOU SAYING TO HIM?

1 A. I ASKED HIM WHERE HE WAS TAKING ME, WHAT HE WAS
2 GOING TO DO. HE WASN'T TALKING BACK TO ME THAT MUCH.

3 Q. UH-HUH.

4 A. HUSH, BITCH, YOU KNOW.

5 Q. NOW, YOU DIDN'T TELL THAT TO LAW ENFORCEMENT
6 ORIGINALLY, DID YOU?

7 A. I TOLD THEM THAT HE KEPT CALLING ME BITCH.

8 Q. IN THE TRUCK OR IN THE BEDROOM?

9 A. BOTH.

10 Q. WELL, YOU DIDN'T TELL LAW ENFORCEMENT ABOUT HIM
11 CALLING YOU BITCH IN THE TRUCK. JUST IN THE BEDROOM; RIGHT?

12 A. I DON'T THINK I MENTIONED IT ABOUT IN THE TRUCK.

13 Q. OKAY. BUT YOU MENTIONED THAT HE SAID SOMETHING
14 ABOUT, "I LIKE TO GO FISHING OVER THERE"?

15 A. YES, HE DID, BUT I DON'T KNOW WHERE IT WAS.

16 Q. HE JUST OUT OF THE BLUE SAYS, YOU KNOW, THAT'S WHERE
17 I GO FISHING.

18 A. HE SAID, "THAT'S WHERE I LIKE TO GO FISHING."

19 Q. BUT YOU HAD A BLINDFOLD ON.

20 A. RIGHT. I DIDN'T SEE WHERE IT WAS.

21 Q. DID HE MAKE ANY OTHER CASUAL CONVERSATION WITH YOU?

22 A. NO.

23 Q. ALL RIGHT. SO YOU GET TO THE HOUSE AND YOU STILL
24 HAVE THE BLINDFOLD ON WHEN YOU GO INSIDE; RIGHT?

25 A. RIGHT.

1 Q. AND WHERE ARE YOU WHEN HE TAKES THE BLINDFOLD OFF?

2 A. IN THE BEDROOM.

3 Q. IN THE BEDROOM WHERE?

4 A. WHERE HE TOOK ME AND I STAYED THAT NIGHT.

5 Q. WELL, WERE YOU STANDING UP? WERE YOU ON THE BED?

6 WERE YOU ON THE FLOOR? WERE YOU SITTING IN THE CHAIR? WHERE

7 WERE YOU WHEN HE TOOK THE BLINDFOLD OFF?

8 A. STANDING UP. STANDING UP.

9 Q. AT WHAT POINT DID HE GET YOU ON THE BED?

10 A. RIGHT AFTER THAT.

11 Q. AND IS THAT WHERE YOU STAYED UNTIL Y'ALL LEFT THE
12 HOUSE?

13 A. WELL, I WENT TO THE BATHROOM - I HAD TO - AND I SAT
14 IN THE CHAIR.

15 Q. SO HE LET YOU GET UP AND---

16 A. I MOVED IN THAT ROOM; THAT'S ALL.

17 Q. DID Y'ALL EVER FALL ASLEEP?

18 A. I MIGHT HAVE. I DON'T KNOW.

19 Q. DID HE EVER FALL ASLEEP?

20 A. YES, AND I TRIED TO GET UP AND HE THREW HIS ARM
21 ACROSS ME AND HE WOULDN'T LET ME, AT ONE POINT.

22 Q. AND THEN YOU HAD THE BLINDFOLD BACK ON, TOOK YOU
23 BACK OUT TO THE TRUCK.

24 A. RIGHT.

25 Q. DID HE GRAB YOU THEN?

1 A. WELL, HE JUST KIND OF PUSHED ME, YOU KNOW, AND PUT
2 ME IN THE TRUCK AND BROUGHT ME BACK TO THE HOUSE AND PUSHED
3 ME OUT.

4 Q. WELL, HOW DID YOU GET FROM THE BEDROOM TO THE TRUCK
5 WITH THE BLINDFOLD ON?

6 A. HE WAS CARRYING ME, YOU KNOW, PUSHING ME.

7 Q. HE PICKED YOU UP AND CARRIED YOU?

8 A. NO, HE DIDN'T PICK ME UP. HE JUST BROUGHT ME BY THE
9 SHOULDERS AND PUT ME IN THERE.

10 Q. DID HE GRAB YOU BY THE SHOULDERS?

11 A. YES. I BEGGED HIM NOT TO HURT ME ANYMORE AND TO LET
12 ME GO.

13 Q. AND SO YOU GOT BACK TO YOUR HOUSE. HOW DID YOU GET
14 OUT OF THE TRUCK?

15 A. HE REACHED OVER AND OPENED THE DOOR AND PUSHED ME
16 OUT AND TOLD ME THAT IF I TOLD ANYBODY HE'D COME BACK AND
17 KILL ME.

18 Q. DID YOU FALL ON THE GROUND?

19 A. YES.

20 Q. ON YOUR FEET OR ON YOUR KNEES OR WHAT?

21 A. WELL, KIND OF ON MY SIDE.

22 Q. DID YOU HAVE YOUR CLOTHES BACK ON THEN?

23 A. YES.

24 Q. WHAT DID YOU DO AFTER YOU GOT IN YOUR HOUSE?

25 A. THE FIRST THING I DID WAS LOCK THE DOOR.

1 Q. OKAY. THEN WHAT DID YOU DO?

2 A. I WENT IN THE BATHROOM AND I WASHED OFF AND PUT ON
3 SOME CLEAN UNDERCLOTHES AND I HAD -- I WAS ASHAMED. I DIDN'T
4 WANT TO TELL IT AND THEN I GOT UPSET.

5 Q. AND THEN WHAT HAPPENED?

6 A. THEN LATER UP IN THE MORNING I WENT TO MY COUSIN'S
7 AND I TOLD HER.

8 Q. ABOUT WHAT TIME?

9 A. PROBABLY ABOUT 11, 11:30, SOMETHING LIKE THAT.

10 Q. SO WHAT DID YOU DO IN THE SIX HOURS IN BETWEEN THE
11 TIME THAT YOU GOT HOME AND THE TIME THAT YOU WENT TO YOUR
12 COUSIN'S AT 11:30? DID YOU EAT BREAKFAST?

13 A. NO. I CRIED AND I WAS TRYING TO FIGURE OUT WHAT TO
14 DO.

15 Q. SO YOU DIDN'T HAVE ANYTHING TO EAT. DID YOU HAVE
16 ANYTHING TO DRINK?

17 A. YEAH, I THINK I DRANK SOME CO-COLA.

18 Q. YOU DRANK SOME CO-COLA. IS THAT ALL?

19 A. NO. I MIXED ME A BIG DRINK AND DRANK IT DOWN
20 BECAUSE I HAD DECIDED I WASN'T GOING TO TELL ANYBODY AND I
21 THOUGHT THAT WOULD CALM ME DOWN.

22 Q. HOW MUCH DID YOU HAVE TO DRINK?

23 A. I POURED ABOUT THIS MUCH IN A GLASS AND FILLED IT UP
24 WITH CO-COLA.

25 Q. ABOUT -- THIS MUCH BEING?

1 A. ABOUT A JIGGER.

2 Q. OKAY. I'M JUST ASKING BECAUSE THE COURT REPORTER
3 CAN'T TAKE---

4 A. I KNOW.

5 Q. ---SOMETHING DOWN THAT SHE CAN'T SEE.

6 A. I WAS JUST -- IT'S ABOUT A JIGGER.

7 Q. WAS THAT WHISKEY OR WHAT?

8 A. IT WAS RUM.

9 Q. AND ABOUT WHAT TIME WAS THAT? WAS THAT RIGHT AFTER
10 YOU WASHED UP, RIGHT BEFORE YOU WENT TO YOUR COUSIN'S OR WHEN
11 WAS THAT?

12 A. 8:30, 9, 9. I DON'T KNOW EXACTLY WHAT TIME IT WAS.

13 Q. AND THAT WAS ALL THAT YOU'D HAD TO DRINK THAT DAY?

14 A. UH-HUH.

15 Q. DID YOU EVER EAT ANYTHING?

16 A. YEAH.

17 Q. WHAT DID YOU EAT?

18 A. I ATE SOMETHING UP AT MARGIE'S. SHE HAD COOKED
19 DINNER AND I DON'T REMEMBER WHAT SHE HAD.

20 Q. OKAY. DID YOU GO UP AND -- DID YOU EAT AS SOON AS
21 YOU GOT THERE?

22 A. NO, NOT RIGHT AWAY.

23 Q. WHAT HAPPENED RIGHT AFTER YOU GOT TO MARGIE'S?

24 A. WELL, I WAS CRYING AND GOING ON AND THEY WERE TRYING
25 TO COMFORT ME AND CALLED MY FAMILY, MY SISTERS AND ALL, AND

1 THEY ALL CAME AND MY CHILDREN, AND THEN AFTER THAT THEY TOOK
2 ME ON TO ORANGEBURG TO THE HOSPITAL TO THE EMERGENCY ROOM AND
3 FROM THERE TO CHARLESTON TO THE RAPE CENTER.

4 Q. SO WHEN DID Y'ALL CALL THE POLICE?

5 A. I THINK THE HOSPITAL CALLED THE POLICE. I KNOW THEY
6 ENDED UP AT THE EMERGENCY ROOM.

7 Q. DOES MARGIE HAVE A PHONE?

8 A. YES.

9 Q. SO YOU WENT TO MARGIE'S AND YOU WERE ALL UPSET. WHO
10 ELSE WAS AT MARGIE'S WHEN YOU GOT THERE?

11 A. HER MOTHER AND HER HUSBAND.

12 Q. HOW MANY PEOPLE WERE CALLED TO COME OVER TO SEE YOU
13 THAT MORNING OR THAT AFTERNOON BY THEN?

14 A. MY SON, HIS WIFE.

15 Q. BUT NOBODY EVER CALLED---

16 A. MY THREE SISTERS AND---

17 Q. NOBODY EVER CALLED THE POLICE.

18 A. NO, NOT FROM THERE, NOT TO MY KNOWLEDGE.

19 Q. WHAT HAPPENED AFTER YOU GOT TO THE HOSPITAL?

20 A. THEY DIDN'T CHECK ME. THE POLICE CAME IN AND TALKED
21 WITH ME.

22 Q. HOW MANY?

23 A. THERE WAS A LADY AND A MAN THAT CAME IN AND TALKED
24 WITH ME AND THEN THEY SENT ME ON TO CHARLESTON.

25 Q. WHO TOOK YOU TO CHARLESTON?

1 A. MY SON AND HIS WIFE.

2 Q. WHAT DID YOU TELL THE POLICE THERE AT THE HOSPITAL?

3 A. I TOLD THEM WHAT HAD HAPPENED.

4 Q. DID YOU GIVE ANY DESCRIPTIONS OF THE PERSON WHO HAD
5 DONE THIS OR THE TRUCK OR ANYTHING LIKE THAT AT THAT TIME?

6 A. I TOLD THEM SOME, BUT THEY DIDN'T ASK ME A LOT OF
7 QUESTIONS AT THAT TIME. THEY WERE TRYING TO GET ME TO GO ON
8 AND HAVE THE -- THE KIT DONE.

9 Q. DID THEY HAVE TO TRY TO TALK YOU INTO THAT?

10 A. WELL, NO. HUH-UH.

11 Q. SO WHAT WERE THEY DOING? WERE THEY MAKING
12 ARRANGEMENTS FOR YOU TO GO, TALKING TO YOU ABOUT GOING---

13 A. YES.

14 Q. ---GIVING Y'ALL DIRECTIONS?

15 A. YES.

16 Q. BUT NOT ASKING YOU ANYTHING ABOUT WHO THIS PERSON
17 WAS---

18 A. YES, THEY ASKED ME THAT---

19 Q. ---AT THAT TIME.

20 A. ---BUT NOT A LOT, AS I CAN REMEMBER.

21 Q. HOW LONG WERE YOU IN CHARLESTON?

22 A. IT TAKES ABOUT AN HOUR AND A HALF TO DRIVE THERE,
23 AND I GUESS I WAS IN THERE MAYBE AN HOUR WITH HER DOING THE
24 KIT OR HOUR AND A HALF MAYBE.

25 Q. DID YOU EVER SEE -- DID YOU EVER SEE THE DOCTOR

1 WHILE YOU WERE THERE?

2 A. NO. SHE JUST DID THE RAPE KIT AND THE PICTURES
3 AND...

4 Q. WAS THAT GRETCHEN OVERSTOLZ?

5 A. I DON'T REMEMBER WHAT HER NAME WAS.

6 Q. YOU DON'T REMEMBER HER NAME?

7 A. HUH-UH.

8 Q. BUT YOU JUST SAW ONE PERSON IN CHARLESTON.

9 A. RIGHT.

10 Q. DID YOU TALK TO ANY LAW ENFORCEMENT ANY MORE THAT
11 DAY?

12 A. NO.

13 Q. WHEN WAS THE NEXT TIME YOU SPOKE WITH LAW
14 ENFORCEMENT?

15 A. I THINK LIEUTENANT BAMBERG CAME OVER TO MY SISTER'S
16 AT THE RESIDENTIAL HOME AND TALKED WITH ME.

17 Q. AND WHEN WAS THAT? WAS THAT THE NEXT DAY?

18 A. IT WAS THE NEXT DAY OR TWO, BUT MY SON WAS TALKING
19 BACK AND FORTH AND---

20 Q. YOUR SON WAS TALKING TO WHO?

21 A. TO MS. BAMBERG AND THEY WERE TRYING TO, YOU KNOW,
22 FIND OUT WHO WAS THE PERSON BECAUSE I DIDN'T KNOW AND THEY
23 WENT TO THE HOUSE AND CHECKED.

24 Q. WELL, WHY WERE THEY TALKING TO YOUR SON ABOUT WHO
25 THIS PERSON WAS?

1 A. BECAUSE I WAS VERY UPSET AND HAD TOLD HIM.

2 Q. SO YOU TALKED TO LIEUTENANT BAMBERG ON, FAIR TO SAY,
3 MONDAY MORNING?

4 A. YEAH---

5 Q. DOES THAT SOUND ABOUT RIGHT?

6 A. ---SOMETIME THAT WEEK.

7 Q. AND YOU GAVE HER A STATEMENT ABOUT WHAT HAPPENED.

8 A. YES.

9 Q. AND YOU GAVE HER A DESCRIPTION OF THE MAN.

10 A. RIGHT. AND I ALSO CAME OVER HERE TWICE AND GAVE
11 STATEMENTS.

12 Q. RIGHT. AND WHEN WAS THAT? DO YOU REMEMBER?

13 A. NO, I DON'T REMEMBER.

14 Q. WELL, WAS IT A COUPLE OF DAYS LATER? A COUPLE OF
15 WEEKS LATER? A COUPLE OF MONTHS LATER?

16 A. MORE LIKE A COUPLE OF MONTHS LATER. IT WAS WHENEVER
17 WE COULD GET EVERYTHING WORKED IN, YOU KNOW, AND GET
18 APPOINTMENTS SET. I DON'T REMEMBER THE EXACT DATES OR DAY
19 THAT IT WAS.

20 Q. NOW, TELL ME ABOUT THAT DAY THAT YOU WERE WATCHING
21 THIS VIDEOTAPE. DO YOU REMEMBER HOW LONG THAT WAS AFTER YOU
22 FIRST TALKED TO LIEUTENANT BAMBERG?

23 A. WELL, AFTER SHE GOT IT FROM THE B.P. AND THEY GOT IT
24 PUT TOGETHER. I GUESS A COUPLE OF WEEKS. I DON'T KNOW. I'M
25 NOT SURE OF THE DATE.

1 Q. HOW MUCH OF THAT TAPE DID YOU WATCH?

2 A. I WATCHED A LOT OF IT.

3 Q. YOU WATCHED FROM THE TIME YOU CAME IN THE STORE?

4 A. UH-HUH.

5 Q. UNTIL THE TIME THAT YOU POINTED OUT---

6 A. RIGHT.

7 Q. ---THE MAN THAT YOU RECOGNIZED.

8 A. SURE DID.

9 Q. BUT YOU SAID AT THE TIME YOU WEREN'T A HUNDRED
10 PERCENT SURE THAT THAT WAS HIM.

11 A. I SAID---

12 Q. ISN'T THAT RIGHT?

13 A. I SAID, I'M NOT A HUNDRED PERCENT SURE, BUT I'M
14 PRETTY SURE, ABOUT 90 PERCENT SURE, THAT THAT'S HIM.

15 Q. NOW, YOU DIDN'T ACTUALLY SAY AT THAT TIME 90 PERCENT
16 SURE.

17 A. NO, NOT AT THAT PARTICULAR TIME. I JUST TOLD HER
18 THAT I WAS PRETTY SURE, WASN'T A HUNDRED PERCENT. BUT LATER
19 AFTER I SAW THE PICTURES I WAS SURE THAT WAS HIM, ABOUT 90
20 PERCENT SURE, YES.

21 Q. OKAY. NOW, AFTER YOU -- YOU WATCHED THAT VIDEO WITH
22 LIEUTENANT BAMBERG; YOU THINK IT WAS A COUPLE OF WEEKS LATER.
23 HOW LONG AFTER THAT DID YOU SEE THAT PHOTO LINE-UP?

24 A. I DON'T KNOW HOW LONG.

25 Q. WAS IT THE NEXT DAY? WAS IT A WEEK?

1 A. IT WAS -- IT WASN'T THE NEXT DAY. IT WAS LONGER,
2 BUT I DON'T REMEMBER WHETHER IT WAS A WEEK OR A WEEK AND A
3 HALF OR WHAT.

4 Q. DO YOU EVER HAVE TROUBLE REMEMBERING THINGS, MS.
5 SANDERS?

6 A. NO, NOT REALLY BUT, I MEAN, SINCE I DON'T WORK AND I
7 DON'T HAVE TO KEEP UP WITH THE TIME, I DON'T REMEMBER THINGS,
8 YOU KNOW, SPECIFICALLY LIKE I USED TO BECAUSE I DON'T HAVE
9 TO.

10 Q. WHAT KIND OF WORK DID YOU DO WHEN YOU WERE WORKING?

11 A. I WAS NURSING.

12 Q. A NURSING---

13 A. ASSISTANT.

14 Q. WERE YOU A NURSE?

15 A. NURSING ASSISTANT.

16 Q. HOW MANY YEARS DID YOU DO THAT?

17 A. ABOUT 30.

18 Q. WHERE ALL DID YOU WORK?

19 A. I WORKED IN ORANGEBURG HOSPITAL, BAMBERG HOSPITAL.

20 THE LAST 18 OR 20 YEARS I WORKED AT CARRIGG MANOR RESIDENTIAL
21 CARE.

22 Q. BEG THE COURT'S INDULGENCE ONE MOMENT. JUST A
23 COUPLE MORE QUESTIONS, MS. SANDERS. WHEN YOU GOT INTO THE
24 TRUCK -- WHEN YOU WERE PUT INTO THE TRUCK ORIGINALLY AT YOUR
25 HOUSE AND I'M BACKTRACKING A LITTLE BIT, DID YOU PUT A SEAT

1 BELT ON?

2 A. NO.

3 Q. DID YOU TOUCH ANYTHING AT ALL?

4 A. I IMAGINE I PROBABLY TOUCHED THE SEAT. I DON'T
5 KNOW.

6 Q. HOW FAST WAS HE DRIVING? COULD YOU TELL?

7 A. NOT REALLY. I WAS TOO SCARED.

8 Q. WELL, DID YOU EVER HAVE TO REACH OUT AND GRAB---

9 A. YES.

10 Q. ---SO YOU WOULDN'T BE SLUNG AROUND IN THE TRUCK
11 SINCE YOU DIDN'T HAVE YOUR SEAT BELT ON?

12 A. RIGHT. YES.

13 Q. DID YOU TOUCH ANYTHING WHEN YOU WERE AT HIS HOUSE?

14 A. I PROBABLY DID.

15 Q. DID HE EVER GIVE YOU ANYTHING?

16 A. YEAH, HE GAVE ME A BEER.

17 Q. HE GAVE YOU A BEER TO DRINK?

18 A. YES. HE SAID, "DRINK THIS."

19 Q. HE JUST OUT OF THE BLUE HANDED YOU A BEER TO DRINK.

20 A. YEAH, BECAUSE HE WAS DRINKING ONE.

21 Q. HE WAS DRINKING A BEER AND JUST GAVE YOU ONE, TOO?

22 A. UH-HUH.

23 Q. WHERE WERE YOU WHEN YOU DRANK THAT BEER?

24 A. IN THAT SAME ROOM.

25 Q. WERE YOU STANDING UP? WERE YOU ON THE BED? WERE

1 YOU SITTING DOWN?

2 A. ON THE BED. ON THE BED.

3 Q. DO YOU REMEMBER TOUCHING ANYTHING ELSE?

4 A. NO.

5 Q. DO YOU SMOKE?

6 A. YES.

7 Q. DID YOU HAVE A CIGARETTE WHILE YOU WERE THERE?

8 A. YES.

9 Q. HOW MANY CIGARETTES?

10 A. I DON'T KNOW HOW MANY.

11 Q. SO YOU WERE USING THAT ASHTRAY?

12 A. YES, I USED THAT ASHTRAY.

13 Q. WHERE DID YOU GET THE CIGARETTES?

14 A. I HAD MY POCKETBOOK ON MY SHOULDER WHEN I WAS TAKEN
15 OUT OF THE HOUSE AND I HAD CIGARETTES IN THERE, AND HE ALSO
16 WENT THROUGH MY POCKETBOOK.

17 Q. NOW, YOU NEVER TOLD ANYBODY THAT BEFORE NOW, DID
18 YOU?

19 A. NO, I DON'T THINK SO.

20 Q. SO HE LET YOU HAVE YOUR CIGARETTES.

21 A. YES.

22 Q. WHAT ELSE DID YOU HAVE IN YOUR POCKETBOOK? ANYTHING
23 ELSE?

24 A. MY WALLET AND HE WENT THROUGH THERE AND LOOKED AT MY
25 CARDS AND THINGS.

1 Q. BUT YOU DIDN'T TELL THE POLICE THAT.

2 A. I DON'T THINK SO. I COULDN'T REMEMBER EVERYTHING
3 THAT HAPPENED. I THINK HE WAS LOOKING FOR MORE MONEY
4 PROBABLY.

5 Q. WELL, DIDN'T THE POLICE ASK YOU TO TELL THEM
6 EVERYTHING THAT YOU KNEW THAT COULD HAVE HELPED THEM TO
7 IDENTIFY OR FIND THIS PERSON?

8 A. YES.

9 Q. DID YOU EVER THINK THAT MAYBE THEY COULD HAVE GOT
10 FINGERPRINTS OFF OF THE STUFF IN YOUR POCKETBOOK OR ANYTHING
11 LIKE THAT?

12 A. NEVER CROSSED MY MIND.

13 Q. DO YOU WATCH A LOT OF T.V.?

14 A. YES.

15 Q. WHAT KIND OF SHOWS DO YOU WATCH?

16 A. I WATCH SOME OF THE SOAP OPERAS AND I LIKE "E.R.",
17 "SEVENTH HEAVEN." I LIKE THE DETECTIVE MOVIES.

18 Q. DO YOU WATCH A LOT OF DETECTIVE SHOWS?

19 A. "LAW AND ORDER." I WATCH SOME, YES.

20 Q. WATCH A LOT OF "LAW AND ORDER"? IT'S ON PRACTICALLY
21 EVERY TIME YOU TURN AROUND, ISN'T IT?

22 A. YEAH. UH-HUH.

23 Q. DO YOU HAVE CABLE?

24 A. YES.

25 Q. YOU KNOW, YOU CAN CATCH "LAW AND ORDER" ABOUT FIVE

1 TIMES A DAY, CAN'T YOU?

2 A. NO, I'VE NEVER WATCHED IT THAT MANY TIMES A DAY.

3 Q. YEAH. BUT YOU DIDN'T THINK THE POLICE WOULD WANT TO
4 KNOW THAT HE HAD TOUCHED STUFF IN YOUR POCKETBOOK.

5 A. I DIDN'T THINK ABOUT IT.

6 Q. NOW, WHEN YOU WERE BLINDFOLDED AND LEFT THE HOUSE,
7 YOU HAD TOOK YOUR POCKETBOOK WITH YOU; RIGHT?

8 A. I NEVER TOOK IT OFF MY SHOULDER WHEN I GOT OUT OF MY
9 CAR. I JUST THREW MY CURTAIN RODS IN THERE AND WENT ON TO
10 THE BEDROOM TO GET MY MONEY.

11 Q. NO, NO, NO. YOU SAID THAT YOU HAD THE POCKETBOOK ON
12 YOUR SHOULDER WHEN THE PERSON TOOK YOU---

13 A. YES.

14 Q. ---PUT YOU IN THE TRUCK, WERE IN THE HOUSE. YOU'RE
15 IN THE HOUSE ALL NIGHT; RIGHT?

16 A. OH, YEAH, I TOOK MY POCKETBOOK OFF.

17 Q. OKAY. WHEN DID YOU GET IT BEFORE YOU WENT BACK OUT
18 TO THE TRUCK?

19 A. WHEN I KEPT BEGGING HIM TO TAKE ME HOME AND HE SAID
20 HE WOULD, AND THEN I GRABBED MY POCKETBOOK.

21 Q. SO YOU GRABBED YOUR POCKETBOOK AND HE TIED THE---

22 A. YES.

23 Q. ---BLINDFOLD BACK AROUND AND YOU---

24 A. YES.

25 Q. ---WENT BACK OUT.

1 A. UH-HUH.

2 Q. DID YOU HAVE TO ASK HIM IF YOU COULD GET YOUR
3 POCKETBOOK OR DID HE HAND IT TO YOU OR---

4 A. NO, HE DIDN'T HAND IT TO ME. I JUST GRABBED IT.

5 Q. AND HE DIDN'T OBJECT TO YOU TAKING IT.

6 A. NO.

7 Q. DID YOU HAVE A SEAT BELT ON THE SECOND TIME YOU WERE
8 IN THE TRUCK?

9 A. NO.

10 Q. DID HE SAY ANYTHING TO YOU WHEN YOU WERE BACK IN THE
11 TRUCK---

12 A. NO.

13 Q. ---WHILE YOU WERE DRIVING?

14 A. THAT WAS A QUIET RIDE BACK.

15 Q. AND YOU DIDN'T SAY ANYTHING TO HIM.

16 A. NO.

17 Q. AND HE JUST DROPPED YOU OFF AT YOUR HOUSE.

18 A. THAT'S RIGHT.

19 Q. AND YOU WENT INSIDE AND YOU CHECKED THE CLOCK AND IT
20 WAS ABOUT 5:00 IN THE MORNING.

21 A. YEAH, AFTER I RUN IN AND I LOCKED THE DOOR AND THEN
22 I CHECKED TO SEE WHAT TIME IT WAS.

23 Q. AND IT WAS STILL DARK---

24 A. YEAH.

25 Q. ---WHEN YOU LEFT HIS HOUSE AND IT WAS DARK WHEN YOU

1 GOT HOME.

2 A. YEAH. IT MIGHT HAVE BEEN GETTING JUST DAYLIGHT.

3 Q. BUT YOU COULDN'T SEE A WHOLE LOT.

4 A. HUH-UH.

5 Q. DO YOU HAVE A PHONE AT YOUR HOUSE? DID YOU AT THAT
6 TIME?

7 A. NO.

8 Q. HOW OFTEN -- WELL, LET ME ASK YOU THIS. YOU
9 MENTIONED YOUR SON AND HIS WIFE. HOW MANY KIDS DO YOU HAVE
10 LIVING AROUND THE AREA AND FAMILY?

11 A. I HAVE TWO SISTERS THAT LIVE ABOUT TWO MILES AND THE
12 OTHER ONE LIVES IN BAMBERG AND MY SON LIVES ABOUT FIVE...
13 THE OTHER SON LIVES IN LEXINGTON.

14 Q. HOW OFTEN -- DO YOU SPEAK WITH OR SEE YOUR FAMILY, ON
15 A REGULAR BASIS OR WOULD YOU AT THAT TIME?

16 A. MY SISTER I WAS SEEING OFTEN.

17 Q. EVERY DAY?

18 A. YEAH. AS A MATTER OF FACT, SHE SAID SHE HAD COME BY
19 MY HOUSE THAT AFTERNOON.

20 Q. UH-HUH.

21 A. AND I HAD GONE TO GET MY CURTAIN RODS.

22 Q. OKAY.

23 A. AND SHE SAID SHE STARTED TO COME BACK BY WHICH SHE
24 DIDN'T. SHE WENT ON TO HER HOUSE.

25 Q. UH-HUH. BUT WHEN YOU CAME BACK, YOU HAD YOUR PURSE

1 AND YOUR CAR KEYS AND EVERYTHING LIKE THAT; RIGHT?

2 A. RIGHT.

3 MS. BROWN: THANK YOU, YOUR HONOR. I HAVE NO
4 FURTHER QUESTIONS.

5 THE COURT: ALL RIGHT. ANYTHING ON REDIRECT?

6 MS. BRISBIN: JUST BRIEFLY, YOUR HONOR.

7 REDIRECT EXAMINATION

8 BY MS. BRISBIN:

9 Q. YOU SAID THAT YOU WERE 90 PERCENT SURE WHEN YOU
10 PICKED OUT JOSEPH WALKER FROM THE VIDEO AND THE PHOTO
11 LINE-UP?

12 A. RIGHT.

13 Q. NOW THAT YOU SEE HIM IN PERSON IN COURT TODAY, HOW
14 SURE -- ARE YOU SURE THAT THIS IS THE PERSON -- JOSEPH WALKER
15 IS THE PERSON WHO SEXUALLY ASSAULTED YOU?

16 A. YES.

17 Q. IS THERE ANY DOUBT IN YOUR MIND?

18 A. NO DOUBT.

19 MS. BRISBIN: THANK YOU.

20 THE COURT: ANYTHING? RECROSS?

21 MS. BROWN: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU MAY
23 STEP DOWN. LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A
24 LITTLE BIT OF A BREAK. IF YOU'LL STEP BACK TO THE JURY ROOM.
25 PLEASE DON'T DISCUSS THE CASE WHILE YOU'RE BACK THERE. WE'LL

1 BRING YOU BACK IN JUST A FEW MINUTES, ABOUT 15 MINUTES OR SO.
2 THANK YOU.

3 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
4 3:34 P.M.)

5 THE COURT: ALL RIGHT. WE'RE GOING TO TAKE A
6 15-MINUTE BREAK. Y'ALL RELAX AND WE'LL BE BACK IN A LITTLE
7 BIT.

8 (WHEREUPON, A SHORT BREAK WAS TAKEN. STATE'S
9 EXHIBITS 10 THROUGH 12 WERE MARKED FOR IDENTIFICATION ONLY.)

10 THE COURT: ALL RIGHT. WE'VE GOT TO FIND US A
11 LAWYER, DON'T WE? OH, THERE SHE IS. WHEN YOU'RE SHORT AND
12 YOU HIDE BEHIND T.V.'S, IT'S HARD TO SEE.

13 MS. BROWN: THAT'S WHY I'M ASKING TO MOVE IT SO I
14 HAVE A GOOD VIEW WITH THE JUDGE.

15 THE COURT: WITH THE WHO? ALL RIGHT. STATE READY
16 TO CALL ITS NEXT WITNESS?

17 MS. BRISBIN: YES, YOUR HONOR.

18 THE COURT: ALL RIGHT. DEFENDANT READY TO GO?

19 MS. BROWN: YES, YOUR HONOR.

20 THE COURT: ALL RIGHT. LET'S BRING THE JURY IN IF
21 WE COULD, PLEASE.

22 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
23 4:02 P.M.)

24 THE COURT: OKAY. MADAM SOLICITOR, IF YOU'D CALL
25 YOUR NEXT WITNESS.

1 MS. BRISBIN: THANK YOU, YOUR HONOR. THE STATE
2 CALLS DR. ELIZABETH GIBBS.

3 DR. ELIZABETH GIBBS, AFTER BEING DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
6 YOUR FULL NAME FOR THE COURT, SPELLING YOUR LAST.

7 THE WITNESS: MY NAME IS DR. ELIZABETH LYNN HARVEY
8 BAKER GIBBS. G-I-B-B-S.

9 DIRECT EXAMINATION

10 BY MS. BRISBIN:

11 Q. DR. GIBBS, WHERE ARE YOU EMPLOYED?

12 A. I'M EMPLOYED AT CAROLINA FORENSIC HEALTHCARE IN
13 CHARLESTON.

14 Q. AND WHAT TYPE OF FACILITY IS THIS?

15 A. CAROLINA FORENSIC HEALTHCARE IS AN L.L.C. AND WE
16 PROVIDE MEDICAL DIRECTING FOR THE CHILDREN'S MEDICAL
17 ASSESSMENT CENTER WHICH IS IN CHARLESTON. C.M.A.C. IS A
18 NONPROFIT PRIVATE KIND OF MEDICAL CLINIC AND WE PROVIDE
19 SERVICES, FORENSIC SERVICES, FOR VICTIMS OF CHILD PHYSICAL
20 ABUSE, CHILD SEXUAL ABUSE, ADULT SEXUAL ASSAULT, AND DOMESTIC
21 VIOLENCE.

22 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED IN THIS TYPE OF
23 POSITION?

24 A. I STARTED C.M.A.C. IN 1996.

25 Q. AND WHAT WERE YOU DOING PRIOR TO THAT?

1 A. PRIOR TO THAT, I WORKED FOR THE ORANGEBURG FAMILY
2 HEALTH CENTER AND I RAN A FORENSIC HEALTHCARE PROGRAM OUT OF
3 THE FAMILY HEALTH CENTER IN ORANGEBURG FROM 1990 TO 1996.

4 Q. AND WHAT IS YOUR POSITION AT THE C.M.A.C. NOW?

5 A. I'M THE MEDICAL DIRECTOR.

6 Q. AND WHAT'S YOUR EDUCATIONAL BACKGROUND?

7 A. I RECEIVED A B.S. DEGREE IN BIOLOGY FROM THE
8 UNIVERSITY OF SOUTH CAROLINA IN 1982, AND THEN I RECEIVED A
9 DOCTORATE OF MEDICINE FROM THE UNIVERSITY OF SOUTH CAROLINA
10 SCHOOL OF MEDICINE AND THAT WAS IN 1986. I WENT TO
11 GREENVILLE MEMORIAL HOSPITAL WHERE I DID A ROTATING
12 INTERNSHIP YEAR, AND THEN I RETURNED TO COLUMBIA AND FINISHED
13 MY PEDIATRIC RESIDENCY IN DECEMBER OF 1989.

14 Q. AND SO YOU ARE TRAINED AS A PEDIATRICIAN?

15 A. YES.

16 Q. DO YOU HAVE ANY SPECIALIZED TRAINING IN SEXUAL
17 ASSAULT EXAMINATIONS?

18 A. YES, I DO.

19 Q. AND WHAT TYPE OF TRAINING DO YOU HAVE IN THAT?

20 A. IN 1989 I WENT TO HARBOR-UCLA AND THE UNIVERSITY OF
21 SAN DIEGO TO LEARN HOW TO DO FORENSIC -- FORENSIC EXAMS FOR
22 VICTIMS OF CHILD ABUSE AND ADOLESCENT SEXUAL ASSAULT, AND
23 THEN SINCE THEN IN 19 -- 1999 I BEGAN ALSO PROVIDING FORENSIC
24 HEALTHCARE EXAMS FOR ADULT DOMESTIC VIOLENCE VICTIMS AND
25 ADULT SEXUAL ASSAULT. AND THROUGH -- OVER THE LAST TEN YEARS

1 I'VE ATTENDED MANY CONFERENCES ALL AROUND THE UNITED STATES.

2 Q. DO YOU HAVE ANY IDEA HOW MANY SEXUAL ASSAULT
3 EXAMINATIONS YOU'VE DONE IN YOUR EXPERIENCE?

4 A. TOTAL SINCE 19 -- 1990 I'VE SEEN BETWEEN 6 AND 7,000
5 VICTIMS OF EITHER SEXUAL ASSAULT OR PHYSICAL ABUSE AND ABOUT
6 90 PERCENT OF THOSE ARE SEXUAL ASSAULT.

7 Q. HAVE YOU EVER BEEN QUALIFIED TO TESTIFY AS AN EXPERT
8 WITNESS IN THE FIELD OF SEXUAL ASSAULT EXAMINATION?

9 A. YES, I HAVE.

10 Q. AND APPROXIMATELY HOW MANY TIMES?

11 A. I QUIT KEEPING TRACK OF THAT IN 1994 WHENEVER I
12 REACHED 50.

13 MS. BRISBIN: OKAY. YOUR HONOR, AT THIS TIME I
14 WOULD ASK THAT DR. GIBBS BE QUALIFIED AS AN EXPERT IN SEXUAL
15 ASSAULT EXAMINATION.

16 MS. BROWN: NO OBJECTION.

17 THE COURT: ALL RIGHT. I'M GOING TO FIND THAT --
18 LADIES AND GENTLEMEN, I THINK I TOLD YOU SCIENTIFIC,
19 TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE THAT WILL ASSIST
20 THE TRIER OF THE FACT, THAT BEING THE JURY, IN UNDERSTANDING
21 THE EVIDENCE OR DETERMINING A FACT THAT MAY BE IN ISSUE, A
22 WITNESS QUALIFIED AS AN EXPERT BY VIRTUE OF HIS OR HER
23 KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION MAY
24 TESTIFY THERETO IN THE FORM OF AN OPINION AND IN THEIR AREAS
25 OF EXPERTISE. I'M GOING TO FIND DR. GIBBS TO BE QUALIFIED AS

1 AN EXPERT IN THE FIELD OF MEDICINE AND THEN ALSO IN THE FIELD
2 OF SEXUAL ASSAULT EXAMINATION AND AS SUCH SHE CAN TESTIFY
3 WITH OPINIONS IN HER AREAS OF EXPERTISE. YOU ARE TO GIVE HER
4 TESTIMONY SUCH WEIGHT AND CREDIBILITY AS YOU DEEM APPROPRIATE
5 AS YOU WILL WITH ANY AND ALL WITNESSES WHO TESTIFY IN THIS
6 TRIAL.

7 MS. BRISBIN: THANK YOU, YOUR HONOR.

8 THE COURT: YES, MA'AM.

9 BY MS. BRISBIN:

10 Q. DID --- WAS MARGARET SANDERS A PATIENT AT -- WHAT DO
11 YOU CALL OUT-CARE CENTERS?

12 A. CARE CENTERS.

13 Q. CARE CENTERS. ON MARCH 3RD OF 2002?

14 A. YES, SHE WAS.

15 Q. AND WHAT TYPE OF EXAMINATION DID SHE HAVE?

16 A. SHE RECEIVED A SEXUAL ASSAULT FORENSIC HEALTHCARE
17 ASSESSMENT AND AN EVIDENCE COLLECTION KIT.

18 Q. IS THAT EVIDENCE COLLECTION KIT WHAT SOME PEOPLE
19 REFER TO AS A RAPE KIT?

20 A. YES.

21 Q. AND WHAT'S INVOLVED IN THAT EXAMINATION?

22 A. BASICALLY WHENEVER THE PATIENT COMES IN WE GET A
23 MEDICAL HISTORY ABOUT THEIR PAST MEDICAL PROBLEMS THEY MIGHT
24 HAVE HAD, ANY CURRENT PROBLEMS THAT THEY ARE HAVING. ALSO WE
25 GET A HISTORY OF THE INCIDENT THAT OCCURRED THAT BROUGHT THEM

1 IN OR THE INCIDENT THAT PUT THEM AT RISK OF BEING SEXUALLY
2 ASSAULTED TYPICALLY.

3 WE GET INFORMATION THAT WILL HELP WITH WHAT WE WILL
4 NEED TO COLLECT IN THE EXAM ROOM AND ANY KIND OF PROBLEMS
5 THAT THEY'RE HAVING WITH THEIR BODY. THOSE ALSO INCLUDE
6 QUESTIONS THAT WE CALL TRIAGE QUESTIONS AROUND THE SYMPTOMS
7 THAT THEY'RE CURRENTLY HAVING AND ANY KIND OF IMMEDIATE
8 MEDICAL ATTENTION THEY MIGHT NEED.

9 AFTER WE GET THE HISTORY, THEN WE DO A PHYSICAL EXAM
10 WHERE WE HAVE A ROOM THAT'S SPECIALLY SUITED FOR THIS. WE
11 HAVE A PIECE OF EQUIPMENT CALLED A COLPOSCOPE WHICH IS LIKE A
12 MICROSCOPE ON A STAND THAT STANDS ABOUT THAT HIGH, AND THAT
13 IS HOOKED TO A MONITOR AND TO A GRAPHIC VIDEO PRINTER SO THAT
14 WE CAN -- WE CAN GET PHOTO DOCUMENTATION OF THE EXAM. AND
15 THEN WE BRING THEM IN AND WE COLLECT WHATEVER EVIDENCE THAT
16 THE HISTORY TELLS US THAT WE NEED TO COLLECT, AND WE DO A
17 PHYSICAL ASSESSMENT FROM HEAD TO TOE AND PHOTO-DOCUMENT THAT.
18 AFTERWARDS WE GET WHATEVER LABORATORY TESTS WE NEED,
19 SOMETIMES GIVE THEM TREATMENT FOR EITHER PREGNANCY PREVENTION
20 OR SEXUALLY TRANSMITTED INFECTIONS AND THEN WE PROCESS AND
21 STORE THE EVIDENCE COLLECTION KIT UNTIL LAW ENFORCEMENT CAN
22 COME AND RETRIEVE IT.

23 Q. WHAT IS YOUR ROLE IN THIS PROCESS?

24 A. I'M THE MEDICAL DIRECTOR. WE HAVE SEVERAL FORENSIC
25 NURSE EXAMINERS. WE ARE A 24-HOUR CLINIC AND I'M THE ONLY

1 PHYSICIAN THAT IS THERE. SO WE HAVE FORENSIC NURSE EXAMINERS
2 THAT ARE TRAINED TO COME IN AND DO THE ASSESSMENT, COLLECT
3 THE EVIDENCE, FILL OUT THE REPORT, GET PHOTO DOCUMENTATION
4 AND THEN I COME IN AND REVIEW THE CHART, REVIEW THE
5 PHOTOGRAPHS, VIDEO IF NEEDED, AND THE OVERALL EVIDENCE
6 COLLECTION AND THEN I MAKE THE MEDICAL DIAGNOSIS.

7 Q. DID YOUR NAME APPEAR ON MS. SANDERS' MEDICAL RECORD?

8 A. YES.

9 Q. AND DID YOU REVIEW THE EXAMINATION REPORTS AND THE
10 PHOTOS?

11 A. YES, I DID.

12 Q. AND WHAT WERE THE FINDINGS ON MS. SANDERS'
13 EXAMINATION?

14 A. THE INDIVIDUAL FINDINGS?

15 Q. YES.

16 A. OKAY. SHE HAD -- SHE HAD REDNESS OF HER SOFT
17 PALATE, WHICH IS THE ROOF OF THE MOUTH, KIND OF TOWARDS THE
18 BACK. SHE HAD REDNESS AND SHE ALSO HAD PETECHIAE. PETECHIAE
19 ARE LITTLE SMALL PINPOINT AREAS OF BLEEDING UNDER THE SKIN.
20 SHE HAD A BRUISE ON HER FOREHEAD THAT HAD BEEN FROM A
21 PREVIOUS INCIDENTAL TRAUMA AND IT WAS NOT RELATED. AND THEN
22 FOR THE FINDINGS IN HER GENITAL AREA, THOSE ARE KIND OF HARD
23 TO VERBALLY EXPLAIN. IF I COULD DRAW THOSE, THAT WOULD BE
24 GREAT.

25 Q. OKAY. LET'S GO BACK TO THE PETECHIAE---

1 A. OKAY.

2 Q. ---AND THE REDNESS IN THE SOFT PALATE.

3 A. UH-HUH.

4 Q. COULD YOU EXPLAIN THAT A LITTLE FURTHER? WHAT'S A
5 SOFT PALATE FOR THOSE OF US WHO MIGHT NOT KNOW?

6 A. BASICALLY IT'S THE ROOF OF THE MOUTH. IF YOU TAKE
7 YOUR TONGUE AND YOU PUT YOUR TONGUE UP TO THE ROOF OF YOUR
8 MOUTH, THEN THE SOFT PALATE IS THE LITTLE AREA THAT YOU'RE
9 FEELING. THE HARD PALATE IS ALL THE WAY TOWARDS THE BACK AND
10 IT'S KIND OF HARD TO GET YOUR TONGUE BACK THERE. THE SOFT
11 PALATE IS MORE TOWARD -- A LITTLE MORE TOWARDS THE FRONT.
12 SHE HAD PETECHIAE IN THE BACK OF THE SOFT PALATE WHICH WOULD
13 BE RIGHT AROUND THE MIDDLE OF WHERE YOU CAN PUT YOUR TONGUE.

14 Q. AND WHAT WOULD BE THE SIGNIFICANCE OF THAT FINDING
15 IN RELATION TO THIS PATIENT'S HISTORY?

16 A. SHE HAD GIVEN A HISTORY OF BEING---

17 MS. BROWN: OBJECTION, YOUR HONOR, TO POTENTIAL
18 HEARSAY.

19 MS. BRISBIN: YOUR HONOR, I BELIEVE IT WOULD COME IN
20 UNDER THE MEDICAL DIAGNOSIS AND TREATMENT EXCEPTION TO THE
21 HEARSAY RULE.

22 THE COURT: SUSTAINED -- I MEAN OVERRULED. YOU MAY
23 PROCEED.

24 BY MS. BRISBIN:

25 Q. YOU CAN ANSWER.

1 A. OKAY. SHE HAD GIVEN A HISTORY OF BEING SEXUALLY
2 ASSAULTED IN HER MOUTH WITH A PENIS AND YOU CAN SEE THOSE
3 PETECHIAE WHERE THERE'S IMPACT LIKE THE LITTLE SMALL BRUISING
4 AND WE DO FREQUENTLY SEE THEM IN ORAL SEXUAL ASSAULTS. YOU
5 CAN SEE THEM IN OTHER CONDITIONS SUCH AS STREPTOCOCCAL OR
6 VIRAL INFECTIONS IN THE MOUTH. THOSE ARE ALMOST ALWAYS AT
7 THE VERY, VERY BACK RIGHT AROUND THE TONSIL OR PILLARS. BUT
8 HERS WERE, LIKE I SAID, RIGHT WHERE IF YOU PUT THE TONGUE AT
9 THE ROOF OF YOUR MOUTH THAT'S WHERE HER'S WERE WHICH IS THE
10 AREA OF IMPACT THAT WE TYPICALLY SEE WITH AN ORAL SEXUAL
11 ASSAULT.

12 Q. OKAY. AND YOU SAID YOU NEED TO DESCRIBE THE GENITAL
13 FINDINGS HOW? WHAT WERE YOU---

14 A. IT WOULD BE GREAT TO DRAW IT IF I COULD.

15 Q. OKAY. LET'S SEE WHAT WE CAN DO HERE. IF YOU WOULD
16 LIKE TO STEP DOWN AND DRAW THAT, THAT WOULD BE GREAT.

17 COURT REPORTER: MS. BRISBIN, HAVE HER FACE TOWARDS
18 ME, IN OTHER WORDS NOT---

19 THE COURT: LET HER -- LET HER TALK -- IF YOU'LL GET
20 ON THE SIDE THAT THE SOLICITOR IS ON---

21 THE WITNESS: THIS WAY?

22 THE COURT: ---YOUR VOICE WILL CARRY THIS WAY AS
23 WELL AS THAT WAY AS WELL.

24 THE WITNESS: OKAY. IF IT'S OKAY, THE FIRST THING
25 I'M GOING TO DO IS DRAW THE NORMAL STRUCTURES SO THAT I CAN

1 LABEL THEM SO WHEN I'M TALKING ABOUT THE FINDINGS, THEN
2 YOU'LL BE ABLE TO TELL WHAT I'M TALKING ABOUT. I'M DRAWING
3 THE FEMALE GENITALIA AND THESE ARE THE LARGER OUTER FATTY
4 LIPS. THEY'RE CALLED THE LABIA MAJORA AND I'M GOING TO LABEL
5 THOSE L.M.A.J. THEN YOU HAVE THE SMALLER INNER LIPS THAT
6 ACTUALLY COME DOWN IN A PUBERTAL OR A MATURE PERSON DOWN TO
7 THE LITTLE V. AT THE BOTTOM AND THOSE ARE CALLED THE LABIA
8 MINORA WHICH ARE THE SMALL -- SMALLER INNER LIPS.

9 RIGHT IN THIS AREA UNDERNEATH HERE YOU HAVE THE
10 CLITORAL HOOD AND UNDERNEATH THAT IS THE CLITORIS AND I
11 LABELED THAT C., AND THEN YOU HAVE THE OPENING TO THE
12 URETHRA. THE URETHRA IS A LITTLE, SHORT TUBE THAT CONNECTS
13 THE BLADDER TO THE OUTSIDE THAT THE URINE COMES OUT OF AND I
14 LABELED THAT U., AND THEN YOU HAVE THE OPENING TO THE VAGINA.

15 THE OPENING TO THE VAGINA IS ACTUALLY SET DOWN
16 INSIDE THESE STRUCTURES. SO IF WE WERE LOOKING AT A 3-D VIEW
17 OF THIS IT WOULD BE BACK BEHIND THE BOARD AND IT'S SET DOWN
18 INSIDE THERE BY ANYWHERE FROM THREE-QUARTERS TO THREE-EIGHTHS
19 OF AN INCH. AND SO THEN THE OUTSIDE PART WHERE THE LABIA
20 COME DOWN AND JOIN IS CALLED THE POSTERIOR FOURCHETTE AND
21 I'LL LABEL THAT P.F.---

22 COURT REPORTER: WILL YOU SPELL THAT OR SAY IT
23 AGAIN?

24 THE WITNESS: POSTERIOR FOURCHETTE.

25 P-O-S-T-E-R-I-O-R F-O-U-R-C-H-E-T-T-E. I BELIEVE THAT'S

1 RIGHT. OKAY. BUT THE POSTERIOR FOURCHETTE IS ON THE OUTSIDE
2 WHERE ALL THESE AREAS COME TO A POINT AND THEN THE -- KIND OF
3 A VALLEY THAT CONNECTS THE OPENING TO THE VAGINA TO THIS
4 POSTERIOR FOURCHETTE ON THE OUTSIDE IS CALLED THE FOSSA
5 NAVICULARIS AND I'LL PUT THAT AS F.N. DO YOU NEED THAT ONE?

6 COURT REPORTER: (SHOOK HEAD FROM SIDE TO SIDE.)

7 THE WITNESS: NO? OKAY. AND SO THESE ARE THE
8 NORMAL FEMALE STRUCTURES. THEN YOU HAVE THE PERINEUM WHICH
9 I'LL LABEL P. WHICH IS THE AREA BETWEEN THE FEMALE GENITALIA
10 AND THE ANUS, AND THEN YOU HAVE THE ANAL AREA WHICH I'LL
11 LABEL A. THE OPENING TO THE VAGINA I'M GOING TO DRAW OVER ON
12 THE SIDE. THE LABIA MAJORA AND THE OUTER PART OF THE LABIA
13 MINORA ARE COVERED BY SKIN THAT'S LIKE THE SKIN ON YOUR ARM.

14 ONCE YOU GET UNDERNEATH LIKE THE INSIDE OF THE LABIA
15 MINORA, THE AREA AROUND THE URETHRA, THE AREA AROUND THE
16 VAGINA AND THE FOSSA NAVICULARIS, IT'S COVERED BY SKIN THAT
17 IS SORT OF A SPECIAL SKIN THAT IS THERE TO STRETCH AND IT
18 STAYS MOIST. IT'S CALLED MUCOSA AND IT'S LIKE THE SAME KIND
19 OF SKIN THAT'S ON THE INSIDE OF YOUR MOUTH. SO IF YOU TAKE
20 YOUR TONGUE AND YOU RUB IT ALONG YOUR CHEEK, THAT'S THE KIND
21 OF SKIN THAT THIS IS MADE OUT OF.

22 THE OPENING TO THE VAGINA HAS AROUND THE ENTRANCE OF
23 IT THAT SAME KIND OF SKIN. IT DOESN'T COVER IT, BUT IT COMES
24 RIGHT AROUND THE EDGES OF IT AND IT'S THAT SAME KIND OF SKIN,
25 THAT MUCOSA. IT'S JUST SORT OF BUNCHED UP AROUND THE --

1 AROUND THE OPENING TO THE VAGINA.

2 SHE HAD SEVERAL DIFFERENT FINDINGS. THE FIRST
3 FINDING WAS IN THIS AREA CALLED THE FOSSA NAVICULARIS. THIS
4 AREA, ESPECIALLY WHEN THERE'S NOT A LOT OF ESTROGEN IN THE
5 BODY, CAN TEAR FAIRLY EASILY. BEFORE MS. OVERSTOLZ BEGAN THE
6 ASSESSMENT, SHE DOCUMENTS THAT WITH THE PHOTOS AND IN HER
7 CHART THAT THAT AREA WAS -- HAD TRAUMA TO IT AND PRIOR TO HER
8 ACTUALLY TOUCHING IT. ONCE SHE STARTED THE ASSESSMENT, THEN
9 THE WHOLE AREA WAS VERY TENDER.

10 ON THE LABIA MAJORA WHICH IS THE LARGER OUTER LIPS,
11 IT WAS EDEMATOUS WHICH JUST MEANS SWOLLEN. ON THE AREA
12 AROUND THE CLITORAL HOOD SHE NOTES THAT THERE'S REDNESS TO
13 THIS AREA RIGHT HERE. THERE'S A SMALL ABRASION IN BETWEEN
14 THE CHART AND THEN WHAT YOU CAN SEE, AND THEN THERE'S AREAS
15 OF LACERATION RIGHT IN HERE AND THEN THERE'S ANOTHER KIND OF
16 SMALL ABRASION ON THE CLITORAL HOOD.

17 RIGHT NEXT TO THE URETHRA WHICH IS THE OPENING RIGHT
18 IN HERE THERE IS -- THERE'S ECCHYMOSIS. WHERE THE PETECHIAE
19 ARE LITTLE, SMALL PINPOINT AREAS OF BLEEDING UNDER THE SKIN,
20 ECCHYMOSIS ARE LARGER AREAS OF BLEEDING UNDER THE SKIN, AND
21 NEXT TO HER URETHRA ON BOTH SIDES WERE AREAS OF VERY RED AND
22 DISTINCT ECCHYMOSIS OR BLEEDING UNDER THE SKIN. THEN THE
23 RIGHT SIDE OF THE LABIA MINORA AND THE INNER SIDE THERE'S TWO
24 FAIRLY LARGE LACERATIONS TO THE SIDE, AND THEN THERE'S
25 SEVERAL OTHER SMALLER AREAS RIGHT ON THE -- RIGHT NEXT TO THE

1 HYMEN. THIS PROBABLY SHOULD BE DRAWN UP A LITTLE BIT, BUT
2 BASICALLY IT'S ON THE INNER PART OF THE LABIA, AND REMEMBER
3 ALL THIS IS THAT KIND OF SKIN THAT WE TALKED ABOUT THAT'S ON
4 THE INSIDE OF YOUR MOUTH.

5 AND THE FOSSA NAVICULARIS, THERE ARE TWO AREAS OF
6 LACERATION. LACERATION MEANS THAT THE SKIN HAS BEEN RIPPED.
7 ABRASION MEANS THAT THE OUTER LAYERS OF THE SKIN HAS BEEN
8 KIND OF TORN OFF, BUT AN ABRASION IS SOMETHING THAT GOES A
9 LITTLE DEEPER. I MEAN, A LACERATION IS SOMETHING THAT GOES A
10 LITTLE DEEPER.

11 WE USE A CLOCK TO DOCUMENT POSITION SO THAT 12:00 IS
12 TOWARDS THE FRONT. 6:00 IS TOWARDS THE BACK. 3:00 IS ON THE
13 LEFT AND 9:00 IS ON THE RIGHT. THESE LACERATIONS THAT ARE IN
14 THE FOSSA NAVICULARIS ARE AT 5 AND 6:00 DOWN INSIDE THE
15 FOSSA.

16 THEN ALL THAT LEAVES IS THE HYMEN AND THERE WERE
17 SEVERAL AREAS ON THE HYMEN. UP IN THIS -- THE AREA RIGHT UP
18 IN HERE RIGHT AROUND -- AROUND 10 TO 11:00 - I'LL CALL IT 11
19 - IS ONE AREA. THERE'S ANOTHER AROUND 7:00. AND THEN THIS
20 WHOLE AREA BETWEEN 1 AND 2, IT WAS JUST VERY RED AND ACTUALLY
21 WAS OOZING AT THE TIME. SO THERE MUST HAVE BEEN ABRASION
22 THERE. THE SKIN WAS CERTAINLY BROKEN BECAUSE IT WAS JUST
23 KIND OF OOZING AT THE TIME. AND THEN AT 3:00 THERE WAS
24 SOMETHING CALLED A TRANSECTION WHICH IS A TRAUMATIC
25 INTERRUPTION IN THE HYMEN. THAT MEANS THAT THERE IS AN

1 INTERRUPTION TO THE HYMEN THAT WAS CAUSED BY TRAUMA. WE CAN
2 TELL THIS BECAUSE IT'S FRESH AND OOZING AT THE TIME THAT THE
3 -- OF THE ASSESSMENT. AND THAT'S -- I THINK THAT'S BASICALLY
4 IT. THERE WAS NO TRAUMA TO THE PERINEUM AND THERE WAS NO
5 TRAUMA TO THE ANUS THAT WAS NOTED.

6 BY MS. BRISBIN:

7 Q. THANK YOU. YOU CAN HAVE A SEAT AGAIN.

8 A. OKAY.

9 Q. DO YOU RECOGNIZE WHAT HAVE BEEN MARKED STATE'S
10 EXHIBIT NUMBER 10, 11, AND 12 FOR IDENTIFICATION PURPOSES?

11 A. YES, I DO.

12 Q. AND HAVE YOU SEEN THOSE BEFORE?

13 A. YES, I HAVE.

14 Q. AND WHEN DID YOU SEE THOSE INITIALLY?

15 A. I FIRST SAW THESE ON MARCH 4TH, THE DAY AFTER THE
16 ASSESSMENT, WHENEVER I WAS PRECEPTING (PHONETIC) THE CHART.

17 Q. AND WHAT ARE THEY?

18 A. THEY'RE GRAPHIC VIDEO PRINTS. THEY'RE THE PHOTO
19 DOCUMENTATION THAT'S TAKEN THROUGH THE COLPOSCOPE OR THE
20 MICROSCOPE THAT'S ON OUR STAND AND IT'S -- THEY'RE NOT
21 ACTUALLY PICTURES. THEY'RE -- BUT THEY'RE GRAPHIC VIDEO
22 PRINTS THAT -- THAT WERE DONE AT THE TIME OF THE ASSESSMENT.

23 Q. AND ARE THESE THE ACTUAL PHOTOS OR PRINTS, WHATEVER
24 YOU CALL THEM, FROM MARGARET SANDERS' EXAMINATION---

25 A. YES---

1 Q. ---ON MARCH---

2 A. ---THEY ARE.

3 Q. ---3RD---

4 A. YES---

5 Q. ---OF 2002?

6 A. ---THEY ARE.

7 MS. BRISBIN: YOUR HONOR, AT THIS TIME I'D ASK THAT
8 THESE STATE'S EXHIBIT 10, 11, AND 12 BE ADMITTED INTO
9 EVIDENCE.

10 MS. BROWN: NO OBJECTION.

11 THE COURT: ALL RIGHT. SO ADMITTED WITHOUT
12 OBJECTION.

13 (STATE'S EXHIBITS 10 THROUGH 12 WERE RECEIVED IN
14 EVIDENCE.)

15 BY MS. BRISBIN:

16 Q. COULD YOU -- WOULD IT HELP YOU TO USE THESE PHOTOS
17 TO EXPLAIN TO THE -- SHOW THE JURY WHAT YOU JUST DESCRIBED?
18 IF YOU COULD MAYBE STEP DOWN AND POINT IT OUT -- POINT OUT
19 THE INJURIES.

20 A. I DON'T KNOW HOW MUCH YOU CAN ACTUALLY SEE FROM
21 THERE, BUT THERE IS THE CLITORAL HOOD RIGHT HERE AND JUST UP
22 UNDERNEATH THAT IS THE OPENING TO THE URETHRA THAT I HAVE
23 DRAWN THERE WITH THE U., AND THIS IS THE AREA OF ECCHYMOSIS
24 OR THE BLEEDING UNDER THE SKIN THAT'S RIGHT NEXT TO THAT.
25 YOU CAN START SEEING THE LESIONS ON THE HYMEN JUST UNDERNEATH

1 THERE.

2 THIS IS -- THIS IS ACTUALLY THE OPENING TO THE
3 VAGINA, AND THIS PIECE OF SKIN THAT GOES RIGHT ALONG THROUGH
4 THERE IS THE -- IS THE HYMEN, AND YOU CAN SEE RIGHT HERE AT 1
5 AND 2:00 THERE'S JUST -- IT LOOKS VERY RED AND IT'S
6 DOCUMENTED AS OOZING. THEN YOU CAN LOOK OVER HERE AT WHAT
7 WOULD BE 11 TO 12:00 AND IT'S SWOLLEN AND RED. RIGHT HERE AT
8 3 IS THE ACUTE TRANSECTION OR THE FRESH TRANSECTION, AND THEN
9 THERE'S THAT AREA AT 7 THAT I'M NOT SURE IS IN THESE.

10 I THINK YOU CAN START TO SEE IT DOWN IN HERE, BUT I
11 DON'T THINK IT SHOWS UP VERY WELL ON THESE. THEN HERE YOU
12 HAVE THE AREA THAT IS -- THAT'S THE FOSSA THAT'S RIGHT IN
13 HERE AND YOU CAN SEE THAT THROUGH ONE OF THE LITTLE
14 LACERATIONS THERE. THIS IS DYE ON HERE. WE USE A TOLUENE
15 BLUE DYE BECAUSE THE OUTER LAYS OF SKIN OF MUCOSA DON'T HAVE
16 ANY NUCLEI IN IT. THE INNER LAYERS OR THE UNDER LAYS DO, SO
17 WHEN THERE'S AN INTERRUPTION OF THE SKIN WE PUT ON THIS BLUE
18 DYE THAT STAINS THE NUCLEAR MATERIAL, AND IF IT'S -- IF THE
19 SKIN IS INTACT, IT JUST WASHES RIGHT OFF BECAUSE THERE'S
20 NOTHING THERE FOR IT TO ADHERE TO. IF THE SKIN IS NOT
21 INTACT, IF THERE IS AN INTERRUPTION IN THE OUTER LAYERS OF
22 SKIN, THEN THE DYE ACTUALLY ADHERES TO IT AND WE CAN SEE IT
23 AND THAT'S WHAT YOU'RE SEEING RIGHT HERE. AND THESE ARE THE
24 SMALL AREAS THAT I HAVE -- THAT I'VE GOTTEN DRAWN RIGHT UP IN
25 HERE, BUT THESE ARE THE TWO PRIMARY FINDINGS. LET'S SEE.

1 THIS IS THE CLITORAL HOOD WHICH IS THIS AREA.

2 THE COURT: DOCTOR, WOULD YOU IDENTIFY WHAT THE
3 EXHIBIT NUMBER IS OF THE...

4 THE WITNESS: OKAY. THIS IS EXHIBIT NUMBER 12.

5 THE COURT: ALL RIGHT.

6 THE WITNESS: AND I WAS JUST TALKING ABOUT -- WHEN I
7 WAS TALKING ABOUT THE INNER ASPECT OF THE LABIA, THAT WAS
8 EXHIBIT 11, AND WHEN I WAS TALKING ABOUT THE FINDINGS ON THE
9 URETHRA AND THE HYMEN, THAT WAS EXHIBIT 10.

10 THE COURT: THANK YOU, MA'AM.

11 THE WITNESS: YOU'RE WELCOME. BUT THIS IS THE
12 CLITORAL HOOD; I'M BACK ON 12 NOW. THIS IS THE CLITORAL HOOD
13 AND YOU CAN SEE RIGHT HERE WHERE THERE'S LACERATIONS OR
14 INTERRUPTIONS IN THE SKIN THAT GO FAIRLY DEEP RIGHT TO HERE.
15 THEN YOU CAN ALSO SEE THE LITTLE AREAS ON THE -- ON THE OTHER
16 SIDE, BUT THESE ARE THE PICTURES THAT ACTUALLY DOCUMENT ALL
17 OF THESE FINDINGS.

18 MS. BRISBIN: THANK YOU. OKAY. THANK YOU. OKAY.
19 YOU CAN HAVE A SEAT.

20 THE COURT: LADIES AND GENTLEMEN, I DON'T MIND YOU
21 PASSING THOSE PHOTOGRAPHS AROUND OR PRINTS, BUT DON'T MISS
22 THE TESTIMONY. AS I TOLD YOU, THE EXHIBITS WILL GO WITH YOU
23 TO THE JURY ROOM---

24 MS. BRISBIN: THAT'S TRUE.

25 THE COURT: ---BUT THE TESTIMONY WON'T. IF YOU MISS

1 IT, YOU'RE JUST OUT OF LUCK. SO MAKE SURE THAT YOU
2 UNDERSTAND WHAT'S BEING SAID AND HEAR WHAT'S BEING SAID HERE
3 TODAY.

4 BY MS. BRISBIN:

5 Q. YOU HAVE GONE OVER THE INDIVIDUAL FINDINGS. CAN YOU
6 SUMMARIZE IN GENERAL WHAT THE FINDINGS OF MS. SANDERS' SEXUAL
7 ASSAULT EXAMINATION WERE?

8 A. THE FINDINGS, PARTICULARLY THE LACERATIONS AND THE
9 TRAUMA TO THE HYMEN, ARE DIAGNOSTIC OF BLUNT-FORCE-
10 PENETRATIVE TRAUMA, AND THE FINDINGS TOGETHER ARE CONSISTENT
11 WITH THE HISTORY THAT SHE GAVE OF A PAINFUL SEXUAL ASSAULT.

12 MS. BRISBIN: THANK YOU. I DON'T HAVE ANY FURTHER
13 QUESTIONS. PLEASE ANSWER ANY THE DEFENSE HAS.

14 CROSS-EXAMINATION

15 BY MS. BROWN:

16 Q. DR. GIBBS, YOU'VE TESTIFIED THAT THE FINDINGS ARE
17 DIAGNOSTIC OF BLUNT-FORCE-PENETRATIVE TRAUMA MEANING THAT
18 IT'S DIAGNOSTIC OF A PAINFUL SEXUAL ASSAULT. WAS THAT WHAT
19 YOU JUST SAID?

20 A. NO. ACTUALLY THOSE ARE TWO DIFFERENT TERMS.

21 Q. OKAY.

22 A. WE USE MEDICAL CERTAINTY ON THE PHYSICAL FINDINGS
23 THAT ARE IN THE CATEGORIES OF NORMAL, NONSPECIFIC.
24 NONSPECIFIC MEANS THAT THAT CAN CAUSE IT, BUT SO CAN A LOT OF
25 OTHER THINGS AND YOU CAN'T WEIGH THAT OUT. SUSPICIOUS OF

1 MEANS THAT IT MAKES YOU STRONGLY CONSIDER A CAUSE, BUT IT
2 DOESN'T REALLY GIVE YOU MUCH INFORMATION ABOUT THE LEVEL OF
3 MEDICAL CERTAINTY. CONSISTENT WITH AS IT RELATES TO PHYSICAL
4 FINDINGS MEANS MORE PROBABLE THAN NOT, AND DIAGNOSTIC MEANS
5 THAT YOU CAN LOOK AT THEM WITHOUT ANY OTHER HISTORY, THAT YOU
6 CAN TELL THAT'S WHAT CAUSED IT. WHEN YOU LOOK AT HER, THEN
7 THE FINDINGS -- PHYSICAL FINDINGS ARE DIAGNOSTIC OF
8 BLUNT-FORCE-PENETRATIVE TRAUMA AND THEY ARE CONSISTENT
9 MEANING THAT, YOU KNOW, THEY ARE -- CERTAINLY CAN BE
10 EXPLAINED BY HER HISTORY.

11 Q. THEY COULD BE EXPLAINED BY OTHER POTENTIAL FACTORS
12 AS WELL; CORRECT?

13 A. YES.

14 Q. WHAT WOULD SOME OF THOSE FACTORS BE OR WHAT WOULD BE
15 OTHER CAUSES FOR THAT DIAGNOSIS?

16 A. THE MAIN FACTOR THAT WOULD BE AN ALTERNATIVE
17 EXPLANATION WOULD BE A FORM OF CONSENSUAL INTERCOURSE THAT
18 WAS FAIRLY ROUGH AND FAIRLY PAINFUL THAT WOULD THEN CAUSE
19 TRAUMA TO THOSE AREAS.

20 Q. NOW, ACCORDING TO YOUR -- YOU DID NOT ACTUALLY DO
21 THE EXAM OF MS. SANDERS; CORRECT?

22 A. NO, I DID NOT.

23 Q. BUT YOU HAVE HAD THE OPPORTUNITY TO REVIEW THAT EXAM
24 AND YOU ACTUALLY USED THAT EXAM TO MAKE YOUR DIAGNOSES;
25 CORRECT?

1 A. YES. THAT'S CORRECT.

2 Q. AND SHE PRESENTED AT THAT TIME AS A 58-YEAR-OLD
3 WOMAN? IS THAT RIGHT?

4 A. 59 YEARS OLD.

5 Q. 59 YEARS OLD. AND SHE HAD HAD A HYSTERECTOMY?

6 A. YES, SEVERAL YEARS AGO.

7 Q. AND SO SHE -- IS IT FAIR TO SAY SHE WAS
8 POSTMENOPAUSAL?

9 A. IT'S KIND OF HARD AND, QUITE HONESTLY, I DON'T KNOW
10 BECAUSE IT'S NOT IN THE RECORD WHETHER WHEN THEY DID A
11 HYSTERECTOMY THEY TOOK HER OVARIES OUT. IF THE OVARIES ARE
12 REMOVED, THEN -- THEN THERE IS NO ESTROGEN THAT'S BEING
13 PRODUCED BY THE OVARIES. IF THE OVARIES HAVEN'T BEEN
14 REMOVED, THEN THEY CAN PRODUCE ESTROGEN UNTIL SHE REACHES
15 MENOPAUSE, BUT I DO KNOW THAT LOOKING AT THE GRAPHIC VIDEO
16 PRINTS THAT HER SKIN WAS -- WAS MORE CONSISTENT WITH SOMEONE
17 WHO WAS AT THE VERY LEAST IN EARLY MENOPAUSE.

18 Q. SO THE SKIN THAT YOU -- THAT YOU SAW LOOKED AS
19 THOUGH IT DID NOT OR IT HAD DIMINISHED ESTROGEN.

20 A. YES. THAT'S CORRECT.

21 Q. AND I BELIEVE YOU TESTIFIED EARLIER THAT WHEN A
22 WOMAN'S ESTROGEN LEVELS DROP, THAT SKIN IS MORE PRONE TO
23 TEARING.

24 A. YES. THAT'S CORRECT.

25 Q. AND THAT'S ACROSS THE BOARD, NOT PARTICULARLY -- NOT

1 SPECIFIC TO MRS. SANDERS BUT---

2 A. YES.

3 Q. ---FOR ANY WOMAN THAT'S TRUE.

4 A. THAT'S CORRECT.

5 Q. SO ANY WOMAN IN THAT SITUATION WITH LOWERED
6 ESTROGEN, HER SKIN IS GOING TO TEAR MORE EASILY THAN A WOMAN
7 WITH NORMAL ESTROGEN LEVELS. IS THAT CORRECT?

8 A. YES.

9 Q. AND I MEAN THE SKIN IN THIS GENITAL AREA, THE---

10 A. RIGHT. I MEAN EVERYBODY---

11 Q. I'LL CALL IT F.N.

12 A. OKAY. EVERYBODY IS DIFFERENT AND SO I DON'T WANT TO
13 MAKE IT ACROSS THE BOARD, BUT AS TRENDS GO AND AS PATTERNS
14 GO, YES, THE LOWER YOUR ESTROGEN THE MORE LIKELY YOU ARE TO
15 TEAR WITH TRAUMA.

16 Q. AND SO WOULD IT BE FAIR TO SAY THAT IT TAKES LESS
17 TRAUMA TO MAKE THIS KIND OF INJURY IN SKIN THAT IS -- THAT
18 HAS LESS ESTROGEN THAN IN SKIN WITH NORMAL ESTROGEN LEVELS OR
19 DO I NEED TO REPHRASE THAT QUESTION?

20 A. COULD YOU REPHRASE IT?

21 Q. IN A WOMAN WHO HAS LOWER ESTROGEN LEVELS, WILL IT
22 TAKE LESS FORCE OR TRAUMA FOR TEARING TO OCCUR OR FOR THESE
23 KINDS OF INJURIES TO OCCUR THAN FOR A WOMAN WITH NORMAL
24 ESTROGEN LEVELS?

25 A. YES.

1 Q. AND I BELIEVE YOU STATED THAT THE DIAGNOSTIC
2 FINDINGS COULD HAVE BEEN DUE TO ROUGHER CONSENSUAL
3 INTERCOURSE, DIDN'T JUST HAVE TO BE NONCONSENSUAL TRAUMA;
4 CORRECT?

5 A. IF YOU TAKE THE -- IF YOU TAKE THE PHYSICAL FINDINGS
6 ALONE, THAT'S CORRECT. THAT WASN'T THE HISTORY THAT WAS
7 GIVEN, BUT IF YOU LOOK AT THE PHYSICAL FINDINGS ALONE WITHOUT
8 ANY HISTORY, THAT WOULD BE CORRECT.

9 Q. WHAT OTHER TYPES OF EXAMS WERE CONDUCTED OF MS.
10 SANDERS?

11 A. SHE HAD EVIDENCE COLLECTION. THE EVIDENCE
12 COLLECTION INCLUDED HAIR SAMPLES, PUBIC HAIR SAMPLES, PUBIC
13 HAIR COMBINGS. THERE WAS A HISTORY OF BEING LICKED IN HER
14 EAR AND SO THAT AREA WAS ACTUALLY SWABBED FOR SALIVA. A
15 KNOWN SALIVA SAMPLE WAS ALSO TAKEN. HER UNDERWEAR WAS
16 COLLECTED EVEN THOUGH THIS WAS -- THIS WAS NOT THE UNDERWEAR
17 THAT SHE HAD ON AT THE TIME. I BELIEVE SHE HAD ALREADY GIVEN
18 THOSE TO LAW ENFORCEMENT.

