

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. Supreme Court

G. Thomas Cooper, Circuit Court Judge

Case No. 2012-CP-40-01543
Appellate Case No. 2013-001287

Randy Thomas, Petitioner

v.

State of South Carolina, Respondent.

APPENDIX
VOLUME TWO

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1 A Yes.

2 Q Do you recall going and showing Deputy Gonzales where
3 the rape had happened?

4 A Yes.

5 Q And did you take him upstairs to your parents'
6 bedroom?

7 A I believe so.

8 Q Do you recall whether or not other officers came to
9 the scene?

10 A Yes.

11 Q And do you remember their names or what they looked
12 like?

13 A A black female officer came, and I remember she was
14 upstairs. She had taken the comforter. I remember she
15 had a briefcase, like silver. It's in one of the
16 pictures.

17 Q Let me show you State's number -- you can kind of see
18 the corner, No. 15. Do you see it in there?

19 A Yes. It's right there on the corner.

20 Q That's her box, her suitcase?

21 A Yes.

22 Q And did you see her -- what, if anything, did you see
23 her do with items from that box?

24 A I know there's a black light. I saw her use the
25 black light to detect, I guess, any type of fluid. And

1 there was some sort of a stain on the bedspread, a little
2 bit on the floor, and she just went over. And they
3 dusted. They took lots of pictures. Very thorough.

4 Q And do you recall talking with an investigator, any
5 other male officers other than Deputy Gonzales?

6 A Yes, I did.

7 Q Describe him.

8 A I can't remember exactly how he looked. I may have
9 just talked to Gonzales, but I know that there was another
10 officer there.

11 Q Another male investigator?

12 A Yes, another investigator.

13 Q You said you saw, actually saw the black female
14 officer with the black light --

15 A Yes.

16 Q -- on the comforter. And you said that you saw some
17 fluid detected?

18 A Yes.

19 Q Where approximately on the comforter did you see the
20 fluid detected?

21 A Right by where the -- the nightstand was in the --

22 MS. DURANT: Your Honor --

23 THE COURT: Yes, hold on.

24 MS. DURANT: Objection. She doesn't know what
25 the black light's used for.

1 THE COURT: I'll sustain the objection. She's
2 not qualified to talk about that.

3 Disregard that last statement by the witness,
4 please, Mr. Foreman, ladies and gentlemen.

5 We're at a pretty good breaking point. It's a
6 little past 1 o'clock. Let's go ahead and break for
7 lunch.

8 Mr. Foreman, ladies and gentlemen, we will break
9 for lunch. I need for you to be back in your jury room at
10 2:30. We'll proceed with the case.

11 Don't discuss the case with anyone during this
12 break.

13 You're excused. Have a good lunch. We'll see
14 you back at 2:30.

15 Everyone else stay seated, please.

16 (The jury left open court at approximately 1:09
17 p.m.)

18 THE COURT: We'll resume at 2:30.

19 Ms. Byrd, again, do not discuss your testimony
20 during the break.

21 (A lunch break was taken.)

22 THE COURT: Is the State ready?

23 MS. COOPER: Yes, your Honor.

24 THE COURT: Is the defense ready?

25 MS. DURANT: Your Honor, we do have some motions.

1 we'd like you to consider.

2 THE COURT: All right.

3 MS. DURANT: First, your Honor, on our objection
4 to the Lyle issue regarding the Clemson incident being
5 allowed to come in, we would ask your Honor to make that,
6 our objection, contemporaneous with our argument when the
7 witness was first questioned about that incident. If
8 you'd be willing to do that, your Honor.

9 THE COURT: I will add that that notation can be
10 made. Quite honestly, whether I can do that or can't do
11 that I don't know. It was intended to be a
12 contemporaneous objection to when the witness went into
13 anything dealing with the Clemson incident; is that right?

14 MS. DURANT: Yes, sir.

15 THE COURT: All right.

16 MS. DURANT: That's correct.

17 And, your Honor, we would preferably ask for a
18 standing objection to any reference to the Clemson
19 incident or we can object each time.