19 A WET PREP WAS DONE WHICH MEANS THAT THE VAGINAL
20 FLUIDS THAT WERE LOOKED AT UNDER THE MICROSCOPE THAT THAT --
21 THAT WAS DONE. THAT WAS NEGATIVE. AND GRETCHEN DID NOT MARK
22 THAT VAGINAL SWABS HAD BEEN TAKEN, BUT SHE DID DO A WET PREP
23 AND I WOULD IMAGINE THAT SHE DID TAKE THOSE, BUT QUITE
24 HONESTLY THEY'RE NOT MARKED ON THE -- ON THE CHART.

25 Q. AND WHO IS GRETCHEN AGAIN?

1 A. GRETCHEN OVERSTOLZ WAS THE FORENSIC NURSE EXAMINER.

2 Q. OKAY. SO THOSE SWABS -- SO EVEN THOUGH IT'S NOT
3 MARKED, THOSE SWABS WERE TAKEN.

4 A. YES, I BELIEVE THEY WERE.

5 Q. WHAT IS THE PURPOSE OF ALL THOSE SWABS AND
6 EVERYTHING THAT YOU JUST MENTIONED? WHAT'S THE PURPOSE OF
7 THAT?

8 A. DO YOU WANT ME TO GO ONE BY ONE?

9 Q. SURE.

10 A. THE HAIR SAMPLES -- THE REASON WE TAKE HAIR SAMPLES
11 IS BECAUSE SOMETIMES LAW ENFORCEMENT WILL GO TO THE SCENE OF
12 THE INCIDENT AND TO ESTABLISH OR FOR THE POSSIBILITY OF
13 ESTABLISHING THAT THE PERSON WAS ACTUALLY AT THE SCENE THEY
14 CAN TAKE HAIR SAMPLES THAT WERE COLLECTED AT THE SCENE
15 SOMETIMES, IF THEY'RE PRESENT, AND COMPARE THEM TO THE HAIR
16 SAMPLE OF THE -- OF THE PATIENT AND SEE IF IT'S A MATCH. SO,
17 THEREFORE, WE HAVE TO PULL SEVERAL -- SEVERAL HAIRS FROM
18 DIFFERENT PARTS OF THE HEAD.

19 THE PUBIC HAIR COMBINGS, WE DO THOSE BECAUSE
20 SOMETIMES WITH -- WITH GENITAL-TO-GENITAL CONTACT SOME HAIRS
21 CAN BE SHED FROM THE -- FROM THE ACCUSED AND THAT CAN BE USED
22 TO HELP DETERMINE, YOU KNOW, WHETHER THEY'RE THERE, IF THOSE
23 ARE PRESENT. AND THEN TO HAVE A MATCH FOR TELLING THE
24 DIFFERENCE BETWEEN THE PATIENT AND ANOTHER PERSON, WE HAVE TO
25 PULL SAMPLES OF THE PATIENT'S PUBIC HAIR.

1 THE SALIVA, THE REASON THAT WE GET SALIVA IS BECAUSE
2 THERE ARE CERTAIN SUBSTANCES THAT ARE SECRETED IN THE
3 POPULATION AND IT'S NOT ANYWHERE CLOSE TO D.N.A. BUT THAT
4 SOMETIMES YOU CAN, YOU KNOW, KIND OF NARROW DOWN THE
5 POPULATION IF YOU HAVE A SUBSTANCE OR BODILY FLUIDS FROM
6 ANOTHER PERSON AND YOU HAVE THE SAME BODILY FLUIDS FROM THE
7 PATIENT AND YOU CAN TELL THAT THEY'RE DIFFERENT PEOPLE AND
8 THAT'S WHY WE COLLECT THE SALIVA.

9 THE BLOOD WE COLLECT FOR D.N.A. THE VAGINAL SWABS
10 ARE LOOKING FOR ANY KIND OF LUBRICANT OR SOMETIMES DEBRIS
11 THAT GETS IN THAT AREA IF THE INCIDENT OCCURRED IN THE WOODS
12 OR SOMEPLACE LIKE THAT AND ALSO LOOKING FOR SEMEN OR BODILY
13 FLUIDS FROM THE PERSON WHO'S ACCUSED. AND THE WET PREP IS TO
14 LOOK FOR SPERM UP UNDERNEATH THE MICROSCOPE. I THINK THAT'S
15 ALL OF THEM.

16 Q. OKAY. WHAT ABOUT PHYSICAL EXAMINATION? ANY -- DO
17 YOU DO ANY OTHER TYPE OF PHYSICAL EXAMINATION LOOKING FOR
18 BRUISING OR ANYTHING LIKE THAT?

19 A. YES. YES.

20 Q. AND THAT EXAM WAS CONDUCTED IN THIS CASE?

21 A. YES.

22 Q. AND WHAT -- WHAT BRUISES WERE NOTED?

23 A. SHE HAD THE PETECHIAE THAT WAS ON HER PALATE THAT WE
24 TALKED ABOUT AND THEN SHE HAD A BRUISE ON HER FOREHEAD, BUT
25 NOT TO CONFUSE YOU: SHE WAS VERY CLEAR THAT THE BRUISE HAD

1 OCCURRED FROM JUST AN INCIDENTAL TRAUMA THAT HAD HAPPENED
2 EARLIER.

3 Q. THERE WAS NO BRUISING NOTICED ON HER ARMS?

4 A. NO.

5 Q. NO BRUISING NOTICED ON HER SHOULDERS?

6 A. THERE WAS NO BRUISING ANYWHERE ELSE ON THE SKIN.

7 Q. AND THAT -- AGAIN, THAT WAS -- EXAMINATION IS DONE
8 IN THAT -- FOR THAT AS WELL?

9 A. YES.

10 Q. NOW, YOU MENTIONED THAT BLOOD IS DRAWN---

11 A. YES.

12 Q. ---IN THE COURSE OF THAT AND THAT'S DONE FOR
13 TOXICOLOGY AS WELL AS SEROLOGY OR D.N.A.?

14 A. SOMETIMES WE DRAW FOR TOXICOLOGY. WE DON'T ALWAYS
15 DO IT. IT'S A DIFFERENT TUBE AND WE DON'T ALWAYS DO THAT.
16 IN THIS CASE IT WAS ONLY -- ONLY A LAVENDER-TOP TUBE WAS
17 DRAWN FOR SEROLOGY, NOT FOR TOXICOLOGY.

18 Q. WHY WAS A TOXICOLOGY TUBE NOT DRAWN?

19 A. THERE WAS NO HISTORY OF ANY SUBSTANCES BEING
20 INGESTED AT THE TIME OF THE ASSAULT.

21 Q. NONE THAT WAS -- THERE WAS NO HISTORY?

22 A. THERE WAS NO HISTORY GIVEN; CORRECT.

23 Q. AND JUST FOR EXPLANATION PURPOSES, WHAT IS
24 TOXICOLOGY?

25 A. TOXICOLOGY IS WHERE THEY TAKE THE BLOOD AND TAKE IT

1 TO THE -- WELL, ALL THE EVIDENCE COLLECTED GOES IN A KIT AND
2 THEN LAW ENFORCEMENT TAKES IT TO OUR STATE LAW ENFORCEMENT
3 DIVISION AND THEN THEY PROCESS IT. AND WHAT THEY WERE
4 PROCESSING TOXICOLOGY FOR ARE LEVELS OF DRUGS, MEDICATIONS,
5 AND ALSO FOR ALCOHOL.

6 Q. OKAY. ARE THERE ANY -- ARE THERE ANY OTHER CULTURES
7 DONE AS FAR AS -- YOU MENTIONED -- YOU MENTIONED EARLIER THAT
8 TESTING IS DONE FOR SEXUALLY TRANSMITTED DISEASES.

9 A. WE DON'T TEST. SOMETIMES WE TREAT PROPHYLACTICALLY.
10 WHENEVER WE SEE SOMEBODY THAT'S VERY, VERY CLOSE IN PROXIMITY
11 TO THE TIME OF THE INCIDENT, THEN THE CULTURES WOULD COME
12 BACK NEGATIVE ANYWAY. AND SO FREQUENTLY, MOST OF THE TIME
13 ACTUALLY, WE GO AHEAD AND TREAT. WE GIVE ANTIBIOTICS. WE
14 GIVE ZYTHROMAX AND FLAGYL WHICH WOULD TREAT FOR GONORRHEA AND
15 CHLAMYDIA AND TRICHOMONAS.

16 Q. OKAY. NOW, THE -- YOU WORK WITH -- LET ME REPHRASE
17 THAT. YOU HAVE ACTUALLY TWO DIFFERENT TYPES OF FORMS AND
18 REPORTS THAT YOU FILL OUT; CORRECT?

19 A. YES. THAT'S CORRECT.

20 Q. COULD YOU EXPLAIN THE DIFFERENCE?

21 A. THE STATE LAW ENFORCEMENT DIVISION, S.L.E.D., THEY
22 ACTUALLY PUBLISH THE PROTOCOL THAT IS IN THE EVIDENCE
23 COLLECTION KIT. THAT PROTOCOL IS DESIGNED AS -- PRIMARILY AS
24 A TOOL FOR LAW ENFORCEMENT. IT HELPS WITH THE INVESTIGATION
25 AND IT ALSO HELPS WITH THE LAB TECHS WHEN THEY GO TO PROCESS

1 THE INFORMATION. SO THAT FORM IS DONE REALLY PRIMARILY FOR
2 LAW ENFORCEMENT. BECAUSE WE ARE A HEALTHCARE FACILITY AND WE
3 DO PROVIDE FORENSIC HEALTHCARE, THERE'S MORE INFORMATION THAT
4 WE NEED SPECIFICALLY AROUND PAST MEDICAL HISTORY, SYMPTOMS
5 THEY MIGHT BE HAVING, ALSO MEDICATIONS, THOSE KINDS OF THINGS
6 AND THEN, QUITE HONESTLY, WE LIKE A MORE DETAILED FORM TO BE
7 ABLE TO RECORD THE PHYSICAL FINDINGS.

8 Q. SO YOU GENERALLY WOULD DO EVERYTHING THAT IS
9 PRESCRIBED IN THE S.L.E.D. PROTOCOL AND THEN ADD TO IT WITH
10 YOUR OWN FORM?

11 A. WE DON'T ALWAYS DO EVERYTHING. WE DO THE PARTS THAT
12 ARE PERTINENT TO US. THE S.L.E.D. PROTOCOL IS A GUIDELINE.
13 IT'S NOT A DOGMA PROTOCOL. IT'S A GUIDELINE, BUT WE DO TRY
14 AND BE AS THOROUGH AS WE CAN.

15 Q. NOW, THE S.L.E.D. PROTOCOL ASKS THAT -- ASKS THAT
16 CERTAIN TESTS BE DONE; CORRECT?

17 A. WELL, IT SUGGESTS THAT THEY BE DONE. YOU DON'T HAVE
18 TO DO ALL OF THE TESTS THAT ARE IN THE PROTOCOL.

19 Q. THEY SUGGEST, FOR EXAMPLE, A URINALYSIS BE DONE.

20 A. CORRECT.

21 Q. WHAT WOULD BE THE PURPOSE OF A URINALYSIS?

22 A. LOOKING FOR BLOOD, WELL, AND SOMETIMES SPERM.
23 SOMETIMES SPERM CAN ACTUALLY BE IN THE URINE, BUT THAT'S VERY
24 UNUSUAL. BUT REALLY WHAT THEY'RE MAINLY LOOKING FOR IS
25 BLOOD.

1 Q. WAS A URINALYSIS CONDUCTED IN THIS CASE?

2 A. I DON'T THINK IT WAS IN HER CASE. WE COULD
3 CERTAINLY LOOK AT THE GENITAL AREA AND SEE THAT THERE WAS
4 BLOOD PRESENT, BUT LET ME LOOK AGAIN TO BE SURE. I TOOK MY
5 CHART APART FOR THE PICTURES. LET ME GET TO... NO, A
6 URINALYSIS WAS NOT DONE IN HER CASE.

7 Q. WHY WOULD THAT NOT HAVE BEEN DONE?

8 A. WE COULD LOOK AT THE GENITAL FINDINGS AND REALIZE
9 THAT IT WOULD BE POSITIVE FOR BLOOD. EVEN MICROSCOPIC BLOOD
10 SHOWS UP ON A URINALYSIS. SO, YOU KNOW, I MEAN SHE CERTAINLY
11 COULD HAVE CHOSEN TO DO ONE, BUT IT WAS NOT NECESSARY.

12 Q. NOW, THERE ARE ALSO SEVERAL CULTURES LISTED ON THE
13 S.L.E.D. PROTOCOL: G.C. CULTURE, ORAL, VAGINAL, AND RECTAL.
14 WHAT IS THAT?

15 A. THE GONORRHEA CULTURE IS THE G.C. CULTURE, AND ORAL
16 MEANS OF THE THROAT. THEN IT'S GOT G.C. CULTURE VAGINAL.
17 THAT MEANS A GONORRHEAL CULTURE OF THE VAGINA, AND THEN A
18 G.C. CULTURE RECTAL MEANS A GONORRHEAL CULTURE OF THE RECTUM
19 OR THE ANUS.

20 Q. AND WERE THOSE CULTURES TAKEN IN THIS CASE?

21 A. NO, THEY WERE NOT.

22 Q. WHY NOT?

23 A. THEY WOULD NOT HAVE BEEN POSITIVE AT THAT POINT. WE
24 WERE -- WE WERE ONLY 24 HOURS OUT. IT TAKES AT LEAST THREE
25 DAYS AND IN SOME CASES THREE TO FIVE DAYS FOR MOST CULTURES

1 TO BE POSITIVE.

2 Q. ALSO LISTED ON HERE WOULD BE AN H.I.V. TEST. WOULD
3 THAT HAVE BEEN DONE IN THIS CASE?

4 A. NO.

5 Q. WHY NOT?

6 A. AN H.I.V. WON'T TURN POSITIVE FOR AT A MINIMUM FIVE
7 OR SIX WEEKS AND THE RECOMMENDATION IS TO HAVE THAT DONE AT
8 SIX WEEKS, TWELVE WEEKS, AND SIX MONTHS. AND SHE WAS
9 REFERRED TO HER PRIMARY CARE PHYSICIAN FOR SEXUALLY-
10 TRANSMITTED-INFECTION TESTING AND FOR H.I.V. TESTING.

11 Q. ARE YOU AWARE OF WHETHER OR NOT THERE WAS ANY
12 FOLLOW-UP?

13 A. I'M NOT AWARE, BUT I KNOW THAT MS. OVERSTOLZ DID
14 TALK TO HER PRIMARY CARE PROVIDER.

15 Q. ABOUT DOING THOSE---

16 A. YES.

17 Q. ---KINDS OF TESTING? NOW, AGAIN BACKING UP, I'M NOT
18 GOING TO TRY TO USE ANY OF THESE TERMS THAT YOU USED, BUT THE
19 GENITAL INJURIES THAT YOU DESCRIBED THAT YOU DREW OUT---

20 A. UH-HUH.

21 Q. ---ON THE DIAGRAM AND POINTED OUT IN THE PICTURES,
22 WOULD ANY OF THOSE INJURIES HAVE BEEN -- COULD -- LET ME
23 REPHRASE. COULD ANY OF THOSE INJURIES HAVE BEEN WORSENERED BY
24 RUBBING WITH A WASHCLOTH TO CLEANSE THE AREA AFTER THE
25 INCIDENT?

1 A. NO, I DON'T THINK SO. I MEAN, THE INJURIES THAT I
2 SAW -- I MEAN, THAT WOULD BE PRETTY PAINFUL. WHEN PEOPLE
3 WASH WITH A WASHCLOTH, IF THEY'RE -- IF THEY'RE CAUSING PAIN,
4 THEN THEY TYPICALLY WOULD NOT DO THAT. THEY WOULDN'T DO IT
5 TO THAT EXTENT.

6 Q. WERE THERE ANY SPERM PRESENT?

7 A. NO. THERE WERE -- WELL, THERE WERE NO -- THERE WERE
8 NO SPERM SEEN UNDER THE MICROSCOPE. WET PREPS ARE ONLY ABOUT
9 50 PERCENT SENSITIVE, SO YOU'RE ONLY GOING TO CATCH ABOUT
10 HALF OF THEM BUT I -- AND I DON'T KNOW WHAT THE S.L.E.D.
11 REPORT SAID.

12 Q. OKAY. HOW LONG AFTER -- HOW LONG AFTER AN INCIDENT
13 DO YOU EXPECT TO STILL SEE -- I THINK YOU CALL IT MOTILE
14 SPERM?

15 A. MOBILE SPERM?

16 Q. MOBILE SPERM.

17 A. YOU KNOW, IT REALLY DEPENDS ON -- ON THE PATIENT AND
18 ON THE CONDITIONS IN THE VAGINA, BUT USUALLY YOU CAN CATCH
19 SPERM THAT -- MOBILE JUST MEANS OR MOTILE JUST MEANS THAT
20 IT'S STILL ALIVE AND SWIMMING WITHIN 24 HOURS. SOMETIMES AS
21 FAR OUT AS 36 HOURS BUT USUALLY WITHIN 24 HOURS.

22 Q. NOW, WOULD -- WHAT KIND OF -- WHAT KIND OF AN EXAM
23 IS DONE TO DETERMINE THE PRESENCE OF SEMEN? IS IT JUST AN
24 EXTERNAL? IS IT AN INTERNAL EXAM? WHAT KIND OF SWABS ARE
25 TAKEN FOR THAT?

1 A. THE SWABS THAT ARE TAKEN ARE ACTUALLY AT THE
2 ENTRANCE AND THEN ALSO INSIDE THE VAGINA.

3 Q. BACK NEAR THE CERVIX?

4 A. YES. WELL, NEAR -- THERE'S A -- THERE'S A LITTLE
5 BULBUS AREA THAT IS -- THAT'S WHERE THE CERVIX KIND OF
6 CRADLES AND SO WE TRY AND GO IN POSTERIORLY AND INFERIORLY
7 MEANING TOWARDS THE BACK AND DOWN SO THAT YOU CATCH THAT
8 LITTLE SORT OF BULBUS AREA.

9 Q. AND AGAIN ARE YOU AWARE OF ANY S.L.E.D. RESULTS THAT
10 CAME IN---

11 A. I'M NOT AWARE OF ANY S.L.E.D. RESULTS. WE'RE NOT
12 ALLOWED TO GET THE -- THE RESULTS.

13 Q. OKAY. THANK YOU VERY MUCH. I HAVE NO FURTHER
14 QUESTIONS.

15 A. THANK YOU.

16 THE COURT: MS. BRISBIN, ANYTHING?

17 REDIRECT EXAMINATION

18 BY MS. BRISBIN:

19 Q. WHAT ARE SOME OF THE REASONS WHY THERE MIGHT NOT BE
20 SEMEN PRESENT IN YOUR EXAMINATION?

21 A. THERE'S TWO -- THERE'S TWO DIFFERENT WAYS TO
22 DETERMINE SEMEN. ONE IS TO SEND THE -- THE SWABS TO S.L.E.D.
23 AND THE OTHER IS UNDER THE WET PREP. I'LL TAKE THE WET PREP
24 FIRST BECAUSE THAT'S EASIER. WHENEVER WE LOOK AT THE WET
25 PREP UNDER THE MICROSCOPE, LIKE I SAID, IT'S ONLY ABOUT 50

1 PERCENT SENSITIVE MEANING THAT WHEN THERE'S SPERM PRESENT
2 WE'RE ONLY GOING TO SEE IT IN HALF OF THE CASES AND THAT'S
3 JUST BECAUSE, YOU KNOW, AS WE'RE PUTTING SWABS IN IT'S KIND
4 OF A HIT-AND-MISS THING AND THEN YOU'RE TAKING THAT LITTLE
5 SAMPLE THAT WAS -- THAT WAS TAKEN FROM THE -- THE VAGINA.
6 YOU'RE DILUTING IT AND THEN TAKING A VERY SMALL -- LIKE TWO
7 DROPS OF THAT AND PUTTING IT ON A MICROSCOPE. SO IT JUST IS
8 A HIT-AND-MISS KIND OF THING. SO FREQUENTLY THERE IS SPERM
9 PRESENT THAT WE DON'T CATCH UNDER THE MICROSCOPE.

10 AS FAR AS THE SAMPLES THAT ARE SENT TO S.L.E.D. WHEN
11 THEY'RE LOOKING FOR SEMEN, IF A CONDOM WAS USED, FREQUENTLY
12 THERE'S NO SEMEN. IF THE PERSON DIDN'T EJACULATE, THEN
13 THERE'S NO SEMEN. IF THE PERSON HAD SOME KIND OF
14 STERILIZATION OR WAS INFERTILE, YOU MAY FIND SEMEN BUT NOT
15 FIND ACTUAL SPERM. SO THERE'S SEVERAL DIFFERENT KINDS OF
16 REASONS WHY.

17 Q. OKAY. WOULD MRS. SANDERS' FINDINGS IN THE GENITAL
18 AREA BE DIAGNOSTIC OF GENITAL TRAUMA REGARDLESS OF WHETHER OR
19 NOT SHE HAD ESTROGEN?

20 A. OH, THERE WAS DEFINITELY GENITAL TRAUMA THERE, YES.

21 Q. AND WOULD HER -- THESE INJURIES BE CONSISTENT WITH
22 PAINFUL SEXUAL ASSAULT WHETHER OR NOT THERE WAS ESTROGEN
23 PRESENT?

24 A. WELL, YES. WELL, ACTUALLY THE DECREASE IN ESTROGEN
25 INCREASES THE AMOUNT OF PAIN TYPICALLY ON A WHOLE. SO, YES.

1 Q. OKAY. AND WOULD THE PETECHIAE IN THE ROOF OF HER
2 MOUTH BE CONSISTENT WITH FORCE -- FORCIBLE ORAL SEX
3 REGARDLESS OF WHETHER THERE WAS ESTROGEN IN HER SYSTEM?

4 A. THE ESTROGEN DOES NOT AFFECT THE MOUTH AT ALL. SO
5 REGARDLESS OF HER ESTROGEN LEVEL, THE PETECHIAE IN THE MOUTH
6 WOULD -- THAT WOULD NOT BE AFFECTED.

7 MS. BRISBIN: THANK YOU.

8 MS. BROWN: BRIEFLY, YOUR HONOR.

9 RECROSS EXAMINATION

10 BY MS. BROWN:

11 Q. AND BOTH THE DIAGNOSTIC FOR THE GENITAL INJURIES AND
12 THE PETECHIAE ON THE -- IN THE SOFT PALATE---

13 A. RIGHT.

14 Q. ---THOSE DIAGNOSES DO NOT MAKE A DETERMINATION AS TO
15 WHETHER OR NOT THOSE ACTS WERE CONSENSUAL OR NOT. IS THAT
16 CORRECT?

17 A. WELL, THERE'S NO WAY FROM A PHYSICAL EXAM TO
18 DETERMINE INTENT. SO, NO, I CAN'T DETERMINE INTENT FROM THE
19 PHYSICAL EXAM ALONE.

20 Q. THAT COULD HAVE BEEN -- THOSE INJURIES COULD HAVE
21 BEEN CAUSED BY A CONSENSUAL ACT.

22 A. THEY'RE MUCH LESS COMMON BUT, YES, THEY COULD BE.

23 Q. IT IS POSSIBLE.

24 A. YES.

25 MS. BROWN: THANK YOU VERY MUCH.

1 THE COURT: ALL RIGHT. DOCTOR, THANK YOU VERY MUCH.

2 THE WITNESS: THANK YOU.

3 THE COURT: YOU CAN STEP DOWN. HAVE YOU GOT ANOTHER
4 WITNESS YOU WANT TO CALL?

5 MS. BRISBIN: YES, YOUR HONOR. THE STATE CALLS
6 MARGIE KAMINER.

7 MARGIE KAMINER, AFTER BEING DULY SWORN,
8 TESTIFIED AS FOLLOWS:

9 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
10 YOUR FULL NAME FOR THE COURT, SPELLING YOUR LAST.

11 THE COURT: MADAM SOLICITOR, BEFORE WE GET STARTED
12 LET ME -- I NEED TO MEET WITH -- WE NEED TO FIGURE OUT WHAT
13 WE'VE GOT TO TELL THE REST OF THE JURORS. SO IF Y'ALL COULD
14 BEAR WITH US ONE SECOND.

15 MS. BRISBIN: YES, YOUR HONOR.

16 (PAUSE IN PROCEEDINGS.)

17 THE COURT: ALL RIGHT. EXCUSE ME. I'M SORRY. I'M
18 SORRY, LADIES AND GENTLEMEN. IF YOU WOULD, PLEASE.

19 MS. BRISBIN: THANK YOU, YOUR HONOR.

20 DIRECT EXAMINATION

21 BY MS. BRISBIN:

22 Q. MS. KAMINER, HOW DO YOU KNOW MARGARET SANDERS?

23 A. WE'RE COUSINS.

24 Q. AND WHERE DO YOU LIVE?

25 A. I LIVE AT -- ON HEBERT ROAD, 726 HEBERT ROAD.

1 Q. IN WHAT TOWN?

2 A. NORWAY.

3 Q. AND DID YOU SEE MARGARET SANDERS ON MARCH 2ND OF
4 2002?

5 A. YES, MA'AM.

6 Q. OR, EXCUSE ME, MARCH 3RD OF 2002?

7 A. I DON'T REMEMBER WHAT DAY IT WAS, BUT IT WAS THE
8 MORNING AFTER THAT HAD HAPPENED.

9 Q. OKAY. ABOUT WHAT -- DO YOU REMEMBER ABOUT WHAT TIME
10 YOU SAW HER?

11 A. IT WAS PROBABLY AROUND 10:30 OR 11, SOMEWHERE AROUND
12 IN THERE.

13 Q. OKAY. AND DID MS. SANDERS TELL YOU THAT SHE HAD
14 BEEN SEXUALLY ASSAULTED?

15 A. YES, MA'AM.

16 Q. DID SHE SAY WHEN IT HAPPENED?

17 A. SHE SAID IT WAS THAT NIGHT.

18 Q. THAT NIGHT?

19 A. WELL, THAT -- THE EVENING, THAT SATURDAY EVENING AND
20 THAT NIGHT.

21 Q. THE SATURDAY EVENING AND THE NIGHT---

22 A. SATURDAY NIGHT. UH-HUH.

23 Q. AND WHAT DAY OF THE WEEK WAS IT WHEN SHE CAME TO
24 YOUR HOUSE?

25 A. IT WAS SUNDAY MORNING.

1 Q. I DON'T THINK I ASKED YOU THAT. WHERE WAS IT SHE
2 WAS WHEN SHE TOLD YOU THAT?

3 A. PARDON ME?

4 Q. WHERE DID -- WHERE WAS SHE WHEN SHE TOLD YOU ABOUT
5 THIS?

6 A. AT MY HOUSE. YES, MA'AM.

7 Q. AND DID SHE CALL FIRST OR DID SHE JUST SHOW UP AT
8 YOUR HOUSE?

9 A. NO, SHE JUST CAME UP.

10 Q. OKAY. AND WHAT WAS HER DEMEANOR LIKE WHEN SHE TOLD
11 YOU ABOUT THIS?

12 A. SHE WAS VERY UPSET, CRYING, VERY UPSET.

13 Q. WHAT DID YOU DO?

14 A. WELL, I TRIED TO CALM HER DOWN. I HUGGED HER, YOU
15 KNOW. SHE WAS CRYING AND I HUGGED HER AND BROUGHT HER INTO
16 THE LIVING ROOM AND SIT HER DOWN AND TRIED TO CALM HER DOWN
17 AND I ASKED HER, YOU KNOW, WHAT HAD HAPPENED AND SHE TOLD ME
18 THAT SHE HAD BEEN RAPED AND I SAID, "WELL, DO YOU WANT ME TO
19 CALL SOMEONE?" I SAID -- SHE -- AT FIRST SHE SAID SHE WAS
20 TOO ASHAMED; SHE DIDN'T WANT TO TELL ANYONE. I SAID, "WELL,
21 MARGARET, YOU'VE GOT TO." I SAID, "YOU CAN'T, YOU KNOW, KEEP
22 THIS."

23 MS. BROWN: OBJECTION TO ANY HEARSAY.

24 THE COURT: SUSTAINED.

25 BY MS. BRISBIN:

1 Q. YOU CAN'T SAY WHAT SHE TOLD YOU.

2 A. OH, OKAY.

3 Q. WHAT DID YOU DO?

4 A. I CALMED HER DOWN, GOT HER TO SIT DOWN, AND I CALLED
5 HER SON RICHARD AND TOLD HIM WHAT HAD HAPPENED AND TOLD HIM
6 -- YOU KNOW, HE CAME OVER TO MY HOUSE THEN. I ALSO CALLED
7 HER SISTER AND THEY CAME OVER. SHE WAS IN CHURCH, BUT THEN
8 SHE CAME THE TIME CHURCH WAS OUT WHEN SHE GOT THE MESSAGE.

9 Q. AND WHAT HAPPENED AFTER THAT?

10 A. WELL, WHEN RICHARD GOT THERE HE TOOK HER ON TO THE
11 HOSPITAL AND GOT IN TOUCH WITH THE LAW, I THINK, ON THE TRIP
12 TO THE HOSPITAL. I DON'T KNOW ABOUT THAT NOW.

13 Q. OKAY. SO YOU DIDN'T GO WITH THEM TO THE HOSPITAL?

14 A. NO, MA'AM.

15 Q. OKAY. AND IS THAT PRETTY MUCH IT FOR WHAT -- YOUR
16 PART IN IT?

17 A. YES, MA'AM.

18 Q. OKAY. THANK YOU. PLEASE ANSWER ANY QUESTIONS THE
19 DEFENSE HAS.

20 A. PARDON?

21 CROSS-EXAMINATION

22 BY MS. BROWN:

23 Q. IS IT MS. KAMINER?

24 A. KAMINER.

25 Q. MS. KAMINER, YOU SAID THAT MS. SANDERS, YOUR COUSIN,

1 CAME OVER TO YOUR HOUSE ABOUT -- BETWEEN 10:30 AND 11.

2 A. SOMEWHERE ALONG IN THERE, YEAH.

3 Q. DID SHE USUALLY COME OVER SUNDAY MORNINGS OR COME---

4 A. NO, MA'AM.

5 Q. ---OVER FOR SUNDAY DINNER?

6 A. NO.

7 Q. NOW, YOU SAID THAT SHE LOOKED TO BE VERY UPSET AND
8 WAS CRYING.

9 A. YES, MA'AM.

10 Q. DID SHE APPEAR TO HAVE BEEN DRINKING?

11 A. WELL, NO, NOT APPEARED TO BE.

12 Q. COULD YOU SMELL ANY ALCOHOL?

13 A. SHE HAD A CUP IN HER HAND AND SHE TOLD ME THAT SHE
14 HAD MIXED HER A DRINK TO CALM HER NERVES.

15 Q. SO SHE BROUGHT THAT CUP WITH HER?

16 A. YES, MA'AM.

17 Q. AND YOU CALLED HER SON AND ONE OF HER SISTERS. YOU
18 DID NOT CALL THE POLICE.

19 A. NO, MA'AM.

20 Q. DID SHE -- HOW LONG WAS IT BEFORE HER SON RICHARD
21 GOT THERE?

22 A. IT WASN'T LONG AFTER I HAD CALLED HIM. I'D SAY 30,
23 45 MINUTES.

24 Q. AND HOW LONG -- HOW LONG IN BETWEEN THE TIME WHEN
25 SHE GOT TO YOUR HOUSE AND -- HOW LONG WAS IT BETWEEN THE TIME

1 SHE GOT TO YOUR HOUSE AND YOU CALLED HER SON?

2 A. WITHIN 30 MINUTES.

3 Q. OKAY.

4 A. IT WASN'T LONG.

5 Q. DURING THAT TIME SPAN SHE SAID THAT YOU HAD PREPARED

6 -- I'M GUESSING IT WAS SUNDAY.

7 A. WELL, I WAS COOKING---

8 Q. YOU HAD PREPARED SUNDAY LUNCH?

9 A. YEAH, I WAS COOKING LUNCH.

10 Q. AND SHE ATE LUNCH?

11 A. I GAVE HER SOMETHING TO EAT; IT WASN'T MUCH. BUT I
12 CAN'T REMEMBER WHAT I EVEN HAD THAT DAY; IT'S BEEN SO LONG.

13 BUT, YEAH, SHE ATE A LITTLE BIT.

14 Q. OKAY. AND THEN RICHARD TOOK HER ON TO THE HOSPITAL
15 ABOUT WHAT TIME?

16 A. AFTER HE GOT THERE, IT WAS PROBABLY 45 MINUTES TO AN
17 HOUR. I'M -- I'M GUESSING.

18 Q. SO ABOUT WHAT TIME? JUST A -- JUST A GUESS.

19 A. I DON'T KNOW.

20 Q. IF SHE GOT THERE ABOUT 10 -- BETWEEN 10:30 AND 11---

21 A. THEN IT WAS ABOUT 30 MINUTES WHEN HE GOT THERE. SO
22 I'D SAY FROM THE TIME SHE GOT THERE IT WAS PROBABLY ABOUT AN
23 HOUR AND A HALF.

24 Q. TILL ABOUT 12:30 OR 1 BECAUSE HER SISTER HAD COME --
25 HAD GOTTEN BACK FROM CHURCH, RIGHT, AND THEN HAD COME OVER TO

1 THE HOUSE?

2 A. WELL, HE WAS THERE NOW BEFORE THE SISTER CAME.

3 Q. OKAY. BUT THE SISTER WAS AT CHURCH WHEN YOU
4 ORIGINALLY CALLED.

5 A. UH-HUH.

6 Q. SO SHE---

7 A. AND I LEFT A MESSAGE ON HER MACHINE.

8 Q. UH-HUH.

9 A. WHEN SHE GOT HOME AND GOT THE MESSAGE, THEN SHE CAME
10 ON OVER.

11 Q. OKAY. CHURCH GETS OUT AROUND 12 IF YOU'RE LUCKY.

12 A. YEAH. WELL, SHE WAS STILL THERE THEN. YEAH.

13 Q. OKAY. SO IT WOULD HAVE BEEN AT LEAST 12:30 OR 1:00
14 BEFORE THEY WOULD HAVE LEFT.

15 A. YEAH.

16 MS. BROWN: OKAY. OKAY. BEG THE COURT'S INDULGENCE
17 ONE MOMENT. (PAUSE.) NO FURTHER QUESTIONS.

18 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU MAY
19 STEP DOWN. LET ME SEE Y'ALL JUST A MINUTE.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

21 THE COURT: ALL RIGHT. DO YOU WANT TO CALL YOUR
22 NEXT WITNESS?

23 MS. BRISBIN: THE STATE CALLS DIANE WARREN.

24 DIANE WARREN, AFTER BEING DULY SWORN, TESTIFIED
25 AS FOLLOWS:

1 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
2 YOUR FULL NAME FOR THE COURT, SPELLING YOUR LAST.

3 THE WITNESS: DIANE WARREN. W-A-R-R-E-N.

4 DIRECT EXAMINATION

5 BY MS. BRISBIN:

6 Q. MS. WARREN, WHERE ARE YOU EMPLOYED?

7 A. RAINBOW GAS GARDENS. EVERYBODY KNOWS IT AS THE

8 B.P.

9 Q. OKAY. THAT'S THE SAME PLACE AS THE RAINBOW.

10 A. YES.

11 Q. OKAY. AND IT'S A GAS STATION?

12 A. YES, MA'AM.

13 Q. DO YOU HAVE MECHANICS THERE OR JUST GAS?

14 A. JUST GAS.

15 Q. OKAY. HOW LONG HAVE YOU WORKED THERE?

16 A. FIVE YEARS.

17 Q. AND WHAT'S YOUR POSITION THERE?

18 A. STORE MANAGER.

19 Q. DO YOU HAVE VIDEO SURVEILLANCE CAMERAS IN THE STORE?

20 A. YES, MA'AM.

21 Q. AND WAS THERE A VIDEOTAPE IN THE SURVEILLANCE
22 CAMERAS ON MARCH 2ND OF 2002?

23 A. YES.

24 Q. DO YOU KNOW -- DID YOU HAVE THE OPPORTUNITY TO WATCH
25 THAT VIDEO?

1 A. NO. I NORMALLY PULL THEM WHEN I COME IN. I PULL
2 THEM AND I MARK THEM OR I PUT THEM BACK IN THE SLOT AND PUT
3 THEM BACK SO I'LL KNOW WHICH DAY, AND THEN I PUT A NEW ONE IN
4 WHICH MEANS I WOULD HAVE PUT A SUNDAY ONE OR A SATURDAY --
5 I'D HAVE PUT A SATURDAY IN BECAUSE I'D HAVE PULLED FRIDAYS
6 AND I'D PUT SATURDAYS IN THERE.

7 Q. OKAY. WHEN DID YOU PULL SATURDAYS?

8 A. SUNDAY.

9 Q. OKAY. AND WHAT DID YOU DO WITH THAT TAPE?

10 A. I PUT IT IN ITS -- IN THE CONTAINER, IN THE HOLDER
11 THAT VIDEOS COME IN. I PUT IT ON MY -- ON MY V.C.R. HOLDER
12 THERE WHERE I PLACE ALL MY VIDEOS.

13 Q. OKAY. AND DO YOU PLACE THEM ACCORDING TO THE DATE?

14 A. I TRY TO. YOU KNOW, I TRY TO PUT THEM LIKE MONDAY
15 THROUGH SUN -- MONDAY THROUGH SUNDAY SO IF ANYBODY NEEDS ONE,
16 MY SUPERVISOR, OR IF SOMEBODY TELLS ME ABOUT AN INCIDENT THAT
17 TOOK PLACE THAT -- THAT I NEED TO LOOK AT, I CAN GO RIGHT TO
18 THAT DAY.

19 Q. OKAY. AND WERE YOU ABLE TO DETERMINE WHICH TAPE
20 CAME FROM MARCH 2ND OF 2002?

21 A. YEAH, BECAUSE I HAD -- LIKE I SAID, I'VE GOT THEM
22 LINED UP AND I HAD JUST PUT THE TAPE RIGHT -- YOU KNOW, RIGHT
23 THERE. SO I KNEW THE BOTTOM LAYER WAS WHAT I NEEDED FOR THAT
24 -- FOR THE ENDING OF THAT WEEK.

25 Q. OKAY. AND IS THERE -- ON THE VIDEOTAPE ITSELF DOES

1 IT TELL YOU WHAT DATE IT'S FROM?

2 A. YES, MA'AM, AND THE TIME IS OFF ON IT DUE TO
3 DAYLIGHT SAVINGS TIMES.

4 Q. HOW MUCH IS IT OFF?

5 A. I THINK IT'S ABOUT AN HOUR.

6 Q. WHAT ABOUT THE DATE?

7 A. THE DATE MIGHT BE OFF, TOO, BECAUSE WE'VE HAD --
8 WE'VE HAD SOME PROBLEMS EVERY NOW AND THEN WITH THE V.C.R.
9 NOT PUTTING THE RIGHT DATE ON, BUT IF -- WE HAVE WHAT WE CALL
10 INTERFACINGS IN OUR CAMERAS AND IN OUR REGISTERS, AND WHAT AN
11 INTERFACING IS: WHEN A CUSTOMER PURCHASES AND I CAN ALWAYS
12 -- IF THE DATE'S NOT RIGHT, THEN I CAN ALWAYS DO THIS. I CAN
13 PULL THE VIDEO UP, GO TO THE INTERFACING, AND ON THE
14 INTERFACING IT WILL GIVE ME THE NAME OF MY LOCATION, WHAT THE
15 PERSON -- WHAT THEY BOUGHT, THE DATE AND THE TIME, AND THAT'S
16 HOW I KNEW I HAD THE PROPER TAPE WAS BECAUSE---

17 Q. YOU COMPARE THE INTERFACING -- IS THAT INTERFACING
18 ON THE CASH REGISTER?

19 A. YES, MA'AM.

20 Q. SO YOU COMPARED THE TAPE WITH THE INTERFACING ON THE
21 CASH REGISTER TO COME UP WITH THE DATE?

22 A. YES, MA'AM.

23 Q. OKAY. SO WHAT DID YOU DO WITH THE TAPE FROM THAT
24 DATE---

25 A. WELL, I TOOK IT---

1 Q. ---AFTER DETERMINING WHAT -- WHICH TAPE WENT WITH
2 THAT DATE?

3 A. WELL, I PUT IT -- I PUT IT WHERE THE TAPES WENT, AND
4 ON MONDAY -- I BELIEVE IT WAS MONDAY - I DON'T KNOW WHAT TIME
5 IT WAS - OFFICER BAMBERG CAME INTO MY -- INTO MY STORE AND
6 ASKED ME DID I HAVE SATURDAY'S VIDEO AND I SAID, "YEAH,
7 PROBABLY BACK THERE." SHE SAID, "WOULD YOU PLEASE---

8 Q. DON'T SAY WHAT SHE SAID.

9 A. I'M SORRY.

10 Q. JUST SAY WHAT YOU DID.

11 A. OKAY. I WENT TO THE BACK AND I PUT IT IN TO MAKE
12 SURE I HAD THE PROPER TAPE, AND I WENT TO THE INTERFACING AND
13 I SAW THAT I HAD SATURDAY'S TAPE BECAUSE I WAS LOOKING FOR
14 THE DATE, NOT A -- NOT A -- SHE DIDN'T GIVE ME A TIME. SHE
15 JUST TOLD ME THAT SHE NEEDED SATURDAY'S DATE. SO I WENT TO
16 THE V.C.R., PUT IT IN, PULLED THE INTERFACING ON IT AND SAW
17 THAT I HAD MARCH THE 2ND, I GUESS IT WAS, AND I PUT IT BACK
18 IN THE CASE AND HANDED IT TO HER AND SHE THANKED ME AND THAT
19 WAS IT.

20 Q. OKAY. AND AT SOME LATER DATE WERE YOU ASKED TO LOOK
21 AT THE VIDEO?

22 A. YES, MA'AM.

23 Q. AND DID YOU DO THAT?

24 A. YES, MA'AM.

25 Q. AND DID YOU -- WERE YOU ASKED -- WELL, DID YOU

1 RECOGNIZE SOMEONE WHO WAS POINTED OUT TO YOU ON VIDEOTAPE?

2 A. YES, MA'AM.

3 Q. AND WHO WAS THAT PERSON?

4 A. JOSEPH WALKER.

5 Q. AND IS THERE ANY DOUBT IN YOUR MIND WHO THAT WAS,
6 THAT THAT WAS JOSEPH WALKER?

7 A. NO, MA'AM. I'VE HAD DEALINGS WITH MR. WALKER. SO
8 WHEN SHE ASKED ME TO PUT THE TAPE IN, I PUT IT IN AND ALL SHE
9 ASKED ME WAS, "DO YOU KNOW THIS PERSON?" AND WHEN I LOOKED
10 UP AT HIM I SAID, "YEAH." I SAID, "THAT'S JOSEPH WALKER,"
11 AND SHE SAID, "THANK YOU." AND SHE SAID, "ARE YOU ABSOLUTELY
12 SURE?" SO WE REWOUND IT AND WENT BACK OVER IT AGAIN AND I
13 SAID, "YEAH. I'VE HAD SEVERAL DEALINGS WITH MR. WALKER."

14 Q. DID SHE KNOW WHAT HIS NAME WAS BEFORE SHE CAME TO
15 YOU, TO YOUR KNOWLEDGE?

16 A. NO, MA'AM, SHE DIDN'T. SHE DIDN'T SAY ANYTHING TO
17 ME AT THAT TIME THAT, YOU KNOW...

18 Q. SHE DIDN'T GIVE YOU ANY HINTS ABOUT WHO IT WAS OR
19 SUGGESTIONS.

20 A. NO, MA'AM. SHE JUST ASKED ME DID I KNOW THIS PERSON
21 AND---

22 Q. OKAY. WAS HE A REGULAR IN YOUR STORE?

23 A. SORT OF. NOT EVERY DAY LIKE IF YOU WOULD COME IN
24 EVERY DAY, BUT I KNEW MR. JOSEPH -- MR. WALKER FROM A
25 PREVIOUS -- ANOTHER BUSINESS TRANSACTION THAT HAD HAPPENED IN

1 OUR -- IN MY LOCATION AND THAT'S HOW I GOT TO KNOW MR.
2 WALKER.

3 Q. OKAY. BUT HE DID COME IN YOUR STORE---

4 A. YES, MA'AM.

5 Q. ---FROM TIME TO TIME.

6 A. YES, MA'AM.

7 Q. OKAY. DID YOU -- WERE YOU ABLE TO DESCRIBE MR.
8 WALKER'S VEHICLE TO LAW ENFORCEMENT AT THAT TIME?

9 A. YES, MA'AM.

10 Q. AND WHAT TYPE OF VEHICLE DID HE DRIVE?

11 A. I TOLD LAW ENFORCEMENT WHEN I IDENTIFIED HIM THAT HE
12 DROVE A BLACK PICKUP TRUCK.

13 Q. OKAY. AND HOW DID YOU KNOW THAT?

14 A. BECAUSE WHEN I HAD SPOKEN TO MR. WALKER IN THE PAST,
15 HE WOULD ALWAYS PARK IT -- I HAVE TWO DOUBLE DOORS AND ALL
16 GLASS AND HE WOULD PARK IT AWAY FROM THE DOOR AND HE WOULD
17 GET OUT, AND THE TIMES THAT WE SPOKE WAS USUALLY RIGHT THERE.
18 I HAVE AN ICE CREAM BOX, AND THE BIG GLASS WOULD BE RIGHT
19 THERE AND HIS TRUCK WOULD BE RIGHT THERE AND HE WOULD -- HE
20 WOULD GET OUT. AND THEN WHENEVER WE GOT THROUGH SPEAKING
21 ABOUT THE STORE BUSINESS WE WERE TALKING ABOUT, HE WOULD
22 ENTER THE TRUCK AND LEAVE AND THAT'S THE SAME TRUCK HE'S
23 ALWAYS DRIVEN THE TIMES THAT I'VE SPOKEN WITH HIM.

24 MS. BRISBIN: THANK YOU. I DON'T HAVE ANY FURTHER
25 QUESTIONS.

1 THE COURT: ANYTHING?

2 MS. BROWN: NO QUESTIONS, YOUR HONOR.

3 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU MAY
4 STEP DOWN. ALL RIGHT. LADIES AND GENTLEMEN, THE SOLICITOR
5 TELLS ME THAT THE NEXT COUPLE OF WITNESSES ARE GOING TO BE
6 LENGTHY WITNESSES. SO RATHER THAN BEGIN THIS AFTERNOON, WE
7 WILL START BACK TOMORROW MORNING AT 9:30. I'M GOING TO ASK
8 YOU TO BE HERE A FEW MINUTES BEFORE SO THAT WHEN 9:30 COMES
9 WE WILL BE IN A POSITION TO GO FORWARD.

10 NOW, YOU'VE INVESTED A GOOD PORTION OF THE DAY IN
11 THIS CASE SO FAR, SO LET'S NOT DO ANYTHING TO JEOPARDIZE IT.
12 DON'T DISCUSS THE CASE WITH ANYBODY THAT YOU COME IN CONTACT
13 WITH TONIGHT. IF YOUR FAMILY OR YOUR FRIENDS OR SOMEBODY
14 ASKS YOU ABOUT IT, JUST TELL THEM YOU'VE BEEN INSTRUCTED BY
15 THE JUDGE THAT YOU'RE NOT ALLOWED TO TALK ABOUT IT. YOU
16 ACKNOWLEDGE THAT YOU'RE SITTING ON A JURY, BUT TELL THEM THAT
17 YOU'LL BE HAPPY TO DO WHATEVER YOU'RE WILLING TO DO AFTER THE
18 CASE IS OVER. SO Y'ALL HAVE A NICE EVENING AND WE WILL SEE
19 YOU BACK HERE SO THAT WE CAN BEGIN AT 9:30. MR. WHITTLE WILL
20 SHOW YOU HOW TO GET OUT AND WE'LL SEE YOU TOMORROW.

21 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
22 THE DAY AT 5:05 P.M.)

23 THE COURT: ANYTHING WE NEED TO TAKE UP TONIGHT?

24 MS. BRISBIN: NOTHING FROM THE STATE, YOUR HONOR.

25 MS. BROWN: NOTHING FROM THE DEFENSE, YOUR HONOR.

1 THE COURT: ALL RIGHT. IF Y'ALL ARE GOING TO HAVE
2 ANY CHARGES YOU WANT ME TO LOOK AT AT ANY TIME, IF YOU'LL GET
3 THEM UP AS SOON AS YOU CAN AND LET ME HAVE THEM I WOULD
4 APPRECIATE IT, IF THERE'S ANYTHING YOU NEED ME TO REVIEW FOR
5 YOU. SO Y'ALL HAVE A NICE EVENING AND WE'LL SEE YOU TOMORROW
6 MORNING.

7 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 5:06
8 P.M. AND RESUMED THE FOLLOWING DAY, JULY 23, 2003, AS
9 FOLLOWS:)

10 THE COURT: THANK YOU. GOOD MORNING, LADIES AND
11 GENTLEMEN. Y'ALL PLEASE BE SEATED. I APOLOGIZE FOR BEING
12 LATE, BUT I HAD SOMETHING AT 9:15 THAT RAN LONGER THAN I
13 ANTICIPATED. ALL RIGHT. THE STATE READY TO GO?

14 MS. BRISBIN: YES, YOUR HONOR.

15 THE COURT: ARE YOU READY TO GO, MS. BROWN?

16 MS. BROWN: YES, SIR.

17 THE COURT: ALL RIGHT. LET'S BRING US THE JURY IN
18 IF YOU COULD.

19 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
20 9:44 A.M.)

21 THE COURT: OKAY. GOOD MORNING, LADIES AND
22 GENTLEMEN. SORRY TO KEEP YOU WAITING, BUT I HAD A MATTER
23 SCHEDULED AT 9:15 THAT RAN A LITTLE BIT LONGER THAN I
24 ANTICIPATED. WAS ANYBODY APPROACHED ABOUT THIS CASE LAST
25 NIGHT OR ANYBODY HAVE ANY CONVERSATION WITH ANYONE ABOUT IT?

1 OKAY. GOOD. I THANK YOU FOR THAT. AND AS YOU'LL RECALL, WE
2 WERE IN THE MIDST OF THE STATE PRESENTING ITS EVIDENCE IN ITS
3 CASE IN CHIEF, AND I'LL CALL ON THE SOLICITOR AND ASK IF SHE
4 WOULD CALL HER NEXT WITNESS.

5 MS. BRISBIN: THANK YOU, YOUR HONOR. THE STATE
6 CALLS LIEUTENANT RHONDA BAMBERG.

7 RHONDA RAY BAMBERG, AFTER BEING DULY SWORN,
8 TESTIFIED AS FOLLOWS:

9 THE CLERK: HAVE A SEAT IN THE WITNESS BOX, STATING
10 YOUR FULL NAME, SPELLING YOUR LAST, PLEASE.

11 THE WITNESS: MY NAME IS RHONDA RAY BAMBERG.
12 B-A-M-B-E-R-G.

13 DIRECT EXAMINATION

14 BY MS. BRISBIN:

15 Q. WHERE ARE YOU EMPLOYED?

16 A. I'M EMPLOYED WITH THE ORANGEBURG COUNTY SHERIFF'S
17 OFFICE.

18 Q. AND HOW LONG HAVE YOU BEEN THERE?

19 A. TWO AND A HALF YEARS.

20 Q. WHAT'S YOUR POSITION THERE?

21 A. I'M A LIEUTENANT OVER THE INVESTIGATION DIVISION.

22 Q. AND WERE YOU THE INITIAL INVESTIGATOR IN THIS CASE?

23 A. I WAS.

24 Q. HOW DID YOU GET INVOLVED?

25 A. I WAS CONTACTED ON THE AFTERNOON OF THE 3RD OF MARCH

1 BY THE RESPONDING DEPUTY. HE WAS AT ORANGEBURG REGIONAL
2 MEDICAL CENTER WITH AN ALLEGED RAPE VICTIM, MS. SANDERS.
3 THEY WERE GOING TO TRANSFER HER TO CHARLESTON TO CONDUCT THE
4 RAPE EXAM..

5 Q. OKAY. AND DID YOU MEET WITH MRS. SANDERS AT THAT
6 TIME?

7 A. NO, I DID NOT.

8 Q. WHEN DID YOU FIRST MEET WITH HER?

9 A. I INSTRUCTED THE DEPUTY THAT WAS AT THE HOSPITAL
10 WITH HER THAT SHE NEEDED TO COME TO THE SHERIFF'S OFFICE ON
11 THE MORNING OF THE 4TH OF MARCH.

12 Q. OKAY. AND DID SHE DO THAT?

13 A. SHE DID.

14 Q. DID SHE DISCLOSE TO YOU THAT SHE HAD BEEN SEXUALLY
15 ASSAULTED?

16 A. YES, SHE DID.

17 Q. DID SHE SAY WHEN THAT HAPPENED?

18 A. YEAH. SHE STATED THAT ON THE AFTERNOON OF THE 2ND
19 OF MARCH WHILE AT THE B.P. STATION HER VEHICLE HAD RAN -- HAD
20 BROKEN DOWN. SHE HAD GOT THE ASSISTANCE OF A BLACK GENTLEMAN
21 APPROXIMATELY 40 TO 50 YEARS OF AGE---

22 Q. OKAY. WE DON'T NEED TO GO INTO ALL OF THAT RIGHT
23 NOW.

24 A. OKAY.

25 Q. DID SHE KNOW WHERE IT HAD HAPPENED?

1 A. NO, SHE DID NOT.

2 Q. AND WHAT DID YOU DO AT THAT POINT?

3 A. AT THAT POINT I GOT A WRITTEN STATEMENT FROM MS.
4 SANDERS. AFTER SHE GAVE ME THE DESCRIPTION OF EVERYTHING, I
5 THEN WENT TO DENMARK TO THE B.P. AND PICKED UP THE VIDEOTAPE.

6 Q. OKAY. AND WHERE DID YOU GET THE VIDEOTAPE?

7 A. FROM MS. WARING (SIC) AT THE B.P. IN DENMARK.

8 Q. AND DO YOU RECOGNIZE WHAT'S BEEN MARKED STATE'S
9 EXHIBIT NUMBER 4 AND ADMITTED INTO EVIDENCE?

10 A. YES, I DO.

11 Q. AND WHAT IS THAT?

12 A. THAT IS A VIDEOTAPE OF THE B.P.

13 Q. AND HOW WAS IT THAT THERE WAS A VIDEOTAPE AT THE
14 B.P.? WHAT KIND OF TAPE IS THIS?

15 A. IT'S A -- THE VIDEOTAPE OF THE B.P. MOST B.P.'S
16 HAVE VIDEO SURVEILLANCE CAMERAS IN THEM THAT ARE SET UP FOR
17 STORE SECURITY AND THAT IS THE TAPE OF THE INSIDE OF THE
18 STORE.

19 Q. OKAY. AND DID YOU -- CAN YOU DESCRIBE WHAT THE
20 LAYOUT OF THE B.P. STATION AND THE PARKING FOR IT IS?

21 A. SURE. THE B.P. IN DENMARK, IT'S OFF OF A MAIN
22 HIGHWAY, HIGHWAY 78, WHICH RUNS STRAIGHT THROUGH DENMARK.
23 WHEN YOU COME IN, THERE'S TWO ENTRANCES TO THE B.P., ONE ON
24 THE LEFT, ONE ON THE RIGHT. THE FRONT OF THE B.P. AS YOU'RE
25 FACING HIGHWAY 78 IS ALL GLASS WINDOWS. ON BOTH SIDES THERE

1 ARE DOORS TO ENTER THE B.P. AND ALSO TO FILL UP WITH YOUR GAS
2 ON BOTH SIDES. IT'S GLASS HALFWAY THROUGH THE B.P. WITH THE
3 BACK PART OF IT BEING BRICK. IT'S TOTALLY BRICK -- IT'S
4 STORAGE OFFICES BACK THERE. THERE'S NO WINDOWS IN IT. YOU
5 CAN COME IN EITHER ON THE LEFT-HAND SIDE OR THE RIGHT-HAND
6 SIDE.

7 Q. IF SOMEONE WAS GETTING GAS ON ONE SIDE, WOULD THEY
8 NECESSARILY BE ABLE TO SEE SOMEONE GETTING GAS ON THE OTHER
9 SIDE?

10 A. NO.

11 Q. OKAY. WHAT DID YOU DO WITH THE VIDEOTAPE?

12 A. WITH THE VIDEOTAPE I TOOK IT BACK TO MY OFFICE AND I
13 ATTEMPTED TO WATCH IT IN OUR -- IN OUR V.C.R.

14 Q. AND THEN WHAT DID YOU DO?

15 A. AFTER I WATCHED THE TAPE IN THE V.C.R., I IDENTIFIED
16 MS. SANDERS ON THE TAPE, MADE CONTACT WITH MS. SANDERS TO
17 COME IN SO THAT SHE COULD IDENTIFY IF SHE SAW HER ASSAILANT
18 ON THE TAPE.

19 Q. AND WAS SHE ABLE TO DO THAT?

20 A. YES, SHE WAS.

21 Q. DID YOU TELL HER OR SUGGEST TO HER OR HINT IN ANY
22 WAY WHO TO PICK?

23 A. NO, I DID NOT.

24 Q. AND WHO DID SHE PICK OUT?

25 A. SHE PICKED OUT A BLACK MALE WITH SOME FACIAL HAIR.

1 THE PERSON SHE -- IT WAS MOST LIKELY THE PERSON THAT HAD
2 SEXUALLY ASSAULTED HER. SHE DIDN'T GIVE ME A NAME.

3 Q. OKAY. WAS SHE A HUNDRED PERCENT SURE?

4 A. SHE WAS NOT.

5 Q. OKAY. DID SHE KNOW THE NAME OF THE PERSON---

6 A. SHE DID NOT.

7 Q. ---WHO DID THIS? HOW DID YOU FIND OUT THAT IT WAS
8 JOSEPH WALKER?

9 A. I TOOK THE VIDEOTAPE BACK TO THE B.P. IN DENMARK AND
10 I SHOWED IT TO MS. WARING. SHE IDENTIFIED MR. WALKER.

11 Q. AND THAT WAS THE MANAGER OF THE STORE?

12 A. THAT IS THE MANAGER OF THE STORE.

13 Q. WAS THERE ANY HESITATION IN HER IDENTIFICATION?

14 A. NONE.

15 Q. WHAT DESCRIPTION WERE YOU GIVEN OF THE -- WHAT
16 PHYSICAL DESCRIPTION WERE YOU GIVEN OF THE SUSPECT?

17 A. THE PHYSICAL DESCRIPTION THAT I WAS GIVEN WAS THAT
18 HE WAS A BLACK MALE APPROXIMATELY 40 TO 50 YEARS OF AGE WITH
19 SOME FACIAL HAIR. HE WAS MISSING SOME OF HIS TEETH. AT THE
20 TIME HE WAS WEARING A BLUE UNIFORM; MS. SANDERS THOUGHT IT
21 WAS A MECHANIC'S UNIFORM. AND HE HAD ON BOOTS AND SHE
22 THOUGHT IT WAS BLACK.

23 Q. OFAY. DID MS. SANDERS EVER PICK OUT ANYONE ELSE IN
24 THE VIDEO THAT SHE THOUGHT MIGHT BE HER ATTACKER?

25 A. NO, SHE DID NOT.

1 Q. DID YOU ALSO SHOW MS. SANDERS A PHOTO LINE-UP?

2 A. I DID.

3 Q. DO YOU RECOGNIZE STATE'S EXHIBIT NUMBER 1 WHICH IS
4 ADMITTED INTO EVIDENCE?

5 A. YES. THIS IS THE PHOTOGRAPHIC LINE-UP THAT I SHOWED
6 TO MS. SANDERS.

7 Q. AND HOW MANY PHOTOS ARE IN THE PHOTOGRAPHIC LINE-UP?

8 A. SIX.

9 Q. AND WHAT DID YOU TELL MS. SANDERS WHEN YOU SHOWED
10 HER THE PHOTOGRAPHIC LINE-UP?

11 A. I HANDED HER THE PHOTOGRAPHIC LINE-UP AND I ASKED
12 HER TO LOOK AT THE PICTURES AND IF SHE COULD IDENTIFY HER
13 ASSAILANT TO POINT HIM OUT TO ME.

14 Q. AND DID SHE DO THAT?

15 A. YES, SHE DID.

16 Q. WHICH PHOTO DID SHE IDENTIFY?

17 A. SHE IDENTIFIED THIS PHOTO RIGHT HERE.

18 Q. AND WHOSE PHOTO IS THAT?

19 A. THIS HERE IS THE PHOTO OF JOSEPH WALKER.

20 Q. OKAY. DOES MR. WALKER LOOK ESSENTIALLY THE SAME IN
21 THE COURTROOM TODAY AS HE DID BACK THEN?

22 A. HE LOOKS LIKE HE'S LOST A LITTLE BIT OF WEIGHT.

23 Q. OKAY. WHAT -- AT THE TIME THAT -- BACK IN MARCH,
24 WHAT WAS -- DO YOU HAVE A RECORD OF HIS HEIGHT AND WEIGHT AT
25 BOOKING?

1 A. AT OUR -- AT OUR BOOKING WHEN WE BOOKED HIM IN? WE
2 USED WHAT WAS ON THE DRIVER'S LICENSE AND THAT WAS SIX FEET
3 THREE, 230 POUNDS.

4 Q. OKAY. AFTER YOU DID THE PHOTO LINE-UP AND THE
5 VIDEO, WHAT DID YOU DO NEXT?

6 A. AFTER I DID THE PHOTO LINE-UP AND THE VIDEO, I
7 TURNED IT OVER TO AIKEN COUNTY.

8 Q. WHY DID YOU TURN IT OVER TO AIKEN COUNTY?

9 A. I FOUND OUT THAT IT WAS IN AIKEN COUNTY.

10 Q. WHY -- HOW DID YOU KNOW IT WAS IN AIKEN COUNTY?

11 A. PRIOR TO ME DOING THE PHOTOGRAPHIC LINE-UP, AFTER
12 MS. WARRING (SIC) IDENTIFIED MR. WALKER FROM THE VIDEOTAPE, I
13 GOT AN ADDRESS OF SALLEY, SOUTH CAROLINA. I WENT TO SALLEY,
14 SOUTH CAROLINA, AND IDENTIFIED MR. WALKER'S RESIDENCE AS
15 BEING A WHITE BLOCK HOUSE. AND WHEN I WENT UP IT WAS A WHITE
16 BLOCK HOUSE AND YOU COULD SEE THAT THERE WERE SHEETS ON THE
17 OUTSIDE OF THE WINDOW. I THEN WENT BACK TO MY OFFICE AND I
18 CONTACTED AIKEN COUNTY.

19 Q. WHAT DESCRIPTION DID YOU HAVE OF THE INTERIOR OF THE
20 HOUSE?

21 A. OF THE INTERIOR OF THE HOUSE IT WAS THE FACT THAT
22 WHEN YOU WALK INTO IT THERE WOULD BE SOME QUILTS OR SHEETS UP
23 TO THE WINDOWS AND DOORS. IN THE BEDROOM THERE WOULD BE A
24 DOUBLE BED, AND AS YOU COME IN THERE WOULD BE A GAS HEATER ON
25 THE LEFT-HAND SIDE. DIRECTLY---

1 Q. IN WHICH ROOM?

2 A. THIS WOULD BE THE BEDROOM.

3 Q. OKAY.

4 A. THERE WOULD BE AN END TABLE OR A TABLE OF SOME SORT
5 IN THE ROOM WITH AN ASHTRAY ON IT AND THAT IN THE BATHROOM --
6 THE BATHROOM WOULD BE OFF THE FOOT OF THE BED AND THAT'S THE
7 DESCRIPTION SHE GAVE ME.

8 Q. OKAY. WAS THERE ANY DESCRIPTION ABOUT HOW THE HOUSE
9 SMELLED?

10 A. YES. SHE STATED THAT THE HOUSE AND THE VEHICLE HAD
11 AN ODOR TO IT.

12 Q. AN ODOR?

13 A. AND IT WAS DIRTY. YES, AN ODOR AND IT WAS DIRTY.

14 Q. WHAT DESCRIPTION DID YOU HAVE OF THE SUSPECT'S
15 VEHICLE?

16 A. THE VEHICLE, SHE DESCRIBED IT AS A BLACK SMALL
17 PICKUP TRUCK.

18 Q. OKAY. WAS THERE ANY DESCRIPTION OF WHETHER IT WAS
19 AN AUTOMATIC OR A STICK SHIFT?

20 A. THERE WAS. SHE STATED THAT SHE ASSUMED THAT IT WAS
21 A STICK SHIFT BECAUSE SHE COULD HEAR THAT HE WAS CHANGING
22 GEARS.

23 Q. AND WAS THAT DESCRIPTION -- DID YOU HAVE THAT
24 DESCRIPTION BACK IN MARCH OF 2002?

25 A. I DID. SHE GAVE THAT DESCRIPTION ON HER INITIAL

1 INTERVIEW ON THE 4TH OF MARCH.

2 Q. AND YOU SAID THE -- THE SUSPECT'S HOUSE WAS IN
3 SALLEY?

4 A. YES.

5 Q. IS THAT IN AIKEN COUNTY?

6 A. THAT IS IN AIKEN COUNTY; CORRECT.

7 Q. WHAT DID YOU DO WHEN YOU REALIZED THAT IT WAS IN
8 AIKEN COUNTY?

9 A. I CONTACTED THE AIKEN COUNTY AUTHORITIES.

10 Q. WHY IS THAT?

11 A. BECAUSE I'M FROM ORANGEBURG COUNTY AND I HAVE NO
12 JURISDICTION IN AIKEN COUNTY.

13 MS. BRISBIN: THANK YOU. PLEASE ANSWER ANY
14 QUESTIONS THE DEFENSE HAS.

15 CROSS-EXAMINATION

16 BY MS. BROWN:

17 Q. GOOD MORNING, LIEUTENANT.

18 A. GOOD MORNING.

19 Q. YOU WERE NOT THE INITIAL RESPONDING OFFICER; IS THAT
20 CORRECT?

21 A. NO, I WAS NOT THE INITIAL RESPONDING OFFICER.
22 WHENEVER WE HAVE -- WE HAVE A DEPUTY THAT GOES TO THE SCENE
23 INITIALLY.

24 Q. OKAY. THE INITIAL RESPONDING OFFICER WAS AN R.L.
25 STOKES?

1 A. THAT IS CORRECT.

2 Q. AND WHAT'S R.L. STAND FOR?

3 A. I DON'T KNOW. I DON'T KNOW HIS FIRST NAME.

4 Q. OKAY. SO OFFICER -- DEPUTY STOKES?

5 A. DEPUTY STOKES, YES.

6 Q. ALL RIGHT. SO DEPUTY STOKES RESPONDED TO THE
7 EMERGENCY ROOM?

8 A. YES. DEPUTY STOKES RESPONDED TO THE EMERGENCY ROOM
9 ALONG WITH OUR VICTIM'S ADVOCATE, TRACY HICKS.

10 Q. AND WHO CONTACTED DEPUTY STOKES?

11 A. I DON'T KNOW THAT.

12 Q. YOU DON'T HAVE THAT INFORMATION?

13 A. I DON'T HAVE THAT INFORMATION, NO.

14 Q. WOULD YOU HAVE THAT INFORMATION IN YOUR CASE FILE?

15 A. NO, IT'S NOT. I MEAN, I DON'T KNOW WHO CONTACTED
16 HIM.

17 Q. OKAY. AND DEPUTY STOKES TOOK AN INITIAL REPORT;
18 CORRECT?

19 A. THAT IS CORRECT.

20 Q. NOW, YOU SAID THAT YOU HAD BEEN WITH THE ORANGEBURG
21 COUNTY SHERIFF'S OFFICE FOR TWO AND A HALF YEARS; CORRECT?

22 A. THAT IS CORRECT.

23 Q. WHAT OTHER TRAINING OR EXPERIENCE DO YOU HAVE AS A
24 LAW ENFORCEMENT OFFICER?

25 A. PRIOR TO THE ORANGEBURG COUNTY SHERIFF'S OFFICE, I

1 WAS EMPLOYED BY THE BAMBERG COUNTY SHERIFF'S OFFICE. I WAS
2 EMPLOYED BY THE DENMARK POLICE DEPARTMENT, AND I SERVED IN
3 THE UNITED STATES ARMY MILITARY POLICE CORPS.

4 Q. SO HOW MANY YEARS?

5 A. I HAVE A TOTAL OF 18 YEARS.

6 Q. AND WHAT KIND OF TRAINING HAVE YOU HAD TO
7 INVESTIGATE CASES OF THIS NATURE?

8 A. I HAVE ATTENDED THE UNITED STATES ARMY MILITARY
9 POLICE INVESTIGATIONS WHICH WAS A 16-WEEK COURSE. I ATTENDED
10 SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY DETECTIVE COURSE. I
11 HAVE RECEIVED NUMEROUS SEMINARS, TRAININGS, SCHOOLS IN
12 INVESTIGATIONS AND LAW ENFORCEMENT.

13 Q. AND YOU ARE TRAINED TO DO CERTAIN THINGS IN THE
14 INVESTIGATION OF A CASE OF THIS NATURE. IS THAT CORRECT?

15 A. YES, WE ARE.

16 Q. YOU ARE TRAINED AS ARE -- WELL, LET ME JUST FOCUS ON
17 YOUR TRAINING. YOU ARE TRAINED IN THE TAKING OF REPORTS?

18 A. YES, WE ARE TRAINED IN THE TAKING OF REPORTS.

19 Q. AND WHAT'S THE PURPOSE OF TAKING -- TAKING DOWN,
20 PUTTING ALL THIS IN WRITING IN A REPORT?

21 A. WELL, THE -- ACTUALLY FOR THE INITIAL REPORT THAT WE
22 USE, THE INCIDENT REPORT IS FOR S.L.E.D. REPORTING PURPOSES.
23 THAT IS SO THAT S.L.E.D. CAN KEEP UP WITH STATS.

24 Q. NOW -- BUT THERE'S A GREATER -- I MEAN A BROADER
25 REASON WHY YOU WOULD WRITE ALL THIS INFORMATION DOWN; RIGHT?

1 A. YEAH. ME AS AN INVESTIGATOR, YES.

2 Q. I MEAN, HOW MANY CASES DO YOU WORK IN A YEAR?

3 A. OH, LORD KNOWS. WELL OVER 300.

4 Q. AND WOULD YOU BE EXPECTED TO REMEMBER OFF THE TOP OF
5 YOUR HEAD WHAT HAPPENED IN ALL 300 OF THOSE CASES?

6 A. NO.

7 Q. WOULD DEPUTY STOKES BE EXPECTED TO REMEMBER OFF THE
8 TOP OF HIS HEAD ALL THE CASES HE RESPONDED TO---

9 A. NO.

10 Q. ---OVER THE COURSE---

11 A. NO.

12 Q. ---OF EVEN A MONTH, MUCH LESS A YEAR?

13 A. NO.

14 Q. SO IT'S IMPORTANT TO GET PERTINENT INFORMATION DOWN
15 IN THE REPORT.

16 A. IT IS.

17 Q. BECAUSE YOU WANT TO BE ABLE TO TESTIFY IF THE CASE
18 COMES UP FOR TRIAL AS TO WHAT YOU WERE TOLD OR AS TO WHAT
19 HAPPENED.

20 A. THAT IS CORRECT.

21 Q. AND THOSE REPORTS ARE WHAT HELPS REFRESH YOUR MEMORY
22 OF WHAT HAPPENED.

23 A. THAT IS CORRECT.

24 Q. AND YOU -- AS THE INVESTIGATING OFFICER IN THIS
25 CASE, YOU HAVE CHARGE OF THE ENTIRE CASE FILE; CORRECT?

1 A. THAT IS CORRECT.

2 Q. INCLUDING REPORTS MADE BY THE INITIAL RESPONDING
3 OFFICER.

4 A. THAT IS CORRECT.

5 Q. AND THAT WAS AGAIN DEPUTY STOKES.

6 A. CORRECT.

7 Q. AND DEPUTY STOKES DID MAKE AN INITIAL INCIDENT
8 REPORT; CORRECT?

9 A. THAT IS CORRECT.

10 Q. DO YOU RECALL THE INFORMATION THAT IS IN THAT
11 INITIAL INCIDENT REPORT?

12 A. SOME OF THE INFORMATION, YES, I DO RECALL.

13 Q. DO YOU RECALL WHETHER OR NOT -- DO YOU RECALL MS.
14 SANDERS -- LET ME REPHRASE THAT. DO YOU RECALL DEPUTY STOKES
15 INDICATING IN HIS REPORT THAT MS. SANDERS INDICATED THAT
16 THERE WAS A GUN INVOLVED IN THIS INCIDENT?

17 A. THAT I DON'T RECALL. I DON'T KNOW IF IT'S IN THERE
18 OR NOT.

19 Q. WOULD LOOKING AT YOUR REPORT REFRESH YOUR
20 RECOLLECTION?

21 A. I DO KNOW THAT IT IS IN MY REPORT THAT THERE'S A
22 GUN, IN THE REPORT.

23 Q. WOULD LOOKING AT THE INITIAL INCIDENT REPORT REFRESH
24 YOUR RECOLLECTION OF WHAT IS IN DEPUTY STOKES' REPORT?

25 A. SURE, IF I CAN TESTIFY TO WHAT'S IN HIS REPORT.

1 Q. WELL, YOU CAN TESTIFY IF IT'S -- IF IT REFRESHES
2 YOUR RECOLLECTION.

3 MS. BRISBIN: YOUR HONOR, I WOULD OBJECT TO HER
4 TESTIFYING TO WHAT SOMEONE -- IS IN SOMEONE ELSE'S REPORT.
5 THAT WOULD BE HEARSAY.

6 MS. BROWN: YOUR HONOR, I BELIEVE AS THE OFFICER WHO
7 IS IN CHARGE OF THIS CASE FILE, IF SHE'S THE OFFICER IN
8 CHARGE OF THE CASE FILE AND IT'S ASSUMED THE ORIGINAL
9 INCIDENT REPORT, SHE CAN LOOK AT THAT REPORT AND IF IT
10 REFRESHES HER RECOLLECTION, SHE CAN TESTIFY TO THAT.

11 THE COURT: WELL, SHE CAN TESTIFY AS TO WHETHER IT
12 REFRESHES HER RECOLLECTION. SHE CAN'T TESTIFY AS TO WHAT THE
13 REPORT SAYS.

14 MS. BROWN: ABSOLUTELY, YOUR HONOR.

15 THE COURT: SHE CAN LOOK AT IT AND SEE IF IT
16 REFRESHES HER RECOLLECTION.

17 BY MS. BROWN:

18 Q. DO YOU RECOGNIZE WHAT I'VE HANDED TO YOU?

19 A. YES, THIS IS DEPUTY STOKES' REPORT.

20 Q. OKAY. WOULD YOU PLEASE TAKE A MOMENT AND REVIEW
21 THAT AND TELL ME IF IT REFRESHES YOUR RECOLLECTION AS TO THE
22 ORIGINAL INCIDENT REPORT?

23 A. I DON'T UNDERSTAND THE QUESTION.

24 Q. JUST READ THAT AND TELL ME IF -- IF THAT HELPS YOU
25 REMEMBER WHAT YOU WERE INFORMED AS TO THE INITIAL INCIDENT

1 REPORT.

2 MS. BRISBIN: YOUR HONOR, I HAVE THE SAME OBJECTION.
3 I THINK THAT'S HEARSAY IF SHE'S REFRESHING -- TRYING TO
4 REFRESH HER MEMORY OF WHAT SOMEBODY ELSE SAID---

5 THE COURT: LOOK, IF IT DOESN'T REFRESH HER
6 RECOLLECTION, SHE'LL SAY NO. IF SHE SAYS IT DOES, SHE'LL SAY
7 YES. NOW, WHETHER THEY CAN ASK HER WHAT IT SAYS THAT'S A...

8 THE WITNESS: I MEAN, YEAH, I MEAN...

9 BY MS. BROWN:

10 Q. DO YOU RECALL WHETHER OR NOT THERE WAS MENTION OF A
11 GUN IN THE INITIAL INCIDENT REPORT?

12 A. IN HIS WRITTEN INITIAL INCIDENT REPORT THERE IS NO
13 MENTION OF A GUN. HOWEVER, ON THE 4TH OF MARCH WHEN I
14 INTERVIEWED MS. SANDERS SHE DID TELL ME ABOUT A GUN.

15 Q. BUT THAT WAS NOT MENTIONED ORIGINALLY; CORRECT?

16 A. IT IS NOT MENTIONED ORIGINALLY. THE INITIAL
17 RESPONDING DEPUTIES DO NOT GO INTO GREAT DETAIL WITH RAPE
18 VICTIMS. WE TRY NOT TO VICTIMIZE VICTIMS OVER AND OVER
19 AGAIN. SO THEY GET A BASIC OF WHO, WHAT, WHERE, WHEN, WHY,
20 AND HOW IN THEIR INITIAL INCIDENT REPORTS. IT IS THEN TURNED
21 OVER TO US AND WE GO INTO GREATER DETAIL.

22 Q. AND SHE GAVE SOME OTHER PRETTY DETAILED THINGS IN
23 THAT INITIAL REPORT---

24 A. SHE DID.

25 Q. ---DIDN'T SHE?

1 A. SHE DID.

2 Q. SHE MENTIONED THE BLINDFOLD.

3 A. SHE DID.

4 Q. SHE ACTUALLY SAID THAT SHE WAS BLINDFOLDED ALL NIGHT
5 LONG, DIDN'T SHE?

6 A. SHE DID.

7 Q. SO SHE GAVE SOME FAIRLY DETAILED STATEMENTS IN THAT
8 INITIAL REPORT---

9 A. CORRECT.

10 Q. ---TO THE OFFICER, DIDN'T SHE?

11 A. I CAN'T -- I CANNOT TESTIFY TO WHETHER OR NOT SHE
12 TOLD HIM ABOUT A GUN AND WHETHER OR NOT HE PUT IT IN HIS
13 REPORT OR NOT. I CAN'T SAY THAT. SHE MAY HAVE TOLD HIM
14 ABOUT A GUN. THAT'S A QUESTION YOU'D HAVE TO ASK HIM.

15 Q. WELL, THAT WOULD HAVE BEEN FAIRLY IMPORTANT
16 INFORMATION, WOULD IT NOT?

17 A. IT WOULD BE.

18 Q. THAT WOULD BE INFORMATION YOU WOULD EXPECT A DEPUTY
19 TO PUT IN A REPORT; CORRECT?

20 A. CORRECT.

21 Q. AND MS. SANDERS GAVE YOU A WRITTEN STATEMENT AFTER
22 SPEAKING WITH YOU ON THE MORNING OF MARCH THE 4TH; CORRECT?

23 A. CORRECT.

24 Q. DO YOU REMEMBER HER INITIAL STATEMENT?

25 A. YES.

1 Q. DO YOU RECOGNIZE WHAT I HAVE JUST HANDED TO YOU,
2 LIEUTENANT BAMBERG?

3 A. THIS IS A STATEMENT I TOOK FROM MS. SANDERS ON MARCH
4 THE 4TH.

5 Q. NOW, IN THAT ORIGINAL STATEMENT DID SHE MENTION A
6 GUN, HER -- HER FIRST NARRATIVE PORTION, DID SHE MENTION A
7 GUN?

8 A. NO, SHE DID NOT.

9 Q. SHE, IN FACT, DID NOT MENTION A GUN UNTIL YOU
10 FURTHER QUESTIONED HER AS TO WHETHER OR NOT THERE WAS A
11 WEAPON.

12 A. THAT IS CORRECT.

13 Q. AND IT WAS AT THAT POINT THAT SHE MENTIONED THAT
14 THERE WAS A PISTOL; IS THAT CORRECT?

15 A. THAT IS CORRECT.

16 Q. AND SHE GAVE NO DESCRIPTION OF THAT PISTOL, DID SHE?

17 A. SHE JUST SAID THAT IT WAS A SMALL CALIBER PISTOL.

18 Q. AND SHE COULDN'T SAY WHAT COLOR IT WAS?

19 A. I DIDN'T ASK HER. WE DIDN'T GO INTO GREAT DETAIL.

20 Q. YOU DIDN'T ASK HER WHAT COLOR IT WAS?

21 A. NO.

22 Q. YOU DIDN'T ASK HER FOR ANY KIND OF DESCRIPTION?

23 A. I DID -- I DID NOT.

24 Q. SO YOU HAD NO IDEA WHAT YOU WOULD HAVE BEEN LOOKING
25 FOR HAD YOU BEEN ABLE TO GO OUT TO THE SCENE AND FIND A GUN.

1 A. I WOULD HAVE BEEN LOOKING FOR A SMALL CALIBER GUN.

2 Q. BUT YOU WOULD HAVE HAD NO IDEA WHAT COLOR GUN YOU
3 WERE LOOKING FOR.

4 A. NO.

5 Q. AND YOU DIDN'T THINK IT WAS IMPORTANT TO ASK.

6 A. AT THE TIME IT'S JUST AN OVERSIGHT ON MY PART.

7 Q. WHO IS RESPONSIBLE FOR RECEIVING THE S.L.E.D.

8 ASSAULT FORM, THAT INFORMATION FROM -- FROM THE HOSPITAL IN
9 CHARLESTON?

10 A. ORIGINALLY IT WOULD HAVE BEEN MYSELF.

11 Q. AND DID YOU?

12 A. I DID.

13 Q. AND WHAT DID YOU DO WITH THAT?

14 A. I PICKED UP THE RAPE EXAM KIT ON THE 13TH OF MARCH
15 AND THEN I TURNED IT OVER TO AIKEN COUNTY WHEN THEY ASSUMED
16 THE INVESTIGATION.

17 Q. AND YOU DIDN'T KNOW ANYTHING ABOUT IT FROM THERE.

18 A. I KNOW ABSOLUTELY NOTHING ABOUT IT FROM THERE.

19 Q. OKAY. NOW, YOU SAID THAT YOU WERE -- YOU GOT THE
20 ADDRESS -- THIS ADDRESS FOR JOSEPH WALKER LIVING SOMEWHERE IN
21 SALLEY, SOUTH CAROLINA.

22 A. THAT IS CORRECT.

23 Q. WHERE DID YOU GET THAT ADDRESS?

24 A. FROM THE DRIVER'S LICENSE.

25 Q. YOU GOT THAT ADDRESS FROM HIS DRIVER'S LICENSE?

1 A. CORRECT.

2 Q. HOW DID YOU GET HIS DRIVER'S LICENSE?

3 A. ONCE I GOT THE INFORMATION ON MR. WALKER, WE RAN HIS
4 DRIVER'S LICENSE. I HAD HIS NAME AND HIS DATE OF BIRTH AND
5 YOU CAN RUN A DRIVER'S LICENSE CHECK ON THE COMPUTER FROM A
6 NAME AND DATE OF BIRTH.

7 Q. WHO GAVE YOU HIS DATE OF BIRTH?

8 A. I GOT THAT INFORMATION FROM AN INCIDENT REPORT IN
9 DENMARK WHERE MS. WARREN TOLD ME SHE HAD HAD OTHER INCIDENTS
10 WITH MR. WALKER SO THAT I COULD GO TO THE DENMARK POLICE
11 DEPARTMENT AND THEY WOULD HAVE AN INCIDENT REPORT ON FILE
12 WHICH IS WHERE I WENT AND THEY DID HAVE AN INCIDENT REPORT ON
13 FILE.

14 Q. AND SO YOU WENT OUT TO THAT ADDRESS.

15 A. I WENT OUT TO SALLEY.

16 Q. YOU WENT OUT TO SALLEY AND YOU WENT TO THE ADDRESS
17 THAT HAD BEEN GIVEN TO YOU.

18 A. NO, I WENT TO SALLEY AND WHEN I GOT THERE, BECAUSE
19 I'M NOT FAMILIAR WITH SALLEY, I HAD TO ASK SOME PEOPLE ON THE
20 STREET WHEN THEY WERE THERE -- IT WAS BY A CONVENIENCE STORE
21 AND I ASKED THEM IF THEY KNEW A MR. WALKER AND THEY GAVE
22 ME...

23 Q. YOU ENDED UP AT THE ADDRESS THAT HAD BEEN GIVEN TO
24 YOU; CORRECT?

25 A. NO, I ENDED UP AT POPULAR (SIC) STREET.

1 Q. UH-HUH. AND YOU ENDED UP AT A PLACE THAT YOU
2 IDENTIFIED TO BE MR. WALKER'S RESIDENCE?

3 A. THAT IS CORRECT.

4 Q. AND YOU FOUND IT TO BE A WHITE BLOCK HOUSE?

5 A. I DID.

6 Q. WITH SHEETS ON THE WINDOWS?

7 A. YES.

8 Q. AND, AGAIN, MS. SANDERS HAD GIVEN YOU A FAIRLY
9 DETAILED DESCRIPTION OF THE -- OF THE INTERIOR OF THIS HOUSE;
10 CORRECT?

11 A. THAT IS CORRECT.

12 Q. BUT GAVE YOU NO DESCRIPTION OF THIS GUN.

13 A. I DIDN'T -- I MEAN, I DIDN'T ASK ABOUT THE
14 DESCRIPTION OF THE GUN. WHENEVER I ASKED HER DIRECT
15 QUESTIONS, SHE WOULD -- SHE WOULD GIVE IT IN GREATER DETAIL.
16 AND AGAIN, LIKE I SAID, THAT'S AN OVERSIGHT. I ASKED ABOUT
17 THE GUN; SHE SAID A SMALL CALIBER GUN.

18 Q. SO YOU HAD TO ASK HER DIRECT QUESTIONS TO GET
19 INFORMATION OUT OF HER?

20 A. WELL, WHENEVER I DID ASK HER DIRECT QUESTIONS SHE
21 WOULD GO INTO GREATER DETAIL.

22 Q. AND THE DESCRIPTION THAT SHE GAVE YOU OF HER
23 ASSAILANT, DID SHE MENTION THAT HE WORE GLASSES?

24 A. NO, SHE DID NOT.

25 Q. DID SHE MENTION HE WAS WEARING A JACKET?

1 A. NO, SHE DID NOT.

2 Q. WERE YOU IN THE ROOM WITH HER WHEN SHE WAS WATCHING
3 THE VIDEOTAPE?

4 A. I WAS IN AND OUT OF THE ROOM. I WAS NOT IN THE ROOM
5 THE WHOLE TIME.

6 Q. ABOUT HOW LONG DID SHE WATCH THAT VIDEOTAPE?

7 A. APPROXIMATELY 30 MINUTES. THE VIDEOTAPE IS A TIME-
8 LAPSE VIDEOTAPE. FROM THE B.P. IT'S ON MULTIPLEX WHICH MEANS
9 THAT YOU HAVE TO WATCH IT ONE FRAME AT THAT TIME. SO FOR A
10 10-MINUTE FRAME IT WOULD TAKE MUCH MORE TIME TO WATCH IT ON A
11 TIME-LAPSE.

12 Q. SO THIS -- THIS VIDEOTAPE THAT WE'RE SEEING TODAY,
13 IS THAT NOT THE EXACT VIDEOTAPE THAT SHE WAS WATCHING?

14 A. THAT IS NOT THE EXACT VIDEOTAPE. THAT IS -- WE TOOK
15 IT TO S.L.E.D. AND BROKE IT DOWN TO -- FOR SPEED PURPOSES.

16 Q. I SEE. SO THAT'S NOT THE EXACT -- SO THIS IS NOT
17 THE EXACT VIDEOTAPE THAT THE MANAGER TOOK OUT OF---

18 A. NO. THAT IS---

19 Q. ---THE STORE?

20 A. THAT'S A VIDEOTAPE THAT WE TOOK TO S.L.E.D. FOR --
21 IT'S A MULTIPLEX CAMERA WHICH YOU WATCH ONE CAMERA AT A TIME
22 TO SLOW IT DOWN. THAT'S THE EXACT -- THAT'S EVERYTHING THAT
23 WAS ON THERE, BUT IT'S SLOWED DOWN FOR YOUR PURPOSES SO THAT
24 IT WOULDN'T TAKE 30, 40, 50 MINUTES.

25 Q. IT WAS TESTIFIED TO YESTERDAY THAT THIS TAPE WAS

1 PHYSICALLY TAKEN FROM THE B.P. STATION. THIS TAPE RIGHT HERE
2 WAS TAKEN FROM THE B.P. STATION, AND NOW YOU'RE SAYING THAT
3 THIS IS NOT THE EXACT TAPE TAKEN FROM THE B.P. STATION?

4 A. THAT IS -- THAT IS NOT THE EXACT TAPE. THAT IS A
5 COPY OF THE TAPE.

6 Q. I SEE. BEG THE COURT'S INDULGENCE ONE MOMENT. WHO
7 ACTUALLY TOOK THE VIDEOTAPE FROM THE STORE TO S.L.E.D.?

8 A. I DID.

9 Q. YOU TOOK THAT TO S.L.E.D.

10 A. I DID.

11 Q. AT WHAT POINT?

12 A. WHEN WE WERE PREPARING FOR COURT TO BREAK IT DOWN TO
13 SLOW IT DOWN FOR COURT PURPOSES AND I STOOD THERE WHILE THEY
14 PUT IT ON THAT TAPE RIGHT THERE.

15 Q. NOW, I THOUGHT YOU TURNED OVER ALL THE INFORMATION
16 ON THIS CASE TO AIKEN COUNTY WHEN YOU DETERMINED THAT THIS
17 WAS NOT---

18 A. I DID NOT TURN THE TAPE OVER TO AIKEN COUNTY. I
19 TURNED OVER THE RAPE EXAM KIT AND THE CLOTHES TO AIKEN
20 COUNTY. WE STILL HAVE A PART OF THIS IN ORANGEBURG COUNTY.

21 Q. I SEE. SO YOU TOOK THIS TAPE TO S.L.E.D. WHEN?

22 A. I CAN'T REMEMBER THE EXACT DATE.

23 Q. DO YOU HAVE THAT INFORMATION IN YOUR CASE FILE?

24 A. I BELIEVE I MIGHT.

25 Q. WOULD YOU LIKE TO LOOK AT YOUR CASE FILE?

1 A. SURE, IF I COULD.

2 Q. TO HAVE YOUR...

3 A. CAN I STEP DOWN AND GET IT?

4 Q. IS THIS IT, THE MANILA...

5 A. IT IS.

6 Q. (MS. BROWN HANDS THE CASE FILE TO THE WITNESS.)

7 A. I DON'T HAVE THE DATE THAT I TOOK IT TO S.L.E.D. IN
8 THERE ALTHOUGH, LIKE I SAID, IT WAS WHILE WE WERE PREPARING
9 FOR COURT.

10 Q. WELL, WOULD IT HAVE BEEN A MONTH AGO? THREE MONTHS
11 AGO?

12 A. IT WAS RIGHT BEFORE THE CASE WAS CALLED THE FIRST
13 TIME WHEN THEY WERE PREPARING IT FOR THE FIRST TIME.

14 Q. SO APRIL?

15 A. NO, IT WAS TWO MONTHS AGO. ABOUT TWO MONTHS AGO.

16 Q. SO YOU TOOK -- YOU TOOK THE ORIGINAL TAPE TO
17 S.L.E.D. TWO MONTHS AGO.

18 A. YES.

19 Q. AND YOU RECEIVED THIS TAPE BACK.

20 A. CORRECT.

21 Q. SO THIS IS NOT THE TAPE THAT MARGARET SANDERS
22 WATCHED IN YOUR OFFICE IN ORANGEBURG, IS IT?

23 A. NO, THAT IS NOT THE TAPE SHE WATCHED IN OUR OFFICE
24 IN ORANGEBURG. THAT IS THE -- ACTUALLY IT'S AN EXACT COPY OF
25 THE TAPE. IT'S JUST SLOWED DOWN FOR COURT PURPOSES.

1 Q. WITH THE OTHER CAMERAS EDITED OUT?

2 A. NO. ACTUALLY ALL THE CAMERAS ARE THERE. IT'S JUST
3 SLOWED DOWN FOR COURT PURPOSES. IF YOU PUT THIS TAPE IN,
4 IT'S GOING TO GO REAL FAST. IT'S A MULTIPLEX SYSTEM ON A
5 TIME-LAPSE AND---

6 Q. AND I BELIEVE IT'S BEEN---

7 A. ---SO YOU HAVE TO SLOW IT DOWN.

8 Q. AND I BELIEVE IT'S BEEN -- LET ME REPHRASE THAT.
9 ARE THERE ACTUALLY MULTIPLE CAMERAS IN THAT STORE?

10 A. THERE ARE.

11 Q. HOW MANY CAMERAS ARE IN THAT STORE?

12 A. I BELIEVE THERE'S FOUR OR FIVE CAMERAS IN THAT
13 STORE.

14 Q. OKAY. SO WHEN YOU'RE TALKING ABOUT A MULTIPLEX
15 VIDEO SYSTEM, IS THIS ONE THAT HAS THE -- THE SPLIT SCREENS
16 SO YOU SEE ALL FOUR---

17 A. EXACTLY. SO YOU SEE---

18 Q. ---ANGLES AT ONCE?

19 A. SO YOU SEE ALL FOUR ANGLES AT ONCE.

20 Q. OKAY. NOW, THE TAPE THAT WE VIEWED YESTERDAY ONLY
21 HAD ONE SCENE ON THE TAPE. DO YOU REMEMBER THAT?

22 A. I DIDN'T SEE THAT TAPE YESTERDAY, SO I CAN'T---

23 Q. HAVE YOU VIEWED THIS TAPE?

24 A. I HAVE VIEWED THIS TAPE.

25 Q. AND THERE'S ONLY ONE---

1 A. THERE'S ONE -- CAMERA ONE I BELIEVE IS THE ONE THAT
2 IT'S SHOWING.

3 Q. CAMERA ONE.

4 A. RIGHT.

5 Q. SO THE OTHER THREE CAMERAS HAVE BEEN EDITED OUT OF
6 THIS PORTION OF THE TAPE; CORRECT?

7 A. I BELIEVE THAT IS CORRECT, BUT I CAN'T -- I'M NOT
8 REAL SURE WITHOUT LOOKING AT THIS AND LOOKING AT THAT.

9 Q. WELL, DID YOU SEE THREE OTHER---

10 A. NO, I DID NOT.

11 Q. ---CAMERA ANGLES ON THAT TAPE?

12 A. NO, I DID NOT.

13 Q. SO IT'S SAFE TO SAY THE OTHER THREE HAVE BEEN EDITED
14 OUT OF THE TAPE.

15 A. YEAH, I WOULD SAY THAT'S SAFE TO SAY.

16 Q. AND IT'S BEEN SLOWED DOWN.

17 A. AND IT'S BEEN SLOWED DOWN; CORRECT. I DON'T -- I
18 DON'T KNOW THE ACTUAL COMPLEXITY OF IT, HOW THEY GET TO STOP
19 THE OTHER SO YOU'RE NOT WATCHING ONE FRAME AT A TIME IS WHAT
20 IT ACTUALLY COMES DOWN TO.

21 MS. BROWN: I HAVE NO FURTHER QUESTIONS FOR THIS
22 WITNESS.

23 REDIRECT EXAMINATION

24 BY MS. BRISBIN:

25 Q. LIEUTENANT BAMBERG, DO YOU HAVE THE ORIGINAL

1 VIDEOTAPE WITH YOU?

2 A. I DO. RIGHT HERE.

3 Q. IS THIS TAPE A FAIR AND ACCURATE REPRESENTATION OF
4 WHAT'S ON THE ORIGINAL TAPE?

5 A. YES, IT'S THE SAME EXACT THING; IT'S JUST SLOWED
6 DOWN.

7 Q. OKAY. WHERE DID YOU GET THIS TAPE?

8 A. I GOT THAT TAPE FROM MS. WARREN.

9 Q. OKAY. AND HAVE YOU VIEWED THAT TAPE AS WELL?

10 A. I HAVE.

11 MS. BRISBIN: YOUR HONOR, AT THIS TIME I WOULD ASK
12 THAT THIS -- THE ORIGINAL ALSO BE ADMITTED INTO EVIDENCE.

13 MS. BROWN: NO OBJECTION.

14 THE COURT: SO ADMITTED WITHOUT OBJECTION.

15 MS. BROWN: WHAT NUMBER IS THAT, PLEASE?

16 (STATE'S EXHIBIT 13 WAS RECEIVED IN EVIDENCE.)

17 BY MS. BRISBIN:

18 Q. HOW MUCH TIME WAS THERE ON THE VIDEOS BETWEEN THE
19 VICTIM'S APPEARANCE AND THE DEFENDANT'S APPEARANCE?

20 A. APPROXIMATELY 12 MINUTES.

21 Q. OKAY. WOULD THAT TIMING BE ACCURATE ON THE COPY?

22 A. CORRECT. IT'S THE SAME EXACT THING. IT'S JUST
23 SLOWED DOWN SO YOU DON'T HAVE TO WATCH ALL THE OTHER CAMERAS.

24 Q. OKAY. AND SO ALTHOUGH THE TIME WAS ONE HOUR OFF
25 BECAUSE OF DAYLIGHT SAVINGS TIME, THE AMOUNT OF TIME BETWEEN

1 THE TWO PEOPLE APPEARING WOULD BE THE SAME.

2 A. CORRECT.

3 Q. OKAY. JUST TO CLARIFY, WHAT DATE WAS IT THAT
4 MARGARET SANDERS TOLD YOU THAT THE SUSPECT HAD A GUN?

5 A. THAT WAS ON THE 4TH OF MARCH.

6 MS. BRISBIN: THANK YOU.

7 THE COURT: ANYTHING FURTHER?

8 MS. BROWN: NO, YOUR HONOR, BUT I DIDN'T GET THE
9 NUMBER FOR THE TAPE THAT WAS INTRODUCED.

10 THE COURT: MADAM COURT REPORTER, WHAT NUMBER WOULD
11 THAT BE?

12 COURT REPORTER: 13.

13 MS. BROWN: THANK YOU. NO FURTHER QUESTIONS, YOUR
14 HONOR.

15 THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN.
16 CALL YOUR NEXT WITNESS.

17 MS. BRISBIN: THE STATE CALLS INVESTIGATOR STUART
18 GRAYBEAL.

19 STUART GRAYBEAL, AFTER BEING DULY SWORN,
20 TESTIFIED AS FOLLOWS:

21 THE CLERK: HAVE A SEAT IN THE WITNESS BOX, STATING
22 YOUR FULL NAME, SPELLING YOUR LAST, PLEASE.

23 THE WITNESS: INVESTIGATOR STUART GRAYBEAL. LAST
24 NAME IS SPELLED G-R-A-Y-B-E-A-L.

25

DIRECT EXAMINATION

BY MR. BRISBIN:

Q. WHERE ARE YOU EMPLOYED?

A. I'M EMPLOYED BY THE AIKEN COUNTY SHERIFF'S OFFICE.

Q. AND HOW LONG HAVE YOU BEEN THERE?

A. I'VE BEEN THERE APPROXIMATELY 10 YEARS.

Q. WHAT IS YOUR POSITION THERE?

A. I'M CURRENTLY A CRIMINAL INVESTIGATOR.

Q. AND WERE YOU THE INVESTIGATING OFFICER FOR AIKEN
COUNTY IN THIS CASE?

A. YES, I WAS.

Q. WHEN DID YOU TAKE OVER THE CASE?

A. I TOOK OVER THE CASE ON MARCH THE 25TH, 2002.

Q. AND HOW DID THAT COME ABOUT?

A. I WAS BRIEFED BY MY SUPERVISOR; I BELIEVE THAT WAS A

A. I WAS PROVIDED COPIES OF THE STATEMENTS,
REPORTS, AND CASE DOCUMENTS THAT HAD BEEN COMPLETED BY
ORANGEBURG COUNTY.

Q. OKAY. WHY WAS THIS TURNED OVER TO AIKEN COUNTY?

A. BECAUSE THE SEXUAL ASSAULT OCCURRED IN THE
JURISDICTION OF AIKEN COUNTY.

Q. AND WHAT ADDRESS WERE YOU GIVEN FOR THAT CRIME
SCENE?

A. THAT WAS POPLAR STREET IN SALLEY, SOUTH CAROLINA.
THE NUMBERS WERE 228.

1 Q. 228 POPLAR STREET?

2 A. THAT'S CORRECT.

3 Q. AND IS THAT IN AIKEN COUNTY?

4 A. YES, MA'AM.

5 Q. WHOSE ADDRESS WAS THAT?

6 A. THAT WAS THE ADDRESS OF THE DEFENDANT, MR. WALKER.

7 Q. JOSEPH WALKER?

8 A. YES, MA'AM.

9 Q. DID YOU TALK WITH THE VICTIM, MARGARET SANDERS?

10 A. NOT THAT DAY.

11 Q. WHEN DID YOU TALK WITH HER?

12 A. I INTERVIEWED MRS. SANDERS ON THE MORNING OF APRIL
13 THE 5TH, 2002.

14 Q. AND DID SHE DISCLOSE TO YOU THAT SHE HAD BEEN
15 SEXUALLY ASSAULTED?

16 A. SHE DID.

17 Q. DID SHE SAY WHEN IT HAPPENED?

18 A. SHE DID.

19 Q. AND WHAT DATE WAS THAT?

20 A. SHE INDICATED THAT THAT WAS ON MARCH THE 2ND, 2002,
21 EVENING OF MARCH THE 2ND, MORNING OF MARCH THE 3RD.

22 Q. DID SHE KNOW WHERE IT HAPPENED?

23 A. SPECIFICALLY, NO.

24 Q. AND WHY WAS THAT?

25 A. SHE INDICATED THAT SHE WAS BLINDFOLDED. SHE

1 PROVIDED A DESCRIPTION, YOU KNOW, AS FAR AS...

2 Q. OKAY.

3 A. SHE STATED SHE WAS -- SHE WAS TAKEN TO ANOTHER
4 LOCATION FROM HER RESIDENCE BY THE DEFENDANT.

5 Q. OKAY.

6 A. IT WAS A LENGTHY DRIVE. SHE WAS NOT FAMILIAR WITH
7 WHERE SHE WAS AT.

8 Q. DO YOU RECOGNIZE WHAT'S BEEN MARKED STATE'S EXHIBIT
9 NUMBER 7?

10 A. I DO.

11 Q. AND HOW DO YOU RECOGNIZE THAT?

12 A. THAT IS A PHOTOGRAPH WHICH I TOOK.

13 Q. OKAY. AND WHEN DID YOU TAKE THIS PHOTOGRAPH?

14 A. I TOOK THAT ON THE EVENING OF MARCH THE 25TH, 2002.

15 Q. OKAY. AND WHY DID YOU TAKE THIS PHOTOGRAPH?

16 A. THAT WAS TAKEN DURING THE EXAMINATION OF MR.
17 WALKER'S RESIDENCE. I EXAMINED THE DWELLING AND ALSO
18 EXAMINED HIS VEHICLE IN THE DRIVEWAY.

19 MS. BRISBIN: OKAY. YOUR HONOR, AT THIS TIME I'D
20 ASK THAT THIS STATE'S EXHIBIT NUMBER 7 BE ADMITTED INTO
21 EVIDENCE.

22 MS. BROWN: YOUR HONOR, I STILL DON'T BELIEVE HE'S
23 QUITE LAID A PROPER FOUNDATION FOR THAT TO COME IN AT THIS
24 TIME.

25 THE COURT: WELL, I'M NOT SURE WHAT THAT MEANS. I'M

1 GOING TO -- SO YOU'RE OBJECTING TO IT?

2 MS. BROWN: YES, YOUR HONOR.

3 THE COURT: ALL RIGHT. OVERRULED. SO ADMITTED AS
4 PLAINTIFF'S EXHIBIT -- I MEAN STATE'S EXHIBIT NUMBER 14
5 (SIC).

6 MS. BRISBIN: THANK YOU, YOUR HONOR.

7 (STATE'S EXHIBIT 7 WAS RECEIVED IN EVIDENCE.)

8 BY MS. BRISBIN:

9 Q. WHAT IS THIS EXACTLY?

10 A. THAT IS THE INTERIOR OF JOSEPH WALKER'S FORD RANGER
11 PICKUP TRUCK AS IT APPEARED ON THE EVENING OF MARCH 25TH,
12 2002.

13 Q. AND YOU TOOK THIS PHOTO?

14 A. I DID.

15 Q. WHERE WAS HIS TRUCK AT THAT TIME?

16 A. IT WAS PARKED IN THE DRIVEWAY OF HIS RESIDENCE ON
17 POPLAR STREET IN SALLEY.

18 Q. OKAY. AND WHAT DESCRIPTION DID YOU HAVE OF THE
19 SUSPECT'S VEHICLE?

20 A. THAT IT WAS A BLACK COMPACT PICKUP TRUCK AND HAD
21 SOME TYPE OF RED STRIPE OR GRAPHIC RUNNING DOWN EACH SIDE.

22 Q. DID YOU HAVE ANY DESCRIPTION OF THE INTERIOR?

23 A. ONLY THAT IT WAS HEAVILY SOILED; IT HAD FOUL ODOR.
24 IT WAS VERY DIRTY AND THAT IT POSSIBLY HAD A MANUAL
25 TRANSMISSION IN IT.

1 Q. A MANUAL? THAT'S A STICK SHIFT?

2 A. A STICK SHIFT. THAT'S CORRECT.

3 Q. OKAY. AND WHAT WAS SIGNIFICANT IN YOUR OBSERVATION
4 ABOUT THIS PHOTO?

5 A. IT SHOWS THE LAYOUT OF THE INTERIOR OF THE TRUCK.
6 ON THE TRANSMISSION HUMP YOU CAN SEE THE GEARSHIFT AND A
7 CLUTCH PEDAL WHICH INDICATES IT IS A MANUAL OR STICK SHIFT
8 TRANSMISSION. AS YOU CAN SEE ON THE PICTURE, IT'S HEAVILY
9 SOILED WITH DUST. THERE'S A LOT OF CLUTTER. THERE'S PAPERS,
10 FOOD WRAPPERS, DEBRIS.

11 Q. DID YOU NOTICE ANY ODOR IN THE TRUCK?

12 A. YES. IT HAD A STRONG UNPLEASANT ODOR CONSISTENT
13 WITH BODY ODOR, UNCLEAN UPHOLSTERY.

14 Q. THANK YOU.

15 A. SPOILED FOOD.

16 Q. OKAY. DO YOU RECOGNIZE WHAT'S ALREADY BEEN ADMITTED
17 INTO EVIDENCE STATE'S EXHIBIT NUMBER 8?

18 A. THAT'S THE EXTERIOR OF MR. WALKER'S TRUCK.

19 Q. WHO TOOK THIS PHOTO?

20 A. I TOOK THAT PHOTO.

21 Q. AND WHERE WAS THIS TRUCK WHEN YOU TOOK THE PHOTO?

22 A. THAT WAS PARKED IN THE DRIVEWAY OF MR. WALKER'S
23 RESIDENCE ON POPLAR STREET. I BELIEVE YOU CAN JUST BARELY
24 SEE THIS IS THE EDGE OF THE ROADWAY AND THE DRIVEWAY COMING
25 UP HERE. HIS RESIDENCE WOULD BE IN FRONT AND JUST TO THE

1 LEFT OF THE TRUCK IF YOU'RE SITTING IN IT.

2 Q. DID YOU HAVE A DESCRIPTION OF THE SIZE OF THE
3 SUSPECT'S VEHICLE?

4 A. THAT IT WAS A SMALL BLACK TRUCK.

5 Q. IS THIS A FULL SIZE OR A COMPACT TRUCK?

6 A. FORD RANGER'S A COMPACT.

7 Q. THANK YOU. SHOWING YOU STATE'S EXHIBIT NUMBER 9
8 WHICH HAS ALSO BEEN ADMITTED INTO EVIDENCE, WHAT IS THIS?

9 A. THAT IS A PHOTOGRAPH I TOOK OF THE INTERIOR OF MR.
10 WALKER'S HOUSE. I BELIEVE THIS WAS TAKEN IN HIS BEDROOM.

11 THE COURT: MADAM SOLICITOR, WHY DON'T YOU LET HIM
12 SHOW THE JURY---

13 MS. BRISBIN: IF YOU WOULD STEP DOWN.

14 THE COURT: IF THEY'RE PASSING PICTURES AROUND,
15 THEY'RE GOING TO MISS HIS TESTIMONY.

16 MS. BRISBIN: YES, SIR.

17 THE COURT: YOU CAN CERTAINLY SHOW IT TO THEM ALL AT
18 ONCE.

19 MS. BRISBIN: IF YOU WOULD JUST POINT OUT TO THE
20 JURY WHAT---

21 THE COURT: YOU GOT JURORS ON BOTH SIDES OF YOU,
22 INVESTIGATOR.

23 THE WITNESS: CAN EVERYONE SEE THIS? THIS IS A
24 PHOTOGRAPH I TOOK OF THE INTERIOR OF JOSEPH WALKER'S
25 RESIDENCE. THIS IS WHAT I REFER TO AS THE MIDDLE ROOM, A

1 BEDROOM IN THE HOUSE. THIS IS A DOUBLE BED. THERE'S A
2 BATHROOM WITH A CINDER BLOCK WALL AT THE FOOT OF THE BED. ON
3 THE FAR RIGHT OF THE PICTURE THERE'S BED LINENS. I BELIEVE
4 THAT WAS A SHEET COVERING THE WINDOW AND YOU CAN SEE PART OF
5 A -- I BELIEVE IT WAS A TABLE. THERE'S CLUTTER, CLOTHING,
6 BOXES, EMPTY BAGS, SOILED CLOTHING VISIBLE IN VARIOUS AREAS
7 OF THE ROOM. THERE'S ALSO A TELEVISION AND A V.C.R. AND SOME
8 TAPES VISIBLE ON THE DRESSER.

9 BY MS. BRISBIN:

10 Q. DID YOU NOTICE ANY ODOR IN THAT ROOM?

11 A. YES, I DID. IT WAS AGAIN CONSISTENT WITH BODY ODOR.
12 THE HOUSE ITSELF WAS UNHYGIENIC. IT WAS A FOUL GARBAGE-TYPE
13 SMELL.

14 Q. WHAT DESCRIPTION HAD YOU BEEN GIVEN OF THE INSIDE OF
15 THE HOME OF THE SUSPECT?

16 A. AS FAR AS THE LAYOUT OR THE CONDITION OR BOTH?

17 Q. BOTH.

18 A. THE LAYOUT -- ENTERING THE FRONT DOOR, THERE WOULD
19 BE I GUESS YOU'D CALL IT A LIVING AREA. THEN YOU WOULD ENTER
20 A BEDROOM AREA WHICH WAS CONSISTENT WITH THIS BEING THE
21 MIDDLE ROOM. THE HOUSE AGAIN WAS DESCRIBED AS HAVING A VERY
22 UNPLEASANT ODOR, VERY DIRTY, VERY CLUTTERED.

23 Q. AND SPECIFICALLY WHAT WAS INSIDE THE BEDROOM?

24 A. THE LAYOUT OF THE BEDROOM: THERE WOULD BE THE BED
25 WHICH IS VISIBLE IN THIS PICTURE. THERE WOULD BE A

1 NIGHTSTAND. I BELIEVE IT WAS DESCRIBED AS HAVING AN ASHTRAY
2 AND SOME CLUTTER ON TOP OF THAT. AS YOU ENTERED THE BEDROOM
3 FROM THE LIVING ROOM, THERE WAS A GAS FLOOR HEATER DESCRIBED
4 AS BEING ON THE IMMEDIATE LEFT. AGAIN, IT WAS DESCRIBED AS
5 NOT HAVING WOODEN DOORS, AND IN THE FRAMES JUST SHEETS HUNG
6 UP IN THEIR PLACE.

7 Q. WHAT SIZE BED WAS DESCRIBED?

8 A. A DOUBLE BED. DOUBLE BED.

9 Q. DO YOU RECOGNIZE WHAT'S BEEN MARKED STATE'S EXHIBIT
10 NUMBER 5 AND ADMITTED INTO EVIDENCE?

11 A. I DO. THAT'S ANOTHER PHOTOGRAPH I TOOK OF THIS
12 ROOM, THE MIDDLE BEDROOM. THIS SHOWS THE BED ITSELF. YOU
13 CAN SEE A PAIR OF BLACK WORK BOOTS.

14 THE COURT: YOU GOT JURORS ON YOUR RIGHT NOW.

15 THE WITNESS: THERE'S ALSO TENNIS SHOES, CLUTTER,
16 YOU KNOW, ON THE TABLE, ON THE DRESSER. YOU CAN SEE THE BED
17 LINEN COVERING THE WINDOW BEHIND THE BED. THERE'S PILLOWS.
18 THERE'S -- I DON'T KNOW IF YOU CAN SEE IT IN THE PICTURE.
19 THIS IS SUPPOSED TO BE A WHITE COVERING---

20 COURT REPORTER: I'M SORRY. SUPPOSED TO BE A WHAT?

21 THE WITNESS: A WHITE COVERING ON THE BED, A
22 COMFORTER I BELIEVE. IT'S VISIBLY SOILED. A PACK OF
23 CIGARETTES. THERE'S AN ASHTRAY ON THE NIGHTSTAND AND
24 EVERYTHING GENERAL CLUTTER.

25 BY MS. BRISBIN:

1 Q. WHAT DESCRIPTION DID YOU HAVE OF THE SHOES OR BOOTS
2 OF THE SUSPECT?

3 A. BLACK WORK SHOES OR WORK BOOTS.

4 Q. ARE THEY VISIBLE IN THIS PHOTO?

5 A. YES, THEY'RE VISIBLE RIGHT HERE AT THE BOTTOM. I
6 DON'T KNOW IF Y'ALL CAN SEE THAT. IT'S IN THE EXTREME BOTTOM
7 RIGHT CORNER.

8 Q. SHOWING YOU STATE'S EXHIBIT NUMBER 6 WHICH IS ALSO
9 ADMITTED INTO EVIDENCE, WHAT DO YOU RECOGNIZE IN THIS PHOTO?

10 A. THIS IS A PHOTOGRAPH OF THE GAS HEATER IN THAT
11 MIDDLE BEDROOM. THIS AREA IS THE LIVING ROOM AREA WHEN YOU
12 ENTER THE HOUSE. YOU PASS THROUGH THIS ROOM. COMING INTO
13 THE BEDROOM, THIS FURNACE OR FLOOR HEATER WOULD BE ON YOUR
14 IMMEDIATE LEFT JUST INSIDE THE DOOR.

15 Q. DID YOU HAVE A DESCRIPTION OF A GAS SPACE HEATER IN
16 THE BEDROOM?

17 A. YES, I DID. THAT WAS ONE OF THE PROMINENT FEATURES
18 I WAS LOOKING FOR IN THE HOUSE.

19 Q. AND -- GO AHEAD.

20 A. AGAIN, THIS IS A LITTLE BIT BETTER SHOT OF THE BLACK
21 WORK BOOT OR WORK SHOES THAT WERE VISIBLE IN THE BEDROOM.

22 Q. THANK YOU. WHAT ELSE DID YOU DO AT THE RESIDENCE OF
23 THE SUSPECT?

24 A. AFTER MY ARRIVAL I INSPECTED THE EXTERIOR OF THE
25 HOUSE, DO A QUICK WALK-AROUND AS IT WERE. I OBSERVED THAT IT

1 WAS A WHITE CINDER BLOCK HOUSE.

2 Q. DID YOU HAVE A DESCRIPTION OF WHAT KIND OF HOUSE IT
3 WAS?

4 A. YES, A WHITE CINDER BLOCK HOUSE. AFTER I WENT OVER
5 THE EXTERIOR OF THE HOUSE, I ENTERED THROUGH THE FRONT DOOR.
6 I EXAMINED THE INTERIOR ROOM BY ROOM. AFTER I HAD DONE A
7 WALK-THROUGH OF THE HOUSE, I PHOTOGRAPHED THE INTERIOR OF THE
8 HOUSE USING A DIGITAL CAMERA. I ALSO PHOTOGRAPHED THE
9 EXTERIOR AND THE VEHICLE. I THEN PROCESSED THE HOUSE FOR
10 LATENT FINGERPRINT IMPRESSIONS. I DUSTED FOR FINGERPRINTS.

11 Q. WERE YOU ABLE TO OBTAIN ANY USABLE FINGERPRINTS?

12 A. NO, I WAS NOT.

13 Q. AND WHY IS THAT?

14 A. I DID COLLECT SEVERAL LIFTS, BUT THEY WERE OF POOR
15 QUALITY. THE REPORT I GOT BACK, AS I STATED, THEY WERE OF NO
16 VALUE. THAT WAS DUE MOSTLY TO THE CONDITION OF THE INTERIOR
17 OF THE HOUSE. THE LEVEL OF FILTH, THE DUST, THE DIRT ON ALL
18 SURFACES JUST MADE THE PRINTS UNUSABLE. I WAS NOT ABLE TO
19 GET A CLEAR, CLEAN LIFT. THAT'S TRUE FOR THE VEHICLE AS
20 WELL.

21 Q. DID YOU ATTEMPT TO GET FINGERPRINTS FROM THE
22 VEHICLE?

23 A. YES, I DID. I PROCESSED FAIRLY EXTENSIVELY.

24 Q. AND WHY WERE YOU UNABLE TO GET USABLE FINGERPRINTS?

25 A. AGAIN, MOST NEWER VEHICLES ARE UPHOLSTERED IN CLOTH

1 OR A TEXTURED VINYL PRODUCT WHICH MAKES PROCESSING FAIRLY
2 DIFFICULT TO BEGIN WITH. I DID PROCESS THAT AND THE SMOOTH
3 PAINTED SURFACES, THE GLASS SURFACES. THEY APPEARED TO BE
4 AGAIN COATED WITH THE FILTH. THERE WAS A LOT OF DUST, DIRT,
5 A FILM CONSISTENT WITH NICOTINE FILM, SPILLED BEVERAGES. IT
6 WAS JUST VERY DIRTY, A LOT OF SURFACE CONTAMINANTS.

7 Q. HOW MUCH TIME HAD GONE BY WHEN YOU INSPECTED THE
8 SUSPECT'S HOME AND VEHICLE?

9 A. TIME IN RELATION TO?

10 Q. IN RELATION TO THE SEXUAL ASSAULT.

11 A. I WAS INFORMED THE SEXUAL ASSAULT TOOK PLACE ON THE
12 2ND -- EVENING OF THE 2ND, MORNING OF THE 3RD OF MARCH AND
13 THIS WAS MARCH THE 25TH. SO 21, 22 DAYS.

14 Q. WERE YOU ABLE TO FIND A WEAPON?

15 A. NO, I WAS NOT.

16 Q. SO HOW MUCH TIME HAD GONE BY SINCE THE INCIDENT?

17 A. AGAIN, THAT WOULD BE 22, 23 DAYS.

18 Q. OKAY. AND WAS THERE ANY D.N.A. INVOLVED IN THIS
19 CASE?

20 A. ARE YOU ASKING IF ANY WAS---

21 Q. IF ANY WAS FOUND.

22 A. ---COLLECTED? NO, MA'AM.

23 Q. AND---

24 A. NOT DURING MY INVESTIGATION THAT I'M AWARE OF.

25 Q. IN YOUR EXPERIENCE IS IT -- DO YOU NORMALLY FIND

1 D.N.A. IN SEXUAL ASSAULT CASES?

2 A. I'VE SEEN IT THAT I CAN RECALL ONE TIME IN 10 YEARS
3 WITH THE AIKEN COUNTY SHERIFF'S OFFICE.

4 MS. BRISBIN: THANK YOU. PLEASE ANSWER ANY
5 QUESTIONS THE DEFENSE HAS.

6 CROSS-EXAMINATION

7 BY MS. BROWN:

8 Q. YOUR TESTIMONY HERE TODAY IS THAT IN THE 10 YEARS
9 WITH THE AIKEN COUNTY SHERIFF'S OFFICE YOU'VE ONLY SEEN ONE
10 CASE INVOLVING A SEXUAL ASSAULT WHERE THERE WAS D.N.A.
11 EVIDENCE COLLECTED AT THE SCENE?

12 A. THAT I WAS INVOLVED WITH I CAN RECALL ONE CASE, ONE
13 SPECIFIC CASE, THAT'S CORRECT.

14 Q. ONLY ONE THAT YOU WERE INVOLVED WITH.

15 A. THAT'S CORRECT.

16 Q. AND HOW MANY INVESTIGATORS ARE THERE AT ANY GIVEN
17 TIME WITH THE AIKEN COUNTY SHERIFF'S OFFICE?

18 A. RIGHT NOW I WOULD GUESS UPWARDS OF 20, 25, NOT
19 COUNTING NARCOTICS.

20 Q. HOW LONG IN THOSE 10 YEARS HAVE YOU BEEN
21 INVESTIGATING CRIMINAL SEXUAL CONDUCT CASES?

22 A. AS AN INVESTIGATOR?

23 Q. YES, SIR.

24 A. SINCE FALL OF '94.

25 Q. AND THERE ARE PROBABLY 20 OTHER INVESTIGATORS AT ANY

1 GIVEN TIME?

2 A. COUNTING JUVENILE, THAT'S CORRECT.

3 Q. NOW, INVESTIGATOR GRAYBEAL, ON THIS DATE---

4 A. I'M SORRY. FALL OF '97. MY APOLOGIES.

5 Q. FALL OF '97---

6 A. YES, MA'AM.

7 Q. ---SINCE YOU'VE BEEN---

8 A. INVESTIGATOR. MY APOLOGIES.

9 Q. THANK YOU. NOW, ON THIS DATE THAT YOU WERE OUT AT
10 MR. WALKER'S RESIDENCE WAS AGAIN MARCH THE 25TH?

11 A. THAT'S CORRECT.

12 Q. AND YOU DID NOT ACTUALLY INTERVIEW MS. SANDERS UNTIL
13 APRIL THE 5TH. IS THAT CORRECT?

14 A. I BELIEVE IT WAS APRIL 5TH. IT WAS SEVERAL DAYS
15 LATER.

16 Q. SO WHEN YOU'RE REFERRING TO THESE DESCRIPTIONS THAT
17 YOU'VE BEEN GIVEN, YOU HAD NOT BEEN GIVEN THOSE DESCRIPTIONS
18 BY MS. SANDERS. IS THAT CORRECT?

19 A. THAT'S CORRECT.

20 Q. YOU WERE RELYING ON THE REPORTS FROM THE ORANGEBURG
21 COUNTY SHERIFF'S OFFICE. IS THAT CORRECT?

22 A. AND THE BRIEFING BY LIEUTENANT REDD. THAT'S
23 CORRECT.

24 Q. THE BRIEFING BY LIEUTENANT REDD. AND HOW HAD --
25 WHERE HAD LIEUTENANT REDD RECEIVED HIS INFORMATION, TO YOUR

1 KNOWLEDGE?

2 A. I BELIEVE HE COMMUNICATED DIRECTLY WITH LIEUTENANT
3 BAMBERG.

4 Q. AND ON WHAT DATE DID YOU ACTUALLY PHYSICALLY RECEIVE
5 THE REPORTS AND THE EVIDENCE IN THIS CASE FROM ORANGEBURG?

6 A. I BELIEVE I RECEIVED ALL THE DOCUMENTS OR MOST OF
7 THE DOCUMENTS AGAIN ON MARCH THE 25TH. LIEUTENANT REDD
8 BRIEFED ME ON HIS KNOWLEDGE OF THE CASE, WHAT HE HAD DONE,
9 AND HE TURNED OVER HIS NOTES AND THE DOCUMENTS HE'D RECEIVED
10 FROM ORANGEBURG COUNTY.

11 Q. AND YOU RECEIVED THE ACTUAL SEXUAL ASSAULT KIT ON
12 APRIL THE 12TH? IS THAT CORRECT?

13 A. I BELIEVE THAT'S THE CORRECT DATE. YES, MA'AM, I
14 RECEIVED THAT ON THE MORNING OF APRIL 12TH.

15 Q. AND YOU ALSO RECEIVED A V.H.S. CASSETTE TAPE?

16 A. I DID.

17 Q. AT THAT TIME?

18 A. I DID.

19 Q. AND WHAT WAS THE CONTENTS OF THAT TAPE?

20 A. THAT TAPE TURNED OUT TO BE UNWATCHABLE. WHETHER IT
21 WAS MIS-RECORDED, WHETHER OUR EQUIPMENT COULDN'T PLAY IT, I
22 DON'T KNOW. THAT WAS IDENTIFIED TO ME AS A DUPLICATE COPY OF
23 THE ORIGINAL TAPE.

24 Q. WAS IT IDENTIFIED TO YOU AS BEING A DUPLICATE COPY
25 OF THE ORIGINAL TAPE?

1 A. YES, MA'AM, IT WAS A DUPLICATE. I WAS NOT GIVEN AN
2 ORIGINAL.

3 Q. AND DID YOU TAKE ANY STEPS TO RECEIVE ANOTHER COPY
4 OF THAT TAPE---

5 A. NO, MA'AM.

6 Q. ---AFTER FINDING IT TO BE UNWATCHABLE?

7 A. NO, MA'AM.

8 Q. WERE YOU AWARE THAT LIEUTENANT BAMBERG WAS GOING TO
9 TAKE THE ORIGINAL TO S.L.E.D. TO HAVE IT CLEANED UP?

10 A. I DON'T RECALL. TO THE BEST OF MY KNOWLEDGE, NO.

11 Q. HAVE YOU EVER VIEWED THE TAPE THAT WAS SHOWN IN
12 COURT YESTERDAY?

13 A. NO, MA'AM.

14 Q. YOU RECEIVED THE SEXUAL ASSAULT COLLECTION KIT ON
15 APRIL THE 12TH.

16 A. THAT IS CORRECT.

17 Q. WHAT DID YOU DO WITH IT?

18 A. I SUBMITTED THAT AS EVIDENCE TO THE AIKEN COUNTY
19 SHERIFF'S OFFICE.

20 Q. WAS IT EVER SENT TO S.L.E.D. FOR TESTING?

21 A. I HAVE NO IDEA.

22 Q. WHOSE RESPONSIBILITY WOULD IT HAVE BEEN TO SEND IT
23 TO S.L.E.D. FOR TESTING?

24 A. THAT WOULD HAVE BEEN THE EVIDENCE CUSTODIAN.

25 Q. AND YOU ARE THE LEAD INVESTIGATOR IN THIS CASE?

1 A. THAT IS CORRECT.

2 Q. CAN YOU TELL BY LOOKING AT YOUR CASE FILE WHETHER OR
3 NOT THIS KIT WAS EVER SENT TO S.L.E.D. FOR TESTING?

4 A. ACCORDING TO MY COPY, IT WAS NOT. IT WAS PLACED IN
5 THE EVIDENCE ROOM OR LOCKER BY LIEUTENANT MCGOWAN AND IT WAS
6 LOGGED IN TO THE EVIDENCE ROOM THAT SAME DAY.

7 Q. NOW, WHOSE RESPONSIBILITY WOULD IT HAVE BEEN TO
8 REQUEST THAT THE EVIDENCE CUSTODIAN SEND THIS KIT TO S.L.E.D.
9 FOR TESTING?

10 A. THAT WOULD BE MINE.

11 Q. AND DID YOU REQUEST THAT THIS KIT BE SENT TO
12 S.L.E.D. FOR TESTING?

13 A. NO. WE HAD NOTHING TO COMPARE IT WITH AT THAT TIME.

14 Q. DID YOU AT ANY POINT RECEIVE THE ABILITY TO GAIN
15 ANYTHING TO COMPARE WITH WHAT YOU HAD?

16 A. IF YOU'RE ASKING DID WE REQUEST A HEARING TO OBTAIN
17 THE DEFENDANT'S D.N.A., NO.

18 Q. YOU DID NOT DO THAT.

19 A. DID NOT.

20 Q. SO YOU DID NOT MAKE ANY ATTEMPT TO DO WHAT WAS
21 NECESSARY IN ORDER TO SEND THIS KIT TO S.L.E.D. FOR TESTING,
22 DID YOU?

23 A. I -- I'M NOT SURE I FOLLOW NECESSARY, BUT IF YOU'RE
24 ASKING DID I GO THROUGH THE STEPS, COLLECT EVIDENCE AND
25 SUBMIT IT, NO, I DID NOT.

1 Q. WELL, THERE ARE NECESSARY STEPS IN ORDER TO COMPLETE
2 A PROCESS; CORRECT?

3 A. YES, MA'AM.

4 Q. AND THOSE STEPS WERE NOT TAKEN, WERE THEY?

5 A. THAT IS CORRECT.

6 Q. I BELIEVE YOU ALSO INDICATED IN YOUR REPORT THAT YOU
7 FOUND A CAP IN THE TRUCK WITH WHAT LOOKED LIKE TO HAVE
8 CAUCASIAN HAIR. IS THAT CORRECT?

9 A. THAT IS CORRECT.

10 Q. AND I BELIEVE YOU REQUESTED KNOWN HEAD HAIR SAMPLES
11 FROM MS. SANDERS---

12 A. YES, MA'AM.

13 Q. ---FOR COMPARISON.

14 A. THAT IS CORRECT.

15 Q. AND DID THAT GO TO S.L.E.D. FOR TESTING?

16 A. TO THE BEST OF MY KNOWLEDGE, IT DID.

17 Q. IT DID.

18 A. I WAS INFORMED THAT HER HAIR OR HER HAIRS WERE
19 COMBED HAIRS. THAT IS, THEY ARE BRUSHED OUT OF HER HAIR AND
20 THAT S.L.E.D. REQUIRED PLUCKED HAIRS TO DO D.N.A. TESTING.

21 Q. WERE THERE NOT PLUCKED HAIRS IN THE SEXUAL ASSAULT
22 KIT?

23 A. I DON'T KNOW. I DON'T KNOW IF IT WAS COMPLETELY
24 COMPLETED, IF YOU WILL ACCEPT THE TERM.

25 Q. WELL, YOU HAD THE S.L.E.D. PROTOCOL KIT IN YOUR

1 POSSESSION, DID YOU NOT?

2 A. YES. I DID NOT BREAK THE SEALS.

3 Q. SO YOU DID NOT SEND THAT KIT WHICH MOST PROBABLY
4 WOULD HAVE HAD PLUCKED HAIRS IN IT TO COMPARE WITH THAT CAP,
5 DID YOU?

6 A. TO THE BEST OF MY KNOWLEDGE, NO, IT WAS NOT SENT TO
7 S.L.E.D.

8 Q. WELL, TO THE BEST OF YOUR KNOWLEDGE YOU'VE JUST
9 INDICATED FROM LOOKING AT YOUR REPORT THAT THAT KIT WAS NOT
10 SENT.

11 A. ACCORDING TO MY REPORT. I DON'T KNOW IF IT WAS
12 SUBSEQUENTLY SENT TO S.L.E.D. OR NOT. TO THE BEST OF MY
13 KNOWLEDGE, IT WAS NOT.

14 Q. WELL, IF IT HAD BEEN SENT TO S.L.E.D. YOU WOULD HAVE
15 DOCUMENTATION OF THAT; CORRECT?

16 A. SHOULD.

17 Q. SHOULD.

18 A. SHOULD.

19 Q. BUT YOU DO NOT HAVE SUCH DOCUMENTATION, DO YOU?

20 A. THAT IS CORRECT. FOR THE RECORD, I WAS GONE ABOUT
21 THREE MONTHS, THREE AND A HALF MONTHS, FOLLOWING THIS. WHEN
22 I RETURNED, I DIDN'T HAVE ANY DOCUMENTATION THAT IT HAD BEEN
23 SENT.

24 Q. WELL, WHOSE RESPONSIBILITY WOULD IT HAVE BEEN TO
25 FOLLOW UP WITH THIS CASE DURING THE THREE AND A HALF MONTHS

1 THAT YOU WERE GONE?

2 A. I HAVE NO IDEA. I WAS OUT OF TOWN ON A FAMILY
3 EMERGENCY. IF ANYTHING PRESSING HAD COME UP, I WOULD PRESUME
4 THAT ONE OF MY SUPERVISORS WOULD EITHER HANDLE IT OR DELEGATE
5 IT.

6 Q. SO ESSENTIALLY THAT KIT SAT IN THE EVIDENCE LOCKER
7 FOR THREE AND A HALF MONTHS WITH NO ATTEMPTS FOR ANYTHING TO
8 BE DONE WITH IT.

9 A. TO THE BEST OF MY KNOWLEDGE, THAT'S -- THAT'S
10 ACCURATE.

11 Q. NOW, WHEN YOU MET WITH MS. SANDERS ON APRIL THE 5TH,
12 SHE GAVE YOU A WRITTEN STATEMENT. IS THAT CORRECT?

13 A. YES, SHE DID.

14 Q. AND SHE DID NOT MENTION A GUN IN THAT WRITTEN
15 STATEMENT, DID SHE?

16 A. IF YOU WOULD BEAR WITH ME. I DON'T RECALL SPECIFIC
17 MENTION OF IT. LET ME GLANCE OVER THE REPORT OR, EXCUSE ME,
18 OVER THE STATEMENT. I DON'T SEE ANY MENTION OF IT. I DON'T
19 RECALL ANY MENTION OF IT.

20 Q. AND SHE GAVE YOU A FAIRLY DETAILED WRITTEN STATEMENT
21 ABOUT WHAT HAPPENED, DID SHE NOT?

22 A. FAIRLY DETAILED, YES.

23 Q. BUT THERE WAS NO MENTION OF A GUN IN THAT STATEMENT.

24 A. NO.

25 Q. WHERE ALL DID YOU PROCESS FOR PRINTS IN THE BEDROOM?

1 A. IN THE BEDROOM? I BELIEVE I ATTEMPTED SOME ON THE
2 END TABLE, THE HEADBOARD OF THE BED, SOME OF THE SMOOTHER
3 WOODEN SURFACES WHICH I DIDN'T HAVE ANY SUCCESS WITH. I
4 BELIEVE I PROCESSED SOME OF THE CONTENTS OF THE GARBAGE CAN
5 NEXT TO THE BED. WHATEVER SMOOTH SURFACE THAT I -- I DON'T
6 -- WITHOUT LOOKING AT THE CARDS, I COULDN'T TELL YOU WHAT
7 EXACT SURFACES I RECOVERED PRINTS FROM, BUT ANYTHING IN THAT
8 MIDDLE BEDROOM OR CLOSE PROXIMITY THAT APPEARED LIKELY TO
9 HAVE BEEN TOUCHED BY ANYONE I---

10 Q. DID YOU PROCESS THE ASHTRAY?

11 A. NO.

12 Q. WHY NOT?

13 A. IT WAS FILTHY.

14 Q. HAD YOU BEEN INFORMED THAT SHE HAD USED THAT
15 ASHTRAY?

16 A. I DON'T RECALL IF SHE SPECIFICALLY MENTIONED IT. I
17 KNOW SHE SMOKED.

18 Q. DID SHE RECALL -- DID SHE MENTION TO YOU THAT SHE
19 HAD SMOKED ON THAT EVENING?

20 A. I DON'T RECALL.

21 Q. DID YOU -- WHAT -- YOU SAID YOU PROCESSED SOME ITEMS
22 THAT WERE IN THAT TRASH CAN.

23 A. CANS, ANYTHING THAT WOULD BE SMOOTH AND RELATIVELY
24 CLEAN THAT SOMEONE MAY HAVE HANDLED. THERE MAY HAVE BEEN A
25 PACK OF CIGARETTES THAT I PROCESSED. AGAIN, I DON'T RECALL

1 SPECIFIC CONTENTS.

2 Q. DID YOU PROCESS A BEER CAN?

3 A. YES, MA'AM.

4 Q. AND HOW MANY BEER CANS DID YOU FIND IN THE GARBAGE
5 CAN?

6 A. TWO OR THREE.

7 Q. AND YOU PROCESSED ALL FOR PRINTS?

8 A. I DON'T KNOW IF I PROCESSED ALL OF THEM. THE ONES
9 AT THE BOTTOM MAY HAVE BEEN WET. I WOULDN'T HAVE PROCESSED
10 IT IF THEY WERE STICKY OR WET.

11 Q. NOW, I BELIEVE YOU STATED IN YOUR REPORT THAT YOU
12 USED SOME KIND OF METHOD TO DETERMINE IF THERE WAS THE
13 PRESENCE OF D.N.A. IN THE FORM OF SPERM OR SEMEN ON THE
14 SHEETS. IS THAT CORRECT?

15 A. THE SHEETS AND THE LIVING ROOM, WHAT I DID -- SEMEN
16 WILL GENERALLY FLUORESCCE UNDER ULTRAVIOLET RADIATION OR
17 ULTRAVIOLET LIGHT. ONE OF THE METHODS THAT SOMETIMES IS
18 EMPLOYED IN THESE CASES: WE'LL TURN OFF THE LIGHTS. I'VE
19 GOT A SMALL ULTRAVIOLET LIGHT OR A WOOD'S LAMP AND YOU HOLD
20 IT CLOSE TO ANYTHING THAT MAY BE SOILED WITH -- POTENTIALLY
21 SOILED WITH SEMEN, AND GENERALLY IF IT'S NOT TOO DEGRADED IT
22 WILL FLUORESCCE OR GLOW. I PROCESSED I BELIEVE THE BED AND
23 SOME OF THE LIVING ROOM FURNITURE WITH THAT.

24 Q. AND YOU HAVE PROCESSED THAT BEFORE IN OTHER CASES;
25 CORRECT?

1 A. OCCASIONALLY. USUALLY WE LET FORENSICS DO THAT, BUT
2 IT'S A GOOD PRELIMINARY PROCEDURE.

3 Q. AND DID ANYONE FROM FORENSICS COME OUT TO THE HOUSE
4 TO PROCESS THE SCENE?

5 A. NO. THERE WAS NOTHING ADDITIONAL TO DO BEYOND WHAT
6 I DID, THE DUSTING FOR PRINTS AND THE USING THE WOOD'S LAMP.

7 Q. I'M SHOWING YOU WHAT'S BEEN INTRODUCED INTO EVIDENCE
8 AS STATE'S EXHIBIT NUMBER 5 AND THIS IS THE PICTURE---

9 A. I'M SORRY. WOULD YOU---

10 Q. ---OF THE BED?

11 A. ---MIND IF I STEPPED DOWN?

12 Q. SURE. PLEASE. NOW, IS THIS PICTURE A FAIR AND
13 ACCURATE REPRESENTATION OF HOW THE BED WAS WHEN YOU
14 ORIGINALLY ENTERED THE HOUSE?

15 A. IT IS.

16 Q. AND LET ME CLARIFY. YOU ENTERED THE HOUSE UPON THE
17 CONSENT OF MR. WALKER; IS THAT CORRECT?

18 A. THAT'S CORRECT, BOTH VERBAL AND WRITTEN STATEMENTS.

19 Q. NOW, YOU SAID THAT YOU---

20 THE COURT: MS. BROWN, CAN YOU AND THE WITNESS
21 SWITCH PLACES AND LET HIM TALK BACK TOWARDS---

22 MS. BROWN: CERTAINLY, YOUR HONOR.

23 THE COURT: ---THE COURT REPORTER?

24 MS. BROWN: CERTAINLY.

25 THE COURT: THANK YOU.

1 BY MS. BROWN:

2 Q. YOU -- FOR LACK OF KNOWING THE TERMINOLOGY, IS IT
3 CORRECT TO SAY THAT YOU FLUOROSCOPED THIS BED, USED THE
4 ULTRAVIOLET LIGHT?

5 A. YES.

6 Q. OKAY. SO YOU USED THE ULTRAVIOLET LIGHT ESSENTIALLY
7 SHOWN -- I GUESS IT'S LIKE A FLASHLIGHT WITH A SPECIAL COVER
8 OR---

9 A. IT'S---

10 Q. ---HELP ME UNDERSTAND.

11 A. IT'S A SMALL FLUORESCENT LANTERN. IT HAS A -- IN
12 PLACE OF A REGULAR WHITE FLUORESCENT TUBE LIKE YOU NORMALLY
13 SEE, IT'S GOT AN ULTRAVIOLET TUBE MOUNTED ON THE SIDE THAT'S
14 MAYBE EIGHT INCHES LONG. WHAT YOU WOULD NORMALLY DO: YOU
15 WOULD TURN THE LIGHTS OFF. AGAIN, THIS IS SORT OF A
16 PRELIMINARY EXAMINATION. IT'S VERY LOW POWER. YOU TURN THE
17 LIGHTS OFF AND YOU WOULD HOLD IT SEVERAL INCHES UP OFF WHAT
18 YOU WERE EXAMINING. IN THIS CASE IT WOULD BE THE MATTRESS,
19 BED CLOTHES, ET CETERA, AND YOU WOULD JUST -- YOU WOULD GO
20 BACK AND FORTH ALMOST LIKE YOU WERE IRONING, HOLDING IT A FEW
21 INCHES OFF, AND IF YOU SEE ANYTHING THAT GLOWED OR FLUORESCED
22 YOU WOULD INVESTIGATE FURTHER, EITHER COLLECT THAT FOR
23 EXAMINATION OR HAVE FORENSICS COME OUT AND COLLECT IT.

24 Q. NOW, SO YOU SHOWED THAT LIGHT ON THE TOP OF THIS
25 BED?

1 A. AS I RECALL, I DID THE BED COVERS. THEN I ROLLED
2 THE BED COVERS OFF AND INSPECTED THE MATTRESS ITSELF.

3 Q. DID YOU EXPECT EACH INDIVIDUAL LAYER?

4 A. AS I RECALL, YES, THAT WOULD BE NORMAL PROCEDURE.

5 Q. THANK YOU. AND NOTHING IMMEDIATELY FLUORESCED; IS
6 THAT CORRECT?

7 A. NOTHING THAT WAS CONSISTENT WITH THE HISTORY AND
8 WITH SEMEN. THERE WERE A FEW SMALL AREAS IN THE LIVING ROOM
9 I BELIEVE WE DETERMINED WERE LINT OR SOME OTHER LIGHT-COLORED
10 OBJECT. NOTHING CONSISTENT WITH SEMEN.

11 Q. OKAY. AND AFTER EXAMINING THAT BED WITH THOSE
12 BEDCLOTHES, DID YOU THEN TAKE THOSE BEDCLOTHES INTO EVIDENCE
13 AND SEND THEM TO S.L.E.D.?

14 A. NO, THERE WAS NO REASON TO SUBMIT THEM. THERE WAS
15 NOTHING FOUND IN THERE, YOU KNOW, FOR FURTHER EXAMINATION.

16 Q. COULD S.L.E.D. HAVE FOUND HAIRS EMBEDDED IN THOSE
17 SHEETS?

18 A. I HAVE NO IDEA. IF THERE WAS SOME THERE, THEY MAY
19 HAVE. BUT GIVEN THE TIME AND EVERYTHING ELSE, I HAVE NO WAY
20 OF KNOWING THAT.

21 Q. IS IT POSSIBLE?

22 A. IF THEY WERE THERE, I'M SURE IT WOULD BE; YES.

23 Q. DID YOU CONSIDER TAKING THOSE SHEETS INTO EVIDENCE
24 AND SENDING THEM FOR TESTING?

25 A. NO. AGAIN, WE HAD NO WAY OF EVEN KNOWING IF THAT

1 WAS THE SAME BEDCLOTHES THAT WERE ON THERE WHEN THIS INCIDENT
2 OCCURRED. THERE WAS NOTHING TO WARRANT FURTHER FORENSIC
3 EXAMINATION.

4 Q. WELL, WITH THE CONDITION OF THIS HOUSE AND THE
5 CONDITION OF THIS BED, WAS IT APPARENT TO YOU THAT -- I MEAN,
6 WOULD YOU HAVE THOUGHT THAT THESE SHEETS HAD BEEN CHANGED IN
7 ANY RECENT---

8 MS. BRISBIN: CALLS FOR SPECULATION, YOUR HONOR.

9 MS. BROWN: YOUR HONOR, I'M ASKING HIM TO TESTIFY AS
10 TO HIS OBSERVATION.

11 THE COURT: ALL RIGHT. WELL, HE CAN TESTIFY AS TO
12 HIS OBSERVATION. HE CAN'T TESTIFY AS TO WHAT MAY OR MAY NOT
13 HAPPEN IN THE FUTURE.

14 MS. BROWN: YES, YOUR HONOR.

15 BY MS. BROWN:

16 Q. YOUR OBSERVATION OF THIS, DID IT LOOK LIKE THESE
17 SHEETS HAD BEEN RECENTLY CHANGED?

18 A. CHANGED? I HAVE NO IDEA. THEY DID NOT APPEAR TO
19 HAVE BEEN RECENTLY WASHED.

20 Q. DID THEY APPEAR TO BE CLEAN?

21 A. NO.

22 Q. SO YOU JUST DIDN'T CONSIDER TAKING THOSE SHEETS IN
23 INTO EVIDENCE.

24 A. I'M NOT SURE WHAT YOU MEAN BY CONSIDER, BUT I DIDN'T
25 SEE ANYTHING THAT WOULD WARRANT ME TAKING THEM IN. THERE WAS

1 NOTHING -- IF THAT ANSWERS YOUR QUESTION.

2 Q. DID YOU -- I BELIEVE YOU TESTIFIED THAT YOU SHONE
3 THE LIGHT ON THE MATTRESS ITSELF.

4 A. YES. AS FAR AS I KNOW, THAT -- THAT IS NORMAL
5 PROCEDURE.

6 Q. DID YOU FLIP THE MATTRESS AND CHECK THE UNDERSIDE?

7 A. NOT THAT I RECALL.

8 Q. WOULD THAT HAVE BEEN NORMAL PROCEDURE?

9 A. NOT USUALLY.

10 Q. WHY NOT?

11 A. IT'S NOT THAT TERRIBLY OFTEN -- I WOULDN'T PRESUME
12 IT'S THAT OFTEN THAT PEOPLE FLIP THE MATTRESS OVER. USUALLY
13 WE'LL LIFT THE MATTRESS UP AND -- AND GIVE A QUICK PEEK, MAKE
14 SURE THERE'S NOTHING IN THERE THAT WOULD HURT US LIKE A
15 WEAPON OR BLOODSTAINS OR ANYTHING. SEEMS LIKE WE DID LIFT
16 THE MATTRESS. THERE ARE TWO BEDS IN THERE; WE DID INSPECT
17 THEM. AND IT SEEMS TO ME WE LOOKED UNDER THE MATTRESS, BUT I
18 COULDN'T... I COULDN'T TESTIFY TO WHETHER WE PUT A WOOD'S
19 LAMP ON THERE. I DON'T BELIEVE WE DID. I DON'T THINK THERE
20 WAS ANY---

21 Q. THIS DIDN'T SEEM TO BE THE KIND OF HOUSE WHERE THE
22 MATTRESS-FLIPPING INSTRUCTIONS WOULD HAVE BEEN FOLLOWED ON A
23 REGULAR BASIS. IS THAT WHAT YOU'RE SAYING?

24 A. I DON'T KNOW IF I WOULD PRESUME THAT FAR BUT I -- I
25 DON'T RECALL THE MATTRESS BEING FLIPPED.

1 Q. NOW, SPEAKING OF WEAPONS, DID YOU LOOK FOR A WEAPON?

2 A. WE DID A CURSORY INSPECTION OF THE HOUSE. WE DIDN'T
3 -- IF YOU'RE ASKING DID WE MAKE A SPECIFIC SEARCH FOR ONE,
4 NO. THAT'S PART OF THE GENERAL -- I CAN'T THINK OF WHAT THE
5 CORRECT WORD IS. WELL, NORMALLY WE WILL -- WE'LL GO INTO A
6 ROOM. WE'LL TAKE NOTE OF WHAT'S THERE. WE DIDN'T RECEIVE
7 SPECIFIC PERMISSION FROM YOUR CLIENT TO GO THROUGH ALL OF THE
8 DRAWERS, MOVE FURNITURE, ET CETERA. WE DIDN'T GO TO THAT
9 LEVEL.

10 Q. BUT YOU RECEIVED FROM HIM CONSENT TO SEARCH THE
11 RESIDENCE LOCATED AT 228 POPLAR STREET, SALLEY, SOUTH
12 CAROLINA.

13 A. THAT IS CORRECT.

14 Q. NOW, THE CONSENT THAT HE SIGNED DIDN'T SAY ANYTHING
15 SPECIFICALLY ABOUT, "THAT SHALT NOT GO THROUGH MY DRAWERS,"
16 DID IT?

17 A. THAT'S CORRECT. I DON'T RECALL IF WE WERE AWARE OF
18 THE GUN AT THAT POINT. NORMALLY -- AND YOUR CLIENT WAS WITH
19 US. WHAT WE WOULD DO, WE WOULD -- IS GIVE A QUICK WALK-
20 THROUGH THROUGH THE ROOM, MAKE SURE THERE'S NO WEAPON,
21 NOTHING THAT HE COULD -- WITHIN HIS IMMEDIATE AREA OF CONTROL
22 TO HURT US, ANYTHING OF OBVIOUS EVIDENTIARY VALUE HE COULD
23 DESTROY. YOU GO THROUGH YOUR ROOMS AND YOU BASICALLY BLOCK
24 THEM OUT IN A GRID AND LOOK.

25 Q. SO NOWHERE IN THE BRIEFING THAT YOU RECEIVED FROM

1 YOUR SUPERVISOR WERE YOU GIVEN INFORMATION THAT A GUN WAS
2 ALLEGED TO HAVE BEEN USED?

3 A. I DON'T RECALL. I DON'T RECALL.

4 Q. HAD YOU RECEIVED SUCH INFORMATION, WOULD YOU HAVE
5 SPECIFICALLY LOOKED FOR THE WEAPON?

6 A. I THINK THE FIRST THING I WOULD HAVE DONE AND I
7 BELIEVE WAS DONE JUST AS A GENERAL PROCEDURE: ARE THERE ANY
8 WEAPONS IN THE HOUSE? I BELIEVE HIS RESPONSE WAS NEGATIVE
9 BECAUSE OTHERWISE WE WOULD ASK WHERE THOSE WEAPONS ARE, WHAT
10 IS IT, AND PROCEED FROM THERE.

11 Q. BUT IF YOU'RE SPECIFICALLY LOOKING FOR A WEAPON, YOU
12 DON'T TAKE A PERSON AT THEIR WORD WHEN THEY SAY THERE'S NO
13 WEAPON IN THE HOUSE, DO YOU?