20 THE COURT: I think once that objection has been
21 made, I would have to go back and read some of the cases.
22 I'm fairly sure that once I had the Lyle hearing and said
23 it was admissible, you still had to make your
24 contemporaneous objection, which you have done. I think
25 once you have done that, then I think it's a standing

1 objection and you don't have to object every time. But
2 there will be and I'll go ahead and note for the record a
3 standing objection to anything throughout the trial from
4 any witness concerning the Clemson incident that's the
5 subject of the Lyle hearing; is that correct?

6 MS. DURANT: Yes, sir.

7 THE COURT: All right.

8 MS. DURANT: And, your Honor, we also are going
9 to ask for a mistrial based on the fact that the Lyle
10 evidence was allowed to come in. As we said in our Lyle
11 hearing, we do feel that that is far more prejudicial than
12 probative to our client.

13 THE COURT: All right. That motion is denied.

14 MS. DURANT: And two more.

15 We would ask for a limiting instruction from
16 your Honor to the jury on how they may consider the Lyle
17 evidence. I think it was offered for a common scheme or
18 plan or motive or intent and we would ask for a limiting
19 instruction to the jury on how they may consider that if
20 they considered it evidence.

21 THE COURT: Do you have a proposed limiting
22 instruction?

23 MS. DURANT: Beg the Court's indulgence, your
24 Honor.

25 THE COURT: It has been awhile since I have

1 admitted Lyle evidence, and to be honest with you, I don't
2 know if the case law requires that, particularly when if
3 it's a common scheme or plan, I think the case law says
4 it's because of that that it is in fact admitted, but I
5 could be wrong. I'm open to suggestions, Ms. Durant.

6 MS. DURANT: Thank you, your Honor.

7 The instruction that we would ask for on the
8 merits, I think the general rule is that when evidence of
9 other crimes is admitted for a specific purpose, we would
10 ask that you instruct the jury to limit their
11 consideration of this evidence for the particular purpose
12 for which it is offered each time there's any testimony
13 about it.

14 THE COURT: Let me hear from the State on that.

15 MS. COOPER: Your Honor, I think the appropriate
16 time to make any instructions regarding the law or
17 evidence that's been admitted in this trial is during your
18 jury instructions. I recall hearing judges charge jurors
19 that evidence has been admitted of a prior bad act. It's
20 admitted for purposes of showing common scheme or plan
21 rather than -- and/or intent. I think the appropriate
22 time to address that with this jury is in your jury
23 instruction on the law.

24 THE COURT: I know that there are some limiting
25 instructions that are given at the time that the evidence

1 is offered. I believe if requested I think on burglary,
2 when relying on prior burglary convictions to make it a
3 burglary first, I think if the request is made, that a
4 limiting instruction is appropriate not only then at the
5 end of the trial but also at that particular time.

6 There's some other instance where I think it's
7 appropriate. I'm sort of at a loss right now on the Lyle
8 issue.

9 Do you have any cases where that was either done
10 or requested and not done? I've got no problem if it's
11 appropriate in giving a limiting instruction. I'm just
12 not sure that the appropriate time is right now, to be
13 honest with you.

14 MS. DURANT: Your Honor, I don't have any
15 regarding -- I have some related to the Enderick case, but
16 I don't have a case, but we will research that if your
17 Honor will grant us any time to do that regarding a
18 limiting instruction at the time. But we do feel that in
19 order for the jury to consider the evidence, I think it's
20 important that they hear when the evidence is presented.
21 I mean, that's when they are hearing it for the first
22 time, and I think that is when it's most important for
23 them to have that mind set when they first hear it that it
24 is for a limited purpose.

25 THE COURT: I'm going to deny the request to

1 make a limiting instruction at this time. I will consider
2 it in making an instruction when I'm charging the jury and
3 would ask both of you to do additional research and come
4 up with a proposed charge.

5 MS. DURANT: If I may, your Honor, I will hand
6 up the case related to a limiting instruction in State V
7 Timmons.

8 THE COURT: All right. That's fine.
9 And this is a case where it's given at the end
10 of the trial?

11 MS. DURANT: Yes, sir, that's my understanding.

12 MS. COOPER: Your Honor, if I may.

13 THE COURT: Wait one second while I finish
14 reading. All right.

15 MS. COOPER: It appears from reading the portion
16 concerning limiting instructions, that the Court is
17 required to give one to the jury from my understanding
18 because we're requesting that the evidence be introduced
19 to show common scheme or plan as well as motive and
20 intent; that the last sentence or two sentences, common
21 scheme or plan, therefore the trial judge erred in
22 refusing to give the requested limiting instruction.