14 A. NO.

15 Q. SO IT'S SAFE TO SAY YOU WERE NOT SPECIFICALLY
16 LOOKING FOR A WEAPON AT THIS RESIDENCE; CORRECT?

17 A. AGAIN, I DON'T RECALL SPECIFICALLY LOOKING FOR A
18 WEAPON. IT CERTAINLY IS NOT ILLEGAL AS LONG AS IT'S NOT --
19 IF ONE WAS MENTIONED, WE WOULD HAVE MADE A SPECIFIC SEARCH
20 FOR IT, BUT I DON'T RECALL THAT.

21 Q. AT ANY RATE YOU DIDN'T FIND ONE.

22 A. THAT IS CORRECT.

23 Q. AND YOU DIDN'T FIND ONE IN THE VEHICLE.

24 A. THAT IS CORRECT.

25 Q. NOW, YOU HAD BEEN GIVEN VIA THE REPORTS FROM

1 ORANGEBURG A DESCRIPTION OF CLOTHING THAT THE ASSAILANT WAS
2 TO HAVE WORN; CORRECT?

3 A. CORRECT.

4 Q. DID YOU TAKE INTO EVIDENCE ANY CLOTHING?

5 A. FROM THE RESIDENCE? NO.

6 Q. DID YOU LOOK FOR ANY CLOTHING?

7 A. YES. THERE WAS CLOTHING EVERYWHERE.

8 Q. DID YOU FIND ANY CLOTHING THAT WAS CONSISTENT WITH
9 THE DESCRIPTION GIVEN IN THE REPORTS FROM ORANGEBURG?

10 A. NO.

11 Q. DID YOU FIND ANYTHING THAT YOU TOOK INTO EVIDENCE
12 THAT WAS BELIEVED TO HAVE POSSIBLY BEEN THE BLINDFOLD?

13 A. YES, MA'AM. I BELIEVE THAT WOULD HAVE BEEN THE
14 KNITTED WOOL HAT. LET ME CHECK MY CHAIN OF CUSTODY; I
15 BELIEVE THAT WAS THE ONLY THING. THAT WAS A POLO BRAND KNIT
16 CAP THAT YOU HAD MENTIONED EARLIER THAT CONTAINED THE -- WHAT
17 APPEARED TO BE CAUCASIAN HEAD HAIRS.

18 Q. NOW, I BELIEVE IN HER STATEMENTS IN THE REPORTS FROM
19 ORANGEBURG SHE REFERRED TO HAVING HAD A BLINDFOLD TIED AROUND
20 HER HEAD; CORRECT?

21 A. YES, MA'AM.

22 Q. AND SO YOU TOOK INTO EVIDENCE A KNITTED CAP---

23 A. YES.

24 Q. ---THAT COULD HAVE BEEN PULLED OVER HER HEAD AND
25 OVER HER EYES.

1 A. PULLED OR TIED OR AFFIXED OVER HER FACE. PEOPLE
2 SOMETIMES PRESUME THEY KNOW WHAT SOMETHING IS, I GUESS YOU'D
3 SAY. IF SHE COULDN'T SEE IT -- GIVEN THE FACT THAT MR.
4 WALKER WOULDN'T HAVE, YOU KNOW, STRAIGHT HEAD HAIRS IN THE
5 CAP, IT APPEARED NOT TO BELONG IN THE TRUCK. SO WE TOOK IT
6 FOR FURTHER EVALUATION.

7 Q. WELL, A PERSON CERTAINLY KNOWS THE DIFFERENCE
8 BETWEEN SOMETHING BEING PULLED ON TOP OF THEIR HEAD VERSUS
9 SOMETHING BEING WRAPPED AROUND THEIR EYES AND TIED IN THE
10 BACK OF THEIR HEAD, WOULD THEY NOT?

11 A. I WASN'T THE PERSON; I COULDN'T ANSWER THAT. IF SHE
12 IS UNDER STRESS, IF SHE'S AFRAID, I DON'T KNOW THAT SHE WOULD
13 KNOW EXACTLY WHAT IT WAS THAT WAS PUT OVER HER OR AROUND HER.

14 Q. OKAY. SO---

15 A. IT'S JUST -- IT'S GOOD -- GOOD PROCEDURE IF
16 SOMETHING LOOKS CLOSE, YOU SEIZE IT AND YOU EVALUATE IT. IT
17 MAY OR MAY NOT BE OF ANY VALUE.

18 Q. SO YOU DIDN'T FIND ANYTHING IN THE HOUSE THAT
19 MATCHED THE DESCRIPTION OF SOMETHING BEING TIED AROUND HER
20 EYES AND AFFIXED IN THE BACK OF THE HEAD, DID YOU?

21 A. NO, MA'AM.

22 Q. AND YOU DIDN'T TAKE ANYTHING INTO EVIDENCE.

23 A. OTHER THAN WHAT I MENTIONED EARLIER, THE LIFT CARDS
24 AND THE KNIT CAP, THAT IS CORRECT.

25 Q. WHEN DID YOU FIND THE KNIT CAP IN RELATION TO WHEN

1 YOU STARTED YOUR SEARCH? DID YOU SEARCH THE TRUCK FIRST?

2 A. NO, SEARCHED THE -- AGAIN, WE MADE A WALK-THROUGH OF
3 THE ENTIRE PREMISES AND PHOTOGRAPHED AND PROCESSED THE
4 INTERIOR OF THE HOUSE. THEN WE MOVED OUTSIDE TO THE VEHICLE.

5 Q. AND THEN YOU PHOTOGRAPHED AND PROCESSED THE VEHICLE.

6 A. THAT IS CORRECT.

7 Q. AND IT WAS AT THAT -- AT THAT POINT IN TIME THAT YOU
8 FOUND THIS CAP.

9 A. YES, MA'AM, DURING PROCESSING OF THE VEHICLE.

10 Q. SO DID YOU LOOK ANY FURTHER FOR A BANDANA-TYPE---

11 A. YES MA'AM.

12 Q. ---PIECE OF CLOTH?

13 A. YES, MA'AM.

14 Q. AND YOU FOUND NOTHING.

15 A. THAT IS CORRECT.

16 Q. AND, AGAIN, YOU FOUND NO CLOTHING THAT MATCHED THE
17 DESCRIPTION.

18 A. NO, MA'AM.

19 Q. BUT NOTHING ELSE LOOKED LIKE IT HAD BEEN TIDIED UP
20 OR CLEANED UP IN QUITE SOMETIME. IS THAT CORRECT?

21 A. NOTHING IN THE HOUSE. I DON'T KNOW WHAT IT LOOKED
22 LIKE AT THE TIME THIS INCIDENT OCCURRED.

23 Q. WELL, YOU KNEW WHAT THE DESCRIPTION WAS.

24 A. I KNOW WHAT THE DESCRIPTION WAS AND IT WAS
25 CONSISTENT: VERY UNKEMPT, VERY CLUTTERED, AND VERY DIRTY.

1 Q. IN FACT, YOU HAD A RATHER DETAILED DESCRIPTION IN
2 THE REPORTS OF WHAT YOU WERE LOOKING FOR IN THE HOUSE. ISN'T
3 THAT CORRECT?

4 A. CORRECT.

5 Q. IS IT USUAL OR UNUSUAL FOR YOU TO RECEIVE SUCH A
6 DETAILED DESCRIPTION OF A -- OF A RESIDENCE OR A ROOM?

7 A. IT VARIES CASE TO CASE. I'VE RECEIVED SOME THAT'S
8 GOOD AND BETTER, AND I'VE RECEIVED SOME WHERE PEOPLE DON'T
9 KNOW IF IT'S A HOUSE, TRAILER, BARN. IT DEPENDS ON THE
10 VICTIM OR THE WITNESS.

11 Q. BUT SHE WAS FAIRLY OBSERVANT ABOUT THAT ROOM.

12 A. YES.

13 Q. AND FAIRLY SPECIFIC ABOUT THAT ROOM.

14 A. YES, SHE WAS.

15 Q. NOW, WHEN YOU -- WHEN YOU INTERVIEWED MS. SANDERS ON
16 APRIL THE 5TH, DID SHE MENTION THAT IT HAD BEEN DARK WHILE
17 SHE WAS IN THAT ROOM?

18 A. I DON'T BELIEVE SHE MENTIONED THAT SPECIFICALLY IN
19 HER STATEMENT, BUT I DO RECALL HER MAKING SOME REFERENCE TO
20 IT BEING IN THE EVENING OR HOURS OF NIGHTTIME.

21 Q. DO YOU RECALL HER MENTIONING THAT NO LIGHT WAS
22 TURNED ON?

23 A. I DON'T RECALL LIGHT ONE WAY OR THE OTHER.

24 Q. DID SHE MENTION ANYTHING TO YOU ABOUT THE HEATER?

25 A. SHE DESCRIBED ITS LOCATION. IF YOU'RE ASKING ME

1 WHETHER IT WAS TURNED ON OR NOT, I DON'T RECALL HER SAYING.

2 Q. WOULD YOU HAVE ASKED HER THAT?

3 A. NOT NORMALLY.

4 Q. DID YOU PROCESS THE BATHROOM FOR FINGERPRINTS?

5 A. IF I DID, IT WAS VERY, VERY CURSORY. AGAIN, THE
6 WHOLE HOUSE, GIVEN THE CONDITION, THE LEVEL OF FILTH, THERE
7 WOULD HAVE BEEN VERY LITTLE I COULD HAVE PROCESSED.

8 Q. WELL, LET ME ASK YOU THIS, INVESTIGATOR GRAYBEAL.
9 YOU HAVE ALLUDED TO THE FACT THAT YOU ARE NOT SPECIFICALLY
10 TRAINED IN FORENSIC INVESTIGATION. IS THAT CORRECT?

11 A. I DON'T KNOW THAT -- DEPENDS ON WHAT -- WHAT LEVEL.
12 I'M NOT A FORENSICS TECHNICIAN. I HAVE RECEIVED SPECIFIC
13 TRAINING IN VARIOUS ASPECTS OF FORENSICS.

14 Q. WELL, LET ME PUT IT THIS WAY. YOU MADE MENTION THAT
15 THERE IS A FORENSICS TEAM ATTACHED WITH THE AIKEN COUNTY
16 SHERIFF'S OFFICE. CORRECT?

17 A. YES, MA'AM.

18 Q. AND THAT IN AN APPROPRIATE CASE, AN INVESTIGATOR
19 SUCH AS YOURSELF CAN REQUEST THAT THAT TEAM COME AND FURTHER
20 PROCESS THE SCENE.

21 A. CORRECT.

22 Q. AND THEY HAVE DIFFERENT EQUIPMENT?

23 A. TO AN EXTENT, YES. WHAT WE WOULD CALL THEM FOR
24 WOULD BE SOMETHING THAT -- EITHER TAKE AN IMPRESSION OF A
25 TIRE TRACK OR FOOT TRACK BECAUSE WE DON'T NORMALLY KEEP

1 CASTING MEDIUM IN THE CAR, A LARGE FOOTPRINT OR HAND PRINT IN
2 THE RESIDENCE. WE USE SOMETHING CALLED A GEL LIFT WHICH HAS
3 TO BE KEPT COOL THAT WE DON'T NORMALLY KEEP IN THE CARS. FOR
4 EXAMPLE, IF WE'D FOUND WHAT APPEARED TO BE SEMEN ON A WALL,
5 WE WOULD EITHER SWAB THAT OR WE WOULD, YOU KNOW, TAKE A --
6 DEPENDING ON WHAT THE WALL IS, WE MAY REMOVE A SECTION OF THE
7 WALL WHICH I DON'T KEEP, YOU KNOW, SAWS AND THAT KIND OF
8 TOOLS IN THE -- IN THE CAR.

9 Q. HOW MANY DIFFERENT TECHNIQUES ARE THERE FOR LIFTING
10 LATENT FINGERPRINT IMPRESSIONS?

11 A. PROBABLY DOZENS.

12 Q. AND HOW MANY ARE YOU SPECIFICALLY TRAINED IN?

13 A. YOU CAN PROCESS WITH DIFFERENT POWDERS, LIFT WITH
14 TAPE. YOU CAN USE SOMETHING CALLED -- I WAS TRYING TO
15 REMEMBER WHAT IT'S CALLED. I DON'T NORMALLY KEEP IT. A
16 SILICONE PRODUCT? YOU CAN PHOTOGRAPH THEM. SOMETHING WE
17 WOULDN'T NORMALLY USE IN THE FIELD: YOU CAN COLLECT THE ITEM
18 ITSELF, BRING IT TO THE SHERIFF'S OFFICE. IT CAN BE FUMED
19 WITH A SUPER GLUE. IT COULD BE FUMED WITH IODINE. IT COULD
20 BE SPRAYED WITH AN ANHYDRANT (PHONETIC). I MEAN, THERE'S --
21 THERE'S DOZENS, DEPENDING ON WHAT THE SURFACE IS, WHAT YOU'RE
22 TRYING TO COLLECT FROM IT. YOU CAN USE MAGNETIC POWDERS.
23 YOU CAN USE GLUE.

24 Q. IS IT POSSIBLE THAT HAD ANY OF THOSE OTHER METHODS
25 BEEN USED THAT DIFFERENT IMPRESSIONS COULD HAVE BEEN LOCATED

1 AND LIFTED?

2 A. I WOULD SAY THAT WOULD BE UNLIKELY---

3 Q. IS IT POS---

4 A. ---FROM WHAT I SAW.

5 Q. IS IT POSSIBLE?

6 A. BEING AS HOW I CAN'T TELL YOU WHAT WAS OR WASN'T
7 THERE, I'M SURE IF THEY WERE THERE IT WOULD BE POSSIBLE THEY
8 COULD BE LIFTED.

9 Q. BUT YOU DID NOT EXPLORE THAT POSSIBILITY---

10 A. I'M NOT SURE---

11 Q. ---TO CHECK.

12 A. ---WHAT YOU MEAN BY THAT.

13 Q. WELL, YOU DIDN'T TAKE THE ITEM IN TO BE PROCESSED AT
14 THE SHERIFF'S OFFICE, DID YOU?

15 A. WHICH ITEM ARE YOU REFERRING TO?

16 Q. WELL, LET'S PICK ONE. THE BEDSIDE TABLE.

17 A. THERE WOULD BE NO REASON TO. I PROCESSED THAT AT
18 THE SCENE. WELL, POWDER WILL SHOW -- SAY I TOUCH THE JUDGE'S
19 BENCH HERE AND I APPLY A FINGERPRINT POWDER. IT WILL SHOW
20 THAT THERE'S SOMETHING THERE. NOW, WHETHER IT'S ANYTHING
21 USABLE, WHETHER IT'S DETAILED OR NOT, YOU KNOW, I DON'T KNOW.

22 ON THE OTHER HAND, IF THERE'S -- IF IT'S DIRTY, IF
23 SOMEONE SPILLED A CO-COLA OR WHATEVER, YOU'LL JUST GET A BIG
24 GLOB AND YOUR BRUSH WILL STICK TO IT. THERE'S NOTHING USABLE
25 OF ANYTHING -- OF ANY NATURE. THAT'S JUST GOING TO BE A

1 CONTAMINATED AREA OF GOO..

2 IF WE HAD FOUND SOMETHING ON AN IRREGULAR SURFACE,
3 SOMETHING THAT COULD NOT BE PROCESSED AT THE SCENE, YOU KNOW,
4 THAT WAS POTENTIALLY A USEFUL BIT OF EVIDENCE, A FINGERPRINT
5 OR PALM PRINT, SOMETHING LIKE THAT CERTAINLY COULD BE
6 COLLECTED, BUT THERE WAS NOTHING FOUND AT THE SCENE THAT I
7 WOULD HAVE ANY REASON TO COLLECT.

8 Q. AND AGAIN NOTHING WAS SENT TO S.L.E.D. FOR
9 EVALUATION EITHER. IS THAT CORRECT?

10 A. OTHER THAN WHAT -- WHAT YOU ASKED ME ABOUT BEFORE,
11 NOT TO THE BEST OF MY KNOWLEDGE, NO.

12 Q. AND AS FAR AS YOU KNOW ABOUT THE CAP, THAT WAS NOT
13 FURTHER TESTED BECAUSE THE PLUCKED HEAD HAIRS WERE NOT THEN
14 SENT UP TO S.L.E.D. FOR COMPARISON. IS THAT CORRECT?

15 A. TO THE BEST OF MY KNOWLEDGE, YES.

16 Q. TO THE BEST OF YOUR KNOWLEDGE YES OR NO?

17 A. THE CAP WAS SENT TO S.L.E.D. YOU ASKED ME...

18 Q. YOU TESTIFIED EARLIER THE CAP WAS SENT---

19 A. LET -- YOU KIND OF CONFUSED ME WITH THE QUESTION.

20 TO THE BEST OF MY KNOWLEDGE, THERE WAS NO ADDITIONAL TESTING
21 DONE TO THAT CAP OTHER THAN WHAT YOU HAD ASKED ABOUT WITH THE
22 HEAD HAIRS. THE INITIAL EXAMINATION WAS DONE. IT WAS
23 COMPARED TO THE COMBED HAIRS WHICH WERE UNSUITABLE FOR
24 COMPARISON, AND TO THE BEST OF MY KNOWLEDGE THERE WAS NO
25 ADDITIONAL COMPARISON OR TESTING DONE, IF THAT ANSWERS YOUR

1 QUESTION.

2 Q. DID YOU EVER RECEIVE FROM S.L.E.D. AN ANALYSIS
3 REPORT STATING THAT THEY COULD NOT MAKE COMPARISON OF THAT
4 CAP?

5 A. I DON'T KNOW IF I RECEIVED A REPORT OR I WAS JUST
6 TOLD BY ONE OF THE EVIDENCE PEOPLE. AGAIN, I WAS IN AND OUT
7 QUITE A BIT DURING THAT TIME OF THE YEAR. I REMEMBER I WAS
8 INFORMED, YOU KNOW, THAT HAIRS WERE NOT SUITABLE, THE COMBED
9 HAIRS. WHETHER IT CAME -- I DON'T RECALL A WRITTEN REPORT,
10 BUT I'M SURE THERE WAS SOME TYPE OF COMMUNICATION, EITHER BY
11 PHONE OR BY REPORT.

12 MS. BROWN: YOUR HONOR, NO FURTHER QUESTIONS.

13 THE COURT: ALL RIGHT. ANYTHING ON REDIRECT?

14 MS. BRISBIN: JUST BRIEFLY, YOUR HONOR.

15 REDIRECT EXAMINATION

16 BY MS. BRISBIN:

17 Q. HOW LONG WERE YOU OUT ON FAMILY LEAVE?

18 A. ALL TOLD BETWEEN THREE AND FOUR MONTHS.

19 Q. AND IS IT POSSIBLE THAT THE SEXUAL ASSAULT KIT WAS
20 SENT TO S.L.E.D. DURING THAT TIME BY SOMEONE ELSE?

21 A. CERTAINLY.

22 Q. AND DID YOU ASK MS. SANDERS IF THERE WAS A GUN
23 INVOLVED?

24 A. I DON'T RECALL.

25 Q. OKAY. AND---

1 A. IF I WAS MADE AWARE OF THAT DURING THE INITIAL
2 BRIEFING THEN, YES, I WOULD HAVE CERTAINLY ASKED THAT, BUT I
3 DON'T RECALL WHETHER IT WAS OR NOT.

4 Q. OKAY. IN YOUR REPORT DID YOU INDICATE THAT THERE
5 WAS A GUN?

6 A. NOT THAT I'M AWARE OF.

7 Q. WOULD YOU REFRESH YOUR MEMORY, IF NEEDED, BY LOOKING
8 AT YOUR REPORT?

9 A. ARE YOU ASKING ME TO PUBLISH IT OR JUST LOOK OVER
10 IT?

11 Q. JUST LOOK AT IT AND REFRESH YOUR MEMORY, IF
12 NECESSARY.

13 A. (THE WITNESS LOOKS AT THE DOCUMENT.) SHE DID STATE
14 THAT SHE OBSERVED HIM TO BE VISIBLY ARMED WITH A PISTOL.
15 THERE'S NO OTHER DESCRIPTION BEYOND THAT.

16 Q. OKAY. AND HOW MUCH TIME HAD GONE BY WHEN YOU
17 SEARCHED THE INSIDE OF THIS HOUSE?

18 A. FROM THE TIME THE INCIDENT OCCURRED?

19 Q. YES.

20 A. AGAIN, 22, 23 DAYS.

21 Q. OKAY. WOULD YOU EXPECT TO FIND CIGARETTES THAT THE
22 VICTIM MAY HAVE SMOKED IN THE ASHTRAY THREE WEEKS LATER?

23 A. NO, I WOULD NOT.

24 Q. WOULD THE SUSPECT'S SEMEN ON HIS OWN BED BE OF ANY
25 VALUE?

1 A. IT WOULD BE A PART OF THE PUZZLE, I GUESS, BUT BY
2 ITSELF THAT WOULDN'T BE REMARKABLE.

3 MS. BRISBIN: THANK YOU.

4 THE COURT: ANYTHING?

5 MS. BROWN: YES, YOUR HONOR.

6 RECROSS EXAMINATION

7 BY MS. BROWN:

8 Q. IN YOUR REPORT WHERE YOU INDICATE THAT MS. SANDERS
9 HAD STATED THAT SHE HAD OBSERVED HIM TO BE VISIBLY ARMED WITH
10 A PISTOL, THAT SECTION OF YOUR REPORT IS WHERE YOU'RE
11 SUMMARIZING WHAT YOU HAD RECEIVED IN THE ORANGEBURG REPORTS,
12 IS IT NOT?

13 A. WHETHER IT WAS WRITTEN OR VERBAL STATEMENTS, I DON'T
14 KNOW. I DIDN'T DIFFERENTIATE IN THERE.

15 Q. BUT THAT SECTION OF YOUR REPORT IS WHERE YOU ARE
16 RELATING WHAT HAS TAKEN PLACE WITH THE ORANGEBURG
17 INVESTIGATION.

18 A. YES.

19 Q. THAT---

20 A. THAT IS CORRECT.

21 Q. THAT STATEMENT IS NOT IN THERE BASED ON YOUR
22 INDEPENDENT INVESTIGATION OF THIS INCIDENT, IS IT?

23 A. NO, MA'AM. I HADN'T SPOKEN WITH HER AT THAT POINT.

24 Q. AND AGAIN WHEN YOU SPOKE WITH HER, YOU DID NOT
25 INDICATE THAT SHE RELATED THAT THERE WAS A GUN PRESENT, DID

1 YOU?

2 A. NO, NOT TO THE BEST -- NOT THAT I RECALL, NO.

3 Q. AND IT'S NOT IN YOUR REPORT, IS IT?

4 A. NOT THAT I SEE, NO, OTHER THAN WHAT YOU JUST ASKED
5 ME ABOUT.

6 Q. AGAIN FROM THE ORANGEBURG REPORT.

7 A. CORRECT.

8 MS. BROWN: THANK YOU. NO FURTHER QUESTIONS.

9 THE COURT: ALL RIGHT. THANK YOU. YOU MAY STEP
10 DOWN. ANY FURTHER WITNESSES?

11 MS. BRISBIN: NO, YOUR HONOR. THE STATE RESTS.

12 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
13 GOING TO GO AHEAD AND TAKE A BREAK, LET YOU STEP BACK TO THE
14 JURY ROOM. PLEASE DON'T DISCUSS THE CASE WHILE YOU'RE BACK
15 THERE, AND WE'LL BRING YOU BACK IN A LITTLE BIT.

16 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
17 11:08 A.M.)

18 THE COURT: ALL RIGHT. ANYTHING WE NEED TO TAKE UP?

19 MS. BROWN: YOUR HONOR, MAY I REVIEW THE INDICTMENTS
20 BRIEFLY BEFORE I MAKE THE MOTIONS? (MS. BROWN REVIEWS THE
21 INDICTMENTS.) THANK YOU, YOUR HONOR. YOUR HONOR, AT THIS
22 TIME ON BEHALF OF MR. WALKER I WOULD MOVE FOR A DIRECTED
23 VERDICT OF NOT GUILTY AS TO ALL THREE CHARGES. YOUR HONOR,
24 TAKING THE EVIDENCE THAT HAS BEEN PRESENTED IN THE LIGHT MOST
25 FAVORABLE TO THE STATE, THE STATE HAS NOT PROVIDED COMPETENT

1 EVIDENCE BY WHICH WOULD -- WOULD RISE TO THE LEVEL OF
2 CREATING A JURY QUESTION ON ANY OF THE THREE INDICTMENTS.

3 PARTICULARLY, YOUR HONOR, AS TO THE INDICTMENT OF
4 POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A
5 VIOLENT CRIME, YOUR HONOR, I BELIEVE TAKING IN THE TOTALITY
6 OF THE EVIDENCE THERE HAS NOT BEEN COMPETENT EVIDENCE
7 PRESENTED BY WHICH A JURY -- BY WHICH IT WOULD RISE TO THE
8 LEVEL OF A JURY QUESTION AS TO WHETHER OR NOT A FIREARM WAS
9 PRESENT. SPECIFICALLY -- THAT WOULD BE THE EXTENT OF OUR
10 MOTION AT THIS TIME, YOUR HONOR.

11 THE COURT: ANYTHING?

12 MS. BRISBIN: YES, YOUR HONOR. THE VICTIM TESTIFIED
13 THAT THE DEFENDANT USED A GUN OR WAVED A GUN IN FRONT OF HER
14 AND THREATENED HER WITH IT DURING THE ASSAULT, AND SHE ALSO
15 TOLD LAW ENFORCEMENT -- LAW ENFORCEMENT -- LIEUTENANT BAMBERG
16 TESTIFIED THAT SHE TOLD HER THAT SHE HAD A GUN ON MARCH 4TH
17 WHEN SHE INTER -- THAT HE HAD A GUN WHEN SHE INTERVIEWED MS.
18 SANDERS ON MARCH 4TH. AND THE LAW DOES NOT REQUIRE ANY
19 CORROBORATION OF THE VICTIM'S TESTIMONY IN A CRIMINAL SEXUAL
20 CONDUCT CASE AND, THEREFORE, THE STATE'S POSITION IS THAT
21 THERE IS SUFFICIENT EVIDENCE FOR CONVICTION IN EACH OF THE
22 THREE INDICTMENTS.

23 MS. BROWN: YOUR HONOR, MY ONLY RESPONSE WOULD BE
24 WHILE IT IS TRUE THAT THERE'S A STATUTE ON POINT THAT SAYS
25 THAT CORROBORATION IS NOT NECESSARY FOR A CONVICTION IN A

1 CRIMINAL SEXUAL CONDUCT CASE, I DON'T BELIEVE THAT POSSESSION
2 OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME WOULD BE
3 INCLUDED UNDER THAT STATUTE STATING THAT CORROBORATION IS NOT
4 NECESSARY, YOUR HONOR.

5 THE COURT: WELL, I -- I'M GOING TO -- TAKING
6 EVERYTHING IN THE LIGHT MOST FAVORABLE TO THE NON-MOVING
7 PARTY, THE QUESTION IS: IS THERE ANY DIRECT EVIDENCE, ANY
8 SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE THAT INDICATES THAT THESE
9 PARTICULAR OFFENSES WERE COMMITTED TO ALLOW THIS CASE TO GO
10 TO THE JURY? I'M GOING TO DENY YOUR MOTION. I MEAN, SHE
11 CLEARLY TESTIFIED THAT THERE WAS A GUN. THE GUN WAS HELD BY
12 THE DEFENDANT AND IT WAS PART OF THE WHOLE SCHEME THAT HE
13 USED IN ATTEMPTING OR GETTING HER TO LEAVE HER RESIDENCE AND
14 ULTIMATELY GO TO THE -- THE ALLEGED SCENE WHERE THE ASSAULT
15 OCCURRED.

16 SO WITH RESPECT -- THERE'S ALSO DIRECT EVIDENCE FROM
17 HER THAT THE -- THAT SHE LEFT HER RESIDENCE INVOLUNTARILY.
18 SHE DID IT BY FORCE FROM HIM, INCLUDING THE USE OF A WEAPON,
19 AND SHE TESTIFIED THAT SHE WAS SEXUALLY ASSAULTED BY HIM AND
20 THAT IT WAS UNWANTED. SO I'M GOING TO FIND THERE IS
21 SUFFICIENT EVIDENCE TO SEND IT TO THE JURY. ALL RIGHT. ARE
22 Y'ALL GOING TO OFFER ANY EVIDENCE?

23 MS. BROWN: YOUR HONOR, IT'S NOT ANTICIPATED AT THIS
24 TIME. I WOULD LIKE TO HAVE A CHANCE TO REVIEW WITH MY CLIENT
25 JUST -- JUST TO BE SAFE ONE MORE TIME HIS---

1 THE COURT: ALL RIGHT.

2 MS. BROWN: ---HIS RIGHTS TO TESTIFY.

3 THE COURT: ALL RIGHT. WELL, WE'LL TAKE A BREAK AND
4 THAT WILL GIVE YOU A CHANCE TO TALK TO YOUR CLIENT BEFORE I
5 TALK TO HIM. LET ME ASK YOU SOMETHING NOW. DID Y'ALL HAVE
6 ANY CHARGES? BECAUSE IF THAT'S THE CASE, WE WILL GO DIRECTLY
7 INTO THE CLOSING ARGUMENTS. DID Y'ALL HAVE ANY CHARGES THAT
8 YOU WANTED ME TO LOOK AT?

9 MS. BRISBIN: YOUR HONOR, THE ONLY STATE'S REQUEST
10 FOR A CHARGE OTHER THAN THE USUAL CIRCUMSTANTIAL EVIDENCE
11 WHICH I THINK YOU ALWAYS CHARGE -- IS THAT CORRECT?

12 THE COURT: WELL---

13 MS. BRISBIN: DO YOU ALWAYS -- WE WOULD REQUEST THAT
14 YOU DO THE---

15 THE COURT: I DON'T WANT TO SAY IN SEVEN YEARS THAT
16 I'VE ALWAYS CHARGED IT, BUT I GENERALLY CHARGE IT AND INTEND
17 TO CHARGE IT.

18 MS. BRISBIN: OTHER THAN THAT, THE ONLY OTHER
19 REQUEST THAT THE STATE WOULD MAKE IS THE TESTIMONY OF A
20 SEXUAL ASSAULT VICTIM NEED NOT BE CORROBORATED---

21 THE COURT: I CERTAINLY INTEND---

22 MS. BRISBIN: ---BY STATUTE.

23 THE COURT: I INTEND TO CHARGE THAT.

24 MS. BRISBIN: THANK YOU.

25 MS. BROWN: YOUR HONOR, FOR THE RECORD THE DEFENSE

1 WOULD OPPOSE A CHARGE BEING MADE OF SECTION 16-3-657
2 INDICATING THAT CORROBORATION IS NOT REQUIRED. YOUR HONOR,
3 THE DEFENDANT'S -- THE DEFENSE POSITION IS THAT THIS STATUTE
4 GOES -- THAT THE CHARGING OF THIS STATUTE WOULD BE AN
5 IMPERMISSIBLE COMMENT ON THE FACTS OF THIS CASE TO A JURY.

6 YOUR HONOR, IT'S OUR POSITION THAT THIS STATUTE --
7 THAT THE WEIGHT OF THIS STATUTE SHOULD GO TO WHETHER OR NOT
8 THERE IS SUFFICIENT EVIDENCE FOR THE COURT TO SEND -- TO SEND
9 A CASE TO THE JURY AND THAT A CHARGE OF THIS -- A CHARGE OF
10 THIS NATURE TO THE JURY COULD BE -- COULD BE CONSTRUED AS A
11 COMMENT ON THE FACTS OF THE PARTICULAR CASE, AND WE WOULD
12 OBJECT TO THIS CHARGE BEING GIVEN TO THE JURY.

13 THE COURT: ALL RIGHT. DO YOU HAVE ANY CASE LAW ON
14 THAT YOU WANT ME TO LOOK AT?

15 MS. BROWN: NOT AT THIS TIME, YOUR HONOR.

16 THE COURT: DO YOU THINK YOU MIGHT BETWEEN NOW AND
17 THE TIME I GIVE THE CHARGE?

18 MS. BROWN: NO, YOUR HONOR.

19 THE COURT: ALL RIGHT. ALL RIGHT. ANYTHING ELSE?
20 DID Y'ALL HAVE ANY CHARGES THAT YOU WANTED ME TO CONSIDER?

21 MS. BROWN: NO, YOUR HONOR. TO CLARIFY THAT THIS
22 COURT CHARGES HESITATE TO ACT ON REASONABLE DOUBT---

23 THE COURT: THAT'S STATE V. MANNING.

24 MS. BROWN: AND I DON'T BELIEVE WE WOULD HAVE ANY
25 SPECIFIC---

1 THE COURT: I CHARGE -- I INTEND TO CHARGE THE THREE
2 BASIC OFFENSES FOR WHICH THE DEFENDANT HAS BEEN CHARGED:
3 C.S.C., KIDNAPPING, POSSESSION OF A WEAPON. I'M GOING TO
4 CHARGE AN IDENTIFICATION CHARGE. YOU KNOW, THERE'S BEEN AN
5 EXPERT, SO I'LL CHARGE EXPERT. I'LL CHARGE -- I INTENDED TO
6 CHARGE NO CORROBORATION AND PROBABLY STILL WILL, BUT I'LL
7 THINK ABOUT IT BEFORE I DO THAT, AND THEN EVERYTHING ELSE IS
8 YOUR BASIC CHARGE. IF THERE'S SOMETHING ELSE THAT YOU WANTED
9 ME TO CHARGE THAT YOU THINK IS UNIQUE TO THIS CASE THAT --
10 OTHER THAN THE PRESUMPTION OF INNOCENCE AND REASONABLE DOUBT
11 AND CREDIBILITY AND ALL THAT STUFF, THEN I CERTAINLY WILL
12 CONSIDER ANYTHING YOU HAVE.

13 MS. BROWN: THE DEFENSE HAS NO OTHER SPECIFIC
14 REQUESTS.

15 THE COURT: ALL RIGHT. WHY DON'T YOU -- YOU TAKE A
16 -- WE'LL TAKE ABOUT 15 MINUTES AND YOU CAN CHAT WITH YOUR
17 CLIENT AND WE'LL TAKE THAT MATTER UP AS TO WHETHER HE INTENDS
18 TO TESTIFY OR NOT. WE'LL GET BACK. I ALSO INTEND TO CHARGE
19 ON THE WEAPONS CHARGE. IF THEY DON'T FIND HIM GUILTY OF THE
20 -- ONE OF THE -- THE KIDNAPPING OR THE C.S.C., THEY CAN'T
21 FIND HIM GUILTY OF THAT.

22 MS. BROWN: YES, YOUR HONOR.

23 (WHEREUPON, A BREAK WAS TAKEN.)

24 THE COURT: THANK YOU. PLEASE BE SEATED IF YOU
25 WOULD. ALL RIGHT. LET'S BRING THE DEFENDANT OUT.

1 (MR. WALKER IS BROUGHT INTO THE COURTROOM.)

2 THE COURT: OH, I'M SORRY. I DIDN'T SEE MISTER...

3 ALL RIGHT. MS. BROWN, WHAT IS IT Y'ALL HAVE DECIDED IN THIS?

4 MS. BROWN: HE HAS DECIDED HE WILL NOT TESTIFY---

5 THE COURT: ALL RIGHT.

6 MS. BROWN: ---AND WE WILL NOT PRESENT EVIDENCE.

7 THE COURT: ALL RIGHT. MR. WALKER, LET ME GET YOU
8 TO STAND IF YOU WOULD AND RAISE YOUR RIGHT HAND.

9 JOSEPH WALKER, AFTER BEING DULY SWORN,
10 TESTIFIED AS FOLLOWS IN CAMERA:

11 EXAMINATION BY THE COURT

12 Q. ALL RIGHT. MR. WALKER, I'M SURE YOU'VE DISCUSSED
13 THIS WITH YOUR ATTORNEY, BUT YOU UNDERSTAND THAT YOU HAVE A
14 RIGHT TO TESTIFY IN THIS TRIAL IF YOU WOULD LIKE TO TESTIFY.
15 DO YOU UNDERSTAND THAT?

16 A. YES, SIR.

17 Q. YOU HAVE A RIGHT TO TELL YOUR SIDE OF THE STORY OR
18 ANYTHING YOU WANT TO SAY THAT'S RELEVANT OR APPLICABLE IN
19 THIS CASE. DO YOU UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. AND, OF COURSE, IF YOU TESTIFY YOU UNDERSTAND YOU'RE
22 SUBJECTING YOURSELF TO BEING CROSS-EXAMINED BY THE STATE, AND
23 ONE OF THE THINGS THE STATE MAY ATTEMPT TO DO IF THEY HAD --
24 DO IS IMPEACH YOU. YOU MAY HAVE SOME PAST CRIMINAL RECORD
25 THAT WOULD BE APPROPRIATELY BROUGHT OUT DURING THE COURSE OF

1 ANY IMPEACHMENT. DO YOU UNDERSTAND THAT?

2 A. YES, SIR.

3 Q. OF COURSE, I KNOW NOTHING ABOUT YOUR PAST RECORD OR
4 ANYTHING LIKE THAT. YOU UNDERSTAND YOU ALSO HAVE A RIGHT NOT
5 TO TESTIFY.

6 A. I DO.

7 Q. YOU HAVE THE RIGHT TO REMAIN SILENT AND IF YOU ELECT
8 NOT TO TESTIFY, IN FACT, I WILL INSTRUCT THE JURY THEY CAN'T
9 EVEN CONSIDER THAT DURING THE COURSE OF THEIR DELIBERATIONS
10 AND THEY'RE NOT TO INFER ANYTHING BY THE FACT THAT YOU
11 ELECTED NOT TO TESTIFY. DO YOU UNDERSTAND THAT?

12 A. YES, SIR.

13 Q. NOW, HAVE YOU HAD AN OPPORTUNITY TO TALK ABOUT THIS
14 WITH YOUR ATTORNEY?

15 A. YES, SIR.

16 Q. AND HAS SHE EXPLAINED FULLY BASICALLY WHAT I'VE
17 EXPLAINED TO YOU TODAY?

18 A. YES, SIR.

19 Q. ALL RIGHT. SHE'S INDICATED THAT AFTER DISCUSSIONS
20 WITH THE TWO OF YOU THAT YOU HAVE ELECTED NOT TO TESTIFY. IS
21 THAT CORRECT?

22 A. YES, SIR.

23 Q. ALL RIGHT. AND DO YOU HAVE ANY QUESTIONS YOU WANT
24 TO ASK MS. BROWN ABOUT YOUR RIGHT TO TESTIFY OR NOT TO
25 TESTIFY?

1 A. NO, SIR.

2 Q. DO YOU THINK YOU FULLY UNDERSTAND?

3 A. YES, SIR.

4 THE COURT: ALL RIGHT. MS. BROWN, IS THERE ANY
5 FURTHER INQUIRY YOU WOULD LIKE TO MAKE OF YOUR CLIENT
6 REGARDING HIS RIGHT TO TESTIFY OR NOT TO TESTIFY?

7 MS. BROWN: NO, YOUR HONOR.

8 THE COURT: DO YOU THINK YOUR CLIENT FULLY
9 UNDERSTANDS HIS CONSTITUTIONAL RIGHTS WITH RESPECT TO HIS
10 TESTIFYING IN THIS TRIAL?

11 MS. BROWN: YES, YOUR HONOR.

12 THE COURT: OKAY. THANK YOU, SIR. ALL RIGHT.
13 Y'ALL READY TO GO FORWARD?

14 MS. BRISBIN: STATE'S READY, YOUR HONOR.

15 THE COURT: ALL RIGHT. MS. BROWN INDICATES SHE WILL
16 NOT BE PROBABLY MORE THAN A HALF HOUR. DO YOU HAVE ANY IDEA
17 HOW LONG...

18 MS. BRISBIN: NO MORE THAN THAT.

19 THE COURT: ALL RIGHT.

20 MS. BROWN: YOUR HONOR, BEFORE THE JURY COMES BACK,
21 THE DEFENSE WILL REST WHEN THE JURY COMES IN AND I WOULD
22 RENEW MY -- RENEW MY DIRECTED VERDICT MOTIONS AT THAT TIME,
23 AND IF THE COURT WOULD LIKE TO RULE ON THAT NOW SO THE JURY
24 DOESN'T HAVE TO BE SENT BACK OUT---

25 THE COURT: ALL RIGHT. WELL, YOU KNOW, AS I SAID,

1 I'M DENYING YOUR DIRECTED VERDICT -- YOUR MOTION FOR DIRECTED
2 VERDICT ON THE THREE OFFENSES FOR WHICH THE DEFENDANT IS
3 CHARGED BASED UPON THE RULING THAT I GAVE YOU PRIOR, AND I
4 UNDERSTAND THAT THAT -- THAT YOU HAD NOT RESTED AT THAT POINT
5 IN TIME AND THAT YOU ARE MAKING YOUR MOTIONS AGAIN AT THIS
6 TIME AND WOULD CONSIDER THOSE MOTIONS HAVING BEEN MADE
7 FOLLOWING YOUR -- RENEWING THOSE MOTIONS FOLLOWING YOUR
8 ELECTING TO REST AT THAT TIME.

9 MS. BROWN: THANK YOU, YOUR HONOR.

10 THE COURT: ALL RIGHT. AND I DO INTEND TO CHARGE
11 THE CHARGE ABOUT CORROBORATION.

12 MS. BRISBIN: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT. LET'S BRING THE JURY IN IF
14 WE COULD.

15 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
16 11:40 A.M.)

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE
18 HAVE CONCLUDED, AS YOU KNOW, THE EVIDENCE BEING PRESENTED BY
19 THE STATE IN ITS CASE IN CHIEF, AND THE DEFENDANT NOW HAS THE
20 OPPORTUNITY TO OFFER ANY EVIDENCE THAT THE DEFENDANT MAY WISH
21 TO OFFER. MS. BROWN?

22 MS. BROWN: THANK YOU, YOUR HONOR. THE DEFENSE
23 RESTS.

24 THE COURT: ALL RIGHT. THANK YOU, MA'AM. THAT
25 MEANS, LADIES AND GENTLEMEN, THAT WE ARE NOW AT THE POINT IN

1 THE TRIAL WHERE THE PARTIES WILL MAKE THEIR CLOSING
2 ARGUMENTS. ALL THE EVIDENCE HAS BEEN OFFERED THAT BOTH THE
3 STATE AND THE DEFENDANT WISH TO OFFER IN THIS CASE.
4 FOLLOWING THE CLOSING ARGUMENT, THEN I WILL CHARGE YOU OR
5 INSTRUCT YOU AS TO THE LAW IN THIS CASE.

6 NOW, ONE THING I NOTE THAT I HAVE NOT SELECTED A
7 FOREPERSON ON THIS JURY AND, MS. FIELDS, SINCE YOU'RE SITTING
8 IN THE FOREPERSON'S SEAT I'LL ASK IF YOU WOULDN'T MIND
9 SERVING AS FOREPERSON OF THIS JURY. NOW, I THINK, LADIES AND
10 GENTLEMEN, Y'ALL HAVE ORDERED LUNCH BECAUSE I ANTICIPATE THAT
11 BY THE TIME WE FINISH THE ARGUMENTS AND THE CHARGE IT WILL BE
12 SOMETIME AROUND LUNCH AND THEN YOU WILL BE ABLE TO -- IF YOU
13 SO ARE INCLINED, YOU CAN BEGIN YOUR EATING AS WELL AS
14 DELIBERATIONS. OF COURSE, YOU'RE NOT REQUIRED TO. YOU CAN
15 WAIT UNTIL YOU FINISH YOUR LUNCH BEFORE YOU BEGIN YOUR
16 DELIBERATIONS IF YOU WANT AT THAT TIME. SO WITH THAT SAID,
17 I'LL CALL ON THE STATE AND ASK IF THEY WOULD PLEASE PROCEED
18 WITH THEIR CLOSING ARGUMENT.

19 MS. BRISBIN: THANK YOU, YOUR HONOR. MAY IT PLEASE
20 THE COURT? MS. BROWN? LADIES AND GENTLEMEN OF THE JURY, THE
21 JUDGE IS GOING TO TELL YOU ABOUT THE LAW THAT APPLIES TO THIS
22 CASE AND LISTEN TO WHAT HE SAYS, BUT I'M JUST GOING TO
23 SUMMARIZE IT BRIEFLY SO THAT YOU KNOW WHAT YOU'RE LOOKING
24 FOR. MR. WALKER IS CHARGED WITH KIDNAPPING, CRIMINAL SEXUAL
25 CONDUCT IN THE FIRST DEGREE, AND POSSESSION OF A WEAPON -- A

1 FIREARM AND/OR A WEAPON IN THE COMMISSION OF A VIOLENT CRIME.
2 KIDNAPPING -- MOST OF US THINK OF KIDNAPPING AS
3 SNATCHING A CHILD. WELL, KIDNAPPING UNDER OUR LAW HAS
4 DIFFERENT MEANINGS. KIDNAPPING ALSO INCLUDES CONFINING
5 SOMEONE AGAINST HER WILL. YOU DON'T HAVE TO PROVE THAT SHE
6 WAS ABDUCTED AND TAKEN SOMEWHERE ELSE. ALL YOU HAVE TO PROVE
7 IS THAT SHE WAS CONFINED AGAINST HER WILL AND, OF COURSE, IN
8 THIS CASE YOU HAVE BOTH. SHE WAS CONFINED. SHE WAS ABDUCTED
9 FROM NORWAY AT HER HOME. SHE WAS TAKEN BY FORCE, CONFINED IN
10 HIS TRUCK, AND TAKEN BY FORCE TO HIS HOME IN SALLEY AND
11 CONFINED ALL NIGHT AGAINST HER WILL, AND SHE TESTIFIED TO ALL
12 OF THAT.

13 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE IS
14 ESSENTIALLY WHAT MOST PEOPLE THINK OF AS RAPE. IT ALSO
15 INCLUDES SOME OTHER TYPES OF SEXUAL BATTERIES. A SEXUAL
16 BATTERY MEANS THERE'S PENETRATION OR FELLATIO WHICH IS ORAL
17 SEX. IN THIS CASE THERE WAS BOTH PENETRATION OF THE VAGINA
18 AND FELLATIO WHICH ARE BOTH TYPES OF CRIMINAL SEXUAL CONDUCT
19 IN THE FIRST DEGREE. WE DON'T HAVE TO PROVE BOTH TYPES
20 OCCURRED, BUT IN THIS CASE THE VICTIM TESTIFIED THAT BOTH
21 TYPES OCCURRED AND THAT THERE WAS SOME PENETRATION, HOW EVER
22 SLIGHT, WHICH IS ALL THAT'S REQUIRED, OF THE PENIS IN THE
23 VAGINA AS WELL AS THE PENIS IN HER MOUTH.

24 FOR IT TO BE FIRST DEGREE THAT MEANS THAT THERE HAS
25 TO BE SOME TYPE OF PHYSICAL FORCE OR VIOLENCE OR THAT A GUN

1 HAS TO BE INVOLVED. IT'S NOT REQUIRED THAT A GUN IS INVOLVED
2 IF THERE'S OTHER TYPES OF PHYSICAL FORCE OR VIOLENCE, BUT USE
3 OF A GUN IS ONE TYPE THAT MAKES IT FIRST DEGREE. AND, OF
4 COURSE, THE VICTIM TESTIFIED THAT HE WAVED A GUN AROUND AND
5 THREATENED TO KILL HER, AND IT DOES NOT REQUIRE POINTING OF
6 THE GUN AND THAT'S AN IMPORTANT THING TO CONSIDER. THERE WAS
7 NO TESTIMONY THAT HE POINTED THE GUN AT HER. SHE SAID HE
8 WAVED IT AROUND AND THREATENED TO KILL HER. THAT IS
9 SUFFICIENT UNDER THE LAW OF SOUTH CAROLINA FOR THIS CHARGE.
10 SHE TOLD -- THERE WAS TESTIMONY FROM LIEUTENANT BAMBERG THAT
11 THE VICTIM TOLD HER ON MARCH 4TH THAT HE HAD A GUN, AND MS.
12 SANDERS ALSO TESTIFIED IN COURT YESTERDAY THAT HE HAD THE
13 GUN.

14 NOW, YOU'VE HEARD ALREADY ABOUT THE TERM REASONABLE
15 DOUBT, PROOF BEYOND A REASONABLE DOUBT, AND THAT'S ABSOLUTELY
16 CORRECT. THE STATE HAS THE BURDEN TO PROVE THE CASE BEYOND A
17 REASONABLE DOUBT. SO WHAT DOES BEYOND A REASONABLE DOUBT
18 MEAN? THE JUDGE WILL GIVE YOU ONE DEFINITION AND YOU LISTEN
19 TO HIM. HE RULES ON THE LAW. ESSENTIALLY WHAT BEYOND A
20 REASONABLE DOUBT MEANS IS THAT YOU MUST BE FIRMLY CONVINCED
21 THAT THE DEFENDANT IS GUILTY. IT DOES NOT MEAN THAT YOU HAVE
22 TO BE ABSOLUTELY CERTAIN BEYOND ANY DOUBT WHATSOEVER IN YOUR
23 MIND. THERE ARE VERY FEW THINGS IN LIFE THAT ARE THAT
24 CERTAIN. IF YOU WEREN'T THERE, YOU CAN'T BE A HUNDRED
25 PERCENT SURE, BUT YOU DON'T HAVE TO BE A HUNDRED PERCENT SURE

1 UNDER THE LAW. YOU SIMPLY HAVE TO NOT HAVE ANY REASONABLE
2 DOUBT.

3 THE STATE OF SOUTH CAROLINA ALSO HAS A LAW THAT
4 SPECIFICALLY SAYS THAT NO CORROBORATION IS REQUIRED OF THE
5 TESTIMONY OF THE VICTIM IN A CRIMINAL SEXUAL CONDUCT CASE.
6 WHAT THAT MEANS IS IF YOU BELIEVE BEYOND A REASONABLE DOUBT
7 THAT MS. SANDERS WAS TELLING THE TRUTH, YOU DON'T NEED ANY
8 OTHER EVIDENCE, BUT IN THIS CASE THERE'S A LOT OF
9 CORROBORATING EVIDENCE.

10 FIRST OF ALL, LET'S SAY -- LET'S TALK ABOUT WHAT
11 THERE ISN'T. NOW, MOST PEOPLE WATCH "C.S.I." AND "LAW AND
12 ORDER" AND WE LIKE TO SEE D.N.A. AND FINGERPRINTS. WE EXPECT
13 THAT BECAUSE YOU SEE THAT ON T.V. BUT INVESTIGATOR GRAYBEAL
14 EXPLAINED TO YOU IN REAL LIFE THEY SELDOM HAVE D.N.A. IN
15 SEXUAL ASSAULT CASES. AND IN MANY CASES THEY'RE NOT ABLE TO
16 GET FINGERPRINTS FOR VARIOUS REASONS, AND HE EXPLAINED TO YOU
17 WHY HE WAS -- HE TRIED TO GET FINGERPRINTS IN THIS CASE, BUT
18 HE COULDN'T BECAUSE YOU CAN SEE FOR YOURSELF -- WHERE ARE THE
19 OTHER PICTURES?

20 YOU CAN SEE FOR YOURSELF THE DIRT ON THE INSIDE OF
21 THIS TRUCK. YOU CAN'T GET FINGERPRINTS OFF OF DIRT, AND
22 INVESTIGATOR GRAYBEAL EXPLAINED TO YOU THAT'S WHY THERE WERE
23 NO FINGERPRINTS THAT WERE USABLE FROM THE INSIDE OF THE
24 TRUCK. THE INSIDE OF THE HOUSE WAS VERY SIMILAR. IT WAS
25 ALSO FILTHY. THE SURFACES THAT HE HAD TRIED TO OBTAIN

1 FINGERPRINTS FROM DID NOT ENABLE HIM TO GET USABLE
2 FINGERPRINTS.

3 IT ALSO HAD BEEN THREE WEEKS WHEN HE DID THE SEARCH
4 OF THE HOUSE. WHEN HE TOOK OVER THE CASE FROM ORANGEBURG,
5 THREE WEEKS HAD PASSED. YOU WOULDN'T EXPECT TO FIND A
6 CIGARETTE BUTT IN THE ASHTRAY FROM THREE WEEKS BEFORE TO GET
7 FINGERPRINTS OFF OF. YOU WOULDN'T EXPECT TO FIND THE SAME
8 BEER CAN IN THE TRASH TO GET FINGERPRINTS OFF OF. AND THE
9 OTHER SURFACES THAT HE TRIED TO GET FINGERPRINTS OFF OF WERE
10 FILTHY AND IT JUST WOULDN'T WORK. THE LAW DOES NOT REQUIRE
11 FINGERPRINTS OR D.N.A. THE LAW SIMPLY REQUIRES THAT YOU
12 BELIEVE THE VICTIM'S TESTIMONY BEYOND A REASONABLE DOUBT, AND
13 THAT'S ALL YOU HAVE TO DO TO FIND JOSEPH WALKER GUILTY.

14 THERE IS NO D.N.A. EVIDENCE. DR. GIBBS EXPLAINED TO
15 YOU THAT THERE ARE MANY REASONS WHY THERE MIGHT NOT BE D.N.A.
16 EVIDENCE IN A SEXUAL ASSAULT KIT. FIRST OF ALL, THERE WAS NO
17 TESTIMONY THAT MR. WALKER EJACULATED, AND AS DR. GIBBS
18 EXPLAINED, IF THERE'S NO EJACULATION THERE MAY NOT BE ANY
19 D.N.A. EVIDENCE AND, BESIDES THAT, THE VICTIM WASHED HERSELF
20 IN THIS CASE BEFORE SHE WENT TO THE EMERGENCY ROOM. SOME OF
21 IT -- IF THERE HAD BEEN D.N.A. EVIDENCE THERE, IT MAY HAVE
22 BEEN WASHED OFF.

23 DR. GIBBS EXPLAINED SOME OTHER REASONS WHY THERE
24 MIGHT NOT BE D.N.A. EVIDENCE, AND INVESTIGATOR GRAYBEAL TOLD
25 YOU THAT IN TEN YEARS OF EXPERIENCE AS AN INVESTIGATOR OR I

1 THINK HE SAID FROM '97 HE WAS -- HE STARTED BEING AN
2 INVESTIGATOR IN '97. SO IN SIX YEARS OF EXPERIENCE AS AN
3 INVESTIGATOR AND TEN YEARS WORKING WITH THE DEPARTMENT HE'S
4 ONLY BEEN PERSONALLY INVOLVED IN ONE CASE WHERE THEY FOUND
5 D.N.A. THIS IS NOT "C.S.I." OR "LAW AND ORDER." THIS IS
6 REAL LIFE AND IT'S NOT LIKE ON T.V. IN REAL LIFE IT'S NOT
7 ALWAYS THAT SIMPLE.

8 WHAT OTHER CORROBORATIVE EVIDENCE DID YOU HEAR? YOU
9 HEARD DR. GIBBS TALK ABOUT THE GENITAL TRAUMA. SHE SHOWED
10 YOU THE -- WELL, SHE SAID THEY WEREN'T ACTUALLY PHOTOS. THEY
11 WERE PRINTS FROM THE COLPOSCOPE WHICH MAGNIFIES THE GENITAL
12 AREA TO SHOW YOU ALL OF THE MANY INJURIES TO MRS. SANDERS'
13 GENITAL AREA, AND DR. SANDERS (SIC) SAID THAT THESE INJURIES
14 WERE DIAGNOSTIC OF BLUNT-FORCE TRAUMA. SHE ALSO SAID THEY
15 WERE CONSISTENT WITH A PAINFUL SEXUAL ASSAULT.

16 NOW, SHE CAN'T TELL YOU IT WAS NOT CONSENSUAL
17 OBVIOUSLY. SHE SAID SHE THINKS IT'S UNLIKELY THAT IT WAS
18 CONSENSUAL, BUT SHE CAN'T -- SHE DOESN'T KNOW WHAT THE INTENT
19 OF THE VICTIM WAS. NOBODY KNOWS THAT BUT THE VICTIM HERSELF.
20 BUT YOU CAN SEE THE PICTURES FOR YOURSELF AND I KNOW YOU
21 ALREADY HAVE PROBABLY MORE THAN YOU WANTED TO, BUT THE -- THE
22 INJURIES, THE LACERATIONS, THE TRANSECTION, THE ABRASIONS -
23 SHE DESCRIBED THE OOZING HYMEN - SPEAK FOR THEMSELVES. THIS
24 WAS NOT CONSENSUAL SEX.

25 CAN YOU IMAGINE THIS FRAIL LITTLE LADY GOING TO

1 DOLLAR GENERAL STORE TO BUY CURTAIN RODS AND THEN SAYING TO
2 HERSELF, WELL, I'LL JUST GO TO THE B.P. AND PICK UP THIS
3 STRANGE MAN AND HAVE ROUGH, PAINFUL CONSENSUAL SEX? IS THAT
4 BELIEVABLE? AND IF IT WAS CONSENSUAL, WHY WOULD SHE REPORT
5 IT TO THE POLICE? IF SHE WANTED TO HAVE CONSENSUAL SEX --
6 SHE'S A GROWN WOMAN, A SENIOR CITIZEN AT THAT. SHE COULD
7 HAVE SEX WITH ANYBODY SHE WANTED AND NOBODY WOULD HAVE EVER
8 KNOWN IF SHE HADN'T TOLD.

9 DR. GIBBS ALSO SAID THAT HER EXAMINATION WAS
10 CONSISTENT WITH FORCIBLE ORAL SEX. SHE DESCRIBED WHAT SHE
11 CALLED THE PETECHIAE WHICH WERE LITTLE SPOTS OF BLOOD IN THE
12 ROOF OF THE MOUTH WHICH ARE CONSISTENT WITH FORCIBLE ORAL SEX
13 WHICH MATCHES UP AGAIN WITH THE HISTORY THAT MS. SANDERS GAVE
14 YOU. SHE SAID THAT HE HAD FORCED HER TO PUT HIS PENIS IN HER
15 MOUTH AS WELL AS SEXUALLY ASSAULTED HER VAGINALLY.

16 YOU ALSO SAW THE VIDEO FROM THE -- OR A COPY OF THE
17 VIDEO FROM THE B.P. STATION WHICH THE MANAGER OF THE STATION
18 TESTIFIED THAT WAS THE DAY THAT -- THAT WAS THE VIDEO FROM
19 MARCH 2ND OF 2002, ALTHOUGH THE DATE ON THE VIDEO IS
20 INCORRECT BECAUSE THEY DON'T KEEP THAT CURRENT AND THE TIMING
21 ON IT IS ONE HOUR OFF BECAUSE OF DAYLIGHT SAVINGS TIME. YOU
22 SAW THE VICTIM ON THE TAPE AND 12 MINUTES LATER YOU SAW THE
23 DEFENDANT ON THE TAPE.

24 NOW, IT'S A FUZZY TAPE. IT'S NOT REAL OBVIOUS MAYBE
25 TO YOU WHO THAT PERSON WAS, THAT IT WAS THIS MAN, JOSEPH

1 WALKER, BUT THE MANAGER KNEW HIM AND SHE KNEW IMMEDIATELY
2 WITHOUT HESITATION THAT THAT WAS JOSEPH WALKER THAT THE
3 VICTIM HAD POINTED OUT. NOBODY TOLD HER WHO TO PICK. SHE
4 DIDN'T SAY, WELL, IT MIGHT BE THAT GUY; IT MIGHT BE THAT GUY.
5 THERE WERE LOTS OF BLACK MALES ON THAT VIDEO AND THAT'S THE
6 ONE SHE PICKED. SHE SAID SHE WASN'T A HUNDRED PERCENT SURE.
7 SHE DIDN'T LIE. SHE SAID, I'M NOT A HUNDRED PERCENT SURE.
8 I'M ABOUT 90 PERCENT SURE. IT'S KIND OF FUZZY. LOOKS LIKE
9 HIM. SHE COULD HAVE SAID, OH, THAT'S HIM. I KNOW THAT'S
10 HIM. ABSOLUTELY NO DOUBT. SHE DIDN'T DO THAT. IF SHE
11 WANTED TO GET THIS GUY IN TROUBLE, WOULDN'T SHE BE A HUNDRED
12 PERCENT SURE?

13 AFTER THE VIDEOTAPE THEY DID THE PHOTO LINE-UP.
14 THEY PUT A PICTURE OF JOSEPH WALKER IN A PHOTO LINE-UP WITH
15 FIVE OTHER PEOPLE WHO LOOKED VERY SIMILAR, AND YOU'LL HAVE
16 ALL OF THIS IN THE JURY ROOM TO LOOK AT MORE CLOSELY. THESE
17 PHOTOS ARE ALL SIX BLACK MEN WHO LOOK VERY SIMILAR. THEY ALL
18 HAVE FACIAL HAIR. SHE PICKED OUT THIS PHOTO. AGAIN, SHE
19 COULDN'T BE A HUNDRED PERCENT SURE. WELL, YOU LOOK AT THIS
20 PHOTO CLOSE UP. WOULD YOU BE A HUNDRED PERCENT SURE THIS WAS
21 THAT MAN?

22 LAW ENFORCEMENT SAYS THIS IS JOSEPH WALKER. DOESN'T
23 LOOK MUCH LIKE HIM IN THIS PICTURE. SHE WASN'T A HUNDRED
24 PERCENT SURE AND SHE SAID THAT. SHE SAID SHE WAS ABOUT 90
25 PERCENT SURE. BUT WHEN SHE SAW HIM IN THIS COURTROOM IN

1 PERSON FACE TO FACE -- WELL, NOT FACE TO FACE BUT IN PERSON,
2 SHE KNEW IMMEDIATELY IT WAS HIM. SHE HAD NO HESITATION. SHE
3 TOLD YOU: THAT IS THE MAN WHO SEXUALLY ASSAULTED ME. SHE
4 TOLD YOU THERE WAS NO DOUBT IN HER MIND.

5 NOW, IF SHE HAD JUST WANTED TO GET JOSEPH WALKER IN
6 TROUBLE FOR SOME REASON, WOULD SHE HAVE SAID, "I DON'T KNOW
7 HIS NAME"? IF SHE WAS JUST MAKING ALL OF THIS UP, WOULDN'T
8 SHE -- TO GET HIM IN TROUBLE, WOULDN'T SHE SAY JOSEPH WALKER
9 RAPED ME INSTEAD OF LETTING THE POLICE -- HOPING THE POLICE
10 MIGHT FIGURE IT OUT?

11 WHEN SHE WENT TO THE RAPE CENTER AND THEY SAID HOW
12 DID YOU -- THEY DIDN'T EVEN ASK HER. SHE VOLUNTEERED: THIS
13 BIG BRUISE ON MY FOREHEAD DIDN'T COME FROM THIS INCIDENT; I
14 HAD THAT BEFORE. IF SHE WANTED TO GET HIM IN TROUBLE,
15 WOULDN'T SHE HAVE SAID, OH, YEAH, I GOT THAT BIG BRUISE WHEN
16 I FELL, WHEN HE PUSHED ME. THAT WOULD HAVE BEEN SO EASY.
17 THAT'S NOT WHAT HAPPENED. AND SHE TOLD THE TRUTH.

18 WHY WOULD SHE LIE? WHAT WOULD SHE HAVE TO GAIN? DO
19 YOU THINK IT WAS FUN FOR HER TO GET UP THERE AND TALK ABOUT
20 ALL OF THESE NASTY DETAILS IN FRONT OF A BUNCH OF STRANGERS?
21 WHY DO PEOPLE LIE? EITHER TO GET OUT OF TROUBLE - SHE WASN'T
22 IN ANY TROUBLE - OR TO GET SOMETHING THEY WANT. WHAT DID SHE
23 HAVE TO GAIN BY LYING ABOUT THIS?

24 IF SHE DIDN'T KNOW JOSEPH WALKER BEFORE THAT DAY AND
25 APPARENTLY SHE DIDN'T BECAUSE SHE DIDN'T GIVE LAW ENFORCEMENT

1 HIS NAME, HOW WOULD SHE KNOW WHAT KIND OF VEHICLE HE DROVE,
2 THAT IT WAS A STICK SHIFT, THAT IT WAS NASTY AND SMELLY ON
3 THE INSIDE, THAT IT HAD A STRIPE ON THE SIDE, THAT IT WAS A
4 SMALL BLACK PICKUP TRUCK? HOW WOULD SHE KNOW THAT HE WAS
5 APPROXIMATELY SIX FEET TALL, APPROXIMATELY 200 POUNDS, WORE
6 BLACK WORK BOOTS, HAD SOME FACIAL HAIR, AND WAS APPROXIMATELY
7 40 TO 50 YEARS OLD?

8 HOW WOULD SHE KNOW HE HAD NO TEETH? HOW WOULD SHE
9 KNOW WHAT THE INSIDE OF HIS HOUSE LOOKED LIKE? HOW WOULD SHE
10 KNOW HE HAD A SPACE HEATER IN HIS HOUSE IN THE BEDROOM ON THE
11 LEFT AS YOU WALK IN THE BEDROOM DOOR? THERE ARE THE BLACK
12 WORK BOOTS. HOW WOULD SHE KNOW THERE WAS NO DOOR ON THE DOOR
13 FRAME? HOW WOULD SHE KNOW THERE WAS A DOUBLE BED IN HIS
14 BEDROOM, THE BATHROOM WAS AT THE FOOT OF THE BED, AND IT WAS
15 A CINDER BLOCK HOUSE? IT WAS NASTY AND SMELLED BAD. HOW
16 WOULD SHE KNOW THERE WAS A SHEET UP OVER THE BEDROOM WINDOW,
17 AN ASHTRAY ON THE TABLE? HOW WOULD SHE KNOW THAT?

18 THINK ABOUT THE CREDIBILITY OF THE OTHER WITNESSES.
19 DID THE STORE MANAGER HAVE ANY REASON TO LIE ABOUT WHO THAT
20 WAS IN THE VIDEO? DID THE DOCTOR HAVE ANY REASON TO LIE
21 ABOUT THE PAINFULNESS OF THE INJURIES THAT SHE HAD FOUND?
22 THE EVIDENCE IS CLEAR, LADIES AND GENTLEMEN. MARGARET
23 SANDERS HAD NO DOUBT THAT JOSEPH WALKER WAS THE MAN WHO
24 SEXUALLY ASSAULTED HER. SHE KNEW AND YOU KNEW -- KNOW BEYOND
25 A REASONABLE DOUBT JOSEPH WALKER IS GUILTY. THANK YOU.

1 THE COURT: MS. BROWN?

2 MS. BROWN: HOW DO WE KNOW? WHAT DO WE KNOW? I
3 TOLD YOU, LADIES AND GENTLEMEN, WHEN I STOOD UP IN FRONT OF
4 YOU BEFORE THAT A TRIAL IS LIKE PUTTING TOGETHER THE PIECES
5 OF THE PUZZLE AND THAT IT'S GOING TO BE YOUR JOB TO TAKE
6 THESE PIECES AND TO SEE IF THEY FIT, IF THEY FIT INTO THE
7 DESCRIPTION OF WHAT THE STATE WOULD HAVE YOU BELIEVE. THERE
8 ARE HOLES; THERE ARE PIECES MISSING. THIS IS YOU ON VACATION
9 TRYING TO PUT THAT THOUSAND PUZZLE PIECE THING TOGETHER AND
10 YOU'VE BEEN WORKING ON IT FOR FOUR DAYS AND YOU GET TO THE
11 END AND YOU CAN'T FIND THE MISSING PIECES AND YOU CAN'T MAKE
12 THE PICTURE CLEAR. AND IF YOU CAN'T MAKE THE PICTURE CLEAR,
13 THEN HOW CAN YOU BELIEVE BEYOND A REASONABLE DOUBT WHAT
14 MARGARET SANDERS TOLD YOU? THE JUDGE IS GOING TO INSTRUCT
15 YOU THAT YOU CAN BELIEVE SOME OF WHAT A WITNESS SAID, ALL OF
16 WHAT A WITNESS SAID, OR NONE OF WHAT A WITNESS SAYS. YOU CAN
17 PICK AND CHOOSE WHAT TO BELIEVE.

18 WHAT SHE SAID YESTERDAY DOESN'T MAKE SENSE. THE
19 DOCTOR TOLD YOU THERE WERE NO BRUISES FOUND ON MARGARET
20 SANDERS EXCEPT FOR THIS ONE ON HER FOREHEAD THAT SHE HAD
21 APPARENTLY HAD FOR TWO WEEKS AFTER HITTING HER HEAD ON THE
22 REFRIGERATOR. WELL, WOULDN'T YOU THINK IF SHE BRUISES THAT
23 EASILY AND KEEPS A BRUISE FOR THAT LONG AFTER HITTING HER
24 HEAD ON THE REFRIGERATOR THAT AFTER HAVING HER ARMS GRABBED
25 TO BE WALKED OUT OF THE HOUSE SHE WOULD HAVE SOME MARKS ON

1 HER ARMS? AND IF SHE WERE FORCED TO THE EXTENT TO HAVE THE
2 INJURIES, WOULDN'T HE HAVE HAD TO HOLD ON TO HER TO FORCE IT?

3 WOULDN'T YOU EXPECT TO SEE SOME BRUISING, SOME
4 REDNESS, SOME TENDERNESS HERE OR HOW ABOUT BACK HERE AT THE
5 BACK OF HER NECK OR ON THE SIDE OF HER FACE? IF SHE WERE
6 BEING FORCED TO PERFORM ORAL SEX, WOULDN'T THERE BE SOME KIND
7 OF MARK, ANYTHING? AND THE DOCTOR WHO -- MS. BRISBIN IS
8 RIGHT. THE DOCTOR HAS NO REASON TO COME IN HERE AND TO MAKE
9 STUFF UP. SHE VERY CANDIDLY SAID THAT WHILE THESE INJURIES
10 WERE DIAGNOSTIC OF A -- OF A PENETRATIVE TRAUMA THAT IT WAS
11 CONSISTENT WITH THE HISTORY GIVEN, BUT WHEN SHE WAS ASKED
12 WHAT ELSE COULD CAUSE THAT DIAGNOSTIC INJURY -- I DIDN'T ASK
13 HER SPECIFICALLY. I ASKED HER: WHAT ELSE COULD CAUSE IT?
14 SHE SAID CONSENSUAL PAINFUL INTERCOURSE. SHE ALSO SAID THAT
15 GIVEN MS. SANDERS' AGE SHE WOULD EXPECT THAT SHE HAD
16 DIMINISHED ESTROGEN.

17 SHE'D HAD A HYSTERECTOMY AND THAT SHE WOULD EXPECT
18 AT 59 YEARS OLD THAT SHE WAS LOSING SOME OF THAT HORMONE, AND
19 SHE TESTIFIED -- EVEN INITIALLY WHEN SHE WAS DRAWING THE
20 DIAGRAM, SHE TESTIFIED THAT THAT AREA IN BETWEEN THE VAGINAL
21 OPENING AND THE BOTTOM OF THE GENITAL AREA THAT ALL OF THAT
22 MUCUS MEMBRANE AREA IS PRONE TO TEARING MORE EASILY WITH
23 ESTROGEN LOSS. SHE JUST STATED THAT WHEN SHE WAS DRAWING THE
24 DIAGRAM AND GIVING THE DESCRIPTION. AND SHE SAID AS A DOCTOR
25 THAT SHE WOULD EXPECT THAT MARGARET SANDERS WOULD BE OF AN

1 AGE AND PLACE IN LIFE TO WHERE SHE WAS EXPERIENCING SOME OF
2 THAT LOSS AND THAT IT WOULD CERTAINLY BE POSSIBLE FOR THE
3 INJURIES THAT SHE DESCRIBED TO HAVE BEEN CAUSED BY CONSENSUAL
4 INTERCOURSE.

5 SHE SAYS THAT HE FOLLOWED HER INTO HER HOUSE. SHE
6 WAS IN THE BEDROOM AND TURNS AROUND AND THERE HE IS. SHE
7 SAID THERE WERE NO OTHER HOUSES AROUND HER HOUSE. HER
8 NEAREST NEIGHBOR WAS A HALF MILE AWAY AND THAT HE WOULD NOT
9 HAVE BEEN ABLE TO SEE ANY OTHER HOUSES, ANY OTHER VEHICLES,
10 ANY OTHER SIGN OF A HUMAN BEING PRESENT WITHIN SHOUTING
11 DISTANCE, NO ONE TO SEE. IF HE WANTED TO RAPE HER, WOULDN'T
12 THAT HAVE BEEN THE TIME TO DO IT, THERE IN HER HOUSE, IN HER
13 BEDROOM, NO ONE ELSE AROUND?

14 WHY IN THE WORLD WOULD THIS BLACK MAN PUT A
15 BLINDFOLD AROUND HER, PUT HER IN HIS TRUCK WHEN IT IS STILL
16 DAYLIGHT OUTSIDE, DRIVE HER ANYWHERE FROM 30 TO 60 MINUTES
17 WHERE ANY CAR PASSING BY -- IF THEY SEE HIM AND HER WITH A
18 BLINDFOLD, ISN'T SOMEBODY GOING TO BE SUSPICIOUS? ISN'T
19 SOMEBODY GOING TO CALL THE POLICE? WHY WOULD HE RISK THAT?
20 WHEN HE HAD AMPLE OPPORTUNITY RIGHT THEN AND THERE, WHY WOULD
21 HE RISK THAT? AND THEN HE LET HER BRING HER PURSE? WHILE
22 SHE WAS THERE LET HER GET CIGARETTES OUT AND SMOKE?

23 I THINK IF I'M HOLDING SOMEONE AGAINST THEIR WILL
24 I'M NOT GOING TO GIVE THEM A LIT CIGARETTE, LADIES AND
25 GENTLEMEN. I'VE ACCIDENTALLY BURNED MYSELF ON A CIGARETTE

1 BEFORE; IT DOESN'T FEEL GOOD. I WOULD BET THAT MOST PEOPLE
2 WHO HAVE SMOKED HAVE AT SOME POINT IN TIME ACCIDENTALLY
3 BURNED THEMSELVES. THEY KNOW WHAT IT FEELS LIKE. THEY KNOW
4 IT DOESN'T FEEL GOOD. IS HE GOING TO ALLOW HER TO BE
5 SMOKING?

6 HE GOT HER A BEER. WHERE DID HE GET THE BEER? IF
7 AS SHE SAYS HE WAS WITH HER IN THAT ROOM THE ENTIRE TIME AND
8 SHE WAS IN THAT ROOM OR IN THE BATHROOM BECAUSE APPARENTLY HE
9 LET HER GO TO THE BATHROOM AT SOME POINT IN TIME, AT WHAT
10 POINT IN TIME DID HE LEAVE TO GO GET THE BEER? AND WHY IS
11 SHE SITTING THERE SHARING A BEER, HAVING A DRINK WITH THIS
12 MAN WHO'S HOLDING HER AGAINST HER WILL AND FORCING HER TO
13 PERFORM SEXUAL ACTS?

14 THAT PIECE DOES NOT FIT IN MY PUZZLE, AND IF IT
15 DOESN'T FIT IN THE PUZZLE, THEN YOU CAN'T BELIEVE HER STORY.
16 BEYOND A REASONABLE DOUBT. AND THEN APPARENTLY SOMETIME
17 BETWEEN 4 AND 4:30 IN THE MORNING HE DECIDES TO PUT THE
18 BLINDFOLD BACK ON, LET HER GET HER PURSE, TAKES HER BACK OUT
19 INTO THE TRUCK, DRIVES HER HOME, DRIVES HER HOME, REACHES TO
20 OPEN THE DOOR, SHOVES HER OUT. SHE SAYS SHE FELL OUT ON HER
21 HIP. DID THEY BRING IN HER CLOTHES TO SHOW YOU ANY DEBRIS OR
22 STAINING OR TEARING? DID SHE HAVE A BRUISE ON HER HIP OR ON
23 HER LEG OR ON HER ELBOW WHERE SHE CAME CRASHING OUT TO THE
24 GROUND?

25 THAT WOULD BE A FAIRLY VIOLENT FALL, WOULDN'T YOU

1 THINK, TO BE SHOVED OUT OF THAT TRUCK AND YOU SPRAWL ON THE
2 GROUND? YET THE MEDICAL CENTER FINDS NO ABRASIONS ON YOUR
3 HANDS, NO MARKS ON YOUR BODY WHATSOEVER EXCEPT FOR THAT
4 BRUISE THAT SHE HAD TWO WEEKS BEFORE.

5 THEN SHE GOES IN HER HOUSE AND SHE WASHES UP. SHE'S
6 HAD 30 YEARS EXPERIENCE AS A NURSING ASSISTANT. SHE'S WORKED
7 IN TWO HOSPITALS. SHE WATCHES "LAW AND ORDER" AND DETECTIVE
8 MOVIES. AND THE FIRST THING SHE DOES IS WASH OFF WITH A
9 WASHCLOTH. THAT DOESN'T MAKE SENSE. AND THEN SHE FIXES
10 HERSELF ANOTHER DRINK.

11 SHE GOES TO HER COUSIN'S HOUSE. SHE'S UPSET. QUITE
12 POSSIBLY IT WAS AN UPSETTING EXPERIENCE ONCE YOU REALIZE
13 WHAT'S HAPPENED. SHE'S GOT HER DRINK WITH HER, DRIVES DOWN
14 TO HER SISTER'S HOUSE. HER SISTER -- EXCUSE ME, HER COUSIN'S
15 HOUSE. HER COUSIN SAID SHE STILL HAD HER CUP WITH HER.
16 WHAT'S WRONG? WHAT'S WRONG? WHY ARE YOU UPSET? WHY DO YOU
17 LOOK SO BAD? WHAT'S GOING ON? WHAT ARE YOU GOING TO SAY?
18 WHAT ARE YOU GOING TO SAY TO YOUR COUSIN? AND WHEN YOU START
19 YOUR STORY, SHE CALLS HER SISTER. THE COUSIN CALLS HER
20 SISTER, LEAVES A MESSAGE ON HER ANSWERING MACHINE: COME OVER
21 HERE. CALLS HER SON. NOW WHAT IS SHE GOING TO SAY? IS SHE
22 GOING TO CHANGE IT UP NOW?

23 LADIES AND GENTLEMEN, I HAVE NO WAY OF KNOWING WHAT
24 THESE PIECES ARE THAT DON'T FIT. ALL I KNOW IS THEY DON'T
25 FIT. THEY DON'T FIT. IT'S NOT CONSISTENT WITH WHAT YOU

1 WOULD EXPECT. YOU KNOW, SHE GIVES A REALLY GOOD DESCRIPTION
2 OF THE INSIDE OF HIS HOUSE, VERY CLOSE DESCRIPTION. SHE
3 DOESN'T SAY ANYTHING ABOUT THE GUN WHEN SHE INITIALLY TALKS
4 TO THE REPORTING OFFICER. HE DIDN'T HAVE ANYTHING NOTED IN
5 HIS REPORT ABOUT HER TALKING ABOUT A GUN. AND WOULDN'T YOU
6 HAVE EXPECTED HER TO SAY SOMETHING ABOUT THE GUN WHEN SHE WAS
7 PRETTY INCLUSIVE OF OTHER THINGS THAT SHE TOLD THE REPORTING
8 OFFICER?

9 SHE DOESN'T INITIALLY MENTION THE GUN TO LIEUTENANT
10 BAMBERG. ONLY AFTER LIEUTENANT BAMBERG SPECIFICALLY ASKED
11 HER ABOUT A WEAPON DOES SHE SAY, OH, YEAH, THERE WAS A PISTOL
12 AND HE WAS JUST KIND OF WAVING IT AROUND. SHE CAN'T GET ANY
13 DESCRIPTION OF THAT GUN? IF YOU'VE GOT A GUN WAVING AROUND,
14 AREN'T YOU GOING TO PAY ATTENTION TO THAT? AREN'T YOU GOING
15 TO KNOW WHAT THAT LOOKS LIKE?

16 I MEAN, IF YOU CAN DESCRIBE THE ROOM, YOU CAN
17 DESCRIBE THE CONTENTS OF THE BEDSIDE TABLE, BUT YOU CAN'T
18 DESCRIBE THE GUN, NOT EVEN SOMETHING AS BASIC AS COLOR -- I
19 MEAN, I DON'T KNOW A WHOLE LOT ABOUT GUNS, BUT I KNOW IF IT'S
20 BLACK OR I KNOW IF IT'S SHINY. I KNOW IF IT LOOKS LIKE THE
21 KIND OF GUN THAT THE COWBOYS USE IN THE SHOOT-EM-UP MOVIES OR
22 IF IT'S THE KIND OF GUN -- THAT BIG KIND OF GUN OR IF IT
23 LOOKS LIKE SOMETHING THAT THE POLICE OFFICERS CARRY. AND
24 LIEUTENANT BAMBERG TOLD YOU THAT ONLY WHEN SHE ASKED SPECIFIC
25 QUESTIONS DID SHE REALLY GET A LOT OF INFORMATION.

1 NOW, YESTERDAY WHEN MS. SANDERS WAS TESTIFYING,
2 REMEMBER HER DEMEANOR. SHE WAS FORTHCOMING WHEN SHE WAS
3 TELLING THE SAME THING THAT SHE'S TOLD BEFORE, BUT WHEN I
4 STARTED ASKING HER QUESTIONS THAT APPARENTLY HADN'T BEEN
5 ASKED BEFORE, SHE DIDN'T WANT TO ANSWER THOSE QUESTIONS. SHE
6 DIDN'T WANT TO ANSWER THE QUESTION ABOUT WHAT SHE'D HAD TO
7 DRINK THAT MORNING. SHE DIDN'T WANT TO ANSWER THE QUESTION
8 ABOUT HER SMOKING CIGARETTES. YOU KNOW, SHE TRIED TO DIVERT
9 OUR ATTENTION FROM THE CIGARETTES IN THE PURSE BY SAYING, OH,
10 YEAH, AND BY THE WAY HE WAS PAWING THROUGH MY PURSE LOOKING
11 THROUGH IT. WELL, THAT WAS NEVER TOLD TO ANY OFFICER BEFORE,
12 AND ANY PERSON WHO WATCHES ANY DETECTIVE SHOWS OR ANY OF
13 THESE T.V. SHOWS KNOWS THAT THEY'RE GOING TO WANT TO GET
14 FINGERPRINTS. AND IF HE'D BEEN ALL THROUGH HER PURSE,
15 WOULDN'T YOU THINK THAT YOU WOULD HAVE TOLD THE POLICE,
16 "HERE'S MY PURSE. CHECK IT. I DON'T KNOW WHO HE IS, BUT HIS
17 FINGERPRINTS MAY BE IN THERE"? AS I SAID YESTERDAY, I DON'T
18 KNOW WHY A LOT OF THINGS HAPPEN OR WHY PEOPLE DO CERTAIN
19 THINGS OR WHY PEOPLE WOULD SAY THINGS THAT AREN'T TRUE, BUT I
20 KNOW THAT A LOT GOES ON IN THIS WORLD THAT I CAN'T EXPLAIN
21 AND I KNOW THAT PEOPLE SAY THINGS THAT AREN'T QUITE TRUE.

22 I ALSO KNOW WHEN MS. SANDERS WAS TALKING ABOUT THIS
23 TAPE YESTERDAY WITH THE SOLICITOR WHEN THEY WERE STANDING IN
24 FRONT OF YOU WITH THE T.V. LOOKING AT IT SHE SAID, "THIS IS
25 THE TAPE THAT I LOOKED AT IN LIEUTENANT BAMBERG'S OFFICE."

1 WELL, WE FOUND OUT TODAY THIS WASN'T THE TAPE THAT SHE LOOKED
2 AT. SHE LOOKED AT A TAPE WITH A LOT OF DIFFERENT CAMERA
3 ANGLES, ONE THAT HAD NOT BEEN EDITED BY S.L.E.D., AND I THINK
4 IT WOULD HAVE BEEN FAIRLY OBVIOUS SEEING THE ONE CAMERA
5 PICTURE YESTERDAY, "NO, THAT'S NOT THE EXACT THING THAT I
6 LOOKED AT BEFORE."

7 SHE GAVE A DESCRIPTION OF MR. WALKER, DID NOT ADD
8 THAT THIS PERSON WORE GLASSES OR HAD A JACKET. THAT'S WHAT
9 YOU'LL SEE ON THE TAPE. IF YOU WATCH THE TAPE, YOU'LL SEE HE
10 WAS THE FIRST BLACK MAN FITTING THE AGE DESCRIPTION ON THAT
11 TAPE AFTER THEY SAW HER ON THERE AND THAT'S WHEN THEY
12 STOPPED. THAT'S WHEN LAW ENFORCEMENT STOPPED, JUST LIKE LAW
13 ENFORCEMENT STOPPED WHEN THEY SAW WHAT THEY EXPECTED TO SEE
14 WHEN THEY WENT TO HIS HOUSE.

15 INVESTIGATOR GRAYBEAL TOLD YOU MR. WALKER GAVE THEM
16 CONSENT TO SEARCH HIS HOUSE. HE SAID, GO AHEAD; LOOK. THEY
17 DIDN'T FIND A GUN. DIDN'T LOOK FOR A GUN. DIDN'T FIND A
18 GUN. DID A SEARCH. NOW, I THINK THAT IT WAS PROBABLY
19 SUGGESTED THAT, YOU KNOW, PERHAPS IN THE THREE WEEKS' TIME HE
20 COULD HAVE GOTTEN RID OF IT, BUT DOES IT LOOK LIKE HE'S MADE
21 ANY CLEAN-UP EFFORTS? YOU'LL HAVE THESE BACK THERE. DOES IT
22 LOOK LIKE HE'S MADE ANY ATTEMPT TO HIDE ANYTHING?

23 WOULD HE HAVE HAD ANY WAY OF KNOWING THAT SHE WAS
24 MAKING THESE ALLEGATIONS AGAINST HIM BEFORE THE POLICE SHOWED
25 UP AT HIS HOUSE THREE WEEKS LATER SAYING, HEY, WE'D LIKE TO

1 SEARCH YOUR HOUSE? WE THINK THERE'S SOME STUFF HERE THAT
2 WE WANT TO FIND. HE HADN'T THROWN ANYTHING AWAY. HE HADN'T
3 WASHED OFF POTENTIAL FINGERPRINTS. HE HASN'T GOTTEN RID OF
4 THE MATTRESS OR THE BED SHEETS OR ANYTHING LIKE THAT. BUT
5 LAW ENFORCEMENT AND THE STATE WANT YOU TO JUST TAKE ALL OF
6 THIS AT FACE VALUE AND NOT LOOK DEEPER AND NOT ASK THE REALLY
7 TOUGH QUESTIONS OF WHAT IS MISSING.

8 THE INVESTIGATOR DIDN'T LOOK AT THAT DOCTOR'S REPORT
9 AND FIND NO BRUISES MISSING AND GO BACK TO MS. SANDERS AND,
10 YOU KNOW, MS. SANDERS, COULD YOU CLARIFY THIS FOR ME?
11 BECAUSE YOU'RE SAYING ONE THING, BUT THE PHYSICAL EVIDENCE
12 DOESN'T MATCH UP TO THAT. THEY WANT TO ASSUME THAT THIS
13 HAPPENED. THEY WANT YOU TO ASSUME THAT THIS HAPPENED. AND
14 THERE ARE TOO MANY PIECES MISSING AND THIS CASE IS TOO
15 IMPORTANT AND THOSE CONCEPTS WE TALKED ABOUT YESTERDAY OF
16 PROOF BEYOND A REASONABLE DOUBT IS TOO IMPORTANT FOR YOU TO
17 ASSUME, FOR YOU TO ASSUME, THAT THIS IS WHAT HAPPENED.

18 IT DOESN'T MAKE SENSE. NO BRUISES, ADMITTING TO
19 SMOKING CIGARETTES THAT NIGHT, DRINKING A BEER, DRINKING
20 AGAIN WHEN SHE GOT HOME, WASHING UP, 30 YEARS EXPERIENCE AS A
21 NURSING ASSISTANT, KNOWS WHAT EVIDENCE THEY'D BE LOOKING FOR.
22 WHEN DID SHE DECIDE TO SAY THAT THIS WAS A CRIME? I DON'T
23 KNOW FOR SURE. WAS IT WHEN SHE GOT TO THE COUSIN'S HOUSE,
24 DISHEVELLED AND UPSET? WAS IT WHEN SHE STARTED REALIZING
25 WHERE SHE'D BEEN AND WHAT SHE HAD DONE? I DON'T KNOW. BUT I

1 KNOW THAT MEANS ALL THE PIECES THAT HAVE BEEN GIVEN TO YOU BY
2 THE STATE DO NOT ADD UP. AND IF THEY DO NOT ADD UP, IF YOU
3 CAN'T FILL IN THOSE HOLES, IF THERE ARE TOO MANY PIECES
4 MISSING, IF THERE ARE TOO MANY THINGS THAT DON'T MAKE SENSE,
5 THEN YOU MUST FIND HIM NOT GUILTY.

6 WHAT WOULD YOU HAVE EXPECTED TO FIND ON HER? WHAT
7 MARKS? WHAT BRUISING? WHAT ADDS UP TO MAKE IT CONSISTENT
8 FOR YOU? DOES IT MAKE SENSE THAT HE WOULD HAVE TAKEN HER TO
9 HIS HOUSE WHEN HE HAD OPPORTUNITY RIGHT THERE IN HERS? WOULD
10 HE HAVE RISKED EXPOSURE IN THAT MANNER? WOULD HE RISK BEING
11 SEEN AGAIN DRIVING HER HOME? IS THAT SOMETHING THAT YOU
12 WOULD EXPECT AN ASSAILANT TO DO, TO DROP THEM OFF IN THEIR
13 FRONT YARD? WHY NOT ON THE SIDE OF THE ROAD SOMEWHERE? WHY
14 NOT TOTALLY CONFUSE HER ABOUT WHERE SHE'D BEEN? WHY NOT MAKE
15 IT SO THAT IT WAS A POTENTIAL LONGER PERIOD OF TIME BEFORE
16 SHE COULD REPORT? WHY DOES HE LET HER TAKE HER PURSE? WHY
17 DOES HE LET HER SMOKE? WHY DOES HE BRING HER A BEER?

18 THOSE ARE THE IMPORTANT QUESTIONS TO ASK. THOSE ARE
19 THE QUESTIONS THAT WILL LEAD YOU TO REALIZING THAT YOU CANNOT
20 INDEED TAKE WHAT SHE SAID AND BELIEVE IT BEYOND A REASONABLE
21 DOUBT, AND IF YOU CAN'T DO THAT, YOU MUST FIND HIM
22 NOT GUILTY. THANK YOU.

23 (WHEREUPON, THE COURT'S CHARGE ON THE LAW TO THE
24 JURY BEGAN AS FOLLOWS:)

25 THE COURT: ALL RIGHT. MADAM FORELADY AND MEMBERS

1 OF THE JURY, THE INDICTMENTS IN THIS CASE CHARGE THE
2 DEFENDANT WITH THE OFFENSES OF CRIMINAL SEXUAL CONDUCT IN THE
3 FIRST DEGREE, KIDNAPPING, AND POSSESSION OF A FIREARM DURING
4 THE COMMISSION OR ATTEMPTED COMMISSION OF A VIOLENT CRIME. I
5 REMIND YOU THE FACT THAT THE DEFENDANT WAS ARRESTED, CHARGED,
6 AND INDICTED IN THIS CASE IS NOT EVIDENCE IN THE CASE AND
7 CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE
8 NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT.
9 THE DOCUMENTS -- THE INDICTMENTS ARE SIMPLY THE FORMAL
10 WRITTEN INSTRUMENTS WHICH CONTAIN THE CHARGES MADE AGAINST
11 THE DEFENDANT. IT IS THE FORMAL DOCUMENT IN THIS CASE BY
12 WHICH THE CASE IS BROUGHT INTO THE COURT.

13 NOW, EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT
14 OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE
15 EVIDENCE AND THE LAW APPLICABLE TO IT, UNINFLUENCED BY YOUR
16 DECISION AS TO ANY OTHER INDICTMENT. HOWEVER, I TELL YOU AT
17 THIS TIME, LADIES AND GENTLEMEN, UNLESS YOU FIND THE
18 DEFENDANT DID, IN FACT, COMMIT A KIDNAPPING OR COMMIT A
19 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE WITH THE USE OF A
20 PISTOL, IF YOU DON'T FIND THE UNDERLYING CHARGES YOU CANNOT
21 FIND THE DEFENDANT GUILTY OF THE USE OF A PISTOL DURING THE
22 COMMISSION OF A VIOLENT ACT.

23 NOW, I HAVE PREPARED THREE VERDICT FORMS IN THIS
24 CASE, ONE FOR EACH OF THE OFFENSES CHARGED, AND YOU ARE GOING
25 TO HAVE TO WRITE, MADAM FORELADY, A SEPARATE VERDICT OF

1 GUILTY OR NOT GUILTY FOR EACH OF THE INDICTMENTS. NOW, TO
2 THE INDICTMENTS THE DEFENDANT HAS ENTERED A PLEA OF NOT
3 GUILTY WHICH PLACES UPON THE STATE THE BURDEN OF PROVING THE
4 DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A
5 CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE
6 HIMSELF INNOCENT. I CHARGE YOU THAT IT IS A VITAL, IMPORTANT
7 RULE OF THE LAW OF EVIDENCE THAT THE DEFENDANT IN A CRIMINAL
8 TRIAL, NO MATTER HOW GREAT OR SERIOUS MAY BE THE OFFENSE FOR
9 WHICH HE IS CHARGED, MUST ALWAYS BE PRESUMED TO BE INNOCENT
10 UNTIL HIS GUILT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT.

11 THIS PRESUMPTION OF INNOCENCE REMAINS WITH THE
12 DEFENDANT AT ALL TIMES, FROM THE MOMENT OF HIS APPEARANCE IN
13 COURT, THROUGHOUT THE TRIAL, AND UNTIL THE JURY HAS, UPON THE
14 TESTIMONY AND THE EVIDENCE PRESENTED, REACHED A VERDICT OF
15 GUILTY BEYOND A REASONABLE DOUBT. FOR IT IS THE SOLEMN DUTY
16 OF THE JURY IF NOT CLEARLY CONVINCED OF HIS GUILT BEYOND A
17 REASONABLE DOUBT TO ACQUIT THE DEFENDANT. SO THE BURDEN OF
18 PROOF IS UPON THE STATE TO ESTABLISH BY EVIDENCE TO YOUR
19 SATISFACTION THE GUILT BEYOND A REASONABLE DOUBT OF THIS
20 DEFENDANT HERE ON TRIAL FOR THE CRIMES OF CRIMINAL SEXUAL
21 CONDUCT IN THE FIRST DEGREE, KIDNAPPING, AND POSSESSION OF A
22 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.

23 NOW, WHAT IS A REASONABLE DOUBT? A REASONABLE DOUBT
24 IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
25 HESITATE TO ACT. IF YOU HAVE SUCH A DOUBT AS TO THE GUILT OF

1 THE DEFENDANT, THEN HE WOULD BE ENTITLED TO A VERDICT OF NOT
2 GUILTY. REASONABLE DOUBT MAY ARISE FROM EVIDENCE WHICH IS IN
3 THE CASE OR FROM THE ABSENCE OR LACK OF EVIDENCE IN THE CASE.
4 YOU ALONE MUST MAKE THE DETERMINATION OF WHETHER OR NOT
5 REASONABLE DOUBT EXISTS AS TO THE GUILT OF THE DEFENDANT.

6 NOW, LADIES AND GENTLEMEN, THERE ARE TWO TYPES OF
7 EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL:
8 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE
9 IS THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE
10 ACTUAL KNOWLEDGE OF A FACT SUCH AS AN EYEWITNESS.
11 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND
12 CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. THE LAW
13 MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR THE
14 VALUE TO BE GIVEN EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE
15 NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF
16 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD
17 WEIGH ALL OF THE EVIDENCE IN THIS CASE. AFTER WEIGHING ALL
18 THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE
19 DEFENDANT BEYOND A REASONABLE DOUBT, THEN YOU MUST FIND THE
20 DEFENDANT NOT GUILTY.

21 NOW, MADAM FORELADY AND MEMBERS OF THE JURY, UNDER
22 OUR CONSTITUTION AND LAWS OF SOUTH CAROLINA, YOU ARE THE
23 FINDERS OF FACTS IN THIS CASE. I DO NOT HAVE THE RIGHT TO
24 PASS UPON THE FACTS OR EVEN EXPRESS ANY OPINION I MAY HAVE AS
25 TO THOSE FACTS NOR MAY I INTIMATE IN ANY WAY WHAT I MAY THINK

1 ABOUT THE GUILT OR THE INNOCENCE OF THE DEFENDANT.

2 YOU ARE ALSO THE JUDGES, THE SOLE JUDGES OF THE
3 CREDIBILITY AND BY THAT I MEAN THE BELIEVABILITY OF THE
4 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. IN PASSING UPON
5 THEIR CREDIBILITY, YOU MAY TAKE INTO CONSIDERATION MANY
6 THINGS SUCH AS THE DEMEANOR OR THE MANNER OF TESTIFYING OF A
7 WITNESS, WHETHER THE WITNESS HAD REASON TO BE BIASED OR
8 PREJUDICED. YOU CAN CONSIDER WHETHER A WITNESS'S TESTIMONY
9 WAS CONTRADICTED ON THE ONE HAND OR SUPPORTED AND
10 CORROBORATED ON THE OTHER HAND.

11 NOW, YOU CERTAINLY DO NOT DETERMINE THE CREDIBILITY
12 OR BELIEVABILITY BY COUNTING THE NUMBER OF WITNESSES FOR
13 EITHER SIDE. YOU MAY BELIEVE A SMALL PORTION OF A WITNESS'S
14 TESTIMONY AND DISREGARD THE LARGER OR VICE VERSA. YOU MAY
15 BELIEVE ONE WITNESS AS AGAINST MANY OR MANY AS AGAINST ONE.

16 YOU'VE ALSO HEARD THE TESTIMONY OF A WITNESS WHO HAS
17 SPECIAL KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION
18 IN A PARTICULAR PROFESSION AND WHO HAS GIVEN HER OPINION AS
19 AN EXPERT AS TO MATTERS IN WHICH SHE IS SKILLED. IN
20 DETERMINING THE WEIGHT TO BE GIVEN SUCH OPINIONS, YOU SHOULD
21 CONSIDER THE QUALIFICATIONS AND THE CREDIBILITY OF THE EXPERT
22 AND THE REASONS GIVEN FOR HER OPINION. YOU ARE NOT BOUND BY
23 SUCH OPINION. GIVE IT THE WEIGHT, IF ANY, TO WHICH YOU DEEM
24 IT IS ENTITLED. ALL OF THESE THINGS YOU WILL CONSIDER,
25 BEARING IN MIND THAT YOU SHOULD GIVE THE DEFENDANT THE

1 BENEFIT OF A REASONABLE DOUBT.

2 I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THAT THE
3 DEFENDANT ELECTED NOT TO TESTIFY IS NOT A FACTOR TO BE
4 CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN
5 YOUR CONSIDERATION ON THE QUESTION OF GUILT OR THE INNOCENCE
6 OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY
7 MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT
8 TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE
9 CONSIDERED BY YOU IN YOUR DELIBERATIONS.

10 I REPEAT: UNDER YOUR OATH YOU ARE TO DRAW NO
11 CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN
12 THIS CASE DID NOT TESTIFY. THE FACT THAT THE DEFENDANT DID
13 NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED BY YOU IN THE JURY
14 ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON
15 THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS
16 INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE
17 THE GUILT BEYOND A REASONABLE DOUBT.

18 NOW, THE SAME CONSTITUTION AND LAWS WHICH MAKE YOU
19 THE FINDERS OF THE FACTS AND THE EVIDENCE AS I DISCUSSED WITH
20 YOU MOMENTS AGO MAKE ME THE SOLE AND ONLY INSTRUCTOR OF THE
21 LAW. YOU MUST ACCEPT AS CORRECT THE LAW WHICH I HAVE CHARGED
22 AND APPLY IT TO YOU -- APPLY IT TO THE EVIDENCE AS YOU FIND
23 IT AND REACH YOUR VERDICT. NOW, I CHARGE YOU IN THIS REGARD
24 THAT YOU SHOULD NOT BE CONCERNED ABOUT WHAT YOU THINK THE LAW
25 SHOULD BE OR WHAT YOU WISH THE LAW WERE. YOU SHOULD ONLY BE

1 CONCERNED ABOUT WHAT THE LAW IS AS I CHARGE IT TO YOU.

2 MADAM FORELADY, MEMBERS OF THE JURY, THE DEFENDANT
3 IS CHARGED WITH CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.
4 THE FIRST ELEMENT WHICH THE STATE MUST PROVE BEYOND A
5 REASONABLE DOUBT IS THAT THE DEFENDANT ENGAGED IN A SEXUAL
6 BATTERY WITH THE VICTIM. A SEXUAL BATTERY IS SEXUAL
7 INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL INTERCOURSE OR ANY
8 INTRUSION, HOW EVER SLIGHT, OF ANY PART OF A PERSON'S BODY OR
9 OF ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER
10 PERSON'S BODY EXCEPT WHEN THE INTRUSION IS ACCOMPLISHED FOR
11 MEDICALLY-RECOGNIZED TREATMENT OR DIAGNOSTIC PURPOSES.

12 IF YOU HAVE FOUND THAT THE STATE HAS NOT PROVEN
13 BEYOND A REASONABLE DOUBT THAT A SEXUAL BATTERY OCCURRED, YOU
14 WOULD STOP DELIBERATING AS TO THIS CHARGE AND YOUR VERDICT
15 WOULD HAVE TO BE NOT GUILTY. IF YOU FIND THAT A SEXUAL
16 BATTERY DID OCCUR, YOU MUST THEN DECIDE WHETHER THE STATE HAS
17 PROVEN BEYOND A REASONABLE DOUBT THAT THE STATE -- I MEAN
18 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT USED AGGRAVATED
19 FORCE TO ACCOMPLISH THE SEXUAL BATTERY. AGGRAVATED FORCE
20 MEANS THE USE OF PHYSICAL FORCE OR PHYSICAL VIOLENCE OF A
21 HIGH AND AGGRAVATED NATURE TO OVERCOME THE VICTIM. THIS
22 INCLUDES THE THREAT OF USING A DEADLY WEAPON. YOU CAN ALSO
23 FIND BEYOND A REASONABLE DOUBT THAT THE VICTIM SUBMITTED TO
24 SEXUAL BATTERY WHILE THE VICTIM WAS ALSO THE VICTIM OF
25 FORCIBLE CONFINEMENT OR KIDNAPPING. NOW, LADIES AND

1 GENTLEMEN, THE TESTIMONY OF A SEXUAL ASSAULT VICTIM NEED NOT
2 BE CORROBORATED.

3 THE DEFENDANT IS ALSO CHARGED WITH KIDNAPPING. THE
4 STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
5 KNOWINGLY AND UNLAWFULLY SEIZED, CONFINED, INVEIGLED,
6 DECOYED, KIDNAPPED, ABDUCTED, OR CARRIED AWAY ANOTHER PERSON
7 WITHOUT AUTHORITY OF LAW. TO DO A THING UNLAWFULLY IS TO DO
8 IT WILLFULLY AGAINST THE LAW. KNOWINGLY MEANS WITH
9 KNOWLEDGE, CONSCIENTIOUSLY, NOT ACCIDENTALLY. SEIZED MEANS
10 TO TAKE HOLD OF SUDDENLY OR FORCIBLY. CONFINED MEANS TO
11 LIMIT, RESTRICT, OR ENCLOSE WITHIN BOUNDS, IMPRISON, OR SHUT
12 IN OR KEEP IN. INVEIGLE MEANS TO LURE, ENTICE, OR LEAD
13 ASTRAY BY FALSE REPRESENTATIONS, PROMISES, OR OTHER DECEITFUL
14 MEANS.

15 KIDNAP IS TO REMOVE A PERSON AGAINST HIS OR HER WILL
16 BY UNLAWFUL FORCE. ABDUCT MEANS TO CARRY OFF BY FORCE FOR AN
17 ILLEGAL PURPOSE. CARRY AWAY MEANS TO REMOVE. THE STATE DOES
18 NOT HAVE TO PROVE THE DEFENDANT DID ALL THESE THINGS.
19 INSTEAD, IF YOU FIND BEYOND A REASONABLE DOUBT THAT THE
20 DEFENDANT DID ANY OF THESE THINGS, YOU MAY FIND THE DEFENDANT
21 GUILTY OF KIDNAPPING. SOMETHING DONE WITHOUT AUTHORITY OF
22 LAW IS SOMETHING WHICH THE LAW DOES NOT SANCTION, PERMIT,
23 ALLOW, CONDONE, OR PROVIDE JUSTIFICATION FOR. THE KIDNAPPING
24 DOES NOT HAVE TO BE FOR ANY PERSONAL OR MONETARY GAIN OR ANY
25 ILLEGAL PURPOSE, BUT IT MAY BE FOR ANY REASON WHATSOEVER.

1 THE DEFENDANT IS ALSO CHARGED WITH THE POSSESSION OF
2 A WEAPON DURING THE COMMISSION OF OR ATTEMPT TO COMMIT A
3 VIOLENT CRIME. THE STATE MUST PROVE BEYOND A REASONABLE
4 DOUBT THAT THE DEFENDANT WAS IN POSSESSION OF A FIREARM OR
5 VISIBLY APPEARED TO WHAT -- VISIBLY DISPLAYED WHAT APPEARED
6 TO BE A FIREARM. FIREARM MEANS ANY MACHINE GUN, AUTOMATIC
7 RIFLE, REVOLVER, PISTOL OR ANY WEAPON WHICH WOULD BE DESIGNED
8 TO OR MAY BE READILY CONVERTED TO EXPEL A PROJECTILE.

9 IN ORDER TO DEFINE -- TO FIND THE DEFENDANT GUILTY
10 OF POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
11 CRIME, YOU MUST FIND THAT THE DEFENDANT -- YOU MUST FIND THE
12 DEFENDANT GUILTY OF EITHER COMMITTING THE VIOLENT CRIME OR
13 ATTEMPTING TO COMMIT THE VIOLENT CRIME. IN SOUTH CAROLINA
14 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE AND KIDNAPPING
15 ARE VIOLENT CRIMES.

16 NOW, AN ISSUE IN THIS CASE IS THE IDENTIFICATION OF
17 THE DEFENDANT AS THE PERSON WHO COMMITTED THE CRIME CHARGED.
18 THE STATE HAS THE BURDEN OF PROVING IDENTITY BEYOND A
19 REASONABLE DOUBT. YOU MUST BE SATISFIED BEYOND A REASONABLE
20 DOUBT OF THE ACCURACY OF THE IDENTIFICATION OF THE DEFENDANT
21 BEFORE YOU MAY CONVICT THE DEFENDANT.

22 IDENTIFICATION TESTIMONY IS AN EXPRESSION OF BELIEF
23 OR IMPRESSION BY A WITNESS. YOU MUST DETERMINE THE ACCURACY
24 OF THE IDENTIFICATION OF THE DEFENDANT. YOU MUST CONSIDER
25 THE BELIEVABILITY OF EACH IDENTIFICATION WITNESS IN THE SAME

1 WAY AS ANY OTHER WITNESS. YOU MAY CONSIDER WHETHER THE
2 WITNESS HAD AN ADEQUATE OPPORTUNITY TO OBSERVE THE DEFENDANT
3 AT THE TIME OF THE OFFENSE. THIS WILL BE AFFECTED BY THINGS
4 LIKE: HOW LONG OR SHORT A TIME WAS AVAILABLE? HOW FAR OR
5 CLOSE WAS THE WITNESS? WHAT WERE THE LIGHTING CONDITIONS?
6 WHETHER THE WITNESS HAD THE CHANCE TO SEE OR KNOW THE PERSON
7 IN THE PAST.

8 ONCE AGAIN, I INSTRUCT YOU THE BURDEN OF PROOF ON
9 THE STATE EXTENDS TO EVERY ELEMENT OF THE CRIME CHARGED, AND
10 THIS SPECIFICALLY INCLUDES THE BURDEN OF PROVING BEYOND A
11 REASONABLE DOUBT THE IDENTITY OF THE DEFENDANT AS THE PERSON
12 WHO COMMITTED THE CRIME. IF AFTER EXAMINING THE TESTIMONY
13 YOU HAVE A REASONABLE DOUBT AS TO THE ACCURACY OF THE
14 IDENTIFICATION, YOU MUST FIND THE DEFENDANT NOT GUILTY.

15 NOW, IN ORDER TO ESTABLISH CRIMINAL LIABILITY,
16 CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE
17 REQUIRED TO BE PROVEN BY THE STATE FOR A PARTICULAR CRIME
18 MIGHT BE PURPOSE, INTENT, KNOWLEDGE. CRIMINAL INTENT MUST BE
19 PROVEN BY THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL
20 INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY
21 FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS
22 NO WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY. THERE IS
23 NO WAY MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND
24 DETERMINE WHAT THE PERSON HAD IN MIND.

25 SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED

1 FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW
2 YOU MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT
3 REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO
4 ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT
5 MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER
6 FACT, BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES
7 AND ALL OF THE FACTS AND CIRCUMSTANCES OF THE CASE. CRIMINAL
8 INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING. IT IS UP
9 TO YOU TO DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED
10 ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.

11 MADAM FORELADY, MEMBERS OF THE JURY, YOU HAVE BEEN
12 SELECTED AS FAIR AND IMPARTIAL JURORS, SWORN TO IMPARTIALLY
13 TRY AND DETERMINE THE FACTS IN THIS CASE, AND WHEN YOU'VE
14 COMPLIED WITH YOUR OATH TO DO SO, NO ONE WILL HAVE A RIGHT TO
15 CRITICIZE YOUR VERDICT. YOU WILL HAVE FULLY DISCHARGED YOUR
16 DUTY AS JURORS.

17 YOU ARE TO DECIDE THIS CASE ACCORDING TO THE
18 TESTIMONY THAT YOU HAVE HEARD FROM THE LIPS OF THE SWORN
19 WITNESSES ALONG WITH ALL OTHER EVIDENCE WHICH HAS BEEN
20 INTRODUCED. I CHARGE YOU THAT AS JURORS YOU MUST DECIDE THE
21 ISSUES IN THESE PROCEEDINGS WITHOUT ANY BIAS AND WITHOUT ANY
22 PREJUDICE TO EITHER OF THE PARTIES. YOU CANNOT ALLOW
23 YOURSELF TO BE GOVERNED BY SYMPATHY, BY PREJUDICE, BY
24 PASSION, BY PUBLIC OPINION, OR ANY OTHER ARBITRARY FACTOR.
25 BOTH THE STATE AND THE DEFENDANT HAVE THE RIGHT TO EXPECT

1 THAT EACH OF YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL
2 OF THE EVIDENCE IN THIS CASE AND THAT YOU WILL FOLLOW THE LAW
3 AS I HAVE EXPLAINED IT TO YOU.

4 MADAM FORELADY, MEMBERS OF THE JURY, AS I TOLD YOU,
5 I HAVE PREPARED THREE VERDICT FORMS. EACH OF THESE VERDICT
6 FORMS HAS TWO POSSIBLE VERDICTS. YOU ARE NOT TO INFER
7 ANYTHING BY WHAT GOES FIRST ON THESE VERDICT FORMS OR WHAT
8 GOES SECOND BECAUSE SOMETHING HAS TO GO FIRST AND SOMETHING
9 HAS TO GO SECOND.

10 WITH THE CHARGE OF CRIMINAL SEXUAL CONDUCT IN THE
11 FIRST DEGREE, THE TWO POSSIBLE VERDICTS ARE: WE, THE JURY,
12 UNANIMOUSLY FIND THE DEFENDANT GUILTY OR WE, THE JURY,
13 UNANIMOUSLY FIND THE DEFENDANT NOT GUILTY. WITH RESPECT TO
14 THE CHARGE OF KIDNAPPING, TWO POSSIBLE VERDICT FORMS ARE
15 AGAIN: WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT GUILTY
16 OR WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT NOT GUILTY.
17 AND WITH THE CHARGE OF POSSESSION OF A FIREARM DURING THE
18 COMMISSION OF A VIOLENT CRIME, YOU AGAIN HAVE TWO POSSIBLE
19 VERDICTS: WE, THE JURY, FIND THE DEFENDANT GUILTY OR WE, THE
20 JURY, FIND THE DEFENDANT NOT GUILTY.

21 NOW, IF YOU DON'T FIND THE DEFENDANT GUILTY OF
22 EITHER OF THE KIDNAPPING OR THE CRIMINAL SEXUAL CONDUCT IN
23 THE FIRST DEGREE, AS I SAID EARLIER YOU CANNOT FIND HIM
24 GUILTY OF THE USE OF THE FIREARM DURING THE COMMISSION OF A
25 VIOLENT CRIME BECAUSE IF HE'S NOT GUILTY OF THOSE OFFENSES,

1 THEN HE'S NOT GUILTY OF THE COMMISSION OF A VIOLENT CRIME.

2 AS I SAID, THIS VERDICT MUST BE A UNANIMOUS VERDICT.

3 IT MUST BE THE UNANIMOUS VERDICT OF ALL TWELVE JURORS. IT
4 CANNOT BE TEN/TWO, EIGHT/FOUR, ELEVEN/ONE. IT'S GOT TO BE
5 UNANIMOUS OF ALL TWELVE JURORS AS TO ALL CHARGES.

6 MADAM FORELADY, WHAT I'M GOING TO ASK YOU TO DO IS
7 WHEN YOU HAVE REACHED A VERDICT ON EACH OF THESE CHARGES THAT
8 YOU CIRCLE THAT VERDICT, WHATEVER IT IS. IF IT'S GUILTY,
9 CIRCLE THE WHOLE VERDICT. IF IT'S NOT GUILTY, CIRCLE THE
10 WHOLE VERDICT. DO THAT ON ALL THREE OF YOUR VERDICT FORMS,
11 IF IT'S APPLICABLE AS TO ALL THREE. THEN I'M GOING TO ASK
12 THAT YOU SIGN EACH OF THE VERDICT FORMS AS FOREPERSON OF THE
13 JURY AND TO DATE THE VERDICT FORM.

14 I'M GOING TO LET YOU STEP BACK TO THE JURY ROOM AT
15 THIS TIME, ALL BUT THE ALTERNATES. I'M GOING TO ASK THAT
16 Y'ALL STAY WITH ME. BUT DO NOT BEGIN YOUR DELIBERATIONS. I
17 MUST REVIEW WITH THE ATTORNEYS TO DETERMINE WHETHER THEY
18 BELIEVE THAT I HAVE EITHER FAILED TO INSTRUCT YOU SOMETHING
19 THAT SHOULD HAVE BEEN INSTRUCTED OR I INCORRECTLY INSTRUCTED
20 YOU. IF ADDITIONAL INSTRUCTIONS ARE NECESSARY, I WILL
21 IMMEDIATELY BRING YOU BACK OUT AND GIVE YOU THOSE
22 INSTRUCTIONS. IF THEY ARE NOT NECESSARY, THEN I WILL HAVE A
23 BAILIFF BRING THE VERDICT FORMS ALONG WITH THE EXHIBITS THAT
24 HAVE BEEN INTRODUCED INTO THIS TRIAL SO THAT -- AND YOU WILL
25 THEN BE TOLD THAT YOU CAN BEGIN YOUR DELIBERATIONS.

1 NOW, THERE ARE SEVERAL VIDEOS IN THIS CASE. IF YOU
2 WANT TO BE ABLE TO VIEW THOSE VIDEOS, WE WILL MAKE A MONITOR
3 AVAILABLE SO THAT THAT CAN BE DONE. WHEN YOU HAVE REACHED A
4 VERDICT, MADAM FORELADY, IF YOU OR SOMEONE WILL KNOCK ON THE
5 DOOR THERE WILL BE A BAILIFF SEATED OUTSIDE THE DOOR. ADVISE
6 THE BAILIFF THAT YOU HAVE REACHED A UNANIMOUS VERDICT. AT
7 THAT TIME WE WILL BRING YOU BACK IN SO THAT YOUR VERDICT CAN
8 BE PUBLISHED. NOW, YOUR LUNCH -- I ASKED YOUR LUNCH TO BE
9 HERE BY 1. IT MAY BE HERE A FEW MINUTES EARLY. IS IT HERE?

10 BAILIFF: LET ME CHECK.

11 THE COURT: WELL, IF IT IS, WE'LL -- WE'LL LET YOU
12 HAVE THAT. I JUST ASK THAT IF ANYBODY IS OUT OF THE JURY
13 ROOM, IN THE REST ROOM OR WHATEVER THE CASE, DON'T DELIBERATE
14 THE CASE UNLESS ALL TWELVE PEOPLE ARE IN THE JURY ROOM. YOU
15 CAN EAT YOUR LUNCH AND DELIBERATE OR IF YOU WANT TO TAKE A
16 FEW MINUTES AND RELAX BEFORE YOU BEGIN YOUR DELIBERATION
17 THAT'S UP TO THE TWELVE OF YOU. ALL RIGHT. LET ME GET YOU
18 TO STEP BACK. DON'T DISCUSS THE CASE AT ALL, AND IF YOU CAN
19 BEGIN DELIBERATIONS I'LL HAVE THE BAILIFF BRING THE VERDICT
20 FORMS AND THE EXHIBITS BACK. MS. SMITH, ARE YOU FEELING ALL
21 RIGHT?

22 JUROR SMITH: OKAY. THANK YOU.

23 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT

24 12:51 P.M.)

25 THE COURT: ALL RIGHT. MR. RUSSO AND MS.

1 BARTHOLOMEW, APPARENTLY YOUR COLLEAGUES HAVE SURVIVED THE
2 ORDEAL AT LEAST SOMEWHAT INTACT. SO IT APPEARS THAT THE
3 TWELVE JURORS ARE GOING TO BE ABLE TO GO FORWARD WITH THE
4 DELIBERATION. AS A RESULT, I'M GOING TO LET Y'ALL GO.

5 (THE ALTERNATES WERE EXCUSED FROM THE TRIAL.)

6 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE WITH
7 RESPECT TO THE INSTRUCTIONS?

8 MS. BRISBIN: NO, YOUR HONOR.

9 THE COURT: ANYTHING FROM THE DEFENDANT?

10 MS. BROWN: YOUR HONOR, WE WOULD RENEW OUR OBJECTION
11 AT THIS TIME TO THE COURT CHARGING SECTION 16-3-657 AS IT
12 APPLIED TO NO CORROBORATION NEEDED---

13 THE COURT: ALL RIGHT.

14 MS. BROWN: ---IN THIS CASE.

15 THE COURT: SO NOTED. ALL RIGHT. ANYTHING FURTHER?
16 ALL RIGHT. WELL, I WILL -- HERE ARE THE VERDICT FORMS.
17 Y'ALL WANT TO LOOK AT THEM BEFORE THEY GO? I'D LIKE FOR YOU
18 TO DO SO. IF YOU WOULD GET WITH DAPHNE AND MAKE SURE WE HAVE
19 ALL THE EXHIBITS, THEN WE CAN SEND -- SEND THEM IN. SEND THE
20 BAILIFF IN AND LET HIM TELL THAT JURY TO EARN THEIR PAY.

21 (WHEREUPON, THE JURY BEGAN DELIBERATING AT 12:56
22 P.M. PAUSE IN PROCEEDINGS WHILE THE JURY DELIBERATED.)

23 THE COURT: PLEASE BE SEATED. THE OTHER THING I CAN
24 DO IS IF YOU WANT ME JUST TO READ THAT CHARGE AGAIN I CAN DO
25 THAT. WHICH ONE DO YOU WANT?

1 MS. BROWN: YOU READING IT AGAIN IS FINE WITH ME,
2 YOUR HONOR.

3 MS. BRISBIN: THAT'S FINE WITH US, TOO.

4 THE COURT: ALL RIGHT. Y'ALL HAVE A SEAT IF YOU
5 WOULD, PLEASE. ALL DRESSED UP IN PINK, HUH? ALL RIGHT. WE
6 NEED TO BRING IN MR. WALKER. YEAH. ALL RIGHT. I HAVE
7 RECEIVED A NOTE FROM THE JURY AND I MET WITH THE SOLICITOR
8 AND THE DEFENSE COUNSEL IN MY CHAMBERS JUST TO ADVISE THEM OF
9 WHAT THIS NOTE SAYS. THE NOTE INDICATES THAT, ACCORDING TO
10 MS. FIELDS WHO IS THE FOREPERSON, "PLEASE HELP US WITH THE
11 DEFINITION OF KIDNAPPING."

12 WHAT I INTENDED TO DO WAS JUST RECHARGE THEM THE
13 CHARGE OF KIDNAPPING THAT I'D GIVEN THEM EARLIER. AND I
14 SUGGESTED TO THE ATTORNEYS THAT I WOULD BE HAPPY TO EITHER
15 PLAY IT AGAIN IF THEY WANT THE COURT REPORTER TO TRY AND FIND
16 IT OR JUST TO READ -- READ THE CHARGE AGAIN, AND I THINK BOTH
17 OF THEM HAD INDICATED THAT IT WOULD BE APPROPRIATE JUST TO
18 READ THE CHARGE AGAIN. IS THAT CORRECT, MADAM SOLICITOR?

19 MS. BRISBIN: YES, YOUR HONOR.

20 THE COURT: MS. BROWN?

21 MS. BROWN: YES, YOUR HONOR.

22 THE COURT: ALL RIGHT. WELL, LET'S BRING THE JURY
23 IN IF WE COULD, PLEASE.

24 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT

25 2:56 P.M.)

1 THE COURT: MADAM FORELADY, I RECEIVED YOUR NOTE
2 WHERE YOU ASKED THAT I HELP YOU WITH THE DEFINITION OF
3 KIDNAPPING. WHAT I CAN DO IS TO RECHARGE YOU THE CHARGE OF
4 KIDNAPPING IF -- IF YOU WOULD LIKE. I HAVE ASKED THE
5 ATTORNEYS WHETHER THEY WOULD HAVE ANY OBJECTION TO MY JUST
6 REREADING THE CHARGE AS OPPOSED TO HAVING IT -- US FINDING IT
7 ON THE TRANSCRIPT AND HAVING HER PLAY IT AGAIN. THE
8 ATTORNEYS HAVE CONSENTED TO MY JUST READING IT. SO I WILL
9 READ THE CHARGE OF -- GIVE YOU THE CHARGE THAT I GAVE YOU
10 EARLIER.

11 THE DEFENDANT IS CHARGED WITH KIDNAPPING. THE STATE
12 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
13 KNOWINGLY AND UNLAWFULLY SEIZED, CONFINED, INVEIGLED,
14 DECOYED, KIDNAPPED, ABDUCTED OR CARRIED AWAY ANOTHER PERSON
15 WITHOUT AUTHORITY OF LAW. TO DO A THING UNLAWFULLY IS TO DO
16 IT WILLFULLY AGAINST THE LAW. KNOWINGLY MEANS WITH
17 KNOWLEDGE, CONSCIOUSLY, NOT ACCIDENTALLY. SEIZE MEANS TO
18 TAKE HOLD OF SUDDENLY OR FORCIBLY. CONFINED MEANS TO LIMIT,
19 RESTRICT OR ENCLOSE WITHIN BOUNDS, IMPRISON, OR SHUT OR KEEP
20 IN. INVEIGLE MEANS TO LURE, ENTICE, OR LEAD ASTRAY BY FALSE
21 REPRESENTATIONS, PROMISES, OR OTHER DECEITFUL MEANS.

22 DECOY MEANS TO LURE BY OR AS IF BY DECOY. A DECOY
23 IS SOMETHING TO ENTICE A PERSON INTO A TRAP. KIDNAP IS TO
24 REMOVE A PERSON AGAINST HIS OR HER WILL BY UNLAWFUL FORCE OR
25 BY FRAUD. ABDUCT MEANS TO CARRY OFF SECRETLY OR BY FORCE FOR

1 AN ILLEGAL PURPOSE. CARRY AWAY MEANS TO REMOVE.

2 NOW, THE STATE DOES NOT HAVE TO PROVE THAT THE
3 DEFENDANT DID ALL OF THESE THINGS. INSTEAD, IF YOU FIND
4 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID ANY OF THESE
5 THINGS, YOU MAY FIND THE DEFENDANT GUILTY OF KIDNAPPING.
6 SOMETHING DONE WITHOUT AUTHORITY OF LAW IS SOMETHING WHICH
7 THE LAW DOES NOT SANCTION, PERMIT, ALLOW, CONDONE, OR PROVIDE
8 JUSTIFICATION FOR. THE KIDNAPPING DOES NOT HAVE TO BE FOR
9 ANY PERSONAL OR MONETARY GAIN -- OR MONETARY GAIN FOR ANY
10 ILLEGAL PURPOSE BUT MAY BE FOR ANY REASON WHATSOEVER.

11 ALL RIGHT? I HOPE THAT'S HELPFUL TO YOU. IF Y'ALL
12 WILL RETURN TO THE JURY ROOM AND RESUME YOUR DELIBERATIONS, I
13 WOULD APPRECIATE IT.

14 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
15 3:00 P.M. AND RESUMED DELIBERATIONS.)

16 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE WITH
17 RESPECT TO THE RESPONSE TO THE QUESTION FROM THE JURY?

18 MS. BRISBIN: NO, YOUR HONOR.

19 THE COURT: ANYTHING FROM THE DEFENDANT?

20 MS. BROWN: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. I WILL MARK THIS QUESTION
22 COURT'S EXHIBIT NUMBER 1?

23 COURT REPORTER: YES, SIR.

24 (COURT'S EXHIBIT 1 WAS MARKED FOR IDENTIFICATION
25 ONLY.)

1 THE COURT: WE'VE GOT A VERDICT. OH, ARE Y'ALL
2 READY?

3 MS. BRISBIN: THE STATE'S READY, YOUR HONOR.

4 THE COURT: ARE YOU READY?

5 MS. BROWN: YES, YOUR HONOR.

6 THE COURT: ALL RIGHT. LET'S BRING US A JURY IN.

7 (WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH A
8 VERDICT AT 3:23 P.M.)

9 THE COURT: ALL RIGHT. MADAM FORELADY, IT'S BEEN
10 REPORTED YOU'VE REACHED A VERDICT.

11 FORELADY: YES, YOUR HONOR.

12 THE COURT: OR VERDICTS. IS THIS THE UNANIMOUS
13 VERDICT OF ALL THE JURORS?

14 FORELADY: YES, SIR.

15 THE COURT: ALL RIGHT. MR. BAILIFF? ALL RIGHT.
16 WHO WANTS TO PUBLISH THE VERDICT? YOU?

17 THE CLERK: YES, SIR. THAT'S ME.

18 THE COURT: YOU DO THE HONOR?

19 THE CLERK: YOUR HONOR, WE HAVE THE STATE OF SOUTH
20 CAROLINA, COUNTY OF AIKEN, STATE OF SOUTH CAROLINA VERSUS
21 JOSEPH WALKER. INDICTMENT NUMBER 2002-GS-02-1294 FOR
22 CRIMINAL SEXUAL CONDUCT FIRST DEGREE. WE, THE JURY,
23 UNANIMOUSLY FIND THE DEFENDANT GUILTY OF THE CRIME OF
24 CRIMINAL SEXUAL CONDUCT FIRST DEGREE, DATED 7/23/2003, SIGNED
25 BY FOREPERSON ROSEMARY FIELDS.

1 YOUR HONOR, WE HAVE THE STATE OF SOUTH CAROLINA
2 VERSUS JOSEPH WALKER, INDICTMENT NUMBER 2002-GS-02-1296 FOR
3 KIDNAPPING. WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT
4 GUILTY OF THE CRIME OF KIDNAPPING, DATED 7/23/2003, SIGNED BY
5 FOREPERSON ROSEMARY FIELDS.

6 YOUR HONOR, WE HAVE THE STATE OF SOUTH CAROLINA
7 VERSUS JOSEPH WALKER, INDICTMENT NUMBER 2002-GS-02-1295,
8 POSSESSION OF A FIREARM OR A KNIFE DURING THE COMMISSION OR
9 ATTEMPT TO COMMIT A VIOLENT CRIME. WE, THE JURY, UNANIMOUSLY
10 FIND THE DEFENDANT NOT GUILTY OF THE CRIME OF POSSESSION OF A
11 FIREARM OR A KNIFE DURING THE COMMISSION OR ATTEMPT TO COMMIT
12 A VIOLENT CRIME, DATED 7/23/2003, SIGNED BY FOREPERSON
13 ROSEMARY FIELDS.

14 MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, IS
15 THIS YOUR VERDICT? PLEASE INDICATE BY RAISING YOUR RIGHT
16 HAND. YOUR HONOR, ALL HANDS ARE RAISED.

17 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE WITH
18 RESPECT TO THE JURY---

19 MS. BRISBIN: NO, YOUR HONOR.

20 THE COURT: ---ON THE VERDICT? ANYTHING FROM THE
21 DEFENDANT?

22 MS. BROWN: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT. ALL RIGHT. MADAM FORELADY,
24 LADIES AND GENTLEMEN OF THE JURY, I THANK YOU VERY MUCH FOR
25 YOUR SERVICE ON THIS JURY PANEL. I KNOW YOU PAID CLOSE

1 ATTENTION AND I APPRECIATE YOU DOING THAT AS WELL AS I KNOW
2 EVERYBODY ELSE INVOLVED IN THE TRIAL DOES. I HOPE YOU FOUND
3 THE EXPERIENCE NOT TOO DIFFICULT AND MAYBE ONE THAT YOU
4 REALIZE HOW IMPORTANT IT IS THAT WE HAVE THE PARTICIPATION OF
5 MEMBERS OF THE COMMUNITY WITHIN OUR CRIMINAL JUSTICE SYSTEM.

6 THE GOOD NEWS FOR YOU NOW IS YOU HAVE NOW -- I MEAN
7 FINISHED YOUR OBLIGATION FOR JURY DUTY THIS WEEK. WE'RE
8 GOING TO BE ABLE TO TURN YOU LOOSE AFTER THIS. DOES WENDY
9 WANT TO MEET WITH THEM?

10 THE CLERK: I HAVE THE CHECKS, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 (THE JURY WAS EXCUSED FROM THE TRIAL AT 3:27 P.M.)

13 THE COURT: ALL RIGHT. Y'ALL READY TO GO FORWARD
14 WITH THE SENTENCING OR DO YOU NEED SOME TIME?

15 MS. BRISBIN: WE NEED A FEW MINUTES, YOUR HONOR.

16 THE COURT: ALL RIGHT. IF WE COULD WAIT A FEW
17 MINUTES, WE MIGHT BE ABLE TO DO ANOTHER PLEA IF YOU'VE GOT
18 ONE.

19 MS. BRISBIN: YOUR HONOR, COULD COUNSEL AND I
20 APPROACH A MOMENT?

21 THE COURT: ALL RIGHT.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

23 THE COURT: ALL RIGHT. BEFORE WE -- I FAILED TO --
24 LET ME DO THIS REAL QUICK. I FAILED TO ASK EITHER THE STATE
25 OR THE DEFENSE WHETHER THERE WERE ANY MOTIONS THAT THEY

1 WANTED NOW THAT WE HAVE DISCHARGED THE JURY IN THE CASE. IS
2 THERE ANYTHING FROM THE STATE?

3 MS. BRISBIN: NO, YOUR HONOR.

4 THE COURT: ANYTHING FROM THE DEFENDANT?

5 MS. BROWN: YES, YOUR HONOR. AT THIS TIME I WOULD
6 MOVE ON BEHALF OF MR. WALKER FOR A NEW TRIAL ON INDICTMENTS
7 2002-GS-02-1294 AND 1296, THOSE BEING FOR CRIMINAL SEXUAL
8 CONDUCT IN THE FIRST DEGREE AND THE CHARGE OF KIDNAPPING.
9 YOUR HONOR, WE WOULD MAKE THAT MOTION FOR A NEW TRIAL BASED
10 ON THE GROUNDS PREVIOUSLY SET FOR DIRECTED VERDICT.

11 THE COURT: ANYTHING FROM THE STATE IN RESPONSE TO
12 THE MOTION? DO YOU WANT TO SAY ANYTHING?

13 MS. BRISBIN: YOUR HONOR, I THINK THE TESTIMONY
14 SPEAKS FOR ITSELF. THE EVIDENCE IS CERTAINLY ADEQUATE FOR
15 THE JURY TO HAVE COME TO THIS CONCLUSION.

16 THE COURT: ALL RIGHT. I'M GOING TO DENY THE
17 MOTIONS -- MOTION. AGAIN, I BELIEVE THERE WAS SUFFICIENT
18 EVIDENCE, TAKING EVERYTHING IN THE MOST LIGHT AT THE TIME, TO
19 RULE AS I DID, TO NOT GRANT THE DIRECTED VERDICT ON THE -- ON
20 ANY OF THE CHARGES. MY NOT DOING SO CERTAINLY DIDN'T SPEAK
21 TO THE WEIGHT OF THE EVIDENCE, AND CLEARLY THE JURY AT LEAST
22 ON ONE OF THE CHARGES FOUND THAT THE WEIGHT OF THE EVIDENCE
23 WAS NOT SUFFICIENT THAT THE DEFENDANT WOULD BE FOUND GUILTY
24 BEYOND A REASONABLE DOUBT. ON TWO THEY FOUND THAT THAT WAS
25 THE CASE. SO I'M GOING TO DENY THE MOTION. ALL RIGHT. NOW,

1 DID Y'ALL WANT TO CHAT A FEW MINUTES OR DID YOU WANT ME TO
2 JUST---

3 MS. BROWN: YES, YOUR HONOR. I NEED A FEW MOMENTS
4 TO BOTH CHECK WITH LIEUTENANT BAMBERG ABOUT THOSE AND TO
5 SPEAK WITH MY CLIENT REGARDING THAT MATTER IF I COULD,
6 PLEASE.

7 THE COURT: ALL RIGHT. WELL, IF -- DO I NEED TO
8 BREAK COURT OR CAN Y'ALL DO THAT SOMEWHERE---

9 MS. BROWN: WE CAN -- WE CAN GO IN THE BACK, YOUR
10 HONOR, AND DISCUSS THAT. I CAN ASK LIEUTENANT BAMBERG OUT
11 HERE AND I CAN SPEAK WITH MR. WALKER IN THE BACK.

12 THE COURT: ALL RIGHT. OKAY. YOU'RE FREE TO GO AND
13 DO THAT AND WE'LL RECESS FOR A FEW MINUTES.

14 (PAUSE IN PROCEEDINGS.)

15 THE COURT: DOES YOUR CLIENT -- I MEAN, DOES MS.
16 SANDERS WANT TO SAY ANYTHING?

17 MS. BRISBIN: NO, YOUR HONOR. MS. SANDERS DOES NOT
18 WISH TO MAKE ANY STATEMENTS.

19 THE COURT: WE'RE GOING TO DEFER THE SENTENCING?

20 MS. BRISBIN: I BELIEVE MS. BROWN HAS---

21 MS. BROWN: NO, YOUR HONOR.

22 MS. BRISBIN: ---TALKED TO HER CLIENT SUFFICIENTLY.

23 THE COURT: ALL RIGHT. SO Y'ALL WANT TO GO FORWARD
24 WITH SENTENCING HERE?

25 MS. BROWN: YES, YOUR HONOR.

1 THE COURT: YOU SHOULD HAVE TOLD ME. THE JURY
2 WANTED TO WATCH IT AND I SENT THEM HOME. ALL RIGHT HERE.
3 WHAT HAVE WE GOT? MS. BRISBIN, DO YOU WANT TO STEP TO THE...
4 HAVE YOU GOT A LAWYER ON THE CHARGES THAT ARE PENDING AGAINST
5 YOU IN ORANGEBURG COUNTY?

6 MR. WALKER: NO, SIR, YOUR HONOR.

7 MS. BROWN: YOUR HONOR, HE INFORMS ME THAT HE DID
8 SEND THE PAPERWORK TO THE ORANGEBURG COUNTY PUBLIC DEFENDER'S
9 OFFICE AND THAT HE HAS FILED THE APPLICATIONS AND THAT HE WAS
10 CONTACTED BY SOMEBODY WHO -- HE DID NOT REMEMBER WHO, BUT HE
11 WAS CONTACTED BY SOMEONE IN THAT OFFICE WHO INFORMED HIM THAT
12 AIKEN COUNTY WOULD BE HANDLING ALL OF THE CHARGES AND THAT
13 THEY DID NOT NEED TO BE IN CONTACT FURTHER WITH HIM AT THAT
14 POINT. I WILL BE---

15 THE COURT: WHAT ARE THE CHARGES THAT ARE PENDING
16 AGAINST HIM IN ORANGEBURG COUNTY?

17 MS. BROWN: THE INDICTMENTS ARE FOR BURGLARY IN THE
18 FIRST DEGREE AND FOR KIDNAPPING, YOUR HONOR.

19 THE COURT: BURGLARY IN THE FIRST DEGREE AND
20 KIDNAPPING.

21 MS. BROWN: YES, YOUR HONOR.

22 THE COURT: YOU KNOW NOTHING ABOUT THOSE CHARGES, DO
23 YOU?

24 MS. BROWN: THEY'RE THE CHARGES BASED ON THE
25 ALLEGATIONS THAT BEGAN---

1 THE COURT: OH, IT'S ARISING---

2 MS. BRISBIN: ---AT THIS SAME INCIDENT.

3 THE COURT: IT'S ARISING OUT OF THIS.

4 MS. BROWN: YES, YOUR HONOR.

5 MS. BRISBIN: YES, SIR.

6 THE COURT: OH, OKAY. SO WHAT IS THE ALLEGED
7 BURGLARY?

8 MS. BRISBIN: GOING INTO THE VICTIM'S HOME WITHOUT
9 PERMISSION.

10 THE COURT: OH, OKAY.

11 MS. BRISBIN: WITH INTENT TO ABDUCT HER.

12 THE COURT: ALL RIGHT. TELL ME ABOUT MR. WALKER,
13 HIS RECORD, IF YOU WOULD.

14 MS. BRISBIN: YES, SIR. IN 1975 HE HAD A CONVICTION
15 FOR USE OF INDECENT LANGUAGE ON THE TELEPHONE AND A FEDERAL
16 CONVICTION FOR FORGING A TREASURY CHECK. IN 1976 HE HAD A
17 CONVICTION FOR ATTEMPTING TO AVOID TELEPHONE PAYMENT. IN
18 1977 -- IN APRIL OF 1977 A CONVICTION FOR FORGERY. IN
19 NOVEMBER OF 1987 HE HAD A FRAUDULENT CHECK CONVICTION AND AN
20 OBTAINING PROPERTY BY FALSE PRETENSES CONVICTION. IN 1988
21 ANOTHER FRAUDULENT CHECK CONVICTION AS WELL AS 1989, MULTIPLE
22 CHARGES, ONE DISPOSITION IN 1989.

23 A DRIVING UNDER SUSPENSION IN 1989. FRAUDULENT
24 CHECK, SEVEN COUNTS, IN 1989. THAT WAS A SEPARATE -- EXCUSE
25 ME. THAT WAS THE SAME CHARGE THAT I ALREADY MENTIONED IN

1 1989. IN 1991 FRAUDULENT CHECK CONVICTION. IN 1994
2 FRAUDULENT CHECK CONVICTION. 1997 FRAUDULENT CHECK, SIX
3 COUNTS, CONVICTED. IN AUGUST OF 2000 FRAUDULENT CHECKS,
4 THREE CONVICTIONS, AND IN NOVEMBER OF 2000 FRAUDULENT CHECKS,
5 TWO CONVICTIONS. AND I MADE ONE MISTAKE. THAT FORGED U.S.
6 TREASURY CHECK CONVICTION WAS IN 1979, AND I BELIEVE THAT'S
7 IT.

8 THE COURT: OKAY. ANYTHING ELSE Y'ALL WANT TO SAY?

9 MS. BRISBIN: NO, YOUR HONOR.

10 THE COURT: ALL RIGHT. MS. BROWN?

11 MS. BROWN: THANK YOU, YOUR HONOR. MAY IT PLEASE
12 THE COURT? YOUR HONOR, AS IT'S BEEN SAID BEFORE, MR. WALKER
13 IS 44 YEARS OLD. YOUR HONOR, HE HAS MAINLY WORKED DOING
14 CONSTRUCTION-TYPE WORK. AT THE TIME OF THIS ALLEGED INCIDENT
15 HE WAS WORKING DOING WORK HELPING TO BUILD THE PUBLIC SCHOOL
16 OVER IN WAGENER. HE TELLS ME THAT HE WOULD DO THAT WORK
17 DURING THE -- DURING THE WEEK AND THAT HE WOULD DO YARD WORK
18 ON THE WEEKENDS AND HE TRIED TO DO WHAT HE CAN TO STAY BUSY
19 AND STAY PRODUCTIVE. HE HAS THREE CHILDREN, ALL DAUGHTERS.
20 THEY ALL LIVE IN BEAUFORT. THE YOUNGEST IS 12. THE MIDDLE
21 DAUGHTER IS 14 AND THE OLDEST IS 17, AND HE WOULD WORK TO TRY
22 TO SEND MONEY TO HELP WITH THEIR SUPPORT.

23 YOUR HONOR, AS YOU'VE HEARD HIS PRIOR RECORD, HE HAS
24 ABSOLUTELY NOTHING OF VIOLENCE ON HIS PRIOR RECORD. YOUR
25 HONOR HAS HAD THE OPPORTUNITY TO HEAR THE FACTS OF THIS CASE.

1 HE HAS CONSISTENTLY DENIED THE ALLEGATIONS THAT THE STATE
2 MADE. WE UNDERSTAND THAT THE JURY -- THE JURY HAS SPOKEN AND
3 WE DO UNDERSTAND, AND HE UNDERSTANDS THAT HE WILL HAVE TO BE
4 SENTENCED TODAY ACCORDINGLY.

5 YOUR HONOR, WE WOULD ASK THE COURT TO TAKE THE
6 ENTIRE CIRCUMSTANCES INTO ACCOUNT, AND WE WOULD ASK THE COURT
7 TO TAKE INTO ACCOUNT THAT HE'S 44 YEARS OLD AND HAS NO RECORD
8 OF VIOLENCE AND WE WOULD ASK THE COURT TO -- WE WOULD ASK THE
9 COURT FOR LENIENCY IN SENTENCING.

10 THE COURT: ALL RIGHT. MR. WALKER, ANYTHING YOU
11 WANT TO SAY?

12 MR. WALKER: NO, SIR.

13 THE COURT: ALL RIGHT. ON THE CRIMINAL SEXUAL
14 CONDUCT--FIRST DEGREE, THE SENTENCE OF THIS COURT: YOU BE
15 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A TERM
16 OF 24 YEARS, PLUS COSTS AND ASSESSMENTS AS APPLICABLE. ON
17 YOUR KIDNAPPING, SENTENCE OF THIS COURT: YOU BE COMMITTED TO
18 THE DEPARTMENT OF CORRECTIONS FOR A TERM OF 24 YEARS. THESE
19 SENTENCES WILL RUN CONCURRENT AND THEY ARE -- YOU'RE GIVEN
20 CREDIT FOR WHATEVER TIME YOU MAY HAVE SERVED IN THIS MATTER.

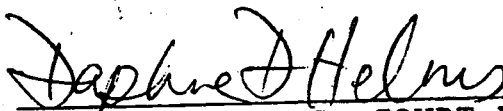
21 MS. BROWN: THANK YOU, YOUR HONOR.

22 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)
23
24
25

I, THE UNDERSIGNED DAPHNE D. HELMS, OFFICIAL COURT REPORTER FOR THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR AIKEN COUNTY, SOUTH CAROLINA, ON THE 22ND AND 23RD DAYS OF JULY, 2003.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

OCTOBER 16, 2003



DAPHNE D. HELMS, COURT REPORTER

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

3
4 INDICTMENT NO. 2002-GS-02-1294
5 2002-GS-02-1295
6 2002-GS-02-1296

7 STATE OF SOUTH CAROLINA,)
8 Plaintiff)

9 VS.)

TRANSCRIPT OF RECORD

10 JOSEPH WALKER,)
11 Defendant)

12
13 July 21, 2003
14 Aiken, South Carolina

15
16 B E F O R E:

17 THE HONORABLE JAMES R. BARBER, III, JUDGE.
18

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

20 Brenda Brisbine, Assistant Solicitor
21 2nd Judicial Circuit

22 Kelley Brown, Esquire
23 Attorney for the Defendant

24 Brenda W. Sigwald, Circuit Court
25 P.O. Box 711, New Ellenton, South Carolina 29809

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Pretrial Motions				
<u>Neal v Biggers</u>				
Rhonda Bamberg	3	9	14	16
Margaret Sanders	18			
By the Court	26			
Reporter's Certificate	36			

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
S-1	Photographic Lineup	8
S-2	Still Video Photo	14
S-3	Still Video Photo	14

PRETRIAL MOTIONS

1
2
3
4
5
6
7
8
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THE COURT: All right. What do we have? A
Neal vs. Biggers?

MS. BRISBINE: Yes, sir.

THE COURT: Anything else?

MS. BRISBINE: That's all for today as far as I
know.

MS. BROWN: The defense doesn't anticipate any
other pretrial motions, Your Honor.

THE COURT: All right. You want to call your
witness.

MS. BRISBINE: Yes, Your Honor. This is State
vs. Joseph Walker, Indictment No's. 2002-GS-02-1294, 1295
and 1296. And the State calls Lieutenant Rhonda Bamberg.

THEREUPON,

LIEUTENANT RHONDA BAMBERG,
after being duly sworn, testified as follows:

THE CLERK: Take a seat in the witness box.
State your full name for the court, spelling your last.

MS. BAMBERG: My name the Rhonda Ray Bamberg,
B-a-m-b-e-r-g.

DIRECT EXAMINATION

By Ms. Brisbane:

Q Where are you employed?

A I'm employed with the Orangeburg County Sheriff's

1 Office.

2 Q And what's your position there?

3 A I'm a lieutenant over the criminal investigation
4 division.

5 Q Were you the initial investigator in this case?

6 A I was.

7 Q And how did it happen to get into -- transferred to
8 Aiken County?

9 A It originated in Orangeburg County and the
10 investigation led into Aiken County with the
11 identification of Mr. Walker.

12 Q And did the incident occur -- some of the incidents
13 occur in Aiken County?

14 A Yes, they did.

15 Q Did you do a photo lineup in the course of this
16 investigation?

17 A Yes, I did.

18 Q And how did you get the defendant's name?

19 A I got the defendant's name through the video from the
20 BP out of Denmark. The manager, the day manager that
21 was on duty there identified Mr. Walker from that
22 video.

23 Q Okay. How did you -- I think we need a little
24 background. How did you get the video from that store?

25 A The incident originated in Denmark, where the victim

1 had gone and her car broke down. She had met
 2 Mr. Walker at that BP in Denmark, so it was on video.
 3 I went to Denmark and I got that video and had the
 4 manager identify the person that the victim had told me
 5 was her -- the person that raped her.

6 Q Okay. And was that the video from the day of the rape?

7 A Yes, it is.

8 Q And did you show that video to the victim?

9 A I did.

10 Q And did she recognize anyone in the video?

11 A Yes, she did.

12 Q And how did you determine who that person was?

13 A I took that video tape back to the manager of Denmark
 14 and she identified him as Mr. Walker. She had
 15 previously had an encounter with him in an incident
 16 that she had filed with the city of Denmark.

17 Q Okay. She knew him by name?

18 A She did.

19 Q Was there any doubt in her mind, or did she indicate
 20 there was any doubt as to who that person was?

21 A No. Within seconds of looking at the video, she said
 22 that's Joseph Walker and told me where -- the last
 23 place she knew of him to live at.

24 Q Okay.

25 THE COURT: Wait a minute. Who was it that

1 told you this?

2 MS. BAMBERG: The manager of the BP in Denmark,
3 Diane Waring.

4 THE COURT: All right. So she viewed the video
5 and told you who the person was after her viewing of the
6 video?

7 MS. BAMBERG: Correct. After Ms. Sanders
8 viewed the video and pointed the subject out, I took it
9 back to Denmark.

10 By Ms. Brisbane:

11 Q When Ms. Sanders picked out the person in the video
12 that she thought had assaulted her, did anyone tell her
13 who to pick?

14 A No.

15 Q Did anyone give her any hints?

16 A No.

17 Q About how long was she watching the video?

18 A Probably 30 minutes.

19 Q Was this video from a 24 hour period?

20 A Yes, this is a time lapse video and inside the BP or
21 the gas station, it has different cameras pointing to
22 different areas of the store. So this particular tape
23 hits every, I think it's 6 different areas, so you have
24 to watch it frame by frame on our time lapse machine at
25 our office.

1 Q Did she ever pick out anyone other than that particular
2 person in the video?

3 A No, she did not.

4 Q And was she 100 percent sure that that was the person
5 who assaulted her?

6 A No, she was not 100 percent sure. She was pretty sure.
7 She stated to me that because the quality of the tape
8 was not great, it had some fuzziness to it -- she said
9 if I could clear it up, she would know for sure whether
10 it was him or not.

11 Q Okay. Did the victim also appear in that video?

12 A Yes, she did.

13 Q Do you know about how much time elapsed between when
14 the victim appeared in the video and when the defendant
15 appeared?

16 A Approximately 12 minutes.

17 Q And how do you know that?

18 A It's got the time on it.

19 Q Okay. And you said you determined the person's name by
20 going back to the manager of the store and then is that
21 when you did the photo lineup?

22 A No. After that -- after she gave me the name of the
23 person, Joseph Walker, after she gave me that name, I
24 tracked down his residence, which led me into Aiken
25 County. I saw some things that the victim had said in

1 reference to his residence, at which time I did the
2 photographic lineup with Mr. Walker.