23 THE COURT: Right. And I'm not refusing to give
24 it at the end of the trial. My question is whether to
25 give it at this point in time or whether to wait until the

1 end of the trial.

2 MS. COOPER: Okay.

3 MS. DURANT: Your Honor, if I may, our argument
4 would be for offering it now is that the jury's being
5 bombarded with a lot of information and we feel that at
6 the end it may all run together, so I feel that it's
7 important for them to have a limiting instruction at the
8 time related to the particular evidence being offered
9 then. I think that's the only way they can try to keep it
10 straight in their minds.

11 THE COURT: Anything else on that particular
12 point?

13 MS. DURANT: Not on that particular point, your
14 Honor.

15 THE COURT: All right. I think you said you had
16 another?

17 MS. DURANT: Yes, sir, your Honor.

18 Just for the record, I wanted to put our
19 objection to the items coming in. I don't think we
20 actually put it on the record, we approached the bench,
21 but we objected to them being introduced as evidence, the
22 State's exhibits, the comforter, the pants, and the
23 panties because chain of evidence has not been established
24 yet and they had been altered from the time they were
25 first taken into custody.

1 THE COURT: But I think those alterations were
2 testified to where there were parts that were either
3 circled or cut out; is that right?

4 MS. DURANT: Yes, sir. That's what she did, but
5 I don't think we've had any of the experts or the forensic
6 people to talk about that.

7 MS. COOPER: Your Honor, we plan to call chain
8 of custody witnesses to establish the chain. We were just
9 admitting the actual articles of clothing and the
10 comforter.

11 THE COURT: All right. The objection is now on
12 the record. If it wasn't clear before it is now clear,
13 and that objection is overruled. And as to the items
14 coming in, there's been no testimony and the Court would
15 not permit any kind of testimony concerning any tests that
16 may have been run or anything along those lines, but your
17 objection is noted and it is overruled.

18 All right. Going to --

19 MS. DURANT: And we have one more, your Honor.

20 THE COURT: Excuse me. Okay, go ahead.

21 MS. VANGINHOVEN: Your Honor, I understand your
22 ruling, but we'd like at this point to preserve the record
23 regarding the burden shifting objection that we had and
24 we'd just like to make a motion for mistrial at this time
25 based on those comments and to ask you to consider that to

1 be a contemporaneous motion when I objected to it during
2 the opening statement. We understand your ruling on that.
3 It's just to preserve the record.

4 THE COURT: All right. The ruling would remain
5 the same. Thank you.

6 I am going to attempt to give the jury a
7 limiting instruction when they come in. And I haven't
8 written anything out and no one's handed anything up.
9 What I'm thinking in terms of is something along the lines
10 that there has been evidence admitted in this case
11 concerning an incident that allegedly occurred at Clemson;
12 that that evidence was admitted for a limited purpose, and
13 if the jury believes it to be true, only on the issues of
14 whether or not it establishes a common scheme or purpose
15 or motive or intent, and it can be considered only for
16 those purposes.

17 Now, is there any objection to that?

18 MS. DURANT: Your Honor, we'd just request that
19 one thing be added to that. We thank you for the limiting
20 instruction, but would add that if they give it as much
21 weight as they feel --

22 THE COURT: Yes, I'll include that they can
23 consider it if they believe it true only on these issues
24 and to be given whatever weight, if any, that the jury
25 determines it is entitled.

1 MS. DURANT: Thank you.

2 THE COURT: Does the State have any objection?

3 MS. COOPER: No, your Honor, that's fine with
4 us.

5 THE COURT: I will do that immediately upon the
6 return to the courtroom by the jury.

7 MS. DURANT: Thank you, your Honor.

8 THE COURT: Anything further?

9 MS. DURANT: Nothing further from the defense,
10 your Honor.

11 THE COURT: Anything from the State?

12 MS. COOPER: No, sir, your Honor.

13 THE COURT: Ms. Byrd, if you'll come up and have
14 a seat, please.

15 Be sure your witnesses are not in the courtroom.
16 Again, I don't know who they are.

17 Let's get the jury back in, please.

18 THE BAILIFF: Be glad to, your Honor.

19 THE COURT: We were still on direct, I believe;
20 is that right?

21 MS. COOPER: Yes, sir, your Honor.

22 (The jury came into open court at approximately
23 2:55 p.m.)