3 Q Okay. Did you go inside his residence?

4 A No, I did not.

5 Q Okay. And how many photos were in this lineup?

6 A Including Mr. Walker, there were five other
7 photographs.

8 Q Okay. Do you recognize what's been marked State's
9 Exhibit No. 1 for identification purposes?

10 A I do.

11 Q Did she pick out one of those photos as someone she
12 recognized?

13 A She did.

14 Q Which one did she pick out?

15 A She picked out this right here.

16 Q Okay. And did she pick out anyone else?

17 A No, she did not.

18 Q Did anyone tell her who to pick or give her any hints?

19 A No.

20 Q Okay. Was she 100 percent sure on that?

21 A No, she was not 100 percent sure.

22 Q Did she say how sure ---

23 A She was ---

24 Q --- how sure she was ---

25 A She was 90 percent sure, but she was not 100 percent

1 sure.

2 Q Okay. And let's see, I'm not sure if I asked you this,
3 did she ever pick out anyone else other than that one
4 person?

5 A No.

6 Q Okay. And who was that person she picked out?

7 A Mr. Walker.

8 Q Joseph Walker?

9 A Yes, ma'am.

10 Q Thank you. I don't have any further questions?

11 THE COURT: Ms. Brown?

12 **CROSS-EXAMINATION**

13 By Ms. Brown:

14 Q Is it Investigator?

15 A Lieutenant Bamberg.

16 Q Lieutenant Bamberg. Thank you. Lieutenant, when she
17 originally watched this video in your office, she was
18 not 100 percent sure that this person was the person
19 that she alleges raped her, isn't that correct?

20 A That is correct.

21 Q And how much of the video did she watch?

22 A She watched the video -- I couldn't say how much of it
23 she watched -- until she recognized who she thought her
24 perpetrator was.

25 Q Well you said she watched the video for about 30

1 minutes?

2 A Uh-huh.

3 Q Until she pointed out who she said looked like the
4 person?

5 A Correct.

6 Q This is a time lapse video?

7 A It is.

8 Q Correct?

9 A Correct.

10 Q So what portion of the day was she viewing?

11 A As far -- what do you mean by that? What part of the
12 day?

13 Q What portion of the -- you said that this video was 24
14 hours worth of video?

15 A Right. From the point that she came into the store and
16 the point that she left, up to the point that
17 Mr. Walker -- and she identified Mr. Walker.

18 Q So she started watching this video from the time -- the
19 time stamp on there that she walked into the store?

20 A Correct. From when she came into the store ---

21 Q And ---

22 A --- and left.

23 Q --- do you recall at what time on the video that was?

24 A I think her time that she came was in was like 1:26
25 p.m. or something like that, 1:28 p.m. off the top of

1 my head, maybe a little later.

2 Q Okay. And approximately how long was she in the store?

3 A She was in the store probably 2 or 3 minutes.

4 Q And then she left the store?

5 A And then she leaves the store.

6 Q And then 12 minutes on the tape a man comes in store
7 that she says looks like the man she says ---

8 A Correct.

9 Q --- raped her?

10 A Correct.

11 Q Okay. Did she watch any further?

12 A I don't recall if she did or if she didn't.

13 Q Now, she never -- shes never stated that she saw this
14 man in the store, isn't that correct?

15 A That's correct. She never said she saw him, but she
16 said that he told her when she was outside to let him
17 run in and pay for his gas and he would come assist her
18 with her car that had broken down. So she knew he went
19 in the store to pay for the gas.

20 Q But she did not continue watching the tape after she
21 identified the person that she said looked like the man
22 she had had the encounter with?

23 A I believe she did, but I'm not 100 percent sure because
24 I was not in the room the whole entire time. She was
25 watching the tape and I was coming in and out of the

1 room.

2 Q Would you have had any notes on that in your case file?

3 A No, no.

4 Q So you have -- so you have no idea how long after she
5 saw who she thought looked like this man, how much
6 longer she watched this tape?

7 A If she did at all, I don't recall.

8 Q Were ya'll ever able the clean up the tape any to help
9 her in her identification?

10 A No, we were not.

11 Q And how certain was she at that time of the
12 identification?

13 A She was 90 percent sure. It was just that the tape was
14 fuzzy. She was pretty sure but she was not 100 percent
15 sure.

16 Q Did she actually use these percentages?

17 A No, she said pretty sure.

18 Q So she never said 90 percent?

19 A She did for the photographic lineup, she did, but not
20 for the tape. She said she was pretty sure for the
21 tape.

22 Q Did she say 90 percent sure on the photographic lineup
23 after you asked her for the percentage or did she come
24 right out and offer 90 percent sure?

25 A No, I asked her, I said how sure are you and she was

1 pretty sure, 90 percent sure, but she could not swear
2 to it.

3 Q What precisely was her wording when you asked her how
4 sure she was? Did she just say pretty sure?

5 A She said she was pretty sure but she could not swear to
6 it.

7 Q Both times?

8 A Both times.

9 Q So she never actually used the phrase 90 percent sure?

10 A 90 percent sure, no.

11 MS. BROWN: Beg the court's indulgence one
12 moment.

13 By Ms. Brown:

14 Q Were there any other black males on that video during
15 that time frame that she was watching?

16 A Yes, there was.

17 Q How many?

18 A I don't recall. I know there was quite a few people
19 that came in and out of the store in that time frame.

20 MS. BROWN: Thank you, Your Honor. I have no
21 further questions.

22 THE COURT: Anything further?

23 MS. BRISBINE: Yes, Your Honor. If I could get
24 these marked for identification.

25 (WHEREUPON the court reporter marked State's

1 Exhibit No's. 2 and 3.)

2 **REDIRECT EXAMINATION**

3 By Ms. Brisbane:

4 Q Do you recognize these photos?

5 A I do.

6 Q What are they?

7 A These are still photos from the video tape. And this
8 here is Ms. Sanders when she was in the store. And
9 this here is Mr. Walker when he was in the store.

10 Q Okay. Just for clarification ---

11 MS. BRISBINE: And that's, for the record,
12 State's Exhibit 2 and 3 for identification purposes only.

13 By Ms. Brisbane:

14 Q Referring to the pictures from the video, can you tell
15 the time that they were in the store -- that the victim
16 and the defendant were in the store?

17 A From here?

18 Q Yes?

19 A These times are wrong.

20 Q Okay.

21 A And the dates are wrong in here.

22 Q Do you know how much they're off?

23 A A couple of hours.

24 Q Okay. So about what time of day -- approximately what
25 time of day would it have been according to this?

1 A According to this it was 16:43 and 16:45, but again ---

2 Q Which is what time?

3 A That's 4:33 and quarter to 5:00.

4 Q Okay.

5 A Which, these times are wrong.

6 Q Okay. By just an hour or 2?

7 A Correct.

8 Q Okay. And is the date correct on these?

9 A No. The date is also wrong.

10 Q And do you know why that is? Did you ---

11 A I did talk to ---

12 Q --- check that out?

13 A Yes, I did. I talked to the store manager about that.

14 On their machine they don't -- servicemen are supposed

15 to come in and change them for daylight savings time

16 and everything, and they don't do it on their machines.

17 They just leave them -- so through the process of time,

18 it just never got changed.

19 Q Okay. Is this the actual photo lineup that you showed
20 the victim?

21 A That is.

22 MS. BRISBINE: I'd like to admit that into
23 evidence at this time, for the purposes of this hearing.

24 MS. BROWN: No objection.

25 THE COURT: So admitted.

1 By Ms. Brisbane:

2 Q And are these photos a true and accurate representation
3 of what was seen on the video?

4 A They are.

5 MS. BRISBINE: I'd like the admit these into
6 evidence for the purposes of this hearing at this time.
7 That's State's Exhibits 1, 2 and 3.

8 THE COURT: So admitted.

9 MS. BRISBINE: : Thank you. Nothing further
10 for this witness.

11 **RECROSS-EXAMINATION**

12 By Ms. Brown:

13 Q I just need brief clarification on this time being off.
14 Now, are these -- you spoke with the store manager
15 about the times on these -- on the ---

16 A Correct.

17 Q --- video?

18 A Correct.

19 Q And the store manager said what exactly about how off
20 the time was?

21 A I want to say she said it was like an hour off. The
22 best way she told me was to watch when they ring up
23 things, the cash register time and -- which in the
24 video you would see when they ring up from the cash
25 register, that time is actually the correct time.

1 These times here on the bottom are not the correct time
2 because of daylight savings time and having a
3 serviceman come in and change them or something like
4 that. And that would not be correct, she said.

5 Q Does your report reflect what the cash register times
6 were at or about the time listed on the video tape?

7 A I want to say in the report it says 15:28 or something
8 like that, 15:29 which is 3:00, 3:30, something like
9 that. And this is off the top of my head. I'm just
10 trying to remember exactly what it says.

11 Q Do you have your report with you?

12 A I do.

13 Q Would referring to your report help refresh your
14 recollection?

15 A It would. It was 15, 15:30 something when she came
16 into the store according to the cash register, because
17 she was at Family Dollar at 15:28.

18 Q And for a lay person like myself ---

19 A I'm sorry, that's, yeah ---

20 Q --- could you translate?

21 A That's 3:28 at Family Dollar and at 3:33 or something
22 she came in the store.

23 Q So she was about 3:28 p.m. at the Family Dollar and
24 about 3:30 at the ---

25 A 3:30, 3:33 at the BP.

Q So the correct times were actually earlier, about an hour earlier?

A Correct.

Q Than those?

A Correct.

Q Okay. Thank you.

MS. BROWN: No further questions.

THE COURT: All right.

MS. BRISBINE: The State calls Margaret Sanders.

THE COURT: You may step down, thank you.

THEREUPON,

MARGARET SANDERS,

after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness box.

State your full name for the court, spelling your last.

THE WITNESS: Margaret Sanders, S-a-n-d-e-r-s.

DIRECT EXAMINATION

By Ms. Brisbane:

Q Ms. Sanders, did Lieutenant Bamberg show you a video of the BP store?

A Yes.

Q And were you in that video?

A Yes.

Q And did you recognize anyone else in that video?

1 A Yes.

2 Q Who did you recognize?

3 A The defendant.

4 Q Do you -- did anyone tell you who to pick or give you
5 any hints?

6 A No.

7 Q About how long had you been watching the video when you
8 saw him?

9 A I'd been watching it a little bit, you know, when he
10 came in the store.

11 Q Can you estimate about how long you'd been watching it
12 before you picked him out?

13 A No. I can't give a definite.

14 Q You can't remember?

15 A Huh-huh.

16 Q Okay. Was it hours?

17 A Oh, no.

18 Q Minutes?

19 A Minutes.

20 Q Okay. Would you say it was more than 30 minutes or
21 less?

22 A Less.

23 Q Okay. Did you know Mr. Walker's name at that time?

24 A I sure didn't.

25 Q And when you picked him out, were you sure that this

1 was the person who had assaulted you? Were you 100
2 percent sure?

3 A Not 100 percent, no.

4 Q Can you say about what percent sure you were?

5 A About 90 percent.

6 Q Did you pick anyone else out as possibly being the
7 person who assaulted you?

8 A No.

9 Q Okay. Did Lieutenant Bamberg show a photo lineup ---

10 A Yes.

11 Q --- after that?

12 A Uh-huh.

13 Q And did you know the name of the person who assaulted
14 you at that time?

15 A No.

16 Q And do you recognize what's been marked State's Exhibit
17 No. 1?

18 A Yes.

19 Q And is that the photo lineup that you were shown?

20 A Right.

21 Q Which person did you pick out of that photo lineup?

22 A This one.

23 Q If you could show the judge.

24 (WHEREUPON the witness did as instructed.)

25 ///

1 By Ms. Brisbane:

2 Q Okay. Did anyone tell you who to pick out ---

3 A No.

4 Q --- of the photo lineup?

5 A No.

6 Q Did they give you any hints about who it was?

7 A No.

8 Q Okay. Did you pick out any of the other people in the
9 photo lineup as well?

10 A No.

11 Q Were you 100 percent sure that that was the person who
12 assaulted you in the photo lineup?

13 A I was pretty sure, yes, about 90 percent.

14 Q Okay. Did you see the defendant on the afternoon of
15 March 2, 2002?

16 A Yes.

17 Q Did you see his face?

18 A Yeah, when I was standing by the car I saw him when he
19 came out.

20 Q Okay. Was it daylight or dark?

21 A It was light enough to tell.

22 Q About how far were you standing from him?

23 A About as far as from me to you, from the side of the
24 car to the hood of the car.

25 Q Okay. So that's what? About how many feet would you

1 say?

2 A About 2 or 3.

3 Q Okay.

4 THE COURT: I'm sorry, I didn't hear what the
5 answer was.

6 MS. SANDERS: 2 or 3 feet.

7 THE COURT: All right.

8 By Ms. Brisbane:

9 Q And did you talk with him at the BP station?

10 A Well, I drove -- got in my car and it cranked up and
11 then I drove around to the side and it cut off and it
12 wouldn't crank back up." So there was these two men at
13 the gas station and I hollered and asked one of them if
14 they knew anything about cars and the white guy said
15 no, he didn't. So he got in and drove off.

16 And the black guy said yes, that he would come
17 over as soon as he finished filling up with gas and
18 paid for it.

19 Q Okay. So when did you see him again after the gas
20 station? Or, I'm jumping ahead. After he paid for his
21 gas, what did he do?

22 A He got in his truck and he drove over and he looked at
23 the car and he saw what it was. It looked like
24 somebody had cut the wire or something on it.

25 Q Okay. And did he help you fix it?

1 A Yes, he went to get a part to put on it.

2 Q Okay. So you were with him, talking with him while he
3 was looking under your trunk -- excuse me the hood of
4 your car?

5 A Right.

6 Q And then he went to get a part and then what happened
7 after that?

8 A He came back and put it on.

9 Q Okay.

10 A And he had told me that it wouldn't be but about \$9 and
11 I didn't have -- I mean, yeah, \$9 and then when he came
12 back he said it was \$30 and I didn't have that much
13 money with me.

14 Q Okay. So --

15 A I trusted him.

16 Q Then what happened after that?

17 A I told him, well just -- he said he was -- I said,
18 well, I'm from Norway and he said he would just follow
19 me because he was going to Norway. And I told him to
20 just cut by a house and I would get the money and give
21 it to him.

22 Q Okay. So did he go by the house?

23 A Yes.

24 Q And just to summarize the amount of time that you
25 were -- you spent with him, when you got to the house,

1 was there any length of time -- what time period did
2 you spend with him when you got to the house? Did he
3 come -- did you invite him in?

4 A No.

5 Q Did he come in?

6 A Oh, yeah.

7 Q And what happened then?

8 A I was getting my money out of the box where I always
9 kept it and when I turned around there he was.

10 Q Okay. Did you get a good view of his face at that
11 point?

12 A No, not then.

13 Q Well, what happened then?

14 A He carried me out of the house.

15 Q He carried you out? How did he carry you?

16 A Well holding me, pushed me out and blindfolded me.

17 Q Okay. At what point did he blindfold you?

18 A Going out of the house.

19 Q Okay. Before you got in the vehicle?

20 A Uh-huh.

21 Q Okay. And then how long were you blindfolded,
22 approximately?

23 A I don't know. Until after we got inside his place or
24 wherever he took me.

25 Q Was it hours, minutes?

1 A I can't answer that, because I don't remember.

2 Q Okay. This was in the drive from your house to his
3 house?

4 A Yes.

5 Q And at what point did he take the blindfold -- at some
6 point did he take the blindfold off?

7 A At his house.

8 Q And how long was the blindfold off? Approximately?

9 A Well the whole time I was in that room. Night, all
10 night.

11 Q All night? Okay. And when was the blindfold put back
12 on?

13 A About 5:00 the next morning when he took me back.

14 THE COURT: Ma'am, I'm having a hard time
15 hearing you.

16 MS. SANDERS: Oh, when he took me back home the
17 next morning, he put it back on, when he pushed me out.

18 By Ms. Brisbane:

19 Q He took it off or he put it on when he pushed you out?

20 A He pulled it off.

21 Q He pulled it off when he pushed you out?

22 A Uh-huh.

23 Q Okay. Was he in the same room with you throughout the
24 night?

25 A Yeah.

1 Q Was he in the same -- where were the two of you during
2 that night?

3 A In that room.

4 Q Where in that room?

5 A In that bedroom or that room that had the sheets or
6 blankets or whatever.

7 Q All right. Were you on the floor, the bed or where
8 were you in the room?

9 A The bed.

10 Q Okay. And was he there the whole time during the
11 night?

12 A Yes.

13 Q With you?

14 A Yes.

15 Q Thank you.

16 MS. BRISBINE: No further questions.

17 MS. BROWN: No questions for the purposes of
18 this hearing, Your Honor.

19 **EXAMINATION**

20 By the Court:

21 Q Ma'am, I know this is uncomfortable, hold on just a
22 minute. Over what period of time did you have
23 opportunity to observe this individual?

24 A You mean to see him? It was dark in the room.

25 Q It was dark the whole time you were in the room?

1 A Yes, except ---

2 Q You could not observe him inside the room?

3 A Not a good view, no.

4 Q So from the time you were at the gas station or the
5 store or wherever it was until he took you at your
6 house, attacked you at your house, how long a period of
7 time was that? That the two of you were together. I
8 don't mean in different cars driving to your house,
9 but -- 15 minutes? 20 minutes? 30 minutes?

10 A That we were together.

11 Q Yeah. You said you saw him in the parking lot, he went
12 in the store?

13 A Right.

14 Q He came back out he came to your car?

15 A Uh-huh.

16 Q He looked in your car, you had conversation about his
17 getting a part. He went to get the part, he came back,
18 he repaired the car?

19 A Yes.

20 Q Then went to your house. He came in your house. Over
21 how long a time did you actually were you looking at
22 him? 15 minutes?

23 A 15, 20, 30 minutes.

24 Q Did you have an opportunity to view him closely? Were
25 you paying close attention to what he looked like?

1 A Enough that I could identify that picture.

2 Q All right. Now, when you looked at the video, when did
3 that occur? How much after the alleged incident did it
4 occur?

5 A How long after I ---

6 Q The next day?

7 A -- looked at the video.

8 Q Yeah. From the time of the assault until you looked at
9 the video, how long was that? One day? Two days? Two
10 hours? How long before you got the see the video?

11 A I think it was about a week.

12 Q All right. And then how long after that did you get to
13 see the photo lineup?

14 A A few days.

15 Q All right. Are you able the make an in court
16 identification here today?

17 A Yes, sir.

18 Q Pardon me?

19 A Yes, sir.

20 Q Can you identify the person that did this in this
21 courtroom?

22 A Sitting over there.

23 Q At the defense table?

24 A Right.

25 Q All right.

1 THE COURT: Anything from what I've asked?

2 MS. BRISBINE: : Nothing further from the
3 State.

4 MS. BROWN: Not from this witness, Your Honor.

5 THE COURT: All right. Thank you, ma'am, you
6 may step down.

7 Anything further from the State?

8 MS. BRISBINE: No, Your Honor.

9 THE COURT: Anything from the defense?

10 MS. BROWN: No witnesses, Your Honor, we'd like
11 to be heard on the motion.

12 THE COURT: All right.

13 MS. BROWN: Thank you, Your Honor, may it
14 please the court. Your Honor, at this time I would move on
15 behalf of Mr. Walker that these identifications be
16 suppressed. Your Honor, in Ms. Walker -- excuse me
17 Ms. Sanders speaking of her opportunity to identify, to
18 observe Mr. Walker and then the identifications that led to
19 the photo lineup, Your Honor, she states that she had
20 opportunity to observe him and to see -- she said that she
21 didn't -- when she was asked did she pay close attention to
22 what he looked like, her response was enough to make
23 identification.

24 Your Honor, none of her identifications have
25 been with 100 percent certainty. She had opportunity to

1 view the video, she testified a week after this happened.

2 She watched this video. They showed it to her from the
3 time that she went into the store until the time that she
4 made an identification. There's no testimony that she had
5 opportunity to view after this person that she was not 100
6 percent sure of but looked like this person. And then the
7 photographic lineup was prepared on the basis of that
8 video.

9 Your Honor, our argument would be that it does
10 not rise to the standards set forth in Neal vs. Biggers to
11 show certainty of identification. We would move that it be
12 suppressed.

13 THE COURT: Anything from the State?

14 MS. BRISBINE: Yes, Your Honor. The State's
15 position is that although she was not 100 percent sure, the
16 percentage goes to weight and not admissibility and there
17 was nothing suggestive about the video or the photo lineup
18 and Biggers actually is a burden that comes in after
19 there's been suggestive identification methods and ---

20 THE COURT: Wait a minute. Tell me that again?

21 Biggers only comes in after there's been suggestive ---

22 MS. BRISBINE: If there's been a suggestive
23 photo lineup, that's what's in the case, the Biggers case.
24 And there's no evidence that anything was suggested ---

25 THE COURT: I don't know that that's the case.

1 I think Biggers is to determine the reliability of the
2 identification and whether it's suggestive or not may be
3 one of the factors to consider in determining whether the
4 reliability is -- I don't think unless -- the burden is on
5 the defendant to now show that there is a suggestive
6 identification before Biggers comes in. I think they're
7 entitled to a hearing under Neal vs. Biggers to determine
8 it's reliability. Was it suggestive or -- but it doesn't
9 have to just be suggestive. There are other factors that
10 could come in that Biggers would be applicable to.

11 MS. BRISBINE: : Even if that's the case ---

12 THE COURT: All right.

13 MS. BRISBINE: : --- there were plenty of
14 opportunities for her to see the defendant's face through
15 the afternoon in broad daylight and she was also with him
16 the entire night and he let her out the next morning. And
17 again she had another opportunity after he took the
18 blindfold off to see him. And she spoke with him and he
19 helped her fix her car.

20 THE COURT: Okay. Anything further?

21 MS. BRISBINE: : No, Your Honor.

22 THE COURT: All right. Well, I don't know
23 after she was released the next day -- I didn't hear her
24 say anything about, "I got to see him again." Or "I didn't
25 see him."

1 She just said he took the blindfold off and,
2 "Let me out."

3 So I don't know about that. But clearly under
4 the criteria that I consider in determining the -- in
5 reviewing the totality of the circumstances involved to
6 determine whether the identifications are reliable, the
7 opportunity of the witness to observe the accused is one of
8 the factors. And in this instance, apparently the lady had
9 an opportunity to observe the accused for 15 minutes to 30
10 minutes, couldn't get a real good, but she did observe him
11 when she got there or when he said he was going to pay.

12 She observed him when he came back out, she
13 observed him when he was repairing the car, she observed
14 him before he went to get the parts. While it may not have
15 been a heightened observation because there was no actual
16 incident occurring at this time, she had a considerable
17 length of time to observe him. She observed him when he
18 got to the house.

19 While the degree of the ascension I would think
20 would be fairly -- which is another factor involved here,
21 because she was trying to get her car fixed and trying to
22 pay attention to what the man was doing. There's been no
23 testimony as to any identification that -- or description
24 that she gave to the police to see whether it was accurate
25 or not accurate or anything like that.

1 The level of certainty -- I don't think Neal
2 vs. Biggers requires an absolute level of certainty because
3 that truly comes into, really a jury question. But she
4 indicated, she felt pretty sure that she was 90 percent
5 sure that that's the individual and the length of time
6 between the confrontation was basically threefold; one
7 about a week after the incident before she had had an
8 opportunity to look at the tape, which I don't find an
9 unduly great amount of time, several days after she saw the
10 mug shot, and then she made an in court identification
11 today.

12 And I'm not sure of the date of the incident,
13 but she seemed fairly certain as to the identification here
14 today. So I'm going to find, considering all of the
15 totality of the circumstances, that the identification
16 would be admissible and I will tell you that I will give a
17 charge to the jury that the ultimate decision is for them
18 to make as to whether the identification is sufficient and
19 that, you know, I think defense counsel has some things to
20 point out in terms of the questioning and the argument.

21 Do ya'll intend to introduce the -- attempt to
22 introduce the mug shots?

23 MS. BRISBINE: Yes, Your Honor.

24 THE COURT: What is the need to do that?

25 MS. BRISBINE: I think it just makes it clear

1 to the jury that she picked this photo out of six photos
2 that were very similar.

3 THE COURT: Well, it's -- ya'll object to her
4 introducing the mug shots.

5 MS. BROWN: Your Honor, I have not -- at this
6 point I've not seen a sufficient chain of evidence or seen
7 sufficient foundation laid at this point to not object.

8 THE COURT: So if they show a sufficient chain,
9 you don't have any problem with the mugs coming in.

10 MS. BROWN: If there were proper foundation
11 laid, I would not anticipate objecting, Your Honor.

12 THE COURT: All right. Well, if they don't
13 care, I don't. All right.

14 Anything further?

15 MS. BRISBINE: Nothing on this case, Your
16 Honor.

17 THE COURT: How about, is there any statement
18 from the defendant?

19 MS. BRISBINE: There's no statement that would
20 be used in the case in chief.

21 THE COURT: So there's no Jackson vs. Denno
22 that we need to do.

23 Any Blair matters?

24 MS. BROWN: No, Your Honor.

25 MS. BRISBINE: No, Your Honor.

1 THE COURT: All right. Anything else that
2 needs to be addressed with respect to this defendant prior
3 to the beginning of the trial?

4 MS. BRISBINE: No, Your Honor, none from the
5 State.

6 THE COURT: All right. Ya'll intend to call
7 this case right after qualification of the jury tomorrow?

8 MS. BRISBINE: Yes, sir.

9 THE COURT: All right.

10 MS. BRISBINE: : Thank you.

11

12

13 * * * * * END OF TRANSCRIPT * * * * *

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1 STATE OF SOUTH CAROLINA)

CERTIFICATE OF REPORTER

2 COUNTY OF AIKEN)

3
4
5
6 I, THE UNDERSIGNED, Brenda W. Sigwald, Official
7 Court Reporter for the Second Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 21st
11 day of July, 2003.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 3 through 35, constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin,
16 counsel, nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 and seal at Aiken County, this 12th day of August, 2003.

19
20 Brenda W. Sigwald

21 Brenda W. Sigwald,
22 Court Reporter and Notary Public
23 For the State of South Carolina
24 My commission expires
25 February 25, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

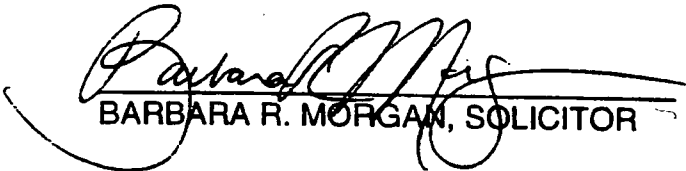
INDICTMENT

At a Court of General Sessions, convened on August 26, 2002, the Grand Jurors of Aiken County present upon their oath:

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

That JOSEPH WALKER did in Aiken County on or about March 2, 2002, commit the crime of Criminal Sexual Conduct In The First Degree, in that the Defendant did commit a sexual battery, to wit: sexual intercourse, upon and with the body of Margaret Ann Sanders. Such sexual battery was accomplished by the use of force of a high and aggravated nature and/or the victim submitted to the sexual battery under circumstances where she was also the victim of forcible confinement and kidnapping. All in violation of §16-3-652 Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

WITNESSES
Graybeal, A.C.S.O.

FILED

NOV 05 2002

J. Graybeal
J. Graybeal
Deputy Clerk

ARREST WARRANT NUMBER

GB42917

303

ACTION OF GRAND JURY

True Bill

Debra R. Lindley
Foreperson of Grand Jury
Date: August 22, 2002

VERDICT

Foreperson of Petit Jury
Name

DOCKET NO. 2002-GS-02-1244

The State of South Carolina
County of Alken

COURT OF GENERAL SESSIONS

AUGUST 26, TERM 2002

THE STATE

vs.

JOSEPH WALKER

Indictment for
CRIMINAL SEXUAL CONDUCT
FIRST DEGREE

SC Code: 16-3-652
CDR Code: 160
Class FEL-A(V)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken 310
STATE VSAKA: _____
Race: Black Sex: Male Age: 45
DOB: 12/2/57 SS#: _____
Address: 238 Poplar Street
City, State, Zip: Sallery SC 29137
DL# _____ SID# SC00081180

INDICTMENT/CASE#:

2002 -GS- 02 - 1294
A/W#: 6842917Date of Offense: 3.2.02S.C. Code §: 16.3.652CDR Code #: 011610☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Criminal Sexual Conduct - 1st Degreein violation of § 16.3.652 of the S.C. Code of Laws, bearing CDR Code # 011610☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Brenda Rich
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 29 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Sur.) \$100 \$ 100.00

\$14-1-211(A)(2) (DUI Sur.) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$ 35.13 (Public Def/Prob) - \$500 \$ 500.00\$73.3, 1B TP (Law Enforce.) \$25 \$ 25.00

\$33.7, 1B TP (Drug Ct. Sur.) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Veh. Assmt) \$40/ea \$ _____

3% to County (if pd. in instl.) \$ 78.75TOTAL \$ 643.75Pauline Harris
Clerk of Court/ Deputy ClerkCourt Reporter: Daphne Dillmo

PTUP

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol _____

Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TF

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE James K. Y. SaultJudge Code: 0111110Sentence Date: 7/23/03

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (6/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

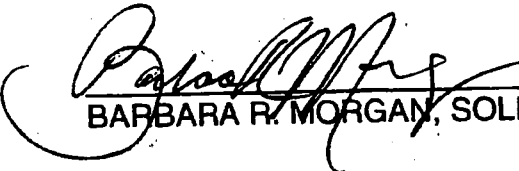
INDICTMENT

At a Court of General Sessions, convened on August 26, 2002, the Grand Jurors of Aiken County present upon their oath:

KIDNAPPING

That JOSEPH WALKER did in Aiken County on or about March 2, 2002, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Margaret Ann Sanders without authority of law, all in violation of §16-3-910 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

WITNESSES

S. C. Graybeal, A.C.S.O.

FILED

NOV 05 2002

J. Steward
Deputy Clerk
Shannon Thompson
Deputy Clerk

ARREST WARRANT NUMBER

Direct Indictment

2 ACTION OF GRAND JURY

312
True B. 11

Shannon Thompson
Foreperson of Grand Jury
Date: August 22, 2002

VERDICT

DOCKET NO. 2002-GS-02-1296

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

AUGUST 26, TERM 2002

THE STATE
vs.

JOSEPH WALKER

Indictment for
KIDNAPPING

SC Code: 16-3-910
CDR Code: 0095
Class FEL-A

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken
 STATE VS.
Joseph Walker
 AKA:
 Race: B Sex: M Age: 45
 DOB: 12/2/57 SS#: [REDACTED]
 Address: 228 Poplar Street
 City, State, Zip Sally SC 29137
 DL# SC 00081180

INDICTMENT/CASE#:

2002 -GS- 22 - 1296
 AWW#: Direct Indictment
 Date of Offense: 3/2/02
 S.C. Code §: 16-3-910
 CDR Code #: 0101915
☐ CASE RESTORED
☒ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Kidnapping

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 24 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
 Fine: \$ _____

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211(A)(1) (Conv. Sur.)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Sur.)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce.)	\$25	\$ 25.00
§33.7, 1B TP (Drug Ct. Sur.)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Veh. Assmt)	\$40/ea	\$
3% to County (if pd. in instl.)	\$	\$ 3.75
TOTAL		\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: Daphne Helms

SPECIAL CONDITIONS:

PTUP _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE James K. Barlow
 Judge Code: 011110
 Sentence Date: 7/23/03

White - Clerk Green - Corrections Canary - Probation

Pink - Defendant

SCCA/217 (6/2003)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 1st, 2004



Wanda P. Hagler
Acting Deputy Chief Attorney

South Carolina Office of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT.

315

CLASSIFICATION SUMMARY REPORT DATED 01/24/05

C023981

SCDC# 162475 WALKER, JOSEPH -
 OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
 INSTITUTION ...: LIEBER CORRECTIONAL INST.
 SECURITY/CUST.: 3 MINIMUM IN
 TOT INCARC SENT....: 24 YRS 0 MOS 0 DYS
 CENTRAL MONITORING.: NO
 MED CLASS: 3 MED PROB/WORK RESTRICT
 MENTAL CLASS: NMH (NO MENTAL HEALTH TRE
 CURRENT PROGRAM...: NO CURRENT PROGRAM
 AGE....: 47

FBI# 492243N4

DORM.....: SBO032B

PROJ MAXOUT DATE: 11/28/2024
 PROJ PAROLE DATE: 00/00/0000
 EWC JOB...: NO CURRENT JOB
 EDUC PGM.: ADULT ED I
 EWC LEVEL: 0 EEC LEVEL: 3E
 ASSIGNMENT...: EDUC DEPT. ACADEMI

PREVIOUS NUMBERS:

00084039
 00086831
 00147030

CURRENT OFFENSES
 CRIMINAL SEX CNDCT 1ST DE
 KIDNAPPING

SENTENCE				COUNTY
YRS	MOS	DYS		
24	0	0		AIKEN
24	0	0		AIKEN

PRIOR SCDC OFFENSES (COMP)
 FRAUD INSUFF FUNDS CHECK
 FRAUD INSUFF FUNDS CHECK

SENTENCE				COUNTY
YRS	MOS	DYS		
0	0	30		AIKEN
0	0	210		AIKEN

PRIOR COMMITMENTS OVER 90 DAYS:

09/21/78 *FORGERY
 03/16/77 FORGERY
 03/16/77 *FORGERY
 06/08/76 NON-PAYMENT/TELECOMM SERV
 05/05/75 *OBSC COMMUNICATION

SENTENCE				INDICT
START	V/NV	CAT		
03/22/2003	V	5	026S021294	
03/22/2003	V	5	026S021294	

SENTENCE				INDICT
START	V/NV	CAT		
12/01/1989	N	1	00001	
08/23/1989	N	1	00001	

0 YRS	30 MOS	0 DYS
0 YRS	18 MOS	0 DYS
0 YRS	18 MOS	0 DYS
1 YRS	0 MOS	0 DYS
1 YRS	0 MOS	0 DYS

DETAINEES (HOLD, WANTED, NOTIFY):

FRAUD INSUFF FUNDS CHECK

WANTED

PRESIDING JUDGE

CATEG: 1

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	ADMINISTRATIVE
01/13/05	LIEBER	INCARCERATED	MEDICAL
01/12/05	KIRKLAND	INCARCERATED	ADMINISTRATIVE
11/04/04	LIEBER	INCARCERATED	MEDICAL
11/03/04	KIRKLAND	INCARCERATED	MEDICAL
08/20/04	LIEBER	INCARCERATED	MEDICAL
08/01/04	KIRKLAND INFRM	INCARCERATED	MEDICAL
07/23/04	TUOMEY REGIONAL	ABSENT WITH LEAVE (A)	MEDICAL
07/23/04	LIEBER	INCARCERATED	MEDICAL
07/23/04	TUOMEY REGIONAL	ABSENT WITH LEAVE (A)	MEDICAL
07/22/04	LIEBER	INCARCERATED	ADMINISTRATIVE
07/22/04	RICHLAND CO	ABSENT WITH LEAVE (A)	MEDICAL
07/09/04	LIEBER	INCARCERATED	ADMINISTRATIVE
06/30/04	KIRKLAND INFRM	INCARCERATED	MEDICAL
06/25/04	TUOMEY REGIONAL	ABSENT WITH LEAVE (A)	MEDICAL
06/23/04	KIRKLAND INFRM	INCARCERATED	MEDICAL
06/08/04	LIEBER	INCARCERATED	ADMINISTRATIVE
06/08/04	KIRKLAND	INCARCERATED	MEDICAL
03/25/04	LIEBER	INCARCERATED	ADMINISTRATIVE

SCDC# 162475

WALKER, JOSEPH -

316

(CONTINUED)

02/09/04	LIEBER	INCARCERATED
02/09/04	KIRKLAND	INCARCERATED
12/18/03	LIEBER	INCARCERATED
12/18/03	KIRKLAND	INCARCERATED
08/19/03	LIEBER	INCARCERATED
07/30/03	KIRKLAND	INCARCERATED

ADMINISTRATIVE
MEDICAL
ADMINISTRATIVE
MEDICAL
ADMINISTRATIVE
NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB
	MECHANIC HELPER	03/12/04	06/10/04	MEDICAL	LVL
	WARDKEEPER ASSISTANT	08/29/03	03/11/04	INMATE REQUEST	3F5

3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC	DESCRIPTION	START DATE	END DATE	TERMINATION REASON
	LVL 3 - FULL TIME(NO EWC)	01/10/05	00/00/00	
	BONUS 8-11 HRS/WK	02/20/04	06/15/04	MEDICAL

***** END OF REPORT *****

317

CMTI330D
OMCOMITA
SCDC# > 162475
WALKER, JOSEPH -

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN

01/24/05
C023981

LOC: LIEBER

SCDC CLASSIFICATION... VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE
TOTAL SENTENCE...: 024-00-000
CURRENT SENTENCE: 024-00-000
PROJECTED COMPLETION DATES
MAXOUT DATE: 11/28/2024
YOA SIX YEAR DATE: / /
INITIAL PAROLE DATE: 00/00/0000

SEXUAL REGISTRY...: Y
SEXUAL PREDATOR...: PENDING
DNA STATUS.....: COMPLETED
CONSECUTIVE SENTENCE ...: N
CURRENT SENT START DATE: 03/22/2003
CURRENT EWC ..: NOT CURRENTLY EARNING EWC
CURRENT EEC ..: 3F
NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000063
TOTAL EARNED WORK CREDITS ...: 000057
TOTAL EDUCATION CREDITS: 000000
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ...: 000670

LABOR CREW/WORK PROG DATE: 99/99/9999
LABOR CREW DISQ REASON:
CURRENT OR PRIOR SEX CONDUCT CONVICT

PFKEYS: 5:HISTORY OF DATE CHANGES
4-° 2 Sess-1 167.7.50.33 TNET1500 3/11

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH WALKER,

APPELLANT

FINAL ^{E.} ANDERS BRIEF OF APPELLANT

WANDA P. HAGLER
Acting Deputy Chief Attorney

South Carolina Office
of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE.....	4
ARGUMENT.....	5
CONCLUSION.....	7
PETITION TO BE RELIEVED AS COUNSEL.....	8

STATEMENT OF ISSUE ON APPEAL

The lower court erred in allowing the state to exercise two peremptory challenges in a discriminatory manner.

STATEMENT OF THE CASE

Appellant Joseph Walker was convicted of first degree criminal sexual conduct and kidnapping during the July 2003 term of the Lexington County General Sessions Court before the Honorable James R. Barber, III, Judge. Appellant received an aggregate twenty-four-year prison sentence.

Appellate appealed. This brief follows.

ARGUMENT

The lower court erred in allowing the state to exercise two peremptory challenges in a discriminatory manner.

At trial, Margaret Ann Sanders testified that she drove to her house on Herbert Road on March 2, 2002, to get money to pay the man who fixed her vehicle on that day. The man followed Sanders to her house to get the money. Sanders parked her vehicle and went inside her house to get the money. Sanders stated that when she turned to exit her bedroom, the man was already standing inside her bedroom. He put a blindfold on her eyes, put her in his trunk and drove to a house. Sanders stated that the man took her inside and raped her and put his penis in her mouth. Then he drove her back home. Sanders later identified appellant as the perpetrator. ROA p. 45, line 3 – p. 66, line 20.

During the jury selection, the state exercised the use of two peremptory challenges to exclude two women from the petit jury.

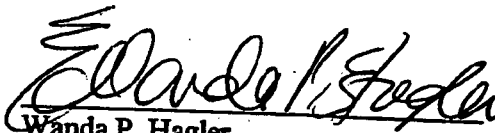
Our Supreme Court has held that any person (black, white, state or defendant) regardless of race or gender may set forth a valid claim under Batson v. Kentucky, 476 U.S. 79 (1986). See also Powers v. Ohio, 499 U.S. 400, 111 S.Ct. 1364 (1991), Georgia v. McCullum, 505 U.S. 42, 112 S.Ct. 2348 (1992), and J.E.B. ex rel. T.B., 511 U.S. 127, 114 S.Ct. 1419. South Carolina is cognizant of this rule. See State v. Chapman, 317 S.C. 302, 454 S.E.2d 317 (1995). Also, any juror, regardless of race or gender, may raise a claim of race/gender based discrimination inasmuch as jurors have a right under the equal protection clause to participate in jury service. State v. Chapman, supra, State v. Govan, 312 S.C. 71, 439 S.E.2d 263 (1993).

Thus, the lower court erred in failing to hold a hearing after the jury was selected in order to discern whether the state's reason for exercising the peremptory challenges in question were discriminatory in nature. The court's neglect in this regard violated the equal protection clause under the fourteenth amendment to the United States Constitution and article 1, §3 of the South Carolina State Constitution

CONCLUSION

Based on the foregoing argument, appellant's convictions and sentences should be reversed and his case remanded to the Lexington County General Sessions Court for a new trial.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Wanda P. Hagler", written over a horizontal line.

Wanda P. Hagler
Acting Deputy Chief Attorney

ATTORNEY FOR APPELLANT

June 21, 2004

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

326

Appeal from Aiken County

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH WALKER,

APPELLANT

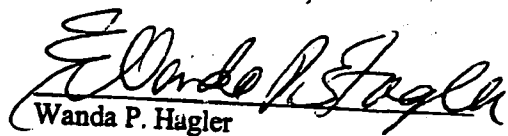
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph Walker states:

1. She is Acting Deputy Chief Attorney for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge James R. Barber, III, which was held on July 23, 2003, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Joseph Walker.

Respectfully submitted,



Wanda P. Hagler
Acting Deputy Chief Attorney

ATTORNEY FOR APPELLANT

June 21, 2004



Close
RECEIVED

JAN 12 2005

The South Carolina Court of Appeals ATTORNEY GENERALS
OFFICE

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 11, 2005

REMITTITUR

The Honorable Liz Godard
109 Park Ave
PO Box 583
Aiken, SC 29802-0583

Re: The State v. Walker, Joseph
2002-GS-02-01294
2002-GS-02-01296

Dear Mrs. Godard:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

V. Claire Allen, Deputy

Kenneth A. Richstad
Clerk of Court

KAR/mo

cc: Acting Deputy Chief Attorney Wanda P. Hagler
Mr. Joseph Walker, #162475
Assistant Deputy Attorney General Salley W. Elliott
Barbara R. Morgan, Esquire

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State of South Carolina, Respondent,

v.

Joseph Walker, Appellant.

Appeal From Aiken County
James R. Barber, Circuit Court Judge

Unpublished Opinion No. 2004-UP-618
Submitted December 1, 2004 – Filed December 9, 2004

APPEAL DISMISSED

Acting Deputy Chief Attorney Wanda P. Hagler, of
Columbia, for Appellant.

FORM 5

STATE OF SOUTH CAROLINA

County of AikenJoseph Walker 162475
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

GSCF-02-Aiken County
 Deputy Clerk: James Barber
 Trial Judge: Kelly Brown
 Trial Atty: Daphne Heine
 Court Reporter: Daphne Heine
 Sec. PCR Petitioner: Daphne Heine
 General Sessions: Daphne Heine
 Appointed Atty: Daphne Heine

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
P.O. Box 205 Ridgville, S.C. 29472
2. Name and location of Court which imposed sentence Aiken County
Court House
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 02-GS-02-1294
 - (b) 02-GS-02-1295

(c) N/A 02-GS-02-1296

330

5. The date upon which sentence was imposed and the terms of the sentence:

(a) July 2003

(b) Twenty-four years

(c) _____

6. 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 _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. Affirmed Conviction Appeal Dismissed

ii. N/A

iii. N/A

(c) the date of each such result:

i. December 2, 2004

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. unpublished Opinion No. 2004-UP-618

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Lack of Subject Matter Jurisdiction
- (c) N/A
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel Not Investigating case properly and not using strong de
- (b) Officer of State being Sole witness before grand Jury factic.
- (c) N/A Rule 3(c) Violation
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? (yes) S.C. Court of Appeals (Direct Appeal)
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. S.C. Court of Appeals lower Court erred in allowing state to exercise two peremptory challenges
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals 1205 Pendleton Street Room 306 Columbia S.C. 29201
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. Appeal Dismissed
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. December 1, 2004
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Unpublished Opinion No. 2004-UP-618
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) First I went through with a direct Appeal
- (b) First I went through with a direct Appeal
- (c) N/A

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Kelley P. Brown Esquire
Aiken County Public Defenders Office P.O. Drawer 2247
Aiken, S.C. 2980
 - ii. Kelley P. Brown Esquire
Aiken County Public Defenders Office P.O. Drawer 2247 Aiken,
S.C. 2980
 - iii. Wanda P. Hagler (Acting Deputy Chief Attorney)
S.C. Office of Appellate Defense 1205 Pendleton St Room 306 Columbia,
S.C. 2920
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment
 - ii. Trial and Sentencing
 - iii. Direct Appeal

19. State clearly the relief you seek in filing this application:

Vacating my sentence
Sentence Reduction
New Trial

20. Are you now under sentence from any other court that you have not challenged?

N/A
N/A

STATE OF SOUTH CAROLINA

County of Dorchester

VERIFICATION

I, Joseph Walker 162475, 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.

Joseph Walker 162475
4th Joseph Walker

SWORN to and subscribed before me this

day of

4th
Michelle R. Blower (L.S.)
 Notary Public

My Commission Expires:

8/20/06

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Joseph Walker 162475, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Joseph Walker 162475
Applicant
JOSEPH WALKER

SWORN or affirmed to and subscribed before me this

4 day of Jan, 2006
M. R. Blome
Notary Public

My Commission Expires: 8/2/06

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

05-CP-02-37

Joseph Walker, #162475

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed January 7, 2005, would respectfully show this Court:

L

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted at the August 2002 term of the Aiken County Grand Jury for first degree criminal sexual conduct (02-GS-02-1294) and kidnapping (02-GS-1296). He was represented by Kelley P. Brown, Esquire. On July 22 - 23, 2003, the Applicant proceeded to trial after which he was found guilty of first degree criminal sexual conduct and kidnapping. He was sentenced by the Honorable James R. Barber, III, to confinement for a concurrent period of twenty-four(24) years for each charge.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Walker, Op. No. 2004-UP-618 (S.C. Ct. App. filed December 9, 2004).

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript and the Applicant's appellate records.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Court lacked subject matter jurisdiction.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Butler, 286 S.C. at 441, 334 S.E.2d at 813. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. at 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland, 466 U.S. at 668. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. *See* Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. *See* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). *See also* S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do

with the indictment document. See Gentry, supra; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45 and -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

V.

The State therefore requests that this Court convene an evidentiary hearing on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

PAULA S. MAGARGLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

10/3, 2005.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

COURT OF COMMON PLEAS
05-CP-02-39

JOSEPH WALKER
PLAINTIFF
VS.
THE STATE OF SOUTH CAROLINA
DEFENDANT

POST CONVICTION RELIEF
TRANSCRIPT OF RECORD

MARCH 9, 2007
BAMBERG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

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

JOAN E. SMITH, ESQ.
TIMOTHY S. MIRSHAK, ESQ.
ATTORNEYS FOR THE PLAINTIFF

LANCE S. BOOZER, ESQ.
ATTORNEY FOR THE DEFENDANT

LISA H. HICKLIN
OFFICIAL COURT REPORTER

INDEX OF WITNESSES

1			
2	KELLEY P. BROWN		
3	CROSS BY MS. SMITH	6	
4	CROSS BY MR. BOOZER	37	
5	REDIRECT BY MS. SMITH	43	
6	ROBINA REED		
7	DIRECT BY MR. MIRSHAK	47	
8	CROSS BY MR. BOOZER	63	
9	REDIRECT BY MR. MIRSHAK	66	
10	JOSEPH WALKER		
11	DIRECT BY MS. SMITH	66	
12	BRENDA BRISBIN		
13	DIRECT BY MR. BOOZER	74	
14	CROSS BY MR. MIRSHAK	78	
15			

PLAINTIFF EXHIBITS

17	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
18	1	S.L.E.D. D.N.A. ANALYSIS	30	30
19	2	INTERVIEW WITH GRETCHEN OVERSTOLZ	30	30
20	3	COPY OF NAME/ADDRESS RECEIPT	31	31
21	4	NOTES	36	36
22	5	U.S. NAVAL OBSERVATORY INFO.	93	
23				
24				
25				

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COURT EXHIBITS

NODESCRIPTIONIDEV

1

C.D.

94

1 (WHEREUPON, ON MARCH 9, 2007 THE FOLLOWING
2 PROCEEDINGS WERE HELD:)

3 THE COURT: ALL RIGHT. MR. BOOZER, CALL YOUR FIRST
4 CASE.

5 MR. BOOZER: JOSEPH WALKER, YOUR HONOR.

6 THE COURT: ALL RIGHT. WHERE IS THE APPLICANT?

7 MR. MIRSHAK: MR. WALKER IS IN THE BACK.

8 THE COURT: HAVE WE GOT AN OFFICER WITH HIM?

9 MR. MIRSHAK: YES, SIR.

10 THE COURT: YOU WANT TO GO BACK THERE AND TELL HIM
11 WE'RE READY?

12 MR. MIRSHAK: YOU WANT HIM IN CUFFS OR OUT OF CUFFS?

13 THE COURT: WHATEVER THE OFFICER WANTS.

14 (WHEREUPON, THE APPLICANT IS PRESENT.)

15 THE COURT: MR. S.C.D.C. IF I OKAY HIS HANDCUFFS
16 COMING OFF, IS THAT OKAY WITH YOU?

17 THE POLICE OFFICER: YOU HAVE TO TELL ME.

18 THE COURT: I AM TELLING YOU. I AM ASKING YOU,
19 REQUESTING YOU. HOW ARE YOU DOING THIS MORNING?

20 THE POLICE OFFICER: FINE. HOW ARE YOU DOING, SIR?

21 THE COURT: YOU'RE GETTING USED TO COMING DOWN HERE,
22 AREN'T YOU?

23 THE POLICE OFFICER: I GO SOME OF EVERYWHERE.

24 THE COURT: I APPRECIATE ALL YOU DO FOR US.

25 MR. BOOZER: YOUR HONOR, MAY I APPROACH WITH THE

1 PACKET?

2 THE COURT: YES.

3 MS. SMITH: YOUR HONOR, I'D LIKE TO START BY GIVING
4 YOU A LITTLE BIT OF BACKGROUND ABOUT THIS CASE.

5 THE COURT: WELL, THAT'S FINE.

6 MS. SMITH: THIS TRIAL WAS JULY 22 AND 23 IN 2003.
7 MR. WALKER WAS CONVICTED OF CRIMINAL SEXUAL CONDUCT IN THE
8 FIRST DEGREE AND KIDNAPPING. THE COMPLAINANT WAS MARGARET
9 SANDERS. SHE WAS A 60-YEAR-OLD WHITE WOMAN WHO LIVED IN
10 NORWAY. ON MARCH 2, 2002 MS. SANDERS SAID SHE WENT TO
11 DENMARK TO THE DOLLAR STORE. THEN SHE WHEN TO B.P. SHE
12 WENT IN THE B.P., CAME OUT, AND HER CAR WOULDN'T START.
13 SHE ASKED ONE MAN FOR HELP. HE REFUSED. SHE ASKED A
14 SECOND MAN FOR HELP. HE LOOKED AT THE ENGINE AND SAID SHE
15 NEEDED A COIL WIRE. HE LEFT TO GO BUY ONE. HE RETURNED
16 AND REPAIRED THE CAR. HE TOLD HER THE COIL WIRE COST \$30.
17 SO, SHE ASKED HIM TO FOLLOW HER TO HER HOUSE IN NORWAY.
18 HE DID. SHE WENT INSIDE HER BEDROOM TO GET HER PURSE,
19 LOOKED UP, AND SAID HE WAS STANDING IN HER DOORWAY.
20 SHE THEN SAYS HE BLINDFOLDED HER, DROVE HER TO HIS
21 HOUSE, AND MADE HER SPEND THE NIGHT. SHE SAID HE RAPED
22 HER. HE DID NOT USE A PROPHYLACTIC AND HE DID EJACULATE.
23 HE GAVE HER A BEER DURING THIS TIME AND ALSO LET HER SMOKE
24 CIGARETTES. THE NEXT DAY HE BLINDFOLDED HER AND DROVE HER
25 HOME IN THE EARLY MORNING HOURS.

1 A FEW HOURS LATER SHE MADE HERSELF A DRINK OF SOME
2 KIND OF ALCOHOL AND SHE WENT TO REPORT THE CRIME AT THE
3 ORANGEBURG COUNTY HOSPITAL. ORANGEBURG COUNTY OBTAINED A
4 SURVEILLANCE VIDEO FROM B.P. MS. SANDERS COMPLAINS THAT
5 SHE CAN'T REALLY -- THAT THE VIDEO IS SNOWY AND SHE CAN'T
6 REALLY SEE IT VERY WELL. SHE IDENTIFIES A MAN ON THAT
7 SNOWY VIDEO AS THE MAN WHO ATTACKED HER, SAID SHE WAS
8 UNCERTAIN, AND THAT SHE WAS NOT 100 PERCENT SURE. A B.P.
9 WORKER LATER IDENTIFIES THAT MAN AS JOSEPH WALKER, A
10 REGULAR CUSTOMER.

11 YOUR HONOR, I WOULD LIKE TO CALL MRS. KELLEY BROWN.
12 THE COURT: COME AROUND, MRS. BROWN.

13 KELLEY P. BROWN, AFTER BEING DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 MS. SMITH: YOUR HONOR, I AM CALLING HER FOR CROSS
16 SINCE SHE'S THE STATE'S WITNESS.

17 THE COURT: MOVE ALONG.

18 CROSS-EXAMINATION

19 BY MS. SMITH:

20 Q MRS. BROWN, YOU WERE APPOINTED TO REPRESENT JOSEPH
21 WALKER ON APRIL 9, 2002; IS THAT RIGHT?

22 A I BELIEVE THAT'S CORRECT. I WAS APPOINTED TO
23 REPRESENT HIM. I BELIEVE THAT'S CORRECT AS TO THE DATE.
24 I WOULD HAVE TO LOOK TO BE CERTAIN.

25 Q HAVE YOU BROUGHT YOUR ENTIRE FILE WITH YOU?

1 A YES, I HAVE.

2 Q HAVE YOU REVIEWED YOUR FILE PRIOR TO TODAY?

3 A YES.

4 Q DID YOU HEAR THE SUMMARY I JUST GAVE THE COURT?

5 A YES.

6 Q DID YOU HAVE ANYTHING THAT YOU DISAGREED WITH ABOUT
7 THAT SUMMARY?

8 A THERE WOULD BE ADDITIONS TO THE FACTS AS THE STATE
9 PRESENTED THEM, BUT NO DISAGREEMENT AS TO WHAT WAS LAID
10 OUT.

11 Q HOW MANY TIMES DID YOU MEET WITH JOSEPH WALKER DURING
12 YOUR ENTIRE REPRESENTATION OF HIM PRIOR -- WELL, NOT YOUR
13 ENTIRE REPRESENTATION, BUT PRIOR TO THE TRIAL?

14 A I COULDN'T GIVE YOU AN EXACT NUMBER.

15 Q WELL, DO YOU HAVE NOTATIONS IN YOUR FILE OF THE TIMES
16 WHEN YOU MET WITH HIM?

17 A I HAVE NOTATIONS IN MY FILE OF SOME TIMES THAT I MET
18 WITH HIM. I ALSO KNOW THAT I MET WITH HIM ON A FEW
19 OCCASIONS OR SPOKE WITH HIM ON THE TELEPHONE THAT I
20 PROBABLY DID NOT NOTATE.

21 THE COURT: HOW MANY NOTATIONS IN THE FILE?

22 THE WITNESS: I HAVE NOTATIONS IN MY FILE OF FOUR
23 OCCASIONS ON WHEN EITHER I OR MY INVESTIGATOR -- I THINK
24 SOME OF THOSE TIMES WERE BOTH OF US -- MET WITH HIM.

25 Q CAN YOU TELL ME HOW MANY TIMES WERE JUST YOU?

1 A FROM MY NOTES I COULDN'T TELL YOU.

2 Q CAN YOU TELL ME HOW MANY TIMES WERE JUST YOUR
3 INVESTIGATOR?

4 A I COULDN'T TELL YOU FROM MY NOTES.

5 THE COURT: WHAT WAS THAT APPOINTMENT DATE ON OR
6 ABOUT WHEN?

7 THE WITNESS: IT WAS --

8 MS. SMITH: APRIL 9.

9 THE WITNESS: APRIL 9 OF 2002, YOUR HONOR.

10 THE COURT: THANK YOU.

11 THE WITNESS: AND THEN I FIRST MET WITH MR. WALKER ON
12 MAY 1 WHEN WE HAD HIS PRELIMINARY HEARING.

13 Q WOULD IT BE FAIR TO SAY THAT'S THE FIRST TIME YOU MET
14 HIM?

15 A PROBABLY, YES. I MAY HAVE SPOKEN WITH HIM ON THE
16 PHONE PRIOR TO THAT DATE, BUT THE FIRST TIME I HAD A
17 FACE-TO-FACE I THINK WAS THE PRELIMINARY HEARING.

18 Q AND YOU CARRY A HEAVY CASE LOAD; IS THAT RIGHT?

19 A THAT'S CORRECT.

20 Q DO YOU KNOW HOW MANY CASES YOU HAD ON THE TRIAL
21 CALENDAR AT THAT TIME?

22 A I DON'T KNOW ABOUT THE TRIAL CALENDAR. I KNOW THAT I
23 CARRY BETWEEN 175 AND 200 TOTAL CASES AT THAT TIME. IT'S
24 DIFFICULT TO SAY -- I GUESS I DON'T KNOW EXACTLY WHAT YOU
25 MEAN BY TRIAL CALENDAR. I PROBABLY HAD ANYWHERE FROM 65

1 TO 70 INDICTED CASES AT THAT TIME, ANY OF WHICH
2 THEORETICALLY COULD BE CALLED BY THE STATE FOR TRIAL. HOW
3 MANY I HAD ON THE ACTUAL TRIAL LIST FOR THAT TERM OF COURT
4 I COULD NOT TELL YOU -- PROBABLY JUST THREE OR FOUR.

5 Q OKAY. NOW YOU RECEIVED INFORMATION FROM THE STATE
6 WITH REGARD TO THIS CASE; IS THAT RIGHT?

7 A YES. I RECEIVED INFORMATION PURSUANT TO MY REQUEST
8 FOR DISCOVERY UNDER RULE FIVE AND BRADY.

9 Q OKAY. AND THAT INFORMATION IS TYPICALLY CALLED RULE
10 FIVE'S; IS THAT RIGHT?

11 A YES.

12 Q OKAY. I DON'T PRACTICE IN CRIMINAL COURT. SO,
13 YOU'LL HAVE TO BEAR WITH ME. CAN YOU TELL ME WHAT THAT
14 INFORMATION CONSISTED OF?

15 A PRIMARILY CONSISTED OF THE POLICE REPORTS. I CAN
16 TELL YOU THAT GENERALLY IT CONSISTS OF THE POLICE REPORTS,
17 THE INVESTIGATIVE SUMMARY FROM THE INVESTIGATING OFFICER,
18 ANY LAB ANALYSIS THAT ARE DONE. THOSE TEND TO TRICKLE IN
19 AS THINGS COME IN. IN THIS CASE -- AND YOU'LL HAVE TO
20 FORGIVE ME BECAUSE THIS CASE WENT TO TRIAL THINGS GOT OUT
21 OF ORDER AND PUT IN THE TRIAL NOTEBOOK AND WHEN THE FILE
22 WAS CLOSED THINGS GOT OUT AND GOT OUT OF ORDER, BUT IN
23 THIS CASE IT LOOKS LIKE I'VE GOT THE AIKEN COUNTY
24 SHERIFF'S OFFICE ORIGINAL REPORTS AND SUPPLEMENTAL
25 REPORTS, INCIDENT REPORT FROM THE ORANGEBURG COUNTY

1 SHERIFF'S OFFICE SINCE THIS INCIDENT ORIGINATED IN
2 ORANGEBURG COUNTY AND ORANGEBURG COUNTY HAD CHARGES
3 PURSUANT TO THIS AS WELL. I BELIEVE THEY HAD A BURGLARY
4 CHARGE PURSUANT TO THESE SET OF FACTS. I HAD THAT -- AN
5 INTERVIEW WITH MS. SANDERS, MEDICAL REPORTS INCLUDING THE
6 SEXUAL ASSAULT PROTOCOL, A REPORT HERE FROM A FORENSIC
7 HEALTHCARE CENTER. I BELIEVE THAT'S ALSO MEDICALS ON
8 MS. SANDERS.

9 Q DID YOU RECEIVE PHOTOS?

10 A THINGS OF THAT NATURE. YES, I HAVE A DISK OF CRIME
11 SCENE PHOTOS.

12 Q ALL RIGHT. AND YOU HAVE ANOTHER C.D. OF AN INTERVIEW
13 AS WELL, ISN'T THAT RIGHT, AN INTERVIEW WITH MR. WALKER?

14 A THAT'S CORRECT.

15 Q HOW MANY TIMES DID YOU REVIEW THOSE C.D.'S WITH
16 MR. WALKER?

17 A I DON'T KNOW HOW MANY TIMES THOSE C.D.'S WERE
18 REVIEWED WITH MR. WALKER. I KNOW THAT I REVIEWED THOSE
19 C.D.'S AND DEFINITELY WOULD HAVE GIVEN A SUMMARY TO
20 MR. WALKER. I DON'T KNOW THAT WE HAD THE EQUIPMENT OR
21 CAPABILITIES AT THAT TIME AS WE DO NOW TO TAKE THE C.D. TO
22 HAVE EASILY TO BEEN ABLE TO PLAY IT FOR HIM AT THAT TIME
23 AS WE DO NOW. SO, I DON'T IMAGINE THAT I DID HAVE HIM
24 ACTUALLY REVIEW IT. I THINK THAT WE SUMMARIZED IT FOR
25 HIM.

1 Q DO YOU BELIEVE THAT YOUR INVESTIGATOR REVIEWED IT
2 WITH HIM?

3 A IT'S POSSIBLE.

4 Q WELL, YOU AGREE IT WOULD BE IMPORTANT TO GO OVER THE
5 INTERVIEW THAT HE HAD WITH THE POLICE OFFICER, DON'T YOU?

6 A YES. IT WOULD BE IMPORTANT TO DO THAT.

7 Q AND IT WOULD BE IMPORTANT TO REVIEW THE PHOTOGRAPHS
8 WITH HIM?

9 A YES.

10 Q BUT YOU DID NOT DO THAT?

11 A I AM NOT SAYING THAT I DID NOT DO THAT. I AM SAYING
12 THAT I AM NOT SURE IF I DID OR NOT.

13 Q DO YOU NEED MORE TIME TO LOOK THROUGH YOUR FILE?

14 A I CAN TELL YOU THAT THE FILE DOES NOT NOTE THAT I
15 DID.

16 Q OKAY. AND IT DOESN'T NOTE THAT YOUR INVESTIGATOR
17 DID?

18 A NO.

19 Q OKAY. MR. WALKER DENIED THAT THESE EVENTS EVER TOOK
20 PLACE, DIDN'T HE?

21 A THAT'S CORRECT.

22 Q THIS IS A COMPLETELY CIRCUMSTANTIAL CASE, ISN'T IT?
23 THERE IS NOT ONE LAB REPORT IN YOUR FILE, IS THERE?

24 A NO.

25 Q THERE IS NO D.N.A. EVIDENCE WHATSOEVER?

1 A NO.

2 Q EVEN THOUGH THE LADY TESTIFIED THAT THE MAN DIDN'T
3 USE A PROPHYLACTIC AND EJACULATED THERE IS NO D.N.A.
4 EVIDENCE OF ANY KIND RECOVERED FROM HER OR HIS HOUSE, IS
5 THERE?

6 A THAT'S CORRECT AND I BELIEVE THAT'S THE POINT THAT
7 WAS EMPHASIZED IN THE TRIAL.

8 Q SHE SAID SHE SMOKED A CIGARETTE AT HIS HOUSE, BUT
9 THERE'S NO -- NOTHING WAS RECOVERED ABOUT THAT, WAS THERE?

10 A AGAIN, A POINT STRONGLY EMPHASIZED AT THE TRIAL.

11 Q HE WAS SUPPOSED TO BE IN HER HOUSE SUPPOSELY, BUT
12 THERE WAS NO EVIDENCE FOUND IN HER HOUSE EITHER, WAS
13 THERE?

14 A THAT'S CORRECT.

15 Q YOU DID NOT INTERVIEW MARGARET SANDERS BEFORE YOU
16 CROSS EXAMINED HER AT TRIAL, DID YOU?

17 A NO.

18 Q NOW, IT'S EVIDENT FROM THE FILE THAT MARGARET SANDERS
19 WAS AN ALCOHOLIC, WASN'T IT?

20 A IT IS EVIDENT FROM THE FILE THAT MS. SANDERS DRANK
21 ALCOHOL. I DON'T KNOW THAT IT'S EVIDENT FROM THE FILE
22 THAT SHE SUFFERED FROM THE DISEASE OF ALCOHOLISM.

23 Q ALL RIGHT. DO YOU KNOW WHAT THE NOTATION E.T.O.H.
24 MEANS?

25 A YES. WELL, I WOULD IMAGINE IT STANDS FOR ETHANOL.

1 Q ALL RIGHT. IF IN THAT FORENSIC NURSE INTERVIEW THAT
2 YOU HAVE --

3 A UH-HUH.

4 Q -- IT SAYS THAT SHE SAID SHE WAS REPORTING FOR
5 E.T.O.H. TREATMENT, WHAT DOES THAT MEAN?

6 A SHE WAS REPORTING FOR ALCOHOL TREATMENT.

7 Q AND DID YOU ASK HER ANY QUESTIONS IN CROSS
8 EXAMINATION ABOUT HER USE OF ALCOHOL?

9 A I DON'T RECALL.

10 Q WELL, IN FACT, YOU DID NOT, DID YOU?

11 A EXCUSE ME?

12 Q IN FACT, YOU DID NOT, DID YOU?

13 THE COURT: SHE SAID SHE DIDN'T RECALL, MA'AM.

14 MS. SMITH: THANK YOU, SIR.

15 THE COURT: DO YOU RECALL IF YOU DID OR DIDN'T?

16 THE WITNESS: I DON'T RECALL YOUR HONOR. I COULD
17 CERTAINLY REVIEW THE TRANSCRIPT --

18 THE COURT: IT SPEAKS FOR ITSELF.

19 THE WITNESS: -- TO ANSWER DEFINITELY.

20 THE COURT: MOVE ALONG.

21 Q WHEN SHE WAS INTERVIEWED WHEN SHE INITIALLY REPORTED
22 THE CRIME BOTH ORANGEBURG POLICE OFFICERS SAID SHE SMELLED
23 OF ALCOHOL, DIDN'T THEY?

24 A THAT'S CORRECT.

25 Q AND THEY POINTED THAT OUT IN THEIR POLICE REPORTS?

1 A THAT'S CORRECT.

2 Q IT WOULD HAVE BEEN IMPORTANT TO CROSS EXAMINE HER
3 ABOUT THAT, WOULD IT NOT?

4 A YES.

5 Q WOULD IT BE VERY SIGNIFICANT FOR THE JURY TO KNOW IF
6 HER JUDGMENT WAS IMPAIRED EITHER IN THE IDENTIFICATION OF
7 THIS MAN OR IN HER PERCEPTION OF WHO IT WAS, WOULDN'T IT?

8 A YES.

9 Q YOU DIDN'T CALL THAT NURSE TO TESTIFY AT TRIAL, DID
10 YOU?

11 A NO, I DID NOT.

12 Q YOU DID NOT CALL THOSE ORANGEBURG POLICE OFFICERS TO
13 TESTIFY AT TRIAL, DID YOU?

14 A NO, I DID NOT.

15 Q MARGARET SANDERS' IDENTIFICATION OF JOSEPH WALKER IS
16 THE ONLY THING THAT LINKS HIM TO THIS CASE, ISN'T IT?

17 A NO. THAT'S INCORRECT.

18 Q DO YOU RECALL THE DISCREPANCIES IN MS. SANDERS'
19 TESTIMONY ABOUT WHAT TIME SHE WENT TO B.P.?

20 A I THINK SO. YES.

21 Q BUT YOU DIDN'T CROSS EXAMINE HER ABOUT THAT, DID YOU?

22 A I DON'T RECALL. I WOULD HAVE TO REVIEW THE
23 TRANSCRIPT, BUT I DON'T RECALL.

24 Q DO YOU RECALL THAT THAT INITIAL ORANGEBURG POLICE
25 REPORT YOU HAVE SAID SHE WENT TO B.P. AT 7 P.M.?

1 THE COURT: DO YOU HAVE A COPY OF IT RIGHT HANDILY,
2 MA'AM? ANYBODY FIND IT? MA'AM, DID YOU FIND IT?

3 MS. SMITH: IF I CAN HAVE A FEW MINUTES I CAN.

4 THE COURT: WELL, MOVE ALONG TO ANOTHER QUESTION IF
5 Y'ALL CAN'T FIND WHAT YOU'RE LOOKING FOR. NEXT QUESTION,
6 PLEASE.

7 Q DO YOU RECALL THAT SHE TESTIFIED -- MS. SANDERS
8 TESTIFIED LATER THAT IT WAS LIGHT OUTSIDE WHEN SHE AND THE
9 ASSAILANT LEFT HER HOME?

10 A I BELIEVE THAT'S CORRECT.

11 Q IN FACT, WAS IT ONE OF YOUR THEORIES WHY WOULD -- WHY
12 WOULD A MAN IN BROAD DAYLIGHT DRAG THIS LADY FROM HER
13 HOUSE BLINDFOLDED IN FRONT OF EVERYONE?

14 A SURE.

15 Q BUT YOU DIDN'T POINT OUT THAT -- WELL, LET ME
16 WITHDRAW THAT. DO YOU RECALL THAT THE SOLICITOR BELIEVED
17 THAT THE CRIME HAPPENED IN THE AFTERNOON?

18 A I THINK THAT'S CORRECT. YES.

19 Q DO YOU RECALL THE PROBLEMS WITH THE B.P. SURVEILLANCE
20 TAPE WITH REGARD TO WHAT TIME IT WAS?

21 A YES.

22 Q DO YOU REMEMBER THAT THE TIME RECORDED ON THE
23 SURVEILLANCE TAPE WAS NOT -- WHAT DO YOU RECALL ABOUT
24 THAT?

25 A MY RECOLLECTION OF THAT IS THAT THE TIME ON THE

1 SURVEILLANCE TAPE WAS NOT THE TIME THAT -- THE ACTUAL
2 TIME. I BELIEVE THAT IT WAS -- I BELIEVE THAT IT WAS
3 TESTIFIED TO THAT THERE WAS A PROBLEM WITH THE TIMESTAMP
4 ON THAT. I DON'T RECALL THAT AND I MAY BE MIXING UP
5 CASES, BUT I DO RECALL THERE WAS A PROBLEM WITH THE
6 TIMESTAMP.

7 Q IN FACT, IT WAS OFF BY AT LEAST AN HOUR. DO YOU
8 RECALL THAT?

9 A I DO RECALL THAT. YES.

10 Q WOULDN'T THAT HAVE BEEN IMPORTANT TO EXPLORE WITH
11 REGARD TO THE OTHER QUESTIONS WITH REGARD TO WHAT TIME IT
12 WAS AND IF IT WAS DARK OR LIGHT?

13 A AS FAR AS IT WENT TO MS. SANDERS' CREDIBILITY, YES.

14 Q BUT YOU DIDN'T GO THROUGH THAT, DID YOU?

15 A I DON'T THINK SO. NO.

16 Q I COPIED YOUR FILE; IS THAT RIGHT?

17 A THAT'S CORRECT.

18 Q I HAVE A -- JUDGE, MAY I APPROACH? CAN YOU IDENTIFY
19 THAT FOR ME?

20 A YES, IT IS THE ORANGEBURG COUNTY SHERIFF'S OFFICE
21 INCIDENT REPORT.

22 Q ALL RIGHT. DO YOU BELIEVE THAT YOU HAVE A COPY OF
23 THAT IN YOUR FILE AS WELL?

24 A I DO.

25 Q DO YOU SEE WHERE IT SAYS WHAT TIME SHE SAYS IT

1 HAPPENED?

2 A YES, RIGHT AFTER YOU STARTED ASKING QUESTIONS AGAIN
3 IT SAID AT APPROXIMATELY 8 P.M. THAT SHE HAD STOPPED AT
4 THE B.P. STATION.

5 Q 8 P.M. IS NOT IN THE AFTERNOON, IS IT?

6 A IT IS NOT.

7 Q THAT WOULD BE AN IMPORTANT DISCREPANCY TO EXPLORE,
8 ISN'T IT?

9 A YES.

10 THE COURT: DID YOU EXPLORE IT?

11 THE WITNESS: I DON'T THINK SO, YOUR HONOR.

12 Q DID YOU REVIEW THE TRANSCRIPT FOR TODAY?

13 A I HAVE. I DIDN'T REVIEW IT LAST NIGHT, BUT I HAVE
14 REVIEWED IT. I REVIEWED IT IN PREPARATION FOR THE LAST
15 HEARING THAT WAS SCHEDULED.

16 Q YOU DIDN'T CHALLENGE MARGARET SANDERS ON HOW HER
17 STORY HAD CHANGED, DID YOU?

18 THE COURT: HOW DID IT CHANGE?

19 Q WELL, DID IT NOT -- DID SHE NOT BEGIN BY TELLING
20 ORANGEBURG OFFICERS THAT IT HAPPENED AT NIGHT AND THEN HER
21 STORY CHANGED WHEN SHE WAS PRESENTED WITH A B.P. TAPE?

22 THE COURT: AND SHOWED WHAT TIME? WHAT DID THE B.P.
23 TAPE SHOW?

24 MS. SMITH: IT SHOWED EARLIER IN THE AFTERNOON --

25 2:20.

1 Q DO YOU REMEMBER IF IT APPEARED TO BE DAYLIGHT OR
2 NIGHT TIME ON THAT VIDEO AT B.P.?

3 A I DON'T RECALL. THAT VIDEOTAPE WAS SO SNOWY AND THE
4 QUALITY WAS SO POOR I DON'T THINK THAT I COULD HAVE TOLD
5 YOU.

6 Q BUT YOU AGREE THAT THIS WOMAN'S MEMORY SEEMED TO
7 IMPROVE OVER TIME, DIDN'T IT?

8 A YES, IT DID.

9 Q AND THAT WAS ONE OF THE THINGS THAT YOU COMPLAINED
10 ABOUT, ISN'T IT?

11 A YES.

12 Q BUT YOU DIDN'T CHALLENGE HER ON IT, DID YOU, IN
13 CROSS?

14 A IF YOU'LL GIVE ME A MOMENT I AM TRYING TO REVIEW THE
15 CROSS EXAMINATION SO I CAN BETTER ANSWER THESE QUESTIONS.

16 (WHEREUPON, THE ATTORNEYS CONFERRED.)

17 THE COURT: MA'AM, DO YOU HAVE A SPECIFIC PAGE OR
18 NUMBER YOU CAN REFER HER TO SO WE CAN MOVE ALONG?

19 MS. SMITH: I'LL JUST GO TO THE NEXT QUESTION, YOUR
20 HONOR.

21 MRS. BROWN?

22 THE WITNESS: YES?

23 Q DO YOU KNOW IF IT WAS LIGHT OR DARK AT 7 O'CLOCK ON
24 MARCH 2, 2003?

25 THE COURT: 7 O'CLOCK A.M. OR P.M.?

1 MS. SMITH: P.M.

2 THE WITNESS: WELL, I DON'T KNOW HOW IT WAS ON THAT
3 DAY. I KNOW THAT IF IT IS LIKE IT WAS ON MARCH 2 OF THIS
4 YEAR I WOULD CLASSIFY IT AS NOT QUITE DARK BUT --

5 Q WELL, YOU DON'T HAVE TO CLASSIFY IT, DO YOU? THERE
6 IS A WAY TO FIND OUT WHAT TIME THE SUNSET WAS ON THAT DAY,
7 ISN'T THERE?

8 A YES, THERE IS A WAY TO FIND OUT WHAT TIME SUNSET WAS
9 ON THAT DAY. IF YOU'RE ASKING ME MY OPINION AND MY
10 RECOLLECTIONS, WHAT I CAN TELL YOU IS THAT MY HUSBAND AND
11 I HAVE BEEN OUT WALKING COMING IN, YOU KNOW, BETWEEN 6:30
12 AND 6:45 IN THIS LAST WEEK, AND THAT'S WHY I WAS TRYING TO
13 CLASSIFY TO YOU THAT IT'S THAT TIME OF DAY THAT'S NOT
14 QUITE DARK AND NOT QUITE LIGHT. SO, I THINK IT THAT'S
15 BEST QUALIFIED AS DUSK.

16 Q SO, IT WOULD BE IMPORTANT TO KNOW WHEN SUNSET WAS; IS
17 THAT RIGHT?

18 A IT WOULD BE HELPFUL TO KNOW WHEN SUNSET WAS, YES.

19 Q ALL RIGHT. AND THERE IS A WAY TO OBTAIN THAT
20 EVIDENCE AND PRESENT IT TO THE JURY, ISN'T THERE?

21 A YES.

22 Q BUT YOU DIDN'T DO THAT, DID YOU?

23 A NO, I DID NOT.

24 Q OKAY. WHAT DAY OF THE WEEK DID THIS HAPPEN? DO YOU
25 RECALL?

1 A I DON'T RECALL.

2 Q ALL RIGHT. WELL, IF I TELL YOU THAT MARCH 2 WAS A
3 SATURDAY IN 2002, WILL YOU AGREE WITH THAT? I'VE GOT A
4 CALENDAR.

5 THE COURT: WE BELIEVE YOU.

6 THE WITNESS: I DON'T HAVE ANY REASON TO DISAGREE
7 WITH YOU ON THAT.

8 Q OKAY. AND YOU REMEMBER THAT SHE TESTIFIED THAT THERE
9 WAS SOMETHING WRONG WITH HER CAR?

10 A UH-HUH.

11 Q AND THE MAN WENT AND BOUGHT A COIL WIRE?

12 A THAT'S CORRECT.

13 Q I DON'T EXPECT YOU TO KNOW WHAT A COIL WIRE IS. I
14 DON'T KNOW WHAT A COIL WIRE IS.

15 THE COURT: ASK THE QUESTION, MA'AM. PLEASE MOVE
16 ALONG.

17 Q HOW DO YOU THINK HE COULD HAVE PURCHASED A COIL WIRE
18 ON A SATURDAY NIGHT?

19 A I THINK IT DEPENDS ON WHERE HE WOULD GO.

20 Q WELL, DID YOU EXPLORE THAT?

21 A NO, I DID NOT.

22 Q DID YOU TRY TO FIND OUT IF IT WAS EVEN POSSIBLE TO DO
23 THAT?

24 A NO, I DID NOT.

25 THE COURT: WHERE DID IT HAPPEN, ALLEGEDLY HAPPEN?

1 MS. SMITH: IN DENMARK.

2 THE COURT: THERE ARE ALL KINDS OF PLACES IN DENMARK
3 TO BUY A COIL WIRE ON SATURDAY NIGHT -- ADVANCED AUTO,
4 BROOKER'S. GO AHEAD.

5 MS. SMITH: WOULDN'T IT BE IMPORTANT TO DETERMINE
6 THAT, SIR?

7 THE COURT: I AM TELLING YOU WHERE YOU CAN BUY THEM.
8 MOVE ALONG.

9 Q DO YOU HAVE YOUR TRANSCRIPT WITH YOU?

10 A YES, I DO.

11 Q CAN YOU LOOK ON PAGE 280, 281?

12 A YES.

13 Q THIS IS YOUR CROSS EXAMINATION OF LIEUTENANT BAMBERG;
14 IS THAT RIGHT?

15 A THAT'S CORRECT.

16 Q THIS IS AT THE PRELIMINARY HEARING? DID YOU HAVE A
17 NEIL V BIGGERS HEARING?

18 THE COURT: LET THE RECORD REFLECT THAT THIS IS AT
19 THE NEIL V BIGGERS HEARING AS SHOWN ON PAGE 274 OF THE
20 TRANSCRIPT. MOVE ALONG.

21 Q IF YOU'LL LOOK ON PAGE 281, LINE 24.

22 A UH-HUH.

23 Q IF YOU'LL START A LITTLE EARLIER THAN THAT, THIS IS
24 WHERE HE'S TALKING ABOUT THE TIMESTAMP ON THE B.P. VIDEO;
25 IS THAT RIGHT?

1 A YOU WANT ME TO START LIKE AT LINE 18?

2 Q YES.

3 A "QUESTION: SO, SHE STARTED WATCHING THIS VIDEO FROM
4 THE TIME THE TIMESTAMP ON THERE THAT SHE WALKED INTO THE
5 STORE? ANSWER: CORRECT, FROM WHEN SHE CAME INTO THE
6 STORE. QUESTION: AND -- ANSWER: AND LEFT. QUESTION:
7 DO YOU RECALL AT WHAT TIME VIDEO THAT WAS? ANSWER: I
8 THINK HER HER TIME THAT SHE CAME IN WAS LIKE 1:26 P.M. OR
9 SOMETHING LIKE THAT, 1:28 P.M. OFF THE TOP OF MY HEAD;
10 MAYBE A LITTLE LATER."

11 Q ALL RIGHT. AND THAT'S A BIG DISCREPANCY FROM HER
12 INITIAL TESTIMONY THAT SHE WAS THERE AT 8; ISN'T THAT
13 RIGHT?

14 A YES.

15 Q BUT YOU DIDN'T EXPLORE THAT TO IMPEACH HIM?

16 A FROM WHAT I HAVE BEEN ABLE TO REVIEW, NO, I DID NOT.

17 THE COURT: MRS. BAMBERG TESTIFIED AT THE TRIAL?

18 MS. SMITH: I BELIEVE JUST AT THE BIGGERS HEARING.

19 THE COURT: I KNOW BUT DID SHE TESTIFY AT TRIAL?

20 MR. MIRSHAK: PAGE 149, YOUR HONOR, SHE DID.

21 THE COURT: WAS SHE CROSS EXAMINED ON THAT TIME
22 DISCREPANCY AT THE TRIAL? DO YOU RECALL?

23 MS. SMITH: NO, SIR, IF YOU'RE ASKING ME.

24 THE COURT: I AM ASKING KELLEY PERKINS BROWN. DO YOU
25 RECALL THAT, MA'AM?

1 THE WITNESS: I DON'T RECALL THAT. I WAS JUST
2 GLANCING AT THE TRANSCRIPT RIGHT QUICK, YOUR HONOR.

3 THE COURT: GO AHEAD, MA'AM.

4 Q ALL RIGHT. YOU STATED EARLIER THAT YOU RECALL THERE
5 WAS NO PHYSICAL EVIDENCE WHATSOEVER; IS THAT RIGHT?

6 A THAT'S CORRECT.

7 Q NO FINGERPRINTS. WERE THERE ANY FINGERPRINTS OF
8 JOSEPH WALKER RECOVERED IN HER HOME?

9 A NO, NOT THAT I RECALL.

10 Q IN FACT, DO YOU RECALL THE MEDICAL -- THE FORENSIC
11 MEDICAL EXAM OF MS. SANDERS?

12 A I HAVE THE FORENSIC MEDICAL EXAM OF MS. SANDERS.

13 Q DO YOU RECALL THAT IT SHOWS -- IT DOES NOT SHOW
14 CONCLUSIVELY WHETHER SHE WAS SEXUALLY ASSAULTED? DO YOU
15 RECALL THAT?

16 A I DON'T THINK THAT'S THE ASSESSMENT THAT I WOULD USE,
17 NO. I MEAN, WHAT ARE YOU ASKING ME SPECIFICALLY?

18 Q WELL, DO YOU RECALL IF THERE WERE OTHER EXPLANATIONS
19 FOR HER PHYSICAL EXAM FOR THE APPEARANCE OF HER?

20 A THERE WERE OTHER EXPLANATIONS THAT I EXPLORED ON
21 CROSS EXAMINATION, BUT THERE WERE NOT OTHER EXPLANATIONS
22 THAT WERE LISTED IN THE MEDICAL RECORDS. I DON'T BELIEVE
23 IN THE MEDICAL RECORDS THAT THEY CAME TO A CONCLUSION ONE
24 WAY OR ANOTHER, ONLY DISCUSSED THEIR FINDINGS AND WHAT HER
25 PHYSICAL STATUS WAS. THE SUMMARY OF THE PHYSICAL FINDING

1 WAS POSITIVE FOR THE WORD I CAN'T READ -- GENITAL TRAUMA,
2 BUT THEY CAME TO NO CONCLUSIONS IN THE MEDICAL REPORT AS
3 TO HOW THAT TRAUMA OCCURRED.

4 Q SO, IT WOULD HAVE BEEN IMPORTANT TO EXPLORE WITH HER
5 WHETHER A TRAUMA -- WHETHER THIS EVEN HAPPENED; ISN'T THAT
6 RIGHT?

7 A WITH WHO?

8 Q WITH THE VICTIM; THE ALLEGED VICTIM.

9 A I DON'T THINK I QUITE UNDERSTAND YOUR QUESTION.

10 MS. SMITH: I'LL WITHDRAW THAT, YOUR HONOR.

11 LET ME SHOW YOU THIS LAB REPORT.

12 MAY I APPROACH, YOUR HONOR?

13 CAN YOU IDENTIFY THAT?

14 THE WITNESS: YES. THIS IS THE FORENSIC SERVICES LAB
15 REPORT, DEPARTMENT OF FORENSIC D.N.A. ANALYSIS FROM THE .
16 INCIDENT DATE OF 3/3/02. IT IS DATED AUGUST 27 OF 2003.
17 IT IS THE SEROLOGY ANALYSIS --

18 Q ALL RIGHT. AND --

19 A -- AND D.N.A. ANALYSIS.

20 Q AND WHAT DOES IT SHOW?

21 A DO YOU WANT ME TO GO LINE BY LINE WHAT IT SHOWS?

22 Q NO. OVERALL IT SHOWS THEY FOUND NO D.N.A. EVIDENCE;
23 ISN'T THAT RIGHT?

24 A IT SHOWS THAT NO D.N.A. PROFILE UNLIKE THE VICTIM WAS
25 DEVELOPED FROM ITEM 1.12 WHICH WAS A BITE MARK. THEY'RE

1 SHOWING D.N.A. -- THEY'RE NOT SHOWING THAT THERE WAS -- I
2 GUESS THE SHORT ANSWER TO YOUR QUESTION IS THEY'RE NOT
3 SHOWING THAT D.N.A. LINKING MR. WALKER TO THIS WAS
4 IDENTIFIED. ALSO, NO SPERMATOZOA WAS DETECTED IN SMEARS.
5 NO SEMEN WAS IDENTIFIED IN EITHER VAGINAL SWABS, ORAL
6 SWABS, OR RECTAL SWABS OR IN HER PANTIES. NO ANALYSIS WAS
7 PERFORMED ON HAIR FROM A KNIT CAP.

8 Q AND WHAT'S -- YOU SAID THE DATE OF THE REPORT WAS
9 AUGUST OF 2003?

10 A AUGUST 27, 2003.

11 Q THAT'S ABOUT A MONTH AFTER THE TRIAL; IS THAT RIGHT?

12 A THAT'S CORRECT.

13 Q COULD YOU HAVE GOTTEN A CONTINUANCE TO WAIT TO
14 RECEIVE THAT REPORT?

15 THE COURT: LET ME SEE THE REPORT. SO, THE CASE WAS
16 TRIED WITHOUT THIS?

17 MS. SMITH: YES, SIR. IT WAS JULY --

18 THE COURT: DID ANYBODY FROM S.L.E.D --

19 MS. SMITH: -- 22.

20 THE COURT: -- TESTIFY TO THE RESULTS WITHOUT THE
21 REPORT? MA'AM?

22 THE WITNESS: NO. WELL, I AM SAYING NO. I DON'T
23 BELIEVE SO, YOUR HONOR.

24 THE COURT: WHY WAS THIS LAB REPORT SUBMITTED AFTER
25 THE TRIAL? ANYBODY KNOW THAT? WHY WAS IT TRIED WITHOUT

1 THE LAB REPORT? DOES ANYBODY KNOW THAT? HOW DID YOU GET
2 THE LAB REPORT?

3 MR. BOOZER: YOUR HONOR, I BELIEVE THAT THEY JUST
4 DIDN'T HAVE THAT WRITTEN REPORT AT THAT TIME AND BECAUSE
5 IT DIDN'T SHOW ANYTHING I DON'T THINK THAT IT WAS
6 IMPORTANT AT THAT TIME.

7 THE COURT: WELL, IT IS IMPORTANT. IT MIGHT NOT BE
8 IMPORTANT TO YOU.

9 MS. SMITH: I GOT THAT FROM --

10 THE COURT: ALL RIGHT. HOLD ON A SECOND. DID
11 ANYBODY FROM S.L.E.D. TESTIFY ABOUT THE FORENSIC
12 EXAMINATION AND RESULTS AT THE TRIAL? SIMPLE QUESTION.
13 ANYBODY KNOW THE ANSWER?

14 MS. SMITH: DR. ELIZABETH --

15 MR. BOOZER: YOUR HONOR, I BELIEVE DR. GIBBS MAY HAVE
16 TESTIFIED TO --

17 THE COURT: MAY HAVE OR DID?

18 MS. SMITH: DR. ELIZABETH GIBBS DID TESTIFY, SIR.

19 THE COURT: WHO IS DR. ELIZABETH GIBBS?

20 MS. SMITH: I BELIEVE SHE TESTIFIED WITH REGARD TO
21 WHAT THE FORENSIC NURSE DID.

22 THE COURT: WELL, DID SHE TESTIFY ABOUT THESE --

23 MR. MIRSHAK: SHE IS NOT WITH S.L.E.D., YOUR HONOR.

24 MS. SMITH: NO, SIR.

25 THE COURT: DID SHE TESTIFY ABOUT THE RESULTS OF THE

1 EXAMINATION THAT THE CHIEF LAW ENFORCEMENT DIVISION OF
2 SOUTH CAROLINA CONDUCTED? ANYBODY KNOW THAT?

3 THE WITNESS: NO, SHE DID NOT, YOUR HONOR.

4 THE COURT: WELL, OBVIOUSLY, YOU DIDN'T KNOW ABOUT
5 THIS LAB REPORT IF IT WASN'T IN EXISTENCE, DID YOU?

6 MS. BRISBIN: ACTUALLY, YOUR HONOR, THAT'S NOT TRUE.

7 THE COURT: ALL RIGHT. HOLD ON. WE'LL TESTIFY ABOUT
8 IT IN A MINUTE. GO AHEAD WITH YOUR QUESTIONS.

9 Q IT WOULD BE IMPORTANT FOR THE JURY TO KNOW ABOUT THIS
10 LAB REPORT, WOULDN'T IT?

11 A YES.

12 Q ESPECIALLY IN A CIRCUMSTANTIAL CASE; ISN'T THAT
13 RIGHT?

14 A YES.

15 Q WHEN THERE ARE NO FINGERPRINTS; IS THAT RIGHT?

16 A YES.

17 Q NOTHING LINKING THIS MAN EXCEPT A SNOWY VIDEO THAT
18 THE VICTIM HERSELF SAID WAS SNOWY AND SHE WASN'T 100
19 PERCENT SURE ABOUT; ISN'T THAT RIGHT?

20 A I AM NOT PREPARED TO CLASSIFY THAT THAT WAS THE ONLY
21 EVIDENCE LINKING, BUT, YES, IT WOULD BE IMPORTANT.

22 Q ESPECIALLY IF SHE HAD SOME TYPE OF ALCOHOL PROBLEM;
23 ISN'T THAT RIGHT?

24 A YES.

25 Q AND MAY HAVE BEEN DRINKING DURING THAT TIME?

1 A YES.

2 Q RIGHT? SUCH THAT THE POLICE OFFICER EVEN SMELLED THE
3 ALCOHOL ON HER?

4 A YES.

5 Q THAT'S ANOTHER PAGE FROM YOUR FILE. THAT'S FROM THE
6 FORENSIC NURSE INTERVIEW. CAN YOU FIND THAT PAGE?

7 A YOU WANT ME TO FIND IT IN MY FILE AS WELL AS THIS?

8 Q YES, PLEASE.

9 THE COURT: WELL, IS IT THE SAME THING?

10 MS. SMITH: NO, SIR.

11 MR. MIRSHAK: IT CAME OUT -- THEY HAVE A COPY IN
12 THEIR FILE.

13 THE COURT: THAT'S WHAT I'M SAYING.

14 MR. MIRSHAK: MRS. BROWN HAS A COPY AND IT'S PART OF
15 THE RULE FIVE.

16 THE COURT: WHY DOES SHE HAVE TO GO FIND IT WHEN WE
17 GOT A COPY OF IT? CAN'T SHE LOOK AT YOUR COPY AND TELL
18 YOU THE ANSWER? I AM JUST TRYING TO SPEED THINGS UP.

19 Q WELL, I THOUGHT IT WOULD BE FASTER FOR HER TO FIND IT
20 IF I GAVE HER A COPY OF IT.

21 THE COURT: WELL, IT'S NOT, OBVIOUSLY.

22 MS. SMITH: OKAY.

23 THE COURT: I AM NOT BEING DIFFICULT. IT IS JUST IF
24 YOU GOT IT, SHOW IT TO HER.

25 THE WITNESS: THIS APPEARS TO BE A COPY OF --

1 THE COURT: IT CAME OUT OF YOUR FILE.

2 THE WITNESS: -- A PAPER THAT'S IN MY FILE THAT I
3 BELIEVE YOU COPIED FROM MY FILE.

4 Q DOES IT HAVE A NOTATION ABOUT THE E.T.O.H. TREATMENT?

5 A YES.

6 Q CAN YOU READ THAT, PLEASE?

7 A SHE HAS BEEN PLANNING ON ATTENDING E.T.O.H. TREATMENT
8 THIS WEEK AND IS STILL PLANNING TO BEGIN THIS WEEK.

9 Q AND THAT IS FROM WHOSE REPORT?

10 A GRETCHEN OVERSTOLTZ. (PHONETIC)

11 THE COURT: WHO IS THAT?

12 Q IS THAT THE NURSE WHO DID THE FORENSIC INTERVIEW IN
13 ORANGEBURG HOSPITAL?

14 A I BELIEVE THAT'S CORRECT.

15 Q SO, YOU HAD THIS INFORMATION IN YOUR FILE?

16 A YES.

17 Q AND WHAT WAS THE DATE ON THIS WHEN THE FORENSIC
18 INTERVIEW WAS DONE?

19 A MARCH 3 OF 2002.

20 Q THAT'S THE DAY AFTER SHE SAID THE INCIDENT OCCURRED?

21 A THAT'S CORRECT.

22 MS. SMITH: I'D LIKE TO MARK THIS, YOUR HONOR.

23 THE COURT: MARK THE S.L.E.D. REPORT AS WELL.

24 MR. BOOZER: MAY I TAKE A LOOK AT IT?

25 MR. MIRSHAK: THE S.L.E.D. REPORT WOULD BE NO. 1 AND

1 THE MARCH 3, 2002 INTERVIEW NOTES BY THE NURSE AND MS.
2 SANDERS WOULD BE NO. 2, YOUR HONOR.

3 THE COURT: THANK YOU.

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NOS. 1 & 2 WERE
5 MARKED FOR IDENTIFICATION AND RECEIVED INTO
6 EVIDENCE.)

7 MR. MIRSHAK: ARE THEY IN EVIDENCE, YOUR HONOR?

8 MR. BOOZER: YOUR HONOR, I THOUGHT I WAS UNDER THE
9 UNDERSTANDING THAT THEY WERE BEING MARKED JUST FOR
10 IDENTIFICATION.

11 THE COURT: WELL, THEY JUST OFFERED THEM INTO
12 EVIDENCE. DO YOU HAVE ANY OBJECTION?

13 MR. BOOZER: I DO, YOUR HONOR, FOR THE NURSE'S REPORT
14 UNLESS SHE'S HERE TO IDENTIFY IT.

15 THE COURT: OVERRULED. THESE ARE A PART OF HER
16 RECORDS THAT HAVE BEEN INTRODUCED FOR THAT PURPOSE. THEY
17 ARE ALSO MEDICAL RECORDS WHICH ARE AN EXCEPTION TO THE
18 HEARSAY RULE. GO AHEAD.

19 Q WOULD YOU LOOK AT THE PHOTOGRAPHS FROM YOUR RULE
20 FIVE'S OR ARE ON ARE THOSE ON THE C.D.?

21 A THEY ARE ON THE C.D. I DON'T BELIEVE THAT I HAVE
22 THEM --

23 Q BUT YOU --

24 A -- PRINTED OUT IN HARD COPY IN THE FILE. I DON'T
25 BELIEVE THEY'RE PRINTED IN HARD COPY.

1 MS. SMITH: WILL YOU MARK THAT?

2 (WHEREUPON, PLAINTIFF'S EXHIBIT NO. 3 WAS MARKED FOR
3 IDENTIFICATION ONLY.)

4 Q CAN YOU TELL ME WHAT THAT SAYS?

5 A CUSTOMER NAME ROBINA REED, 515 FREDERICK STREET,
6 DENMARK, SOUTH CAROLINA, 29042.

7 MS. SMITH: AND I'D LIKE TO OFFER THIS INTO EVIDENCE,
8 YOUR HONOR.

9 THE COURT: ANY OBJECTION?

10 MR. BOOZER: NO OBJECTION, YOUR HONOR.

11 MR. MIRSHAK: FOR THE RECORD, YOUR HONOR, THAT'S FROM
12 THE STATE'S RULE FIVE.

13 THE COURT: THANK YOU. MOVE ALONG.

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NO. 3 WAS ADMITTED
15 INTO EVIDENCE.)

16 Q WHO IS ROBINA REED?

17 THE COURT: IF YOU KNOW WHO SHE IS, ASK HER WHO SHE
18 IS WITHOUT HER HAVING TO GO THROUGH THAT FILE.

19 Q WELL --

20 THE COURT: DO YOU KNOW WHO SHE IS WITHOUT LOOKING
21 THROUGH YOUR FILE?

22 A I THINK SHE IS A PERSON WHO KNOWS MR. WALKER. THE
23 NOTE IN MY FILE IS THAT I'VE GOT A NOTE IN MY FILE OF A
24 ROBINA WHO IS A MANAGER OF HARDEES.

25 Q DID YOU SPEAK TO ROBINA REED?

1 A I DID NOT. MY INVESTIGATOR EITHER DID SPEAK WITH HER
2 OR MADE ATTEMPTS TO SPEAK WITH HER.

3 Q DO YOU HAVE NOTES TO THAT EFFECT?

4 A I HAVE THE NOTES THAT -- DO I HAVE NOTES SPECIFICALLY
5 TO THAT EFFECT?

6 Q IN FACT, THE ONLY NOTE YOU HAVE SAYS ROBINA, MANAGER
7 OF HARDEES. THERE AREN'T ANY OTHER NOTES, ARE THERE?

8 A THAT'S CORRECT.

9 Q SO, YOU DON'T KNOW IF HE TRIED TO CONTACT HER OR NOT,
10 DO YOU?

11 A MY RECOLLECTION IS THAT THOSE NAMES WERE IN THERE
12 BECAUSE THOSE WERE PEOPLE THAT HE -- NAMES THAT HE HAD
13 BEEN GIVEN OF PEOPLE THAT HE EITHER HAD TALKED TO OR HAD
14 ATTEMPTED TO TALK TO.

15 Q DID YOU SUBPOENA HER TO TRIAL?

16 A NO, I DID NOT.

17 THE COURT: IS SHE HERE TODAY?

18 MR. MIRSHAK: YES, SIR.

19 Q MR. WALKER TOLD YOU THAT HE WAS WITH HER THAT NIGHT,
20 DID HE NOT?

21 A NO, HE DID NOT TELL ME THAT. NO, MA'AM.

22 THE COURT: WHO DID HE TELL?

23 MS. SMITH: HE TOLD THE --

24 THE COURT: I AM ASKING HER.. DO YOU KNOW WHO HE
25 TOLD?

1 THE WITNESS: I DO NOT KNOW THAT HE TOLD ANYONE, YOUR
2 HONOR. HE DID NOT TELL ME. I WAS NOT AWARE OF ANY CLAIM
3 THAT HE WAS WITH ANYONE ON THAT NIGHT.

4 Q BUT YOU DIDN'T MAKE ANY REAL EFFORTS TO FIND HER, DID
5 YOU?

6 A I PERSONALLY DID NOT. NO, MA'AM.

7 Q YOU COULD HAVE SENT HER A SUBPOENA, COULDN'T YOU?

8 A I COULD HAVE.

9 THE COURT: WHAT WAS HER NAME DOING IN YOUR FILE?

10 THE WITNESS: HER NAME WAS IN MY FILE BECAUSE SHE WAS
11 A NAME THAT MR. WALKER HAD GIVEN TO MY INVESTIGATOR.

12 THE COURT: WHO WAS YOUR INVESTIGATOR?

13 THE WITNESS: MR. BENNIE WILLIAMS AND THAT NOTE IS
14 ACTUALLY IN HIS HANDWRITING.

15 THE COURT: DO YOU KNOW WHAT HE DID AS A RESULT OF
16 OBTAINING THAT NAME BY WAY OF INVESTIGATION, IF ANYTHING,
17 OF YOUR OWN PERSONAL KNOWLEDGE?

18 THE WITNESS: I DO NOT HAVE PERSONAL KNOWLEDGE OF
19 THAT, NO.

20 THE COURT: DID YOU EVER DISCUSS WITH HIM THE
21 SIGNIFICANCE OF THAT NAME?

22 THE WITNESS: NO.

23 THE COURT: AND YOUR CLIENT NEVER TOLD YOU THAT HE
24 WAS WITH HER ON THAT NIGHT?

25 THE WITNESS: THAT'S CORRECT.

1 THE COURT: NOWHERE IN YOUR FILE REFLECTS THAT?

2 THE WITNESS: NO, SIR.

3 THE COURT: AND, OBVIOUSLY, IF IT HAD'VE BEEN IN YOUR
4 FILE YOU WOULD WOULD HAVE EXPLORED THAT VERY VIGOROUSLY?

5 THE WITNESS: YES, SIR.

6 THE COURT: MOVE ALONG.

7 Q WELL, WHEN HE WAS INTERVIEWED BY THE POLICE ON THAT
8 THAT C.D. YOU HAVE HE TOLD THEM, DIDN'T HE?

9 A IT'S BEEN A LONG TIME SINCE I'VE WATCHED THAT C.D. I
10 COULDN'T TELL YOU.

11 Q BUT YOU REVIEWED IT PRIOR TO THE TRIAL; RIGHT?

12 A YES.

13 Q SO, IT WOULD HAVE BEEN IMPORTANT TO EXPLORE ANY ALIBI
14 DEFENSE THIS MAN HAD?

15 A AND I BELIEVE THAT MY INVESTIGATOR WAS DOING SO.

16 THE COURT: DID HE? YOU BELIEVE IT. DID HE?

17 THE WITNESS: HE TOLD ME THAT HE WAS EXPLORING. YES,
18 YOUR HONOR.

19 THE COURT: SO, THERE IS AN INTERVIEW TAPE OF THE
20 DEFENDANT THAT SAYS THAT HE WAS WITH -- WHAT'S HER NAME?

21 MS. SMITH: ROBINA REED.

22 THE COURT: MS. REED ON THE NIGHT OF THE INCIDENT.
23 THAT NAME APPEARS IN THE FILE, BUT WE DON'T KNOW WHAT WAS
24 DONE AS FAR AS FINDING OUT WHAT MS. REED WOULD OR WOULD
25 NOT HAVE SAID; IS THAT CORRECT?

1 THE WITNESS: YES, YOUR HONOR.

2 Q AND YOU DIDN'T NOTIFY THE STATE OF ANY ALIBI DEFENSE,
3 DID YOU?

4 A NO.

5 Q YOU AGREE THAT WOULD HAVE A TERRIBLE PREJUDICE ON
6 MR. WALKER NOT TO EXPLORE THAT, DON'T YOU?

7 A WITHOUT HAVING SPOKEN WITH HER I CAN'T AGREE OR
8 DISAGREE WITH THAT.

9 THE COURT: WELL, WHAAT IF SHE SAID SHE WAS WITH HIM?
10 WOULDN'T THAT BE PREJUDICIAL?

11 THE WITNESS: YES, SIR.

12 THE COURT: IF SHE SAID SHE WASN'T WITH HIM IT WOULD
13 NOT BE PREJUDICIAL.

14 THE WITNESS: THAT'S CORRECT.

15 MS. SMITH: YOUR HONOR, CAN WE MARK THAT NOTE SHE WAS
16 REFERRING TO IN HER FILE?

17 THE COURT: YOU CAN MARK WHATEVER YOU WANT TO.

18 MR. MIRSHAK: MAY I HELP, YOUR HONOR, SINCE I KNOW
19 WHERE IT IS?

20 THE COURT: IF YOU KNOW WHERE IT IS.

21 MR. MIRSHAK: TO MOVE THIS ALONG.

22 THE COURT: ARE YOU GOING TO MOVE IT INTO EVIDENCE?

23 MR. MIRSHAK: YES, SIR. WE MOVE PLAINTIFF'S
24 EXHIBIT 4 INTO EVIDENCE. SHOW IT TO THE STATE, PLEASE.

25 THE COURT: MR. BOOZER?

1 MR. BOOZER: NO OBJECTION, YOUR HONOR.

2 THE COURT: WITHOUT OBJECTION.

3 (WHEREUPON, PLAINTIFF'S EXHIBIT NO. 4 WAS MARKED FOR
4 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

5 Q DIDN'T YOU TELL US THAT NOBODY KNEW WHERE ROBINA REED
6 WAS AND THAT'S WHY YOU HADN'T TALKED TO HER?

7 A I DON'T RECALL THAT.

8 Q WHOSE HANDWRITING IS THAT ON THE NOTES WE HAVE?

9 A THAT'S BENNIE WILLIAMS.

10 Q AND HE'S THE INVESTIGATOR?

11 A THAT'S CORRECT.

12 MS. SMITH: THAT'S ALL I HAVE OF THIS WITNESS, YOUR
13 HONOR.

14 THE COURT: CROSS?

15 MR. BOOZER: THANK YOU, YOUR HONOR.

16 MR. MIRSHAK: MAY I, YOUR HONOR, BEFORE THEY CROSS?
17 CAN WE STIPULATE THAT THE C.D. CONFESSION INTERVIEW WITH
18 THE POLICE OFFICER WHERE MR. WALKER IS BEING, IN EFFECT,
19 CROSS EXAMINED BY THE POLICE OFFICER THAT THAT, IN FACT,
20 SHOWED MR. WALKER TELLS THAT OFFICER THAT SHE WAS WITH
21 ROBINA THAT NIGHT --

22 THE COURT: THAT HE WAS.

23 MR. MIRSHAK: AND THAT WAS ON OR ABOUT MARCH 23, I
24 BELIEVE, 2005. WE'VE GOT THE C.D.

25 THE COURT: WELL, ARE YOU GOING TO STIPULATE TO THAT?

1 MR. BOOZER: NO, SIR, YOUR HONOR.

2 THE COURT: LET THE C.D. COME INTO EVIDENCE. I CAN
3 LOOK AT IT.

4 MR. MIRSHAK: THANK YOU, YOUR HONOR.

5 MR. BOOZER: THANK YOU, YOUR HONOR.

6 CROSS-EXAMINATION

7 BY MR. BOOZER:

8 Q MRS. BROWN, NOW IN YOUR MEETINGS WITH THE APPLICANT
9 WHAT SPECIFIC ITEMS DID YOU DISCUSS WITH HIM IN PREPARING
10 FOR THE CASE?

11 A WELL --

12 Q AS FAR AS DEFENSES, FACTS OF THE CASE, ELEMENTS THAT
13 THEY WERE REQUIRED TO PROVE?

14 A WELL, I MEAN, OBVIOUSLY, WE DISCUSSED WHAT HE WAS
15 CHARGED WITH. I DISCUSSED WITH HIM THE EVIDENCE THAT THE
16 STATE HAD WAS ESSENTIALLY HER IDENTIFICATION OF HIM AS
17 BEING THE PERSON WHO TOOK HIM -- I MEAN, TOOK HER FROM HER
18 HOME AND WHO SEXUALLY ASSAULTED HER. I DISCUSSED WITH HIM
19 THE FACT THAT SHE GAVE VERY SPECIFIC DETAILS OF THE INSIDE
20 OF HIS HOME.

21 MS. SMITH: YOUR HONOR, I ASKED HER TO -- I WOULD
22 OBJECT AND ASK THAT SHE GAVE SPECIFIC DATES OF WHEN THESE
23 CONVERSATIONS TOOK PLACE.

24 THE COURT: OVERRULED. GO AHEAD.

25 THE WITNESS: THANK YOU. WE DISCUSSED THE FACT THAT

1 SHE HAD MADE SPECIFIC DESCRIPTIONS OF THE INSIDE OF HIS
2 HOME. WE DISCUSSED WHAT THE ELEMENTS THE STATE HAD TO
3 PROVE AND THE FACTS THAT THEY WERE SEEKING TO USE TO PROVE
4 MY CASE.

5 Q MRS. BROWN, DID HE EVER TELL YOU THAT SHE WAS NEVER
6 AT HIS HOUSE?

7 A YES.

8 Q OKAY. BUT SHE WAS ABLE TO TESTIFY TO ALL OF THESE
9 SPECIFICS OF THE HOME; IS THAT CORRECT?

10 A THAT'S CORRECT.

11 Q NOW, YOU HIRED A PRIVATE INVESTIGATOR?

12 A NO. I HAVE -- WE -- OUR OFFICE HAS TWO
13 INVESTIGATORS ON STAFF.

14 Q OKAY. AND DURING YOUR INVESTIGATION DID THE
15 APPLICANT EVER TELL YOU OR INDICATE THAT HE HAD AN ALIBI
16 WITNESS?

17 A HE DID NOT TELL ME, NO.

18 Q DID THE APPLICANT DISCUSS WITH YOU THIS ROBINA REED?

19 A NO.

20 Q IF HE HAD TOLD YOU ABOUT ROBINA REED AND SAID THIS IS
21 AN ALIBI WITNESS; THIS IS SOMEONE I WANT YOU TO
22 INVESTIGATE, WOULD YOU HAVE HAD INVESTIGATED THAT PERSON
23 OR HAD YOUR INVESTIGATOR INVESTIGATE THAT PERSON?

24 A YES.

25 Q WAS THERE ANY REASON TO SUBPOENA ROBINA REED?

1 A NOT THAT I KNEW OF AT THE TIME.

2 Q OKAY. NOW, WERE YOU PROVIDED WITH AND GIVEN ACCESS
3 TO ALL OF THE STATE'S EVIDENCE THAT THEY HAD?

4 A YES.

5 Q DID YOU GO OVER ALL OF THAT EVIDENCE WITH YOUR
6 CLIENT?

7 A AS I TESTIFIED BEFORE I WENT OVER WITH HIM WHAT WAS
8 THERE. I DON'T SPECIFICALLY RECALL IF I PLAYED A TAPE FOR
9 HIM OR IF I SHOWED HIM PHOTOGRAPHS. I WOULD HAVE
10 SUMMARIZED FOR HIM WHAT THE STATE HAD AND, CERTAINLY, WHAT
11 THEY INTENDED TO USE AGAINST HIM AT TRIAL.

12 Q NOW, I BELIEVE DR. GIBBS TESTIFIED AT THE TRIAL, AND
13 DID SHE TESTIFY THAT THERE WAS MEDICAL EVIDENCE CONSISTENT
14 WITH A SEXUAL ASSAULT?

15 A I BELIEVE THAT HER TESTIMONY AT TRIAL WAS THAT IT WAS
16 CONSISTENT. SHE DESCRIBED THE TRAUMA THAT SHE DISCOVERED,
17 AND I BELIEVE THAT SHE DID TESTIFY THAT IT WAS CONSISTENT
18 WITH A SEXUAL ASSAULT.

19 Q AND SHE EVEN TESTIFIED TO THE FACT THAT THERE WERE
20 INJURIES IN THE VICTIM'S MOUTH CONSISTENT WITH A SEXUAL
21 ASSAULT; IS THAT CORRECT?

22 A I BELIEVE THAT'S CORRECT.

23 Q GOING TO THE VIDEOTAPE OR THE SURVEILLANCE TAPE FROM
24 THE B.P. STATION, WAS THE CLERK -- THE STORE CLERK -- ABLE
25 TO MATCH UP THE TIME ON THE VIDEOTAPE EVEN THOUGH IT WAS

1 ALLEGEDLY OFF WITH THE ACTUAL TIME? DO YOU RECALL?

2 A I RECALL THAT THERE WAS TESTIMONY TO THAT NATURE. I
3 DON'T SPECIFICALLY RECALL WHAT THE TESTIMONY WAS WITHOUT
4 LOOKING AT IT IN THE TRANSCRIPT.

5 Q I BELIEVE SOME OF THAT TESTIMONY IS ON PAGE 143, YOUR
6 HONOR, WITH MS. WARREN?

7 A YES.

8 Q ARE YOU ON PAGE 143?

9 A YES.

10 Q IF YOU COULD READ LINE 7 THROUGH 16.

11 A "ANSWER: THE DATE MIGHT BE OFF, TOO, BECAUSE WE'VE
12 HAD -- WE'VE HAD SOME PROBLEMS EVERY NOW AND THEN WITH THE
13 V.C.R. NOT PUTTING THE RIGHT DATE ON, BUT IF WE HAVE WHAT
14 WE CALL INTERFACINGS IN OUR CAMERAS AND IN OUR REGISTERS,
15 AND WHAT AN INTERFACING IS WHEN A CUSTOMER PURCHASES AND I
16 CAN ALWAYS -- IF THE DATE IS NOT RIGHT, THEN I CAN ALWAYS
17 DO THIS. I CAN PULL THE VIDEO UP, GO TO THE INTERFACING,
18 AND ON THE INTERFACING IT WILL GIVE ME THE NAME OF MY
19 LOCATION, WHAT THE PERSON, WHAT THEY BOUGHT, THE DATE AND
20 THE TIME, AND THAT'S HOW I KNEW I HAD THE PROPER TAPE WAS
21 BECAUSE -- QUESTION: YOU COMPARED THE INTERFACING. IS
22 THAT INTERFACING ON THE CASH REGISTER? ANSWER: YES,

23 MA'AM."

24 AND THIS --

25 THE COURT: WHAT PAGE IS THAT?

1 THE WITNESS: IT IS 143. THIS WAS DIRECT EXAM BY
2 MS. BRISBIN. QUESTION AT LINE 20: "SO, YOU COMPARED THE
3 TAPE WITH THE INTERFACING ON THE CASH REGISTER TO COME UP
4 WITH THE DATE? ANSWER: YES, MA'AM. QUESTION: OKAY.
5 SO, WHAT DID YOU DO WITH THE TAPE FROM THAT DATE? ANSWER:
6 WELL, I TOOK IT -- QUESTION: AFTER DETERMINING WHICH TAPE
7 WENT WITH THAT DATE? ANSWER: WELL, I PUT IT -- I PUT
8 IT --

9 Q I'M SORRY. I THINK THAT THAT IS GOOD. THANK YOU.
10 GOING BACK TO THE FINGERPRINTS, I THINK, THAT WERE
11 DISCUSSED --

12 THE COURT: WELL, DID YOU CROSS EXAMINE THAT
13 PERSON -- MS. WARREN? THE TRANSCRIPT SAYS YOU DIDN'T.

14 THE WITNESS: NO, I DID NOT.

15 THE COURT: ANY PARTICULAR REASON WHY? WERE YOU
16 SATISFIED WITH WHAT HER EXPLANATION WAS?

17 THE WITNESS: YES, SIR.

18 Q MRS. BROWN, GOING BACK TO THE FINGERPRINTS THAT WERE
19 RAISED EARLIER, DO YOU RECALL IF THERE WAS A PROBLEM WITH
20 OBTAINING FINGERPRINTS FROM THE HOME OR THE CAR?

21 A MY RECOLLECTION IS THAT THEY MADE ATTEMPTS TO DO SO,
22 BUT THEY DID NOT FIND ANYTHING OF VALUE TO MAKE
23 IDENTIFICATIONS WITH.

24 Q NOW, AT THE TRIAL DID YOU RAISE THE ISSUE THAT THERE
25 WAS NO D.N.A. FOUND?

1 A I BELIEVE SO.

2 Q AND JUST BECAUSE NO D.N.A. IS FOUND DOES THAT MEAN
3 THAT IT IS CONCLUSIVE THAT THERE WAS NOT A RAPE OR A
4 SEXUAL ASSAULT?

5 A IN MY EXPERIENCE TRYING THESE KIND OF CASES, NO.
6 I'VE HAD CASES BEFORE WHERE THERE'S NOT BEEN D.N.A.
7 EVIDENCE TO BE FOUND, AND THAT'S ALWAYS SOMETHING THAT'S
8 USED, BUT IT'S NOT CONCLUSIVE.

9 Q NOW, DID THE VICTIM ALSO IDENTIFY THE APPLICANT IN A
10 PHOTO LINE-UP?

11 A I BELIEVE SO.

12 MR. BOOZER: THE COURT'S INDULGENCE, YOUR HONOR.

13 THE WITNESS: I WOULD HAVE TO CHECK MY NOTES TO BE
14 ABSOLUTELY SURE ON THAT.

15 THE COURT: REFER HER TO WHERE YOU WANT TO ASK HER.

16 MR. BOOZER: I'M SORRY, YOUR HONOR?

17 THE COURT: IF YOU KNOW THE ANSWER TO THAT, WHERE IS
18 IT IN THE TRANSCRIPT? THERE WAS A NEIL VERSUS BIGGERS
19 LINE-UP HEARING.

20 MR. BOOZER: YOUR HONOR, I BELIEVE IT IS 283, YOUR
21 HONOR.

22 THE COURT: AND 276. SHE WAS 90 PERCENT SURE.

23 Q MRS. BROWN, DID THE CLERK ALSO IDENTIFY MR. WALKER IN
24 THE VIDEOTAPE?

25 A YES.

1 MR. BOOZER: THANK YOU, YOUR HONOR.

2 THE COURT: REDIRECT, IF ANY.

3 RE CROSS-EXAMINATION

4 BY MS. SMITH:

5 Q WELL, JUST BECAUSE THE MAN MAY HAVE BEEN AT THE B.P.
6 ON THAT DAY AND THE CLERK MIGHT HAVE IDENTIFIED HIM
7 DOESN'T MEAN THAT HE DID THE ACTS THAT FOLLOWED, DID IT?

8 A NO.

9 Q IN FACT, HE WAS A REGULAR CUSTOMER, WASN'T HE?

10 A THAT'S WHAT THE TESTIMONY WAS, YES, MA'AM.

11 Q NOW, YOU BEGAN BY ANSWERING MR. BOOZER'S QUESTION
12 ABOUT WHAT YOU TALKED TO MR. WALKER ABOUT?

13 A YES.

14 Q NOW, DO YOU SPECIFICALLY RECALL THIS, OR DID YOU TELL
15 US WHAT YOU GENERALLY -- HOW YOU GENERALLY INTERVIEW YOUR
16 CLIENTS?

17 A BOTH.

18 Q BUT YOU DON'T KNOW HOW MANY TIMES YOU MET WITH HIM?

19 A NO.

20 Q YOU THINK IT WAS ONE TIME?

21 A I NEVER SAID THAT I THOUGHT IT WAS ONE TIME.

22 Q I BELIEVE YOU SAID YOU THINK IT WAS THE TIME -- THE
23 ONE TIME BEFORE THE HEARING STARTED?

24 A NO. I TOLD YOU THAT THAT WAS ONE OF THE TIMES THAT I
25 MET WITH HIM. I SPOKE WITH MR. WALKER AND MET WITH HIM ON

1 SEVERAL OCCASIONS. I CANNOT TELL YOU SPECIFICALLY HOW
2 MANY.

3 Q DO YOU RECALL THAT MR. WALKER HAD A ROOMMATE?

4 A IN HIS HOUSE?

5 Q YES.

6 A I DON'T RECALL THAT. I THINK THAT HE MENTIONED THAT.

7 Q WELL, YOU HAVE NOTES ABOUT A MAN NAMED DOUG, DON'T
8 YOU?

9 MR. BOOZER: I AM GOING TO HAVE TO OBJECT TO THE
10 RELEVANCE.

11 THE COURT: SURE. THAT'S NOT IN RESPONSE TO THE
12 CROSS.

13 MS. SMITH: WELL, SIR --

14 THE COURT: SUSTAINED.

15 MS. SMITH: MAY I EXPLAIN?

16 THE COURT: YOU MAY. YOUR REDIRECT HAS TO BE IN
17 RESPONSE TO THE CROSS EXAMINATION. THAT DID NOT COME UP.

18 MS. SMITH: WELL, JUST BECAUSE THE WOMAN CAN IDENTIFY
19 THE INSIDE OF THE HOUSE DOESN'T MEAN THAT THAT SPECIFIC
20 ACT OCCURRED WITH HIM. HE SAID HE HAD NEVER HAD HER IN
21 THE HOUSE. THAT DOESN'T MEAN THAT DOUG DIDN'T HAVE HER IN
22 THE HOUSE EVER.

23 THE COURT: ALL RIGHT. I'LL LET YOU ASK IT.

24 Q DID YOU TALK TO DOUG?

25 A I DID NOT TALK TO DOUG, NO.

1 Q DID YOU TRY TO LOCATE DOUG?

2 A I DID NOT, NO.

3 Q AND YOUR INVESTIGATOR DIDN'T EITHER, DID HE?

4 A I DON'T KNOW.

5 Q DID YOU SEND DOUG A SUBPOENA?

6 A NO?

7 THE COURT: IS DOUG HERE TODAY?

8 MS. SMITH: NO. AND IT WOULD HAVE BEEN A LOT EASIER
9 TO FIND DOUG SEVERAL YEARS AGO THAN IT WOULD BE FOR ME
10 TODAY; RIGHT?

11 THE COURT: WELL, WHO KNOWS THAT, MA'AM? MOVE ALONG.

12 Q NOW, DIDN'T DR. GIBBS ALSO TESTIFY THAT THE TRAUMA OR
13 HOWEVER SHE DESCRIBED THE APPEARANCE OF MS. -- OF THE
14 VICTIM MS. SANDERS -- WAS ALSO CONSISTENT WITH A WOMAN WHO
15 HAD GONE THROUGH MENOPAUSE? DO YOU RECALL THAT?

16 A I BELIEVE I EXPLORED THAT POSSIBILITY WITH HER ON
17 CROSS EXAMINATION.

18 Q SO, THERE WAS NO EVIDENCE OF -- THIS WAS A PURELY
19 CIRCUMSTANTIAL CASE, WASN'T IT?

20 A I DON'T KNOW THAT I WOULD CLASSIFY IT AS A PURELY
21 CIRCUMSTANTIAL CASE. I DON'T THINK THAT WHEN YOU HAVE
22 SOMEONE DIRECTLY IDENTIFYING SOMEONE AS THE PERSON WHO
23 COMMITTED A SEXUAL ASSAULT ON THEM THAT THAT WOULD -- I
24 BELIEVE THAT THAT WOULD BE CONSIDERED DIRECT EVIDENCE.

25 Q SOMEONE WHO SMELLED OF ALCOHOL WHEN THEY SPOKE TO THE

1 POLICE A FEW HOURS AFTER IT HAPPENED?

2 A I AM NOT CLASSIFYING HOW CREDIBLE IT IS. I AM JUST
3 JUST SAYING I BELIEVE THAT WOULD BE CONSIDERED DIRECT
4 EVIDENCE.

5 Q BUT YOU SHOULD HAVE CHALLENGED HER CREDIBILITY AT
6 TRIAL, SHOULDN'T YOU?

7 A I COULD HAVE AND I BELIEVE I DID IN OTHER WAYS.

8 Q WELL, YOU DIDN'T CHALLENGE HER ON THE ALCOHOL FACTS,
9 DID YOU?

10 A I DID NOT CHALLENGE HER ON HER GOING INTO TREATMENT
11 FOR ALCOHOL, BUT I DID CHALLENGE HER WITH HER TESTIMONY OF
12 HIM PROVIDING HER ALCOHOL DURING THE COURSE OF THAT NIGHT.
13 I CHALLENGED HER ON HER TESTIMONY THAT HE ALLOWED HER TO
14 SMOKE CIGARETTES. I CHALLENGED HER ON HER CREDIBILITY BY
15 HER TESTIMONY THAT HE ALLOWED HER TO GRAB HER PURSE AS SHE
16 WAS HEADING OUT THE DOOR.

17 THE COURT: BUT NOT ON THE ALCOHOL TREATMENT?

18 THE WITNESS: NOT ON THE ALCOHOL TREATMENT THAT I
19 RECALL.

20 Q BUT WHETHER SHE WAS IMPAIRED AND COULD MAKE A GOOD
21 IDENTIFICATION?

22 MR. BOOZER: YOUR HONOR, I WOULD OBJECT. I THINK
23 SHE'S ANSWER ALL OF THESE QUESTIONS.

24 THE COURT: SHE HAS. SUSTAINED. MOVE ALONG. YOU
25 COVERED THAT POINT VERY THOROUGHLY.

1 MS. SMITH: THAT'S ALL I HAVE, YOUR HONOR.

2 MR. MIRSHAK: YOUR HONOR, ONE, PLEASE.

3 MS. SMITH: THAT'S ALL I HAVE, YOUR HONOR.

4 THE COURT: YOU MAY STEP DOWN.

5 MR. BOOZER: ONE QUESTION, YOUR HONOR, VERY BRIEFLY.

6 THE COURT: NEXT WITNESS. YOU MAY STEP DOWN.

7 MR. MIRSHAK: ROBINA REED, PLEASE.

8 THE COURT: COME AROUND, PLEASE. GOOD MORNING. PUT
9 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

10 ROBINA REED, AFTER BEING DULY SWORN, TESTIFIED
11 AS FOLLOWS:

12 THE COURT: R-E-E-D?

13 THE COURT: ARE YOU KIN TO IZZY AND CLYDE.

14 THE WITNESS: NO.

15 THE COURT: FROM ELKO?

16 THE WITNESS: NO.

17 THE COURT: DO YOU KNOW THEM?

18 THE WITNESS: NO.

19 THE COURT: WHERE ARE YOU FROM?

20 THE WITNESS: NEW YORK.

21 THE COURT: NO WONDER.

22 MR. MIRSHAK: SHE'S GOT DENMARK ROOTS, THOUGH, JUDGE.

23 DIRECT EXAMINATION

24 BY MR. MIRSHAK:

25 Q STATE YOUR NAME FOR THE RECORD, PLEASE.

1 A ROBINA MAE REED.

2 Q AND, MS. REED, WHERE DO YOU LIVE?

3 A IN DENMARK.

4 Q DENMARK, SOUTH CAROLINA?

5 A YES.

6 Q AND DO YOU KNOW WHERE THE RAINBOW B.P. GAS STATION
7 IS?

8 A YES.

9 Q AND HOW LONG HAVE YOU LIVED IN DENMARK?

10 A SINCE 1988.

11 Q OKAY. SO, YOU'VE LIVED IN DENMARK ALMOST 19 YEARS AS
12 WE SIT HERE TODAY?

13 A YES.

14 Q WERE YOU LIVING IN DENMARK, SOUTH CAROLINA IN MARCH
15 OF 2002?

16 A YES.

17 Q NOW, DO YOU KNOW JOSEPH WALKER?

18 A YES.

19 Q HOW LONG DID YOU KNOW MR. WALKER PRIOR TO MARCH OF
20 2002?

21 A I KNOW HIM FOR ABOUT TWO YEARS.

22 Q OKAY. NOW, FROM MARCH -- WHERE DO YOU WORK?

23 A I WORK AT HARDEES.

24 Q AND IS THAT THE HARDEES ON US 78 AS YOU'RE COMING
25 DOWN HERE FROM WILLISTON, BLACKVILLE?

- 1 A YES.
- 2 Q AND YOU GO RIGHT BY IT ON THE RIGHT?
- 3 A YES.
- 4 Q COMING ON DOWN HERE TO BAMBERG?
- 5 A RIGHT.
- 6 Q IS THAT CORRECT?
- 7 A THAT'S CORRECT.
- 8 Q HOW LONG HAVE YOU WORKED AT THAT HARDEES?
- 9 A SINCE 1988.
- 10 Q OKAY. SO, YOU'VE WORKED THERE AS WE SIT HERE TODAY
- 11 ALMOST 19 YEARS?
- 12 A UH-HUH.
- 13 Q HAVE YOU ALWAYS WORKED THERE?
- 14 A YES.
- 15 Q HAVE YOU HAD ANY OTHER JOB IN DENMARK OR IN
- 16 ORANGEBURG OR AIKEN COUNTY SINCE THAT TIME?
- 17 A I JUST HAD MY LITTLE CLEANING BUSINESS, BUT THAT'S
- 18 IT.
- 19 Q A LITTLE SIDE BUSINESS?
- 20 A YEA.
- 21 Q AND WHAT WAS YOUR POSITION AT THE HARDEES IN DENMARK
- 22 IN MARCH OF 2002? WHAT POSITION DID YOU HOLD AS AN
- 23 EMPLOYEE?
- 24 A MANAGER.
- 25 Q OKAY. DID YOU RUN A CERTAIN SHIFT?

1 A I RUN THEM ALL.

2 Q OKAY. SOMETIMES DID YOU WORK DAYSHIFT AND SOMETIMES
3 YOU WORKED NIGHTSHIFT?

4 A MOSTLY NIGHTSHIFT.

5 Q OKAY. BUT YOU'RE NOT THE OVERALL MANAGER FOR THE
6 WHOLE HARDEES; IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q NOW, PRIOR TO SOMETIME IN JANUARY OR FEBRUARY OF 2007
9 HAD YOU EVER MET MYSELF OR MS. SMITH BEFORE?

10 A NO.

11 Q HAD YOU EVER TALKED TO US?

12 A NO.

13 Q SINCE MARCH OF 2002 UNTIL MS. SMITH -- LET ME BACK
14 UP. MS. SMITH AND I MET WITH YOU AT THE HARDEES -- I
15 MEAN, EXCUSE ME. WE CALLED YOU ON THE TELEPHONE AT THE
16 HARDEES, DID WE NOT?

17 A YES, YOU DID.

18 Q IN FACT, DID I COME BY AND LEAVE MY BUSINESS CARD FOR
19 YOU AT THAT HARDEES SOMETIME IN JANUARY OF 2007?

20 A YES, MY BOSS GAVE IT TO ME. I DON'T KNOW WHAT IT
21 WAS. I THREW IT IN THE TRASH.

22 Q YOU DIDN'T CALL ME BACK, DID YOU?

23 A NO.

24 Q YOU THOUGHT IT WAS SOME OLD AUGUSTA LAWYER COMING
25 DOWN THERE TO HARRASS YOU, DIDN'T YOU?

1 A YES.

2 THE COURT: ALL RIGHT. ONE AT A TIME PLEASE.

3 MR. MIRSHAK: THANK YOU, YOUR HONOR.

4 NOW, HOW LONG HAVE YOU LIVED -- WHAT IS YOUR STREET
5 ADDRESS AGAIN?

6 THE WITNESS: IT WAS 515 FREDERICK, BUT IT IS 296.

7 Q OKAY. ON FREDERICK STREET; CORRECT?

8 A YES.

9 Q HOW LONG HAVE YOU LIVED ON FREDERICK STREET?

10 A '88, 1988.

11 Q OKAY. WERE YOU LIVING AT 515 FREDERICK STREET IN
12 MARCH OF 2002?

13 A YES.

14 Q NOW, FROM MARCH OF 2002 UNTIL MS. SMITH AND I
15 CONTACTED YOU HAD ANYONE FROM EITHER -- WELL, FIRST OF
16 ALL, HAD ANYONE EVER CONTACTED YOU ABOUT ANY ALLEGED CRIME
17 INVOLVING JOSEPH WALKER?

18 A NO.

19 Q OKAY. DID -- YOU HEARD THAT LADY WHO JUST TESTIFIED.
20 I THINK SHE'S LEFT NOW -- KELLEY BROWN?

21 A I DON'T KNOW HER.

22 Q DID YOU EVER HAVE ANY CONTACT FROM KELLEY BROWN?

23 A NO.

24 Q DID YOU EVER HAVE ANY CONTACT FROM AN INVESTIGATOR
25 NAMED BENNIE WILLIAMS?

1 A NO.

2 Q NOW, DID YOU EVER HAVE ANY CONTACT FROM THE AIKEN
3 COUNTY OR THE ORANGEBURG COUNTY SHERIFF'S DEPARTMENT ABOUT
4 ANY CRIME INVOLVING MR. WALKER?

5 A NOPE.

6 Q DID YOU EVER HAVE ANY CONTACT FROM THE AIKEN COUNTY
7 SOLICITOR'S OFFICE, MS. BRENDA BRISBIN, OR ANYBODY WORKING
8 IN HER OFFICE?

9 A NO.

10 Q ARE YOU HERE TO TELL THE TRUTH TODAY, MA'AM?

11 A YES.

12 Q NOW, I AM GOING TO SHOW YOU WHAT'S BEEN MARKED AS
13 PLAINTIFF'S EXHIBIT 3, AND I AM GOING TO ASK YOU TO ASSUME
14 THAT THIS WAS FOUND IN MR. WALKER'S TRASHCAN ON THE --
15 THAT WAS PROVIDED TO US. IS THAT YOUR NAME AND ADDRESS?

16 A YES.

17 Q NOW, DO YOU KNOW WHAT THIS PARTICULAR RECEIPT WAS
18 FROM?

19 A THAT'S AN OLD BILL I PAID. YEA, THAT'S IT.

20 Q BUT YOU DON'T KNOW WHAT SPECIFIC BILL IT WAS?

21 A NO.

22 Q OKAY. AND IF I TELL YOU THAT WE BELIEVE THAT THE
23 STATE'S EVIDENCE IS THAT THIS WAS FOUND IN MR. WALKER'S
24 TRASHCAN AND WHEN THE POLICE OFFICERS SEARCHED HIS HOUSE,
25 DO YOU HAVE ANY REASON TO BELIEVE THAT THIS CAME FROM YOUR

1 HOUSE?

2 A YES, THAT CAME FROM MY HOUSE.

3 Q BUT, ORIGINALLY, IT WAS IN YOUR HOUSE?

4 A YES.

5 Q DO YOU KNOW IF YOU CARRIED IT TO MR. WALKER'S HOUSE
6 OR DID HE CARRY IT THERE?

7 A HE CARRIED IT THERE. HE BURNED MY TRASH.

8 Q HE BURNED YOUR TRASH?

9 A YES.

10 Q OKAY. DID HE ALSO BURN YOUR YARD OFF AT TIMES?

11 A YES.

12 Q WHAT IS THE PURPOSE OF BURNING OFF YOUR YARD?

13 A SO MY GRASS WOULD COME BACK PRETTY.

14 Q NOW, DID HE DO THAT ON MORE THAN ONE OCCASION?

15 A YEA, MORE THAN ONE TIME.

16 Q TELL JUDGE EARLY, IF YOU WILL, WHAT WAS YOUR
17 RELATIONSHIP -- WHAT -- WITH MR. WALKER IN MARCH OF 2002?

18 A WE WAS LOVERS.

19 Q OKAY. WERE Y'ALL BOYFRIEND AND GIRLFRIEND?

20 A YES.

21 Q WOULD HE SPEND THE NIGHT AT YOUR HOUSE?

22 A YES.

23 Q HOW OFTEN WOULD HE STAY AT YOUR HOUSE?

24 A HE HAD A KEY. HE COULD COME ANYTIME, BUT HE COME ON
25 THE WEEKENDS AND WAIT ON ME ON THE WEEKDAYS WHEN I GET OFF

1 OF WORK AND TAKE ME HOME.

2 Q YOU ACTUALLY GAVE HIM A KEY?

3 A UH-HUH.

4 Q DID YOU HAVE A CAR?

5 A IT BROKE.

6 Q BACK IN MARCH OF 2002 DID YOU HAVE A CAR?

7 A YES.

8 Q OKAY. BUT IT WAS BROKEN?

9 A YEA.

10 Q WOULD MR. WALKER COME TO THE HARDEES AND WAIT ON YOU
11 TO TAKE YOU HOME?

12 A YES.

13 Q OKAY. NOW, DID YOU HAVE ANYBODY ELSE LIVING WITH YOU
14 AT YOUR HOUSE?

15 A I HAD MY SON.

16 Q WHAT IS HIS NAME?

17 A AUBRY.

18 Q AND HOW OLD IS HE NOW?

19 A HE JUST MADE 21.

20 Q OKAY. SO, IN MARCH OF 2002 HE WAS ABOUT 15 YEARS
21 OLD; IS THAT RIGHT?

22 A YES.

23 Q FIFTEEN OR SIXTEEN?

24 A YES.

25 Q WOULD MR. WALKER SPEND THE NIGHT AT YOUR HOUSE WITH

1 YOUR SON AND YOU THERE?

2 A YES.

3 Q WHERE DID MR. WALKER -- LET ME BACK UP. FROM -- DID
4 YOU LOSE CONTACT WITH MR. WALKER?

5 A YES.

6 Q NOW, DO YOU NOW KNOW THAT HE WAS ARRESTED AND CHARGED
7 WITH THESE CRIMES SOMETIME IN LATE MARCH OF 2002; IS THAT
8 RIGHT?

9 A YES.

10 Q SINCE MARCH OF 2002 UNTIL MS. SMITH AND I CONTACTED
11 YOU DID YOU EVER HAVE ANY CONTACT BY TELEPHONE OR IN
12 PERSON WITH MR. WALKER?

13 A NO. I THOUGHT HE GOT TIRED OF MY MOUTH. SO I --

14 Q YOU JUST THOUGHT HE TOOK OFF?

15 A YEA.

16 Q OKAY.

17 THE COURT: YOU DIDN'T KNOW HE WAS ARRESTED?

18 THE WITNESS: NO.

19 Q OKAY. NOW --

20 THE COURT: YOU KNOW HE WENT TO JAIL?

21 THE WITNESS: I AIN'T KNOWED NOTHING.

22 THE COURT: WHEN DID YOU FIND OUT HE WENT TO JAIL?

23 THE WITNESS: WHEN THEY GOT A THING IN THE MAIL -- A
24 CHECK. I THOUGHT IT WAS A CHILD SUPPORT. I DIDN'T KNOW
25 WHAT IT WAS. THEN THEY LEFT A CARD AT THE JOB -- AT MY

1 JOB. MY BOSS TOLD ME AND I AIN'T KNOW WHAT IT WAS. SO, I
2 SAID IT MUST BE A CASE ON MY JOB. I SAID I AIN'T GOING TO
3 BE NO WITNESS. I THREW IT IN THE GARBAGE.

4 THE COURT: YOU'RE TALKING ABOUT WITH MR. MIRSHAK?

5 THE WITNESS: YEA.

6 Q YOU'RE TALKING ABOUT FIVE YEARS LATER; IS THAT
7 CORRECT?

8 A YEA.

9 Q WE SENT YOU A SUBPOENA AND A SUBPOENA CHECK FOR, I
10 DON'T KNOW, 30 OR \$35; IS THAT RIGHT?

11 THE COURT: THE QUESTION IS ONCE HE QUIT COMING
12 AROUND IN MARCH YOU DIDN'T MAKE ANY INQUIRIES AS TO WHERE
13 HE WAS, WHY HE DIDN'T COME AROUND?

14 THE WITNESS: NO, BECAUSE I GOT TIRED. HE GOT TIRED
15 OF MY MOUTH. WE GOT IN AN ARGUMENT. I TOLD HIM HE NEEDED
16 TO GET LOST. SO, I THOUGHT HE JUST GOT LOST AT THE TIME.
17 I THOUGHT HE TOOK ME SERIOUS, AND THE WAY I WORK A LOT I
18 DIDN'T REALLY HAVE THE TIME.

19 Q OKAY. DID ANYBODY TALK -- WELL, LET ME BACK UP. IN
20 MARCH OF 2002 PRIOR TO, IF YOU NOW KNOW HE WAS ARRESTED DO
21 YOU KNOW WHERE MR. WALKER WAS WORKING?

22 A HE WORKED AT A CONSTRUCTION LIKE BUILDING
23 SCHOOLHOUSES -- WAGENER.

24 Q WAGENER, SOUTH CAROLINA?

25 A I THINK SO, YEA, WAGENER. I WENT OUT THERE A COUPLE

1 OF TIMES.

2 Q YOU HAD BEEN TO THERE?

3 A UH-HUH.

4 Q HAD YOU ALSO BEEN TO HIS HOUSE?

5 A YES.

6 Q HAD YOU SPENT THE NIGHT AT HIS HOUSE?

7 A OF COURSE.

8 Q OKAY. HOW LONG DID THIS RELATIONSHIP WITH MR. WALKER
9 GO ON?

10 A A GOOD WHILE.

11 THE COURT: HOW LONG IS A GOOD WHILE?

12 THE WITNESS: WE WAS TOGETHER OVER A YEAR.

13 Q OKAY.

14 A AND THEN AFTER THAT, THAT WAS IT. I AIN'T SEEN HIM.

15 Q NOW, AT THE FIRST OF MARCH -- THE FIRST WEEKEND OF
16 MARCH OF 2002 WERE YOU AND MR. WALKER STILL INVOLVED IN A
17 SEXUAL RELATIONSHIP?

18 A OF COURSE.

19 Q AND WE'RE NOW FIVE YEARS LATER; IS THAT CORRECT?

20 A YEA.

21 Q OKAY. AT THE TIME BEFORE HE DISAPPEARED HAD
22 MR. WALKER BEEN SPENDING WITH NIGHT WITH YOU ON THE
23 WEEKENDS AND ON SATURDAY NIGHT?

24 A YES, HE HAS.

25 Q OKAY. HAD THAT BEEN GOING ON EVERY WEEKEND FOR SIX

1 MONTHS TO A YEAR?

2 A YEA.

3 Q AND WOULD HE STAY THERE DURING THE WEEK?

4 A UH-HUH.

5 Q OKAY. NOW, IF YOU WERE WORKING -- IF -- YOU WERE
6 GENERALLY WORKING ON SATURDAY NIGHTS WHAT SHIFT?

7 A SECOND.

8 Q WHAT IS THE SECOND SHIFT HOURS?

9 A IT STARTED OUT AT 2 O'CLOCK 'TIL 11.

10 Q OKAY. AND WOULD MR. WALKER COME TO YOUR PLACE OF
11 BUSINESS WHILE YOU WERE ON SHIFT?

12 A YES.

13 Q AND WHAT WOULD HE DO?

14 A SIT DOWN AND DRINK COFFEE, MAYBE MAKE HIM A SALAD,
15 AND THEN SOMETIMES IF I AM RUNNING LATE I'LL PUT HIM TO
16 WORK SO I CAN GET OUT.

17 Q WHAT DOES PUT HIM TO WORK MEAN?

18 A I MAKE HIM CLEAN UP, HELP ME GET OUT OF THERE, TAKE
19 THE TRASH OUT SO I CAN GET OUT THE JOB FASTER.

20 Q DID YOU PAY HIM TO DO THAT AT HARDEES?

21 A I AIN'T GOT TO PAY HIM.

22 Q PARDON ME?

23 A NO, I AIN'T PAID HIM.

24 Q THEY WOULDN'T LET YOU WRITE HIM A CHECK?

25 A NO.

1 THE COURT: ALL RIGHT. MR. MIRSHAK, GET TO THE
2 \$64,000 QUESTION.

3 Q MS. REED, WERE YOU SPENDING THE NIGHT WITH MR. WALKER
4 IN THE FIRST WEEKEND OF MARCH OF 2002 ON THE WEEKEND OF
5 MARCH 2?

6 A I GUESS I DID.

7 THE COURT: DO YOU KNOW --

8 THE WITNESS: THAT'S BEEN A LONG TIME.

9 THE COURT: -- MA'AM?

10 THE WITNESS: YES.

11 Q OKAY. WHEN IS THE LAST TIME THAT YOU SPENT THE NIGHT
12 WITH HIM AFTER THAT?

13 A THAT'S A SUNDAY. IN MARCH, I DON'T KNOW.

14 Q OKAY. DID YOU EVER AFTER -- OKAY. AT SOME POINT
15 THEN HE JUST DIDN'T SHOW UP ANYMORE?

16 A RIGHT.

17 THE COURT: DID HE SHOW UP ANYMORE AFTER THAT
18 PARTICULAR WEEKEND, THE FIRST WEEKEND IN MARCH?

19 THE WITNESS: YEA, HE SHOW BACK UP.

20 THE COURT: WHEN WAS HE ARRESTED?

21 MR. MIRSHAK: MARCH 22, YOUR HONOR. I THINK THAT'S
22 CORRECT. THE STATE WILL CORRECT ME IF I AM WRONG.

23 THE COURT: GO AHEAD.

24 Q OKAY. DO YOU -- ON THAT WEEKEND -- THAT WAS SPRING
25 WAS COMING UP; IS THAT RIGHT? IS THAT WHEN YOU WOULD BURN

- 1 OFF YOUR YARD?
- 2 A YEA.
- 3 Q DID MR. WALKER -- DO YOU RECALL MR. WALKER BURNING
- 4 OFF YOUR YARD?
- 5 A YES.
- 6 Q OKAY. DID YOU LEAVE HIM THERE WITH THE YARD BURNING?
- 7 A YES.
- 8 Q WHAT DID YOU TELL HIM ABOUT WHAT KIND OF JOB HE OUGHT
- 9 TO DO?
- 10 A I SAID HE BETTER DO A NEAT JOB. I DON'T LIKE NOTHING
- 11 SLOPPY.
- 12 Q DID Y'ALL KID AROUND ABOUT THAT?
- 13 A YEA, I BE SERIOUS THOUGH.
- 14 Q DID YOU LEAVE HIM -- ON THE FRIDAY NIGHT HAD HE BEEN
- 15 THERE AFTER WORK?
- 16 A YEA, I LEAVE HIM THERE.
- 17 Q YOU NEVER GOT YOUR KEY BACK, DID YOU, BECAUSE HE WAS
- 18 ARRESTED?
- 19 A NOPE.
- 20 Q DID YOU TRUST HIM WITH THAT KEY?
- 21 A YES.
- 22 Q DID HE EVER TAKE ANYTHING OUT OF YOUR HOUSE THAT HE
- 23 WASN'T SUPPOSED TO?
- 24 A NO.
- 25 Q WHERE WOULD HE TAKE YOUR TRASH WHEN HE WAS GOING TO

1 GO BURN IT?

2 A I GUESS HE TAKE IT TO HIS HOUSE. I DIDN'T CARE AS
3 LONG AS HE BURNED IT.

4 Q DO Y'ALL HAVE TRASH PICKUP ON FREDERICK STREET?

5 A YES, BUT I USUALLY BURN MY PAPERS. BUT WE GET TRASH.

6 MR. MIRSHAK: OKAY. ONE MINUTE, PLEASE, YOUR HONOR.

7 LET ME ASK YOU A QUESTION. DO YOU HAVE DOGS?

8 THE WITNESS: YES.

9 Q DID YOU HAVE DOGS IN MARCH OF 2002?

10 A YES.

11 Q WHAT KIND OF SIGN DID YOU HAVE ON YOUR DOOR, ON YOUR
12 GATE?

13 A IT SAYS IF YOU CAN RUN 3.2 SECONDS OR SOMETHING LIKE
14 THAT. IT'S ON THERE.

15 Q IF YOU CAN'T RUN IN 3.2 SECONDS, DON'T COME THROUGH
16 THIS GATE?

17 A YEA.

18 Q WHAT KIND OF DOGS DID YOU HAVE?

19 A I HAD A ROTTWEILER.

20 Q OKAY. IS THAT SOMETIMES, ALSO -- IS THAT LIKE A PIT
21 BULL? IT WASN'T A PIT BULL. IT WAS A ROTTWEILER?

22 A IT WASN'T A PIT BULL. IT IS A BIG BLACK DOG.

23 THE COURT: I KNOW WHAT A ROTTWEILER IS. MOVE ALONG.

24 Q OKAY. WOULD YOU LEAVE MR. WALKER THERE WITH THE DOG?

25 A YES.

1 Q OKAY. ANY PROBLEMS WITH THAT?

2 A NO.

3 Q ONE MINUTE, PLEASE. MR. WALKER HADN'T TALKED TO YOU
4 ABOUT THIS CASE SINCE YOU LAST HAD CONTACT WITH HIM IN
5 MARCH OF 2002?

6 A I HADN'T SEEN HIM AT ALL.

7 Q HE HADN'T CALLED YOU UP AND TOLD YOU WHAT TO SAY HERE
8 TODAY?

9 A NO.

10 MR. BOOZER: YOUR HONOR, I THINK SHE'S ALREADY
11 ANSWERED THIS.

12 MR. MIRSHAK: I'LL WITHDRAW THE QUESTION. WELL, I'M
13 NOT --

14 THE COURT: NO. THAT'S A GOOD QUESTION.

15 Q HAS HE CONTACTED YOU IN ANY WAY --

16 THE COURT: SHE'S ANSWERED THAT.

17 MR. MIRSHAK: THANK YOU, YOUR HONOR. ONE MINUTE,
18 PLEASE. DURING -- I'LL WITHDRAW IT. THANK YOU, YOUR
19 HONOR.

20 THE COURT: MS. REED, DO YOU KNOW THAT UNDER SOUTH
21 CAROLINA LAW THAT IF YOU GIVE FALSE TESTIMONY UNDER OATH I
22 CAN PUT YOU IN JAIL FOR FIVE YEARS AND FINE YOU \$10,000?

23 THE WITNESS: YEP.

24 THE COURT: KNOWING THAT IS WHAT YOU TOLD US THE
25 ABSOLUTE TRUTH TODAY?

1 THE WITNESS: YES, SIR.

2 THE COURT: AND YOU'RE TELLING ME THAT YOU SPENT --
3 MR. REED (SIC) WAS STAYING WITH YOU THAT FIRST WEEKEND IN
4 MARCH OF 2002?