24 THE BAILIFF: The jury's all present, your
25 Honor.

1 THE COURT: Thank you.

2 Mr. Foreman and ladies and gentlemen, before we
3 resume, I need to at this time give you what is called a
4 limiting instruction, and that is this: There has been
5 introduced in this case some evidence of an alleged
6 incident that occurred at Clemson University. This
7 evidence was admitted for a limited purpose and can be
8 considered by the jury, if you consider it to be true,
9 only for the limited purpose for which it was admitted,
10 and that was on the issue of whether it goes to the issue
11 of whether there was a common scheme or plan or whether it
12 goes to show intent or motive.

13 It can be considered by the jury, if you
14 consider it true, only on those issues and would be given
15 such weight, if any, that you, the jury, determine it
16 should be afforded. That is the only reason and that was
17 the purpose that that evidence has been admitted.

18 All right. We will proceed.

19 Any objections or additions to the instructions
20 just given?

21 MS. COOPER: None from the State, your Honor.

22 THE COURT: From the defense?

23 MS. DURANT: No, your Honor.

24 THE COURT: All right. We will continue with
25 the direct examination, Solicitor.

1 MS. COOPER: Thank you, your Honor.

2 BY MS. COOPER:

3 Q Good afternoon, Lauren.

4 A Good afternoon.

5 Q Lauren, before we broke for lunch I was asking you
6 questions about a female officer that was called to your
7 house. Do you recall that line of questioning?

8 A Yes.

9 Q You indicated you saw her with a black light on the
10 bed comforter?

11 A Yes.

12 Q Did you see her collect the bed comforter?

13 A Yes, I did.

14 Q Now, do you recall her taking photographs of your
15 residence?

16 A Yes.

17 Q In fact, all these photographs that we have shown to
18 the jury, are these photographs that she took?

19 A Yes.

20 Q You saw her take them?

21 A I saw her take them.

22 Q I believe we've already admitted State's No. 48. Do
23 you recall that photograph?

24 A Yes.

25 Q And I'm going to show you State's No. -- if you

1 could, just look at each photograph, look at the back and
2 read out the number of that exhibit and indicate that you
3 recognize or do not recognize the photograph.

4 A I just read this number, 58?

5 Q Yes, ma'am.

6 A Okay. Fifty-eight. I do recognize it.

7 Q Okay. And the next?

8 A Fifty-seven, and I do recognize it. And fifty-six,
9 and I recognize that. Fifty-five, I remember that.
10 Fifty-two, and I remember that. Fifty-three, I recognize
11 that. Fifty-four, and I also recognize that.

12 Forty-nine, I recognize that. Forty-seven,
13 forty-six, I recognize both of those.

14 Fifty-one and fifty, I recognize both of those.

15 Q And what are all those photographs of?

16 A Of my arms, legs, of me.

17 Q Okay. What day is that?

18 A That was the day of the incident when they came and
19 took pictures of the evidence at the house.

20 Q October 30th?

21 A Yes, October 30th.

22 MS. COOPER: Your Honor, at this time I would
23 seek to introduce the photographs into evidence.

24 THE COURT: Take a look at them and see if
25 there's any objections.

1 MS. DURANT: We have seen all these, your Honor.
2 There is no objection.

3 THE COURT: Without objection, State's 46, 47,
4 49, 50, 51, 52-3-4-5-6-7 and 58 are admitted.

5 MS. COOPER: Thank you, your Honor.

6 (WHEREUPON, State's Exhibits Nos. 46, 47, 49,
7 50, 51, 52, 53, 54, 55, 56, 57, 58 were admitted into
8 evidence.)

9 BY MS. COOPER:

10 Q And the same officer took those photographs of you?

11 A Yes.

12 Q And in those photographs, could you tell whether
13 there was any bruising or any injuries on those
14 photographs?

15 A There is a scratch.

16 Q Okay.

17 A And there was no bruising in those photographs.

18 Q Did you eventually bruise?

19 A Yes, I did.

20 Q How long did it take you to bruise?

21 A Approximately two days later.

22 Q Do you recall where you develop bruises?

23 A Yes, I remember I had bruises on the side of my
24 wrists, both wrists, and on my bicep.

25 Q And biceps on which arm?

1 A My right arm.

2 Q And where else did you suffer bruising?

3 A On my calves from the beam.

4 Q When he dragged you off the beam?

5 A Right.

6 Q And you mentioned the scratches. Is that depicted in

7 State's 53?

8 A Yes.

9 MS. COOPER: Your Honor, may I publish the
10 photographs to the jury?

11 THE COURT: All right.

12 BY MS. COOPER:

13 Q When you got done talking to the officers at your
14 parents' house and the photographs were taken, where did
15 they ask you to go from there?

16 A To the hospital.

17 Q What did they ask you to do at the hospital?

18 A They asked me to remove my clothes and put them in
19 some sort of -- or they put them in a bag. I saw the
20 officer, the lady officer take those.

21 Q And is that the same lady officer that collected the
22 bed comforter?

23 A Yes.

24 Q And she took your panties?

25 A Uh-huh.

- 1 Q What items of clothing did you see her take?
- 2 A All three pieces of clothing were together.
- 3 Q Okay. So the panties, the shirt, and pants?
- 4 A Yes.
- 5 Q Did you get examined by any nurses or doctors?
- 6 A Yes, I did.
- 7 Q Describe what you had to undergo at the hospital.
- 8 A It was unreal. It was very traumatizing. I remember
9 crying the entire time. It was so -- I can't find the
10 words. I remember when he had to examine the --
- 11 Q Who is "he," the doctor?
- 12 A The doctor who did the pelvic exam. That was so
13 uncomfortable I remember crying. I didn't even want to
14 unfold my legs. I was just very upset.
- 15 Q And what other things did the doctors do to you while
16 you were at the hospital?
- 17 A They -- I remember they -- I think they scraped, I
18 don't remember exactly, but I remember they like kind of
19 scraped off my skin a little bit. I remember they got
20 hairs. They got hairs from my head. They did the exam,
21 the physical exam.
- 22 Q And so you had to undergo more examination?
- 23 A Right.
- 24 Q How long do you think you were at the hospital?
- 25 A I was there until -- I remember it was dark. It was

1 late, later that night.

2 Q Several hours later?

3 A Yes.

4 Q Do you recall who came and got you from the hospital?

5 A My mother drove back down. My neighbors had called
6 my momma, and her and my sister came down. Ashley Mishoe
7 came, was in the hospital room, and I think that's it.

8 Q From the hospital where did you go from there?

9 A I went back to my home.

10 Q Do you remember how it was that you got to the
11 hospital from the house, from your parents' house?

12 A Yes. I was crying; I didn't want to go. I was
13 really shaken up and I felt kind of like it was out of
14 body, just really crazy. I kind of like had flashbacks.
15 I didn't want to go in the house. My momma had one arm.

16 Q And I think my question is this: From the house, how
17 did you get from the house to the hospital?

18 A With my mother's van.

19 Q Okay. Did you drive to the hospital?

20 A Yes, but I couldn't drive the car.

21 Q Who drove the car?

22 A I think my momma went back another day, it might have
23 been the next day to go pick it up.

24 Q So you drove your mom's car to the hospital?

25 A Yeah, I followed -- yes.

1 Q You followed the investigator?

2 A I followed the investigator.

3 Q Do you recall making any phone calls along the way?

4 A Yes.

5 Q Who did you call?

6 A I called Ashley.

7 Q All right. Have you had an opportunity to review a
8 recording from that conversation?

9 A Yes.

10 MS. COOPER: Your Honor, at this time the State
11 seeks to introduce State's Exhibit No. 60 into evidence.

12 THE COURT: Did she identify that this is the
13 one that she heard?

14 BY MS. COOPER:

15 Q Is this the recording -- have you had a chance to
16 rehear this recording of the conversation or the message
17 that you left for Ashley on your way to the hospital?