5 THE WITNESS: YES.

6 THE COURT: ANSWER ANY QUESTIONS THE A.G. HAS.

7 MR. BOOZER: THANK YOU, YOUR HONOR.

8 CROSS-EXAMINATION

9 BY MR. BOOZER:

10 Q MS. REED --

11 A YES, SIR?

12 Q DID YOU MARK A CALENDAR EVERYTIME MR. WALKER CAME
13 OVER TO YOUR HOUSE?

14 A NO.

15 Q SO, Y'ALL SPENT EVERY WEEKEND EVERY NIGHT TOGETHER?

16 A IT AIN'T EVERY WEEKEND, BUT HE WE STAY THE NIGHT.
17 THEN I GO TO HIS HOUSE AND THEN HE COMES TO STAY AT MY
18 HOUSE.

19 Q Y'ALL ARE SPENDING EVERY NIGHT AND EVERY WEEKEND
20 TOGETHER. THIS IS YOUR LOVER, BUT YOU DIDN'T KNOW HE WAS
21 ARRESTED?

22 A NO, BECAUSE WE HAD AN ARGUMENT. I DIDN'T KNOW.

23 Q OKAY. DID HE --

24 A THEN -- EXCUSE ME.

25 Q I'M SORRY. GO AHEAD?

1 A I WAS JUST SAYING BECAUSE I JUST HAD LOST MY DAUGHTER
2 IN A CAR WRECK. AT THE TIME HE WASN'T SUPPORTIVE FOR ME.
3 SO, I JUST DIDN'T HAVE THE TIME. I PUT MOST OF MY TIME AT
4 THE JOB.

5 Q WHEN DID Y'ALL BREAK UP?

6 A WE BROKE UP LATE -- IN LATE MARCH.

7 THE COURT: WHAT YEAR?

8 THE WITNESS: THAT WAS LIKE 2000 -- MY DAUGHTER DIED
9 IN 2000, 2002.

10 THE COURT: YOU BROKE UP WHEN?

11 THE WITNESS: I AM TRYING TO CALCULATE. MY DAUGHTER
12 DIED IN 2000. ABOUT 2002.

13 Q 2002 IS WHEN Y'ALL BROKE UP?

14 A YEA.

15 Q YOU KNOW THE EXACT DATE?

16 A NO, SIR.

17 Q BUT YOU KNEW HE WAS WITH YOU THAT NIGHT?

18 A HUH?

19 Q YOU KNEW HE WAS WITH YOU ON MARCH 2?

20 A WELL, I KNOW HE WAS WITH ME, BUT I CAN'T SAY A
21 PARTICULAR DATE. NO, I DON'T KNOW WHAT DATE Y'ALL WANT.

22 Q BUT YOU CAN'T REMEMBER THE DATE Y'ALL BROKE UP?

23 A RIGHT.

24 Q DO YOU KNOW WHAT YOU WERE DOING THE NIGHT OF MARCH 1,
25 2002?

1 A NO, I CAN'T GO BACK THAT FAR.

2 Q WELL, THAT'S JUST THE DAY BEFORE WHEN YOU SAID
3 MR. WALKER WAS WITH YOU?

4 A YOU SAID HE WAS WITH ME, BUT THAT'S ALL I CAN SAY.

5 Q SO, YOU DON'T KNOW WHAT YOU WERE DOING MARCH 1, 2002?

6 A WE COULD HAVE BEEN TOGETHER IN 2002. I DON'T EVEN
7 KNOW WHAT DAY THAT WAS.

8 Q BUT YOU DON'T KNOW SPECIFICALLY?

9 A RIGHT, THAT'S WHAT I'M SAYING.

10 Q BUT YOU KNOW SPECIFICALLY RIGHT NOW WHAT YOU WERE
11 DOING MARCH 2, 2002?

12 A NO, I AIN'T SAID THAT.

13 Q SO, YOU DON'T KNOW WHAT YOU WERE DOING MARCH 2, 2002
14 THAT NIGHT?

15 THE COURT: MA'AM, DO YOU KNOW WHETHER OR NOT YOU
16 WERE WITH THIS MAN OVER HERE MR. WALKER?

17 THE WITNESS: I KNOW WE SPENT A LOT OF DAYS TOGETHER.
18 I CAN'T TELL YOU NO PARTICULAR DAY.

19 Q SO YOU CAN'T TELL --

20 A A PARTICULAR DAY; RIGHT.

21 Q YOU CAN'T TELL US YOU WERE WITH HIM MARCH 2, 2002?

22 A RIGHT.

23 MR. BOOZER: THANK YOU, YOUR HONOR. NO FURTHER
24 QUESTIONS.

25 MR. MIRSHAK: MAY I YOUR, HONOR?

1 THE COURT: SURE.

2 REDIRECT EXAMINATION

3 BY MR. MIRSHAK:

4 Q PRIOR TO THE LAST TIME THAT SAW MR. WALKER DID Y'ALL
5 SPEND EVERY WEEKEND TOGETHER?

6 A YEA, WE SPEND EVERY WEEKEND TOGETHER.

7 Q AT EITHER HIS HOUSE OR YOUR HOUSE?

8 A RIGHT.

9 MR. MIRSHAK: OKAY. THANK YOU.

10 THE COURT: YOU MAY STEP DOWN. NEXT WITNESS.

11 MS. SMITH: JOSEPH WALKER.

12 THE COURT: THANK YOU, MA'AM. YOU STILL WORKING AT
13 HARDEES?

14 THE WITNESS: YES, I'M OFF TODAY. I JUST GOT OFF
15 LAST NIGHT.

16 JOSEPH WALKER, AFTER BEING DULY SWORN, TESTIFIED
17 AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MS. SMITH:

20 Q MR. WALKER, DO YOU KNOW WHAT YOU'RE ASKING THE COURT
21 TO DO TODAY?

22 A I AM HERE FOR SOME THINGS THAT MRS. KELLEY BROWN DID
23 NOT OBJECT TO.

24 THE COURT: YEA, BUT YOU UNDERSTAND WHAT HAPPENS IF I
25 RULE FOR YOU? YOU GET A NEW TRIAL.

1 THE WITNESS: YES, SIR.

2 THE COURT: AND AT THE NEW TRIAL YOU MIGHT BE FOUND
3 GUILTY OR YOU MIGHT BE FOUND NOT GUILTY. IF YOU'RE FOUND
4 GUILTY YOU MAY POSSIBLY GET MORE TIME THAN YOU'VE ALREADY
5 GOTTEN. DO YOU UNDERSTAND THAT?

6 THE APPLICANT: YES, SIR.

7 THE COURT: YOU'RE CHARGED WITH KIDNAPPING, CRIMINAL
8 SEXUAL CONDUCT FIRST DEGREE, POSSESSION OF A WEAPON DURING
9 THE COMMISSION OF A VIOLENT CRIME. SO, IF A C.S.C. IN THE
10 FIRST DEGREE IS 30 YEARS; IS THAT CORRECT? KIDNAPPING IS
11 UP TO LIFE. SO, YOU COULD POSSIBLY GET IF YOU WERE
12 CONVICTED -- I AM NOT SAYING YOU WOULD BE, BUT IF YOU WERE
13 A JUDGE COULD GIVE YOU UP TO LIFE IN JAIL IN PRISON AND
14 NOT GIVE YOU 25 YEARS. HE MAY GIVE YOU MORE OR SHE MAY
15 GIVE YOU MORE, MAY GIVE YOU LESS OR MAY GIVE YOU THE SAME
16 THING. SO, YOU UNDERSTAND THAT RISK?

17 THE APPLICANT: YES, SIR.

18 THE COURT: ALL RIGHT. MOVE ALONG.

19 Q BUT YOU TOLD THE POLICE OFFICERS THAT INTERVIEWED YOU
20 THAT YOU DIDN'T DO THIS, DIDN'T YOU?

21 A RIGHT. I TOLD THEM I DIDN'T DO IT.

22 Q HOW MANY TIMES DID YOU MEET WITH KELLEY BROWN?

23 A I AIN'T SEEN HER BUT ONE TIME.

24 Q DO YOU REMEMBER WHEN THAT WAS?

25 A THAT WAS AT THE PRELIMINARY HEARING.

1 THE COURT: WERE YOU JAIL? DID YOU GET OUT ON BOND
2 ONCE YOU WERE ARRESTED?

3 THE APPLICANT: I WAS IN JAIL, YOUR HONOR.

4 THE COURT: NEVER GOT OUT ON BOND?

5 THE APPLICANT: NO, SIR.

6 THE COURT: SO, SHE CAME OVER AT THE PRELIMINARY
7 HEARING BUT NO OTHER TIME THAT YOU CAN RECALL?

8 THE APPLICANT: NO OTHER TIME.

9 Q DID YOU EVER TALK TO ANY OF HER INVESTIGATORS?

10 A I HAD TALKED TO BENNIE, AND BENNIE ASKED ME IF I HAD
11 ANY WITNESSES. I TOLD HIM YEA, AND I TOLD HIM WHERE
12 ROBINA WAS WORKING AT.

13 THE COURT: THAT'S MS. REED?

14 THE APPLICANT: YES, SIR. YOUR HONOR. HIS WORDS TO
15 ME HE SAID THAT HE WAS GOING TO CHECK INTO IT. I AIN'T
16 SEEN HIM NO MORE EITHER.

17 THE COURT: MS. SMITH, HAND ME THAT EXHIBIT RIGHT
18 THERE. THE TOP ONE.

19 WELL, WHEN THEY DIDN'T CALL MS. REED TO THE TRIAL OR
20 MRS. BROWN DIDN'T DISCUSS MS. REED WITH YOU, DID YOU NOT
21 SAY, HEY, THAT LADY KNOWS I WAS WITH HER THAT NIGHT? YOU
22 DIDN'T TELL MRS. BROWN THAT?

23 THE APPLICANT: NO, SIR, YOUR HONOR.

24 THE COURT: WHY?

25 THE APPLICANT: I HAD TOLD BENNIE WHERE I WERE.

1 THE COURT: I KNOW THAT.

2 THE APPLICANT: BENNIE SAID THAT HE WOULD, YOU KNOW,
3 GIVE HER THE INFORMATION.

4 Q DID YOU TALK TO ANY OTHER INVESTIGATOR?

5 A NO. THE INVESTIGATOR THAT WOULD COME TO TALK TO ME
6 IT WOULD BE BENNIE.

7 Q AND HOW MANY TIMES DID YOU TALK TO BENNIE?

8 A ABOUT TWICE. THAT WAS IT.

9 Q SO, YOU THINK YOU TALKED TO KELLEY BROWN ONCE AND
10 BENNIE TWICE?

11 A RIGHT.

12 Q ANYBODY ELSE?

13 A NOT TO MY KNOWLEDGE.

14 Q DID YOU TALK TO KELLEY ON THE PHONE?

15 A I TALKED TO HER ONE TIME, AND SHE TOLD ME I WAS
16 GETTING READY TO GO TO TRIAL.

17 Q DID YOU TALK TO BENNIE ON THE PHONE?

18 A NO.

19 THE COURT: WHAT KIND OF EDUCATION DO YOU GOT,
20 MR. WALKER?

21 THE APPLICANT: MY EDUCATION AIN'T GOOD.

22 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

23 THE APPLICANT: I HAD -- WELL, I CAN'T REMEMBER RIGHT
24 NOW, YOUR HONOR, BUT I DIDN'T FINISH SCHOOL.

25 THE COURT: ALL RIGHT. BUT YOU KNEW -- YOU KNEW WHAT

1 WAS GOING ON THAT YOU WERE GOING ON TRIAL FOR ALLEGING
2 DOING ALL OF THIS STUFF AND THEY DIDN'T HAVE MS. REED
3 THERE. YOU DIDN'T TELL MRS. BROWN, HEY, WE GOT TO GET MS.
4 REED HERE BECAUSE SHE CAN VOUCH FOR WHERE I WAS THAT
5 NIGHT?

6 THE APPLICANT: YOUR HONOR --

7 THE COURT: HOW COME YOU DIDN'T TO DO THAT?

8 THE APPLICANT: WAIT A MINUTE. BENNIE, HER
9 INVESTIGATOR, SAID HE WOULD HANDLE EVERYTHING, AND I TOLD
10 HIM.

11 THE COURT: I KNOW THAT, BUT ONCE YOU GOT IN THE
12 COURTROOM LIKE WE ARE HERE TODAY AND MS. REED WASN'T THERE
13 YOU DIDN'T SAY, WHOA, WHOA, WE NEED TO GET MS. REED HERE?

14 THE APPLICANT: OKAY. I ASKED MRS -- I HAD ASKED HER
15 -- IT WAS SOMEBODY ELSE IN THE COURTROOM WITH HER. THEY
16 KEPT BRINGING ME IN AND OUT OF THE HOLDING CELL. I DIDN'T
17 HARDLY GOT A CHANCE TO TALK TO MRS. BROWN WHEN MY TRIAL
18 WAS GOING ON.

19 THE COURT: HOW LONG DID YA YOUR TRIAL LAST?

20 THE WITNESS: I WOULD SAY ABOUT THREE OR FOUR DAYS.

21 THE COURT: SURELY YOU HAD TIME DURING THE TRIAL TO
22 SAY, LISTEN, WE NEED MS. REED HERE.

23 THE APPLICANT: SHE WOULDN'T -- THEY WAS ON SO
24 MANY -- I AIN'T REALLY HAD A CHANCE TO SAY NOTHING TO HER.

25 THE COURT: ALL RIGHT. I'M SORRY, MS. SMITH.

1 Q CAN YOU READ, MR. WALKER?

2 A NO.

3 Q CAN YOU WRITE?

4 A NO, JUST ONLY MY NAME.

5 Q AND WHEN YOU HAVE COMMUNICATED WITH ME BY LETTER HOW
6 DID YOU DO THAT?

7 A I HAD MY ROOMMATE TO WRITE IT.

8 THE COURT: WHAT IS YOUR PHYSICAL CONDITION? WHY ARE
9 YOU IN A WHEELCHAIR?

10 THE APPLICANT: I LOST MY -- I LOST TWO OF MY TOES.

11 THE COURT: YOU GOT HIGH SUGAR, DIABETES?

12 THE WITNESS: THIS ONE CAME FROM -- ONE OF THEM CAME
13 FROM A BROWN RECLUSE. A SPIDER BIT ME. THEY SAID THIS
14 ONE CAME FROM A BROWN RECLUSE. A SPIDER HAD BIT ME, THE
15 SAME ONE.

16 THE COURT: IT BIT YOU IN THE ARM AND YOU LOST YOUR
17 TOE?

18 THE WITNESS: SIR?

19 THE COURT: WHERE DID HE BITE YOU?

20 THE WITNESS: BITE ME ON MY TOE.

21 THE COURT: OH, OKAY.

22 MR. MIRSHAK: IN PRISON, YOUR HONOR.

23 Q WAS THERE A DELAY IN BEING TREATED?

24 THE COURT: WELL, THAT'S NOT.

25 MS. SMITH: WELL -- DO YOU REMEMBER BEING INTERVIEWED

1 BY THE POLICE OFFICER OR THE DETECTIVE?

2 THE WITNESS: DETECTIVE REDD.

3 Q REDD; R-E-D-D?

4 A UH-HUH.

5 Q DO YOU REMEMBER TALKING TO HIM ABOUT DOGS?

6 A I DIDN'T TALK TO HIM ABOUT NO DOGS.

7 Q DO YOU REMEMBER -- DO YOU REMEMBER THAT -- DO YOU
8 REMEMBER --

9 THE COURT: MS. SMITH, I AM GOING TO LOOK AT THAT
10 VIDEO, I PROMISE YOU, OR EITHER LOOK AT THE TRANSCRIPT OF
11 IT.

12 MR. MIRSHAK: YOUR HONOR, FOR THE RECORD THE ONLY
13 COPY OF THAT DISK, AS I UNDERSTAND IT, WAS THE COPY THAT
14 WAS IN MRS. BROWN'S FILE. WE HAVE DUPLICATED THAT AND
15 PROVIDED IT TO THE SOLICITOR'S FILE BECAUSE THEY DID NOT
16 HAVE IT ANY LONGER.

17 THE COURT: WE'LL GET INTO THAT IN JUST A FEW
18 MINUTES.

19 MR. MIRSHAK: THANK YOU.

20 Q DO YOU REMEMBER TALKING TO THE POLICE ABOUT WHERE YOU
21 WERE AT THE TIME THEY SAID THIS CRIME HAPPENED?

22 A I TOLD THEM I WAS AT MY GIRLFRIEND'S HOUSE --
23 ROBINA'S HOUSE.

24 Q WHAT WERE YOU DOING? DO YOU REMEMBER?

25 A I WAS BURNING HER YARD, CLEARING HER YARD, DOING

1 DIFFERENT THINGS.

2 Q DID YOU ASK THEM TO TALK TO ROBINA?

3 A YEA.

4 Q DO YOU REMEMBER HOW LONG YOU HAD BEEN THERE?
5 THE COURT: BEEN WHERE?

6 Q AT ROBINA'S?

7 A I HAD -- I SPENT THE NIGHT THERE. THAT MORNING -- AS
8 A MATTER OF FACT, I STAYED THERE. I DIDN'T -- BECAUSE I
9 CLEANED UP THE FRONT AND BACKYARD AND PUT UP A FENCE. I
10 STAYED THERE.

11 Q WELL, HOW OFTEN DID YOU STAY AT ROBINA'S?

12 A I BE THERE LIKE SOMETIME DURING THE WEEK AND ON THE
13 WEEKENDS.

14 Q DID YOU ASK KELLEY BROWN TO TALK TO ROBINA?

15 A I DID.

16 Q WAS ROBINA CALLED AS A WITNESS AT TRIAL?

17 A EXCUSE ME?

18 Q WAS ROBINA CALLED AS A WITNESS AT YOUR TRIAL?

19 A NO, SHE DIDN'T NOTIFY HER.

20 Q WAS IT IMPORTANT FOR HER TO BE CALLED AS A WITNESS?

21 A YEA.

22 MS. SMITH: THAT'S ALL I HAVE, YOUR HONOR.

23 THE COURT: CROSS.

24 MR. BOOZER: NOTHING FROM THE STATE, YOUR HONOR.

25 THE COURT: THANK YOU. YOU MAY STEP DOWN OR MAY

1 WHEEL BACK.

2 MS. SMITH: THAT'S ALL I HAVE, YOUR HONOR, EXCEPT FOR
3 SOME ARGUMENT.

4 THE COURT: ALL RIGHT. THE STATE CAN CALL THE FIRST
5 WITNESS.

6 MR. BOOZER: THANK YOU, YOUR HONOR. THE STATE WOULD
7 CALL --

8 THE COURT: HOLD ON ONE SECOND.

9 MR. MIRSHAK: YOUR HONOR, WE NEED TO MARK THE C.D. AS
10 PART OF OUR CASE IN CHIEF.

11 THE COURT: I AM GOING TO MARK IT AS A COURT'S
12 EXHIBIT.

13 MR. MIRSHAK: THANK YOU, YOUR HONOR.

14 THE COURT: ALL RIGHT. LET'S GO, MR. BOOZER.

15 MR. BOOZER: MS. BRENDA BRISBIN.

16 BRENDA BRISBIN, AFTER BEING DULY SWORN,
17 TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. BOOZER:

20 Q MS. BRISBIN, COULD YOU BRIEFLY DESCRIBE FOR THE COURT
21 YOUR INVOLVEMENT IN THIS CASE?

22 A I WAS THE PROSECUTOR.

23 THE COURT: THAT'S A PRETTY BRIEF DESCRIPTION. I
24 LIKE THAT.

25 Q MS. BRISBIN, WAS THERE MEDICAL EVIDENCE IN THIS CASE

1 CONSISTENT WITH A SEXUAL ASSAULT?

2 A YES, THERE WAS. DR. GIBBS TESTIFIED THAT THE MEDICAL
3 EVIDENCE WHICH WAS INJURIES TO THE GENITAL AREA WHICH SHE
4 SHOWED ACTUAL MICROSCOPIC PHOTOS TO EXPLAIN IN GREAT
5 DETAIL AND SHE SAID THAT THEY WERE CONSISTENT WITH SEXUAL
6 ASSAULT.

7 MR. MIRSHAK: YOUR HONOR, FOR THE RECORD, THE
8 TRANSCRIPT WILL BE THE HIGHEST AND BEST EVIDENCE OF --

9 THE COURT: I UNDERSTAND THAT.

10 MR. MIRSHAK: -- HER TESTIMONY.

11 THE COURT: YOU HAVE ASKED EVERYBODY WHAT THEY
12 RECAL --

13 MR. MIRSHAK: YES, SIR.

14 THE COURT: -- AND I'LL READ THE TESTIMONY.

15 Q WERE THERE, ALSO, EVIDENCE OF INJURIES TO HER MOUTH
16 CONSISTENT WITH A SEXUAL ASSAULT?

17 A TO BE HONEST, I DON'T REMEMBER THAT.

18 MR. BOOZER: FOR THE RECORD, YOUR HONOR, I BELIEVE
19 THE TRANSCRIPT REFLECTS THAT.

20 THE COURT: IT EITHER DOES OR IT DOESN'T.

21 Q NOW, MS. BRISBIN, DID YOU KNOW ANYTHING ABOUT A
22 ROOMMATE NAMED DOUG?

23 A NEVER HEARD OF HIM.

24 Q DID THAT EVER COME UP AT ALL?

25 A NO.

1 Q MS. BRISBIN, IS TESTIMONY IN A TRIAL DIRECT EVIDENCE
2 IN A CASE?

3 THE COURT: IS TESTIMONY DIRECT EVIDENCE?

4 THE WITNESS: TESTIMONY IS EVIDENCE. I DON'T THINK I
5 WOULD CLASSIFY IT AS DIRECT EVIDENCE. IT DEPENDS ON WHAT
6 PHYSICAL OR OTHER TYPES OF EVIDENCE.

7 Q IT MAY HAVE BEEN A BAD QUESTION. I APOLOGIZE.

8 THE COURT: I AGREE.

9 Q MOVING ON. IS A POLICE REPORT ADMISSIBLE AT TRIAL?

10 A NO.

11 THE COURT: MS. SMITH, HAND ME THAT LAB REPORT,
12 S.L.E.D. REPORT.

13 MR. BOOZER: NO FURTHER QUESTIONS.

14 THE COURT: NO. HOLD ON A SECOND. MS. BRISBIN, I AM
15 GOING TO SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFF'S
16 EXHIBIT 1. IN YOUR OWN WORDS TELL ME WAS THIS IN
17 EXISTENCE AT THE TIME OF THE TRIAL?

18 THE WITNESS: IT WAS -- I AM NOT SURE THAT THE
19 WRITTEN REPORT WAS IN EXISTENCE. A LOT OF TIMES WE GET
20 THOSE LATER, BUT I GET A VERBAL REPORT WHICH MRS. BROWN
21 WAS AWARE OF THAT THERE WAS NO D.N.A. EVIDENCE AND, IN
22 FACT, MS. SANDERS HAD --

23 THE COURT: MS. WHO?

24 THE WITNESS: THE VICTIM HAD TESTIFIED THAT SHE HAD
25 WASHED PRIOR TO BEING EXAMINED AND THERE WAS -- I'M

1 PRETTY SURE THERE WAS TESTIMONY ABOUT THE LACK OF D.N.A.
2 EVIDENCE AT THE TRIAL, ALTHOUGH I DON'T REMEMBER
3 SPECIFICALLY HOW IT WENT, BUT IT WOULD NOT SURPRISE ME IF
4 WE GOT THE WRITTEN REPORT LATER, BUT I ALWAYS GET THOSE
5 REPORTS PRIOR TO GOING TO TRIAL FROM S.L.E.D. AND PASS IT
6 ALONG TO THE DEFENSE ATTORNEY.

7 THE COURT: BUT THIS REPORT WAS NOT AVAILABLE BEFORE
8 TRIAL, WAS IT?

9 THE WITNESS: THE WRITTEN REPORT MAY HAVE NOT BEEN
10 AVAILABLE, BUT THE VERBAL REPORT COMES MUCH EARLIER. IN
11 FACT, I HAVE HAD IT TAKE MANY MONTHS TO GET THE WRITTEN
12 REPORT.

13 THE COURT: DID ANYBODY FROM S.L.E.D. -- DID YOU CALL
14 ANYBODY FROM S.L.E.D. TO GO OVER WHAT THE ORAL REPORT
15 WOULD HAVE BEEN?

16 THE WITNESS: NO, SIR, BECAUSE THERE WAS NOT ANY
17 D.N.A. EVIDENCE. THERE DIDN'T SEEM TO BE ANY REASON TO.

18 THE COURT: OKAY. BUT IN YOUR OPINION -- STRIKE
19 THAT. FROM YOUR KNOWLEDGE OF THE CASE DEFENSE COUNSEL
20 KNEW NOT NECESSARILY OF THE EXISTENCE OF THE WRITTEN
21 REPORT, BUT OF THE RESULTS --

22 THE WITNESS: YES, SIR.

23 THE COURT: -- THAT LATER WERE REDUCED TO WRITING AND
24 COULD HAVE MADE WHATEVER USE OF THAT THEY DEEMED
25 NECESSARY?

1 THE WITNESS: YES, SIR, AND I BELIEVE THERE WAS
2 TESTIMONY ABOUT THE LACK OF D.N.A. EVIDENCE IN THE TRIAL.

3 THE COURT: FROM WHOM?

4 THE WITNESS: I AM NOT SURE IF IT WAS LAW ENFORCEMENT
5 OR DR. GIBBS. I CAN'T RECALL.

6 THE COURT: OKAY. I'M SORRY. ALL RIGHT. ANYTHING
7 ELSE ON DIRECT?

8 MR. BOOZER: NO, SIR, YOUR HONOR.

9 THE COURT: CROSS?

10 MR. MIRSHAK: THANK YOU, YOUR HONOR.

11 CROSS-EXAMINATION

12 BY MR. MIRSHAK:

13 Q MS. BRISBIN, YOU'RE AN EXPERIENCED PROSECUTOR, AREN'T
14 YOU?

15 A SOMEWHAT.

16 Q HOW MANY CASES HAVE YOU TRIED IN AIKEN COUNTY?

17 A I THINK ABOUT 35.

18 Q YOU'VE BEEN WITH THE SOLICITOR'S OFFICE FOR HOW MANY
19 YEARS?

20 A SIX AND A HALF.

21 Q OKAY. YOU WOULD AGREE THAT IT WOULD BE IMPORTANT TO
22 THE DEFENSE TO HAVE A WRITTEN LAB REPORT PRIOR TO THE
23 COMMENCEMENT OF THE TRIAL, WOULD YOU NOT, WITH REGARD TO
24 THE FINDINGS POSITIVE OR NEGATIVE WITH REGARDS TO THE
25 TRIAL OF A RAPE CASE?

1 A IF THERE'S NO D.N.A. EVIDENCE AND SHE'S AWARE OF
2 THAT, THEN SHE CAN CROSS EXAMINE WITHOUT A WRITTEN REPORT.

3 MR. MIRSHAK: MAY I, YOUR HONOR?

4 THE COURT: HOW DO YOU KNOW THAT SHE WAS AWARE OF IT?

5 THE WITNESS: I RECALL THAT SHE WAS AWARE OF IT, AND
6 I WOULD NOT GO TO TRIAL WITHOUT MAKING HER AWARE OF THE
7 LACK OF EVIDENCE.

8 THE COURT: I UNDERSTAND THAT. I AM NOT SUGGESTING
9 THAT YOU WOULD. I AM JUST -- IS THERE ANYTHING IN THE
10 RULE FIVE MATERIAL, THE BRADY MATERIAL, JUST SAYING WHAT
11 THE REPORT WOULD HAVE SAID OR DID Y'ALL JUST HAVE A
12 CONVERSATION ABOUT IT OR DO YOU RECALL?

13 THE WITNESS: I WOULD HAVE JUST TOLD HER THAT PRIOR
14 TO TRIAL.

15 MR. MIRSHAK: OKAY.

16 THE COURT: AND CERTAINLY I'M NOT --

17 THE WITNESS: AS SOON AS I GOT THE REPORT. I GET IT
18 VERBALLY AND I TELL HER.

19 THE COURT: I AM NOT SUGGESTING IN ANY WAY THAT YOU
20 WITHHELD ANYTHING. I KNOW YOU BETTER THAN THAT.

21 Q MS. BRISBIN, BUT IN FAIRNESS YOU DON'T HAVE A
22 SPECIFIC RECOLLECTION OF YOUR CONVERSATIONS WITH KELLEY
23 BROWN ABOUT ABOUT THIS CASE, DO YOU?

24 A I DO RECALL INFORMING HER THAT THERE WAS NO D.N.A.
25 EVIDENCE.

1 Q WELL --

2 A I CAN'T TELL YOU THE EXACT DATE.

3 Q OKAY. SIX YEARS -- WE'RE FIVE YEARS POST-TRIAL.

4 A UH-HUH.

5 Q HOW WOULD YOU RECALL THAT SPECIFICALLY OTHER THAN
6 JUST GENERALLY THAT'S YOUR PRACTICE? I MEAN, ISN'T THAT
7 FAIR --

8 A I AM NOT SURE I CAN ANSWER THAT QUESTION.

9 Q WOULDN'T YOU AGREE THAT YOU DON'T HAVE A SPECIFIC
10 RECOLLECTION, BUT IT'S, BASICALLY, YOUR MODUS OPERANDI
11 WHICH WE WOULD RESPECT TO SHARE INFORMATION LIKE THAT WITH
12 THE DEFENSE? YOU DON'T HAVE A SPECIFIC RECOLLECTION.

13 A I BELIEVE I DO. I AM NOT SURE I COULD SWEAR UNDER
14 OATH THAT I --

15 THE COURT: I UNDERSTAND.

16 Q THANK YOU. AND, MS. BRISBIN, THE STATE'S FILE DOES
17 NOT EXIST; ISN'T THAT CORRECT?

18 A THE STATE'S FILE HAS BEEN RECONSTRUCTED. THE
19 ORIGINAL FILE WAS LOST SOMEWHERE IN THE FILE PROCESS.

20 Q BUT YOU DON'T HAVE ANY OF YOUR TRIAL NOTES OR
21 INTERVIEW NOTES OR PREPARATORY NOTES?

22 A UNFORTUNATELY, I DO NOT.

23 Q SO, YOU HAVEN'T HAD THE BENEFIT FIVE YEARS POST-TRIAL
24 OF REVIEWING YOUR FILE; ISN'T THAT CORRECT?

25 A THAT'S CORRECT.

1 Q AND, SO, YOUR FILE THAT WAS RECONSTRUCTED CAME FROM
2 GOING TO EITHER THE SHERIFF'S DEPARTMENT AND GETTING THE
3 POLICE REPORTS OR EVEN FROM OUR FILE --

4 A EXACTLY.

5 Q -- WITH REGARD TO THE C.D. AND VIDEOTAPE; IS THAT
6 CORRECT?

7 A YES, SIR.

8 Q NOW, WOULD YOU ALSO AGREE THAT AS AN EXPERIENCED
9 PROSECUTOR THAT IF THERE WAS AN ALIBI DEFENSE IT WOULD BE
10 ESSENTIAL FOR THE DEFENDANT'S ATTORNEY TO INVESTIGATE THAT
11 ALIBI DEFENSE?

12 A IF SHE WAS MADE AWARE OF IT --

13 Q OKAY.

14 A -- BY THE DEFENDANT.

15 Q OKAY. WELL, YOUR OFFICE PROVIDED MRS. BROWN WITH THE
16 RULE FIVE THAT HAS THE ROBINA REED FREDERICK DRIVE ADDRESS
17 ON THE C.D.; ISN'T THAT CORRECT? YOU HAVE REVIEWED THAT
18 -- WELL, LET ME BACK UP.

19 A ACTUALLY, I HAVEN'T. SORRY.

20 Q I AM A LITTLE CONFUSED. NOW, WE CAME IN FEBRUARY TO
21 TRY THIS CASE AND Y'ALL ASKED TO BE ABLE TO REVIEW THE
22 EVIDENCE AND WE COPIED THE C.D. AND YOU HAVEN'T REVIEWED
23 IT?

24 A NO, I HAVEN'T.

25 Q HAS THE ATTORNEY GENERAL'S OFFICE, TO YOUR KNOWLEDGE,

1 REVIEWED THAT C.D.?

2 A NOT TO MY KNOWLEDGE.

3 Q YOU ONLY HAD THE COPY. YOU DIDN'T PROVIDE A COPY TO
4 MR. BOOZER, DID YOU?

5 A THAT'S CORRECT.

6 THE COURT: I RECALL WE WERE BACK IN TRIAL IN -- OR
7 THIS CASE WAS CALLED IN FEBRUARY AND YOU INFORMED THE
8 A.G.'S OFFICE THAT YOU HAD LOCATED AS MS. REED AND WHAT
9 SHE WAS GOING TO SAY.

10 MR. MIRSHAK: THAT'S CORRECT.

11 THE COURT: AND THEY WANTED IT CONTINUED SO THEY
12 COULD LOOK INTO THAT.

13 MR. MIRSHAK: AND LOOK INTO THE C.D.

14 THE COURT: AND THE C.D. HAS BEEN COPIED AND PROVIDED
15 TO WHOM?

16 THE WITNESS: TO ME AND I GUESS THAT'S MY MISTAKE. I
17 DIDN'T UNDERSTAND THAT I WAS SUPPOSED TO PROVIDE IT TO
18 MR. BOOZER.

19 MR. MIRSHAK: OKAY.

20 MR. BOOZER: YOUR HONOR, I NEVER REQUESTED THE C.D.

21 THE COURT: THAT'S FINE.

22 MR. MIRSHAK: THAT'S ALL RIGHT.

23 THE COURT: NOBODY IS FUSSING.

24 Q WELL, LET ME ASK WOULD IT ALSO BE TRUE THAT YOU HAVE
25 NOT ACTUALLY REVIEWED THE CONFESSIONS -- I MEAN, IT

1 WASN'T A CONFESSION -- THE INTERVIEW TAPE BY LIEUTENANT
2 REDD OR SERGEANT REDD WITH MR. WALKER?

3 A NO, I HAVE NOT.

4 THE COURT: SO, YOU CAN'T TELL ME IF IT SAYS ON THERE
5 THAT HE CLAIMED TO HAVE BEEN WITH MS. REED ON THE NIGHT IN
6 QUESTION?

7 THE WITNESS: NO, SIR.

8 THE COURT: I NEED TO LOOK AT IT MYSELF.

9 Q DO YOU HAVE A SPECIFIC RECOLLECTION WHETHER YOU
10 ACTUALLY REVIEWED THAT RULE FIVE TAPE -- I MEAN, INTERVIEW
11 STATEMENT THAT WAS PRODUCED TO MRS. BROWN PRIOR TO TRIAL?

12 A THE C.D.?

13 Q YES, MA'AM.

14 A I DID, YES, BUT I CAN'T RECALL SPECIFICALLY WHAT'S ON
15 IT AT THIS POINT.

16 Q OKAY. NOW, IT WOULD BE FAIR TO SAY TODAY THAT AS AN
17 EXPERIENCED PROSECUTOR YOU ARE DISTURBED BY MS. REED'S
18 TESTIMONY ABOUT WHETHER OR NOT MR. WALKER GOT A FAIR
19 TRIAL? YES OR NO, MA'AM?

20 A I DON'T KNOW WHAT YOU MEAN BY DISTURBED. I DON'T
21 THINK SHE EVER SAID SHE COULD SAY THAT EXACT DATE SHE
22 SPENT THE NIGHT WITH HIM.

23 Q OKAY. DO YOU AGREE THAT KELLEY BROWN'S OFFICE WAS
24 INEFFECTIVE IN FAILING TO INTERVIEW MS. REED PRIOR TO
25 TRIAL OR MAKING ANY EFFORT TO LOCATE HER?

1 A NO, BECAUSE HE SAID HE NEVER TOLD MRS. BROWN.

2 Q WELL, YOU --

3 THE COURT: ASK HER A HYPOTHETICAL.

4 Q OKAY. IF MRS. BROWN KNEW OF THE EXISTENCE OF ROBINA.
5 REED AS A WITNESS TO THE WHEREABOUTS OF JOSEPH WALKER ON
6 MARCH 2 WOULD YOU AGREE THAT IT WOULD BE INEFFECTIVE
7 ASSISTANCE OF COUNSEL IF HER OFFICE FAILED TO INTERVIEW OR
8 MAKE A GOOD FAITH EFFORT TO FIND MS. REED? YES OR NO,
9 MA'AM?

10 A IF -- WELL, I AM NOT SURE I CAN ANSWER THAT YES OR
11 NO.

12 Q YOU'RE AN EXPERIENCED PROSECUTOR.

13 THE COURT: HOLD ON. WHAT'S YOUR ANSWER?

14 THE WITNESS: IF MR. REED (SIC) HAD TOLD MRS. BROWN
15 DIRECTLY I HAVE AN ALIBI WITNESS, I WAS WITH THIS LADY, H-
16 THIS IS HOW YOU CAN FIND HER, SHE WILL TELL YOU DEFINITELY
17 I SPENT THE NIGHT WITH HER THAT NIGHT THAT THIS INCIDENT
18 OCCURRED, THEN PERHAPS THAT WOULD BE INEFFECTIVE
19 ASSISTANCE OF COUNSEL ALTHOUGH I DON'T THINK IT'S MY
20 POSITION TO MAKE THAT DETERMINATION.

21 MR. MIRSHAK: I UNDERSTAND.

22 THE COURT: NOBODY IS ASKING YOU TO MAKE THAT
23 DETERMINATION. WHAT IF IT WAS REVEALED ON AN INTERVIEW
24 TAPE THAT THE GUY ALLEGED TO HAVE BEEN WITH SOMEONE ON THE
25 NIGHT IN QUESTION? DO YOU HAVE AN OPINION AS TO WHETHER

1 OR NOT THE LAWYER HAS A DUTY TO NOTWITHSTANDING WHAT THE
2 CLIENT SAYS TO INVESTIGATE THAT STATEMENT ON THE INTERVIEW
3 TAPE TO DETERMINE WHETHER OR NOT IT WAS TRUE?

4 THE WITNESS: I'M NOT --

5 THE COURT: IF YOU HAVE AN OPINION.

6 THE WITNESS: I DON'T HAVE AN OPINION.

7 THE COURT: THANK YOU, MA'AM. MOVE ALONG.

8 Q WELL, THE RESOURCES OF THE AIKEN COUNTY SHERIFF'S
9 DEPARTMENT WERE AVAILABLE TO FIND MS. REED, WEREN'T THEY?
10 SHE HAS BEEN WORKING IN HARDEES IN DENMARK FOR 18 YEARS.
11 Y'ALL COULD HAVE EASILY HAVE FOUND HER, COULDN'T YOU, AND
12 INTERVIEW HER?

13 A I DON'T KNOW.

14 Q OKAY. WELL, YOU AGREE THAT A TRIAL IS A SEARCH FOR
15 THE TRUTH AND JUSTICE; RIGHT?

16 A WELL, I DON'T REMEMBER ASKING THAT QUESTION MYSELF.
17 SO, IF -- I DON'T KNOW. I DON'T KNOW THE ANSWER TO THAT.
18 I DON'T REMEMBER HER NAME EVEN COMING UP TO BE HONEST WITH
19 YOU.

20 Q WELL, IF YOU WOULD AGREE THAT IF MR. WALKER HAD A
21 ROOMMATE NAMED DOUG -- WELL, LET ME BACK UP. ONCE
22 MR. WALKER WAS IN JAIL AND NEVER GOT OUT HE DIDN'T -- AND
23 HE WAS RELYING ON THE PUBLIC DEFENDER'S OFFICE, HE WAS AT
24 THEIR MERCY AS TO ANY INVESTIGATION OF THIS CASE, WASN'T
25 HE?

1 A I WOULD THINK SO.

2 Q OKAY. AND IF THERE WAS A ROOMMATE NAME DOUG WHO
3 LIVED IN THAT HOUSE WHERE MR. WALKER STAYED SOME OF THE
4 TIME -- THE HOUSE THAT WAS SEARCHED -- THAT WOULD BE
5 IMPORTANT TO KNOW WHETHER HE HAD HAD MS. SANDERS TO THAT
6 HOUSE OR NOT IF, IN FACT, SHE EVER WENT THERE?

7 A I WAS NOT AWARE THAT THERE WAS ANY ROOMMATE.

8 Q OKAY. WELL, MS. BRISBIN, YOU AGREE NOW HAVING LOOKED
9 AT WHAT'S BEEN PRODUCED AND YOU RECREATED THAT THERE IS A
10 MAJOR DISCREPANCY IN THE TIME THAT THIS ORIGINALLY WAS
11 REPORTED TO HAVE OCCURRED IN EARLY AFTERNOON OF MARCH 2
12 AND THE TIME MS. WALKER REPORTED IT HAVING OCCURRED AT
13 8 O'CLOCK THAT EVENING?

14 A NO. MY UNDERSTANDING IS THAT -- AND I REMEMBER THIS
15 FROM THE TRIAL. THE VIDEOTAPE FROM THE STORE -- THE
16 MANAGER EXPLAINED THAT THE TIMING THAT WAS DISPLAYED ON
17 THE VIDEOTAPE WAS NOT ACCURATE AND SHE MATCHED IT UP WITH
18 THE REGISTRY, THE TYPE -- THE CASH REGISTER. SHE WAS ABLE
19 TO CLARIFY THE CORRECT TIME.

20 Q BUT THAT'S NOT THE TIME MS. WALKER REPORTED THE RAPE
21 -- I MEAN, THE KIDNAPPING PART OF THIS CASE -- I MEAN
22 MS. SANDERS -- TO HAVE OCCURRED. SHE REPORTED IT
23 INITIALLY AT 8 O'CLOCK. YOU SAW THIS WHAT WAS MARKED INTO
24 EVIDENCE, DIDN'T YOU?

25 A NO.

1 Q SHE SAID THAT 8 O'CLOCK THAT NIGHT THAT THIS
2 OCCURRED?

3 A WELL, IT TOOK PLACE -- SHE REPORTED THAT SHE WAS
4 RAPED AT GUNPOINT THROUGHOUT THE NIGHT AND I DON'T RECALL
5 THE TIMES THAT IT STARTED.

6 Q THE INTERVIEW NOTES -- DID YOU EVER INTERVIEW THE
7 NURSE, MS. GRETCHEN -- I'M SORRY. MAY I LOOK OVER YOUR
8 SHOULDER?

9 A YES. SHE TESTIFIED, I BELIEVE.

10 Q NO. SHE DID NOT TESTIFY.

11 A SHE DID NOT TESTIFY? I DON'T REMEMBER.

12 Q OKAY. AND SHE TESTIFIED THAT SHE TOLD HER THAT IT
13 WAS AT 7 O'CLOCK AND THERE IS ANOTHER POLICE REPORT THAT
14 SAID IT HAPPENED AT 8 O'CLOCK. THAT'S NOT ADJUSTING ONE
15 HOUR ON A TAPE AT ONE IN THE AFTERNOON, IS IT? THAT'S A
16 MAJOR DISCREPANCY IN TIME?

17 A HONESTLY, I CAN'T ANSWER YOUR QUESTION BECAUSE I'M
18 NOT -- I DON'T REMEMBER ANYTHING ABOUT THE TIME THAT
19 ANYBODY TESTIFIED TO.

20 Q OKAY. AND IF WE -- WOULD YOU AGREE -- AND, YOUR
21 HONOR, I'D STATE THIS IS A PRINTOUT FROM THE U.S. NAVAL
22 OBSERVATORY THAT KEEPS TRACK OF SUNSETTING -- THAT ON
23 MARCH 2, 2002 THAT THE SUNSET AT 6:22?

24 THE COURT: THAT DOESN'T MEAN IT'S DARK, DOES IT?

25 MR. MIRSHAK: NO. MAY I, YOUR HONOR?

1 THE COURT: YEA, GO AHEAD.

2 Q IF IT WAS 8 O'CLOCK AND THE SUN SET AT 6:22 WHEN SHE
3 REPORTED IT OCCURRED, THAT WOULD BE A MAJOR DISCREPANCY IN
4 WHETHER IT WAS DAYLIGHT OR ONSET OF DUSK OR EVEN DARK AT
5 8 O'CLOCK AT NIGHT, WOULDN'T IT, AND NOBODY LOOKED INTO
6 THAT, DID THEY?

7 A I DON'T RECALL.

8 Q ALL THE STATE TRIED TO DO AND THE INVESTIGATORS TRIED
9 TO DO WAS GO BACK AND GET A TAPE THAT WAS ON A 24-HOUR
10 CYCLE AND TRY TO GO BACK AND MATCH IT UP BECAUSE
11 MR. WALKER SHOWED UP IN THE TAPE --

12 A WELL, MS. SANDERS ALSO SHOWED UP IN THE TAPE.

13 THE COURT: HOLD ON. WHOA. FINISH YOUR QUESTION.

14 Q BUT SHE SHOWS UP ON THE TAPE AT 1:22 P.M., DOESN'T
15 SHE, AND THEY ADJUSTED IT TO 2:22 P.M.?

16 A SHE SHOWED UP ON THE TAPE ON THE SAME TIME MR. WALKER
17 SHOWED UP ON THE TAPE WHICH IS THE WHOLE POINT BECAUSE HER
18 STORY WAS THAT HE FIXED HER CAR WHEN THEY WERE THERE AT
19 THE B.P. AT THE SAME TIME AND THEN LATER ON HE SAID SHE
20 WANTED HIS \$30 AND SHE TOLD HIM HE COULD FOLLOW HER TO HER
21 HOME FOR PAYMENT AND THAT'S WHEN HE ABDUCTED HER.

22 A WELL, THERE IS A POLICE OFFICER ALSO IN THAT TAPE,
23 ISN'T THERE?

24 A YES.

25 Q OKAY. YOU DON'T THINK MR. WALKER TOOK THAT WOMAN IN

1 FRONT OF THE POLICE OFFICER, DO YOU?

2 A HE DIDN'T TAKE HER FROM THE B.P. STATION. HE TOOK
3 HER FROM HIS HOME -- HER HOME.

4 MR. MIRSHAK: OKAY. YOUR HONOR, I WOULD JUST
5 REFERENCE THE TRANSCRIPT ABOUT THE DISCREPANCIES IN --

6 THE COURT: I AM GOING TO READ THE TRANSCRIPT.

7 MR. MIRSHAK: -- THE TIME ON THE TAPE.

8 SO, KELLEY BROWN DID NOT HAVE ANY WRITTEN REPORT
9 ABOUT THE D.N.A. EVIDENCE IN THIS CASE, IS THAT CORRECT,
10 AT THE TIME OF TRIAL?

11 THE COURT: WE'VE ALREADY ESTABLISHED THAT.

12 Q LET ME ASK YOU THIS. THERE WAS SOME THEORY THAT
13 MR. WALKER HAD USED A CAP TO BLINDFOLD MS. WALKER, WASN'T
14 THERE? THE POLICE OFFICER TOLD YOU THAT, DIDN'T THEY?

15 A THERE WAS SOME QUESTION -- MS. WALKER -- MS. SANDERS
16 SAID THAT SHE WAS BLINDFOLDED. SHE WASN'T SURE WHAT HE
17 USED TO BLINDFOLD HER AND THAT WAS KIND OF CONJECTURE ON
18 THE POLICE OFFICER'S PART THAT PERHAPS THIS CAP THAT THEY
19 FOUND IN HIS CAR WITH A BLONDE HAIR IN IT COULD HAVE BEEN
20 WHAT SHE WAS BLINDFOLDED WITH.

21 Q AND A CAP FROM MR. WALKER'S CAR --

22 A TRUCK, RATHER.

23 Q -- WAS SENT OFF. PARDON ME?

24 A TRUCK, RATHER.

25 Q TRUCK -- EXCUSE ME -- WAS SENT OFF TO THE CRIME LAB?

- 1 A IT WAS SENT BUT IT WAS NOT TESTED.
- 2 Q THAT WOULD HAVE BEEN IMPORTANT TO KNOW THAT THIS --
- 3 A IT COULD ONLY HAVE HELPED --
- 4 Q -- THE POLICE SEIZED --
- 5 THE COURT: HOLD ON.
- 6 Q -- THAT THE POLICE SEIZED A CAP THAT THEY SAID TO
- 7 MR. WALKER WE GOT YOU WHEN THEY TOOK THAT CAP BECAUSE THEY
- 8 FOUND A WHITE -- SOME KIND OF HAIR IN IT?
- 9 A THEY DIDN'T SAY THAT.
- 10 Q PARDON ME?
- 11 A THEY DIDN'T SAY WE GOT YOU BECAUSE WE FOUND A CAP.
- 12 Q OKAY. THEY SENT THAT CAP OFF TO THE CRIME LAB, AND
- 13 MRS. BROWN DIDN'T HAVE THE RESULTS SHOWING THAT THE CAP
- 14 WAS NEGATIVE?
- 15 A THE CAP WAS NOT TESTED.
- 16 Q OKAY.
- 17 A AND IT COULD ONLY HAVE HELPED THE STATE IF THEY FOUND
- 18 MS. SANDERS' HAIR IN THE CAP.
- 19 Q THE FACT OF THE MATTER IS THAT'S THE IMPORTANCE OF
- 20 THE LAB TEST RESULTS. YOU DIDN'T TELL MRS. BROWN THAT THE
- 21 CAP HADN'T BEEN TESTED, DID YOU?
- 22 A SHE WOULD HAVE KNOWN IT IF IT HAD BEEN TESTED.
- 23 Q WELL, HOW DO YOU KNOW THAT SITTING HERE TODAY, MS.
- 24 BRISBIN?
- 25 A BECAUSE I WOULD HAVE TOLD HER IF IT WAS TESTED.

- 1 Q OKAY.
- 2 A BECAUSE I AM HONEST.
- 3 Q I KNOW YOU ARE.
- 4 THE COURT: NOBODY IS QUESTIONING THAT.
- 5 Q THAT'S NOT A QUESTION. I MEAN, THIS IS NOT AN ATTACK
- 6 ON YOU, MS. BRISBIN. YOU KNOW THAT. THAT CAP SHOWS UP IN
- 7 THE RULE FIVE, DOESN'T IT?
- 8 A YES.
- 9 Q OKAY. AND THAT -- OKAY. AND THAT'S WHY THE CAP WAS
- 10 PRODUCED -- THE PHOTOGRAPH OF THE CAP WAS PRODUCED BECAUSE
- 11 THE STATE THOUGHT IT WAS RELEVANT TO TRIAL OF THIS CASE?
- 12 A ACTUALLY, THE STATE DIDN'T THINK THAT WHICH IS WHY I
- 13 DIDN'T HAVE ASK THEM TO TEST THE CAP.
- 14 Q ARE YOU SAYING NOW YOU TOLD THE STATE CRIME LAB WHAT
- 15 TO TEST?
- 16 A YES. THAT'S THE WAY IT WORKS.
- 17 Q OKAY. AND DO YOU HAVE A SPECIFIC RECOLLECTION FROM
- 18 WHEN THOSE RESULTS WERE SENT TO -- I MEAN, WHEN THE
- 19 EVIDENCE WAS SENT TO THE STATE?
- 20 A I'M SORRY. I DON'T --
- 21 Q YOU DIDN'T ORCHESTRATE -- EXCUSE ME. THAT'S NOT THE
- 22 RIGHT WORD. YOU DIDN'T INSTRUCT WHAT THE SHERIFF'S
- 23 DEPARTMENT WAS TO SEND TO THE STATE, DID YOU?
- 24 A NO. THEY SEND EVERYTHING --
- 25 Q OKAY.

1 A -- THEY CAN GET THEIR HANDS ON.

2 Q AND YOU DON'T HAVE A RECOLLECTION THAT THE STATE --
3 S.L.E.D. CALLED YOU AND SAID WHAT DO YOU WANT US TO TEST?

4 A NO. THAT'S NOT THE WAY IT WORKS. I CALL THEM AND
5 TELL THEM, AND I DID NOT TELL THEM TO TEST THE CAP. THEY
6 DON'T DO ANYTHING UNLESS WE TELL THEM TO.

7 THE COURT: WHAT WERE Y'ALL TRYING TO FIND FROM THE
8 CAP?

9 THE WITNESS: THE POLICE OFFICER'S THOUGHT PROCESS
10 WAS PERHAPS THIS IS WHAT HE USED TO BLINDFOLD HER BECAUSE
11 THERE WAS A BLONDE HAIR IN THE CAP.

12 THE COURT: ALL RIGHT.

13 THE WITNESS: AND THAT PERHAPS THAT WOULD BE
14 MS. SANDERS' HAIR.

15 THE COURT: SO, IF IT HAD BEEN TESTED IT COULD
16 HAVE --

17 THE COURT: IT COULD HAVE HELPED US.

18 THE COURT: BUT IT COULD HAVE SHOWN THAT IT WASN'T
19 HER HAIR.

20 THE WITNESS: BUT WHAT DOES THAT PROVE? I MEAN --

21 THE COURT: WELL, I DON'T KNOW.

22 MR. MIRSHAK: THAT'S ALL I HAVE, YOUR HONOR.

23 THE COURT: THANK YOU. ANYTHING ELSE?

24 MR. MIRSHAK: YOUR HONOR, I WOULD LIKE TO MARK FOR
25 WHATEVER WEIGHT THE COURT GIVES IT THE OBSERVATORY FOR

1 WHAT TIME THE SUN SETS.

2 THE COURT: YOU CAN MARK IT, BUT I AIN'T GOING TO
3 GIVE IT MUCH WEIGHT.

4 MR. MIRSHAK: THAT'S FINE. THANK YOU, YOUR HONOR.
5 (WHEREUPON, PLAINTIFF'S EXHIBIT NO. 5 WAS MARKED FOR
6 IDENTIFICATION ONLY.)

7 THE COURT: I WILL CERTAINLY CONSIDER IT. ANY
8 QUESTIONS?

9 MR. BOOZER: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: YOU CAN STEP DOWN. NEXT WITNESS.

11 MR. BOOZER: NOTHING FROM THE STATE, YOUR HONOR.

12 THE COURT: ANYTHING IN REPLY? ALL RIGHT. I WANT
13 THE C.D. HOW DO YOU WATCH IT?

14 MR. MIRSHAK: STICK IT IN YOUR LAPTOP.

15 MS. SMITH: AN MP3 PLAYER, I THINK, WOULD PROBABLY DO
16 IT.

17 THE COURT: CAN YOU DO IT?

18 THE LAW CLERK: YES, SIR.

19 THE COURT: ALL RIGHT. WE KNOW HOW TO DO IT.

20 MR. MIRSHAK: I DON'T KNOW WHAT AN MP3 PLAYER IS,
21 JUDGE.

22 THE COURT: I CERTAINLY DO KNOW WHAT IT IS.

23 MR. MIRSHAK: OKAY. YOUR HONOR, I THINK THIS IS THE
24 ONLY COPY OF THIS TAPE. DO YOU STILL -- EXCUSE ME. MAY I
25 INQUIRE OF MS. BRISBIN --

1 MS. BRISBIN: I HAVE A COPY..

2 THE COURT: HOW MANY COPIES DO WE HAVE?

3 MS. BRISBIN: I HAVE ONE THAT YOU GAVE ME.

4 MR. MIRSHAK: DO YOU THINK YOUR COPY IS A GOOD COPY?

5 MS. BRISBIN: I HAVEN'T LOOKED AT IT.

6 THE COURT: I WANT ONE PUT INTO THE RECORD.

7 MR. MIRSHAK: THAT'S WHAT I'M CONCERNED ABOUT. THEY
8 WERE HAVING A HARD TIME BURNING IT AND IF THEY HAVEN'T
9 LOOKED AT IT --

10 THE COURT: IS THAT A GOOD COPY?

11 MR. MIRSHAK: YES, SIR, IT IS.

12 THE COURT: PUT IT IN THE RECORD.

13 (WHEREUPON, COURT'S EXHIBIT NO. 1 WAS MARKED FOR
14 IDENTIFICATION ONLY.)

15 THE COURT: MS. COURT REPORTER, LET THE RECORD
16 REFLECT THAT I AM GOING TO TAKE THAT C.D. WITH ME TODAY
17 AND I WILL RETURN IT TO YOU ONCE WE'VE HAD AN OPPORTUNITY
18 TO REVIEW IT? FAIR WITH EVERYBODY?

19 MS. SMITH: YES, SIR.

20 THE COURT: ALL RIGHT. I DON'T NEED ARGUMENTS. I
21 HAVE HEARD THE CASE. I WOULD LIKE PROPOSED ORDERS FROM
22 BOTH SIDES WITHIN A REASONABLE PERIOD OF TIME.

23 MR. MIRSHAK: WOULD IT BE APPROPRIATE FOR THE COURT
24 TO LET US KNOW WHAT YOUR VIEW OF THE TAPE IS BEFORE WE
25 SUBMIT A PROPOSED ORDER SO WE KNOW WHAT WE'RE DEALING

1 WITH?

2 THE COURT: WELL, I ASSUME IT'S GOING TO -- IF YOU'RE
3 TELLING ME WHAT IT SAYS IT SAYS, I AM GOING TO BE
4 CONCERNED WITH THE FACT THAT IT REVEALED HE WAS CLAIMING
5 AN ALIBI AND IT WASN'T INVESTIGATED, BUT I AM GOING TO
6 MAKE SURE THAT'S WHAT IT SAYS.

7 MR. MIRSHAK: WELL, THAT'S OUR REVIEW OF THE TAPE.

8 THE COURT: I WILL HAVE THE TAPE REVIEWED BY THIS
9 TIME NEXT WEEK. WE WILL RETURN IT TO THE COURT REPORTER
10 AND GO FROM THERE. ALL RIGHT. LET'S TAKE A QUICK
11 FIVE-MINUTE BREAK FOR MY COURT REPORTER AND WE'LL START
12 THE NEXT CASE.

13 MR. MIRSHAK: YOUR HONOR, JUST TO BOLSTER THAT,
14 THOUGH, MY RECOLLECTION OF THAT TAPE IS THAT HE DOES NOT
15 SAY THE PERSON'S LAST NAME NECESSARILY. I DON'T REMEMBER
16 THAT FOR A FACT. HE SAYS ROBINA. THEY KEEP GOING THROUGH
17 THAT, BUT YOU'VE GOT THE OTHER EXHIBITS IN THE FILE THAT
18 WAS ON THE RULE 5 C.D. THAT'S GOT HER NAME AND MRS. BROWN
19 HAD HER NAME.

20 THE COURT: WELL, SHE TESTIFIED ABOUT HER NAME TODAY.

21 MR. MIRSHAK: PARDON ME?

22 THE COURT: SHE SAID WHAT HER NAME WAS TODAY.

23 MR. MIRSHAK: YES, SIR. THANK YOU.

24 THE COURT: ALL RIGHT. WE'LL STAND AT EASE FOR A
25 VERY SHORT FIVE MINUTES.

(END OF TRANSCRIPT OF RECORD.)

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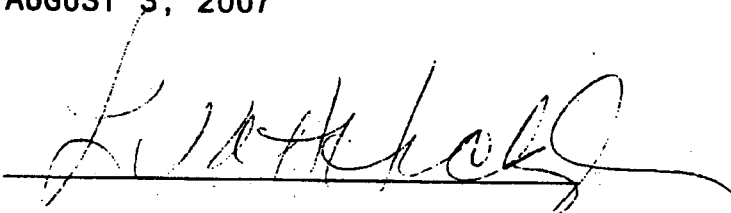
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, LISA H. HICKLIN, OFFICIAL COURT REPORTER FOR THE
SECOND 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
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR AIKEN
COUNTY, SOUTH CAROLINA, ON THE 9TH DAY OF MARCH, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

AUGUST 3, 2007


LISA H. HICKLIN, COURT REPORTER

MP # 25,329 438

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO: 05-CP-02-39

JOSEPH WALKER, # 162475)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

MAY 23 2007

CCC.P. & G.A., Aiken County, SC

Deputy Clerk

ORDER FOR POST-CONVICTION RELIEF

DATE OF HEARING: MARCH 9, 2007
PRESIDING JUDGE: HON. DOYET A. EARLY, III
COURT REPORTER: LISA H. HICKLIN
ATTORNEYS FOR APPLICANT: JOAN E. SMITH,
TIMOTHY S. MIRSHAK
ATTORNEY FOR STATE: LANCE S. BOOZER

MP # 25,329

This matter comes before this Court on the application of Joseph Walker, hereinafter known as "Applicant," for post-conviction relief on the ground of the alleged ineffective assistance of trial counsel, Kelley Perkins Brown, Esq., hereinafter known as "Trial Counsel." The hearing in this matter was set for February 6, 2007, in Aiken County, and was continued at the request of the State. By agreement of counsel, the final hearing was held in Bamberg County.¹ Present at the hearing in this matter was the Applicant and Trial Counsel, the witnesses of the parties, as well as Applicant's present counsel and Counsel for the State, as set out above.

FILED

5/23/07

Liz Godard
CCC.P. & G.A.
Miranda Brown
Deputy Clerk

¹ The hearing in this matter was continued in order for the State to interview the Applicant's witness, Robina Reed.

I. Procedural History

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This action was commenced by the Applicant's request for post-conviction relief. The applicant was charged with Criminal Sexual Conduct – 1st Degree; Kidnapping; and Possession of a firearm or a knife during the commission or attempt to commit a violent crime. The Applicant was found to be not guilty of the crime of possession of a firearm or a knife during the commission or attempt to commit a violent crime, and was convicted of Criminal Sexual Conduct – 1st Degree; and Kidnapping at a trial held before the Hon. James R. Barber, III, in the Aiken County Court of General Sessions on July 21-23, 2003. A timely notice of appeal was filed on Applicant's behalf, and the appeal was perfected. The Applicant's appeal was dismissed by order entered Dec. 9, 2004, in State v. Walker, Op. No 2004-UP-618 (SC Ct. App.); the Remittitur was filed on Jan. 11, 2005. The Applicant filed his petition for Post-Conviction Relief on Jan. 7, 2005.

Applicant seeks relief on the following grounds:

1. ineffective assistance of trial counsel, including:
 - a. the failure to investigate and interview a potential alibi witness, Robina Reed; and
 - b. the cumulative error of the failure to investigate, combined with her
 - (i.) failure to cross examine the state's witnesses and victim at trial as to the victim's history of alcohol use; (ii.) failure to cross examine the state's witnesses and victim at trial as to the conflicts in the evidence as to the time of the alleged incident; and (iii.) failure to ask for a continuance to await the results of the forensic testing, which results were received one month after trial;

2. lack of subject matter jurisdiction, which argument was abandoned by the Applicant at the PCR hearing.

II. Applicable Law

The Sixth Amendment provides that an "accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668, 685, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Ineffective assistance of counsel may be claimed by an applicant after conviction. A presumption arises that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler v. State, 286 S.C. 441, 334 SE 2d 813 (1985). The applicant bears the burden to prove his entitlement to relief by a preponderance of the evidence. Rule 71.1(e), SCRPC. In order to overcome the presumption, a two-pronged test is applied to the applicant's claim, and he must show that trial counsel's error amounted to the ineffective assistance of counsel in that (1) trial counsel's performance fell below an objective standard of reasonableness and, (2) but for trial counsel's error, there is a reasonable probability the result at trial would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome of the trial. Strickland, supra. Cherry v. State, 300 S.C. 115, 386 SE 2d 624 (1989). Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

To support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, an applicant may not merely speculate as to what the witness's testimony would have been had the witness been called at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807, (1998). A PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with

the rules of evidence. Pauling v. State 331 SC 606, 503 SE2d 468 (1998) citing Glover v. State, 318 SC 496, 458 SE 2d 538 (1995).

In order to show that counsel was ineffective for failing to adequately prepare by failing to ask for a continuance or otherwise failing to investigate, applicant must show what benefits would have accrued from additional preparation. Skeen v. State, 325 S.C. 210, 481 SE 2d 129 (1997). However, while "[s]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable;...strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, supra. While the scope of a reasonable investigation depends on several issues, "at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Troedel v. Wainwright, 667 F. Supp. 1456, 1461 (S.D.Fla.1986), aff'd, 828 F.2d 670 (11th Cir. 1987).

III. Summary of Testimony, Findings of Fact and Conclusions of Law

The Court has heard the testimony of the Applicant; Trial Counsel; the potential alibi witness, Robina Reed; and the Assistant Solicitor for the State, Brenda Brisbin. The Court also reviewed the evidence tendered and admitted into evidence, including notes from Trial Counsel's file, and documents produced by the State pursuant to Rule 5, SCRCP, the forensic testing report dated one month after the trial. As a result of the testimony at the PCR hearing, and with the consent of counsel, the Court reviewed a digital video disc recording (DVD) of an interview of the Applicant in March 2002 at the time of his arrest, which DVD had been provided as part of the Rule 5 material.

THE COURT THEREFORE FINDS AND CONCLUDES that this application for post-conviction relief was timely filed and is properly before this Court pursuant to SC Code Ann. §§ 17-27-10 et seq. (2004) and Rule 71.1(b), SCRCP.

THE COURT FURTHER FINDS AND CONCLUDES it has heard the testimony of the witnesses presented at the hearing, observed the witnesses and passed upon their credibility, and weighed the testimony accordingly.

THE COURT FURTHER FINDS AND CONCLUDES that the Applicant's petition for post-conviction relief should be granted, and that the Applicant be granted a new trial due to the ineffective assistance of Trial Counsel due to her failure to interview the Applicant's witness, which failure prejudiced the Applicant; and due to the cumulative error of Trial Counsel which prejudiced the Applicant.

1. Failure to interview witness

THE COURT FURTHER FINDS AND CONCLUDES that the Applicant has met his burden and has established prejudice by Trial Counsel's failure to interview Robina Reed as an alibi witness for the Applicant. The March 2002 videotaped interview of the Applicant, conducted by Lt. Redd, clearly shows that the Applicant at the time of his initial arrest disclosed and relied upon an alibi defense. The Applicant has an eighth-grade education and his ability to read and write is limited, as evidenced by Applicant's demeanor and testimony at trial and depicted in the interview on the DVD. Trial Counsel was aware, or should have been aware, of the existence of the alleged alibi witness, Robina Reed. The Applicant testified that he informed Trial Counsel's investigator of the witness. Additionally, the name of the witness appears in the notes of Trial Counsel; and

the name and address of the witness appears in the photographic evidence provided by the State to Trial Counsel as part of the State's Rule 5 materials.

The testimony at the PCR hearing substantiates that Trial Counsel utterly failed to make any effort to locate or interview Reed prior to the trial, or to subpoena her to the trial. Reed testified that she had been employed at the same Hardee's restaurant in Denmark for at least two years prior to the alleged incident in March 2002 through the time of trial in July 2003, and through the present date. Additionally, she has continuously resided on Frederick Street in Denmark, which address was disclosed in the Rule 5 materials.

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THE COURT FURTHER FINDS AND CONCLUDES that the Applicant was entitled to rely upon his Trial Counsel to locate, or attempt to locate, and interview his witness, particularly since Applicant remained incarcerated from the time of his arrest through the time of trial. With the same information that was available to Trial Counsel, Applicant's PCR counsel was able to locate Reed, interview her, and subpoena her to the PCR hearings in February and March 2007. Reed further testified that no one had ever contacted her until she was contacted by present PCR counsel. The Applicant and Reed had an intimate relationship that was ongoing at the time of the alleged incident, and the Applicant had a key to her home. She further testified that the Applicant was usually with her during the time frame of incident. The Applicant testified that he had been spending many nights, and most, if not all, weekends with Reed prior to, and including, the date of the alleged incident, which occurred on a Saturday and Sunday. While Reed's memory of specific dates is not perfect since it has been approximately five years since the incident, and approximately four years since the trial, her testimony corroborated that of the

Applicant. She further testified that she had not been in contact with the Applicant since March 2002, and, in fact, had not known what had happened to him until she was contacted by PCR counsel.

Trial Counsel offered no explanation as to her failure, or the failure of her investigators, to attempt to locate Reed. The Court finds that this failure severely prejudiced the Applicant's right to a fair trial. While it is the role of the jury to gauge the credibility of the witnesses at trial, the Court finds that the testimony of Reed at the PCR hearing was credible.

The jury would have weighed the credibility of the testimony of the witness, and it is reasonable to assume that the outcome of the deliberations may have been different had this witness testified in light of the facts of this case. Trial Counsel articulated no trial strategy for the failure to investigate the Applicant's claims that he was with the witness at the time of the incident. **THE COURT THEREFORE FINDS AND CONCLUDES** that the Applicant has met his burden to establish both that his Trial Counsel was ineffective, and that prejudice resulted. Strickland, supra; Rule 71.1(e), SCRCP.

2. Cumulative Error

THE COURT FURTHER FINDS AND CONCLUDES that the Applicant has independently established a second ground for prejudice with the cumulative effect of Trial Counsel's error in her failure to investigate Sanders' alcohol use, her failure to move to continue the hearing to await the written results of the forensic testing, her failure to cross-examine the witnesses as to the discrepancy of the conflicting times of the incident, and her failure to investigate or interview Reed, the combination of which prejudiced the Applicant. Further, the Applicant has shown what benefit would have

accrued from the additional preparation. These failures cumulatively prejudiced the Applicant and adversely affected his right to a fair trial under the facts of this case. Green v. State, 351 S.C. 184, 569 S.E. 2d 318 (2002). Had Trial Counsel moved for a continuance to await the completion of the forensic testing to show the jury the results received one month after trial; had Trial Counsel called Reed as a witness, cross-examined the state's witnesses and victim as to the conflicting time of the incident, and cross-examined the victim as to her alcohol use and her credibility in identifying the Applicant as her assailant, it is reasonable to assume that the outcome of the trial would have been different.

Alcohol use by victim

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THE COURT FURTHER FINDS AND CONCLUDES that no trial strategy was articulated by Trial Counsel for her failure to investigate the credibility of Sanders with regard to her alcohol use. Trial Counsel did not investigate the reference to "ETOH treatment" set out in the history notes of the nurse who conducted the sexual assault examination of Sanders either by interviewing the nurse prior to trial, calling the nurse as a witness, cross-examining the State's physician witness, or by cross-examination of Sanders. Trial Counsel did not investigate the references to the odor of alcohol on Sanders noted by police at the time of the initial report either by interviewing the police officers, calling the officers as witnesses, or by cross-examination of Sanders. Trial Counsel merely made reference that alcohol had been consumed by Sanders during and after the incident as part of a confirmation of events Sanders claimed had transpired. The only evidence linking the Applicant to Sanders was Sander's identification of the Applicant. Trial Counsel's failure to investigate the impact of alcohol use prevented the

jury from considering Sanders' credibility in her identification of the Applicant as her assailant.

THE COURT FURTHER FINDS AND CONCLUDES that, while standing alone, the failure by Trial Counsel to investigate Sanders' use of alcohol does not establish prejudice, it is further evidence of the cumulative effect of trial counsel's ineffectiveness.

Failure to cross examine witnesses and victim

THE COURT FURTHER FINDS AND CONCLUDES that Trial Counsel articulated no trial strategy for her failure to adequately prepare for trial through her failure to call witnesses with regard to the conflicts in the timeline as to when the incident occurred. Trial Counsel did not call the officers who prepared the initial incident reports, or the nurse who performed the forensic interview and examination in reference to statements the victim made about the time the incident occurred. The victim then gave a differing account at trial after viewing the Applicant on the in-store video at the store where the victim said she initially met her assailant. It was reasonable for Trial Counsel to explore this issue in order to place reasonable doubt in the minds of the jury as to whether Sanders had accurately identified the Applicant as her assailant in light of her initial hesitancy to tell police she was completely sure that he was the same man. While the scope of a reasonable investigation depends on several issues, "at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Troedel v. Wainwright, 667 F. Supp. 1456, 1461 (S.D.Fla.1986), aff'd, 828 F.2d 670 (11th Cir. 1987).

Failure to ask for a continuance to await completion of forensic testing

THE COURT FURTHER FINDS AND CONCLUDES that Trial Counsel articulated no trial strategy for her failure to investigate the results of forensic testing being performed by South Carolina Law Enforcement Division on items submitted by police as the result of the sexual assault exam performed on Sanders, and on items collected by police from the Applicant's home. In fact, Trial Counsel testified that she was not aware that the SLED forensic report was outstanding at the time of trial in July 2003. The report, dated August 2003, does not indicate any evidence linking the Applicant to Sanders. Trial Counsel testified that had she known the report was not completed at the time of the trial, she could have requested a continuance. Trial Counsel gave no explanation as to why she did not know that the testing had not been completed. It is reasonable to assume that the outcome of the trial might have been different had Trial Counsel known whether all forensic testing was completed prior to trial. Had she requested a continuance to await the results, the resulting report, rendered one month later, could have been shown to the jury in order to stress that the only evidence linking the Applicant to the incident was Sanders' identification. Skeen, supra; Strickland, supra; Troedel v. Wainwright, supra.

THE COURT FURTHER FINDS AND CONCLUDES that while Trial Counsel's failure to ask for a continuance to await the completion of forensic testing does not, standing alone, establish prejudice, it is further evidence of the cumulative effect of trial counsel's ineffectiveness.

THE COURT FURTHER FINDS AND CONCLUDES that all other grounds raised by the Applicant are without merit and are denied.

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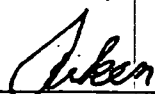
ORDER

IT IS THEREFORE ORDERED AND ADJUDGED that the application of Joseph Walker for post-conviction relief is hereby **GRANTED**. His convictions on the charges of Criminal Sexual Conduct - 1st Degree; and Kidnapping, are hereby **REVERSED**, and he shall be entitled to a new trial on those two charges.

SO ORDERED.

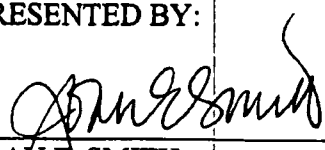


The Hon. Doyet A. Early, III
Presiding Judge, Second Circuit


_____, South Carolina

This the 24th day of May, 2007.

PRESENTED BY:



JOAN E. SMITH
SC Bar No. 66097
Attorney for Applicant

LAW OFFICES OF MIRSHAK & SMITH
1210 Wachovia Building
699 Broad Street
Augusta, GA 30901
(706) 722-1551

STATE OF SOUTH CAROLINA/
COUNTY OF AIKEN

FORM 4

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 05-CP-01939

MC _____ JR _____

Joseph Walker #162475

State of S.C.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

☐

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒

DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐

ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____

☐

ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at _____, South Carolina, this _____ day of _____, 20____.

PRESIDING JUDGE

This judgment/order was entered/filed on the 23 day of May, 2007, and a copy mailed/hand-delivered/boxed this 23 day of May, 2007 to attorneys of record or to parties (when appearing pro se) as follows:

Joan Smith

ATTORNEY(S) FOR THE PLAINTIFF(S)

Atty Gen
G.S.
Solicitor

ATTORNEY(S) FOR THE DEFENDANT(S)

L. Godard
CLERK OF COURT

By M. Anderson
DEPUTY CLERK