18 A Yes.

19 Q Is that your voice?

20 A Yes.

21 Q Is that on the day of the incident?

22 A Yes.

23 MS. COOPER: Your Honor, at this time I'd seek
24 to introduce No. 60 into evidence.

25 MS. DURANT: We'd like to renew our objection.

1 THE COURT: Same objection as earlier?

2 MS. DURANT: Yes, sir, and the other objection.

3 THE COURT: All right. The objection is
4 overruled. State's 60 is admitted.

5 MS. COOPER: Thank you, your Honor.

6 (WHEREUPON, State's Exhibit No. 60 was admitted
7 into evidence.)

8 BY MS. COOPER:

9 Q Now, there are portions that are inaudible, so listen
10 carefully, and when we're done playing it, I need you to
11 repeat what you said, okay?

12 A Okay.

13 (Audiotape being played.)

14 BY MS. COOPER:

15 Q Do you recall leaving that message for Ashley on her
16 cell phone?

17 A Yes.

18 Q Can you repeat for the jury what it is you said to
19 her in the message?

20 A I said, He came back, I'm on my way to the hospital,
21 he took Zach, he had a knife.

22 Q What happened when you got back from the hospital to
23 your residence, your parents' house?

24 A My mother had to help me go back inside. I didn't
25 want to go back inside.

1 Q Why didn't you want to go back inside?

2 A I felt -- I felt really dizzy. I felt -- I was just
3 overcome with like emotion, seeing all that again.

4 Q Lauren, did you have sex with that man against your
5 will?

6 A Yes, I did.

7 Q Did you want to go upstairs to your parents' bedroom?

8 A No, I did not.

9 Q When you were in the kitchen, when he had the knife
10 to your neck, you indicated you didn't want your parents
11 to see you that way?

12 A Right.

13 Q Describe how you regard your parents.

14 A I love my parents. They're -- I hate to see them
15 upset, I hate to see them worried.

16 Q Do you respect them?

17 A Yes.

18 Q Would you ever have sex voluntarily with anyone on
19 their bed?

20 A No, I would not.

21 Q Between the incident that happened at Clemson and the
22 incident that happened on October 30th at your house,
23 your parents' house, did you have an opportunity to see
24 Randy Thomas during that interlude or had he come by your
25 house?

1 A I know at one point he did come by the house. I'm
2 not sure about the date. I'm not even sure if it was
3 after the incident in Clemson, but I know that he did come
4 by the house at one point.

5 Q Who was at your house with you when he stopped by?

6 A His friend James.

7 Q And who was with you?

8 A My father, my daddy.

9 Q And you feel safe around your father?

10 A Yes, I do.

11 Q Did anything happen between the two of you with your
12 father there?

13 A No.

14 Q The man that took you against your will up to your
15 parents' bedroom and then raped you and kidnapped your
16 child, do you see him in the courtroom?

17 A Yes, I do.

18 Q Could you please point him out to the jury?

19 A He's right there.

20 Q Could you describe what shirt he's wearing?

21 A A blue shirt.

22 MS. COOPER: Your Honor, let the record reflect
23 that she has identified the defendant.

24 THE COURT: Yes.

25 BY MS. COOPER:

1 Q Lauren, do you have an appointment tomorrow at
2 school?

3 A Yes.

4 Q What do you have?

5 A I have an organic chemistry test.

6 Q Are you going to go take that test?

7 A I don't have to. I mean, I can stay, but I would
8 rather take the test.

9 Q Has this been a pleasant experience for you?

10 A No.

11 MS. COOPER: Beg the Court's indulgence, your
12 Honor.

13 Thank you, Lauren. Please answer any questions
14 the defense may have.

15 THE COURT: All right. Cross-examine, please.

16 MS. DURANT: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MS. DURANT:

19 Q Good afternoon, Lauren.

20 A Good afternoon.

21 Q You started dating Randy when you were what, 18, 19?

22 A Eighteen, I believe.

23 Q And when you went to Clemson you wanted him to come
24 up there with you?

25 A Yes.

- 1 Q You were in love with him?
- 2 A Yes.
- 3 Q And you wanted to be with him?
- 4 A Yes.
- 5 Q And he stayed with you when you came to Clemson?
- 6 A Yes.
- 7 Q He stayed with you on weekends and he stayed with you
8 during the week sometimes?
- 9 A Yes.
- 10 Q And Zach was living with you also?
- 11 A Yes.
- 12 Q And Zach stayed with you during the week and
13 sometimes he went to your parents on weekends?
- 14 A Right.
- 15 Q So Randy was at your apartment with you and Zach?
- 16 A Right.
- 17 Q Most of the time?
- 18 A Yes, most of the time.
- 19 Q In fact, he used your address as his address?
- 20 A Yes.
- 21 Q And sometimes Zach stayed with Randy by himself?
- 22 A That's true.
- 23 Q Randy babysat Zach a lot of times?
- 24 A Not often, but he did. He has watched Zach before.
- 25 Q And sometimes he would take Zach for rides?

1 A Huh?

2 Q Sometimes he would take Zach to ride in the car to
3 come pick you up or take you to class?

4 A Yes.

5 Q Zach, they had a relationship?

6 A They did have a relationship.

7 Q Zach called Randy daddy sometimes, didn't he?

8 A Yes, he did.

9 Q I'm sorry, I didn't hear you?

10 A Yes.

11 Q Randy worked at the apartment complex for awhile,
12 didn't he?

13 A For like a split second.

14 Q Well, he did work there for awhile?

15 A Yes, he did for maybe a week.

16 Q But he did work there?

17 A Yes.

18 Q And I think he was seeking employment during that
19 time; isn't that true?

20 A That's what he keeps saying, yes.

21 Q Pardon?

22 A That's what he says. He wasn't really active in
23 seeking it.

24 Q Well, he was seeking employment, though, during that
25 time?

1 A Sure.

2 Q You said that you met Randy when you were dating Eric
3 Elsey?

4 A Right.

5 Q And about a month after you met Randy you started
6 dating him?

7 A Right.

8 Q And they were actually roommates, I think?

9 A Right.

10 Q And you were still seeing Randy and you had started
11 seeing Mike Anderson shortly after that; isn't that true?

12 A No, I was not seeing Randy.

13 Q Well, you and Randy broke up -- I think you testified
14 at an earlier hearing that you and Randy broke up the end
15 of July?

16 A Right, and then I went back to Clemson yesterday and
17 got another statement and found that it was actually
18 August 9th.

19 Q So you actually broke up August 9th?

20 A Technically, yes.

21 Q And I think you testified that you were seeing Mike
22 Anderson on August 21st?

23 A Right.

24 Q In fact, you had spent the night at Mike's house that
25 night?

1 A Right.

2 Q So if you and Randy broke up on August 9th, you had
3 just started seeing Mike?

4 A Well, we had been -- we had met or we were friends
5 earlier. We had just started seeing each other.

6 Q When you were seeing Randy you knew his mother?

7 A Yes.

8 Q I think you said her name was Margaret Mitchell?

9 A Right.

10 Q She came to visit you in Clemson?

11 A Yes, she has.

12 Q And she kept Zach sometimes, too, didn't she?

13 A Yes, she did.

14 Q As far as your parents' home in Columbia, Randy had
15 been there with you on prior occasions?

16 A He's been to the home, my home in Columbia?

17 Q Right.

18 A Yes.

19 Q So he's visited with you and your parents at their
20 home in Columbia?

21 A Yes.

22 Q And that was during the period you were dating prior
23 to all of this?

24 A Right.

25 Q When you -- after the incident in Clemson you didn't

1 go to the hospital, did you?

2 A No, I did not.

3 Q You took out a trespass notice?

4 A Right.

5 Q And I think the purpose of that was just to keep him
6 away from that apartment?

7 A Right, because I couldn't get a restraining order.

8 Q What was your cell phone number during that time?

9 You talked about your cell phone earlier.

10 A During October?

11 Q Uh-huh.

12 A It was the same number,

13 Q I think you testified at an earlier hearing also that
14 between the August incident at Clemson and the incident in
15 Columbia, that you had not talked to Randy? I think you
16 first testified to that at an earlier hearing?

17 A Right. I said that he had called from different
18 numbers and emailed me and I never returned the e-mails.

19 Q And you never talked to him on the telephone?

20 A Not that I can recall.

21 Q When you -- after the incident in Columbia, you gave
22 a statement; isn't that true?

23 A Yes, I did.

24 Q Do you have a copy of your statement with you?

25 A Not right here.

1 Q Now, is that your signature at the bottom of that
2 statement, Lauren?

3 A Yes, it is.

4 Q If we could look at that statement a moment.

5 You said that he, Randy, came in, he started to
6 apologize, about halfway down the page, I kept cutting him
7 off, I wasn't really scared of him at that point.

8 Do you see that in your statement?

9 A Uh-huh. That's what it says.

10 Q And you gave this statement on what date,
11 November 1st?

12 A Yes, it's the 1st.

13 Q That's two days after the incident in Columbia,
14 right?

15 A Uh-huh.

16 Q So it was very fresh in your mind at that point?

17 A Yes.

18 Q So on this page it says that you were not really
19 scared of him at that point when he first came in, right?

20 A Right.

21 Q Let's go down a little ways. Let's go back to the
22 top.

23 You said he knocked on the door and just walked
24 in.

25 The door wasn't locked?

1 A No, it was not.

2 Q You say in here, too, about halfway down that he
3 grabbed my wrist, do you see that?

4 A Yes.

5 Q And if you can go over to the next page. About a
6 third of the way down you said he grabbed my wrists again.

7 A Okay.

8 Q And if you keep going a couple of sentences later,
9 you said, grabbed the beam at the top of the stairs with
10 my hands?

11 A Yes.

12 Q I think you had testified earlier when Ms. Cooper was
13 talking to you that you were really terrified when he
14 first came in, that you remembered the Clemson incident?

15 A Yes.

16 Q Okay. If you go on down on the second page, you're
17 saying that he's taking you upstairs at this point with
18 your testimony; I asked him what he wanted and he told me
19 to get on the bed. Are you with me? Do you see that?
20 It's about a third of the way down. He asked me again and
21 he told me not to make him mad.

22 A Yes.

23 Q What is that next statement?

24 A I believed that he would leave us alone, but I still
25 couldn't do it.

1 Q So in your statement you're saying while you're
2 upstairs in the bedroom that you believed that he would
3 leave you alone, that's in your statement?

4 A Right. I meant --

5 Q That's okay.

6 MS. COOPER: Your Honor, she's allowed to
7 explain what she meant.

8 THE COURT: She may explain her answer. Go
9 ahead.

10 THE WITNESS: I meant by that statement that I
11 believed if I'd had done what he had told me to do then he
12 would have left us alone at that point, but I still
13 couldn't do it is what I'm saying.

14 BY MS. DURANT:

15 Q So your testimony was that you were terrified of him
16 and you believed if you did what he wanted you to do that
17 he would leave you alone?

18 A Right.

19 Q But you still couldn't do what he was asking you to
20 do?

21 A Right, I still couldn't do it.

22 Q If you go down a little bit farther, you said, He
23 held my hands above my head by my wrists.

24 A Yes. Yes, I see it.

25 Q Is there anywhere in your statement -- I think you

1 testified earlier that he threw you on your back?

2 A Yes.

3 Q Do you see that in your statement? About a third of
4 the way from the bottom --

5 A It said he had turned me around.

6 Q And what was the next part?

7 A And I was laying on my back, lying on my back.

8 Q So there's nothing that says he threw you on your
9 back, is there?

10 A He had turned me around.

11 Q Right. During this time upstairs you said you'd
12 gotten the impression that he was going to kill himself,
13 right?

14 A Yes.

15 Q And on the third page you talk about you fell down
16 over a stool, about two-thirds of the way down?

17 A I fell down over the stool, right.

18 Q Could you read those next two sentences, please?

19 A He grabbed my arms while I was still on the ground
20 and he started to drag me. There's a beam in my house
21 that I grabbed with my leg.

22 Q Could you read the next sentence?

23 A He kept pulling on me and it really hurt, so finally
24 he broke me loose.

25 Q I think you testified earlier that you were

1 struggling during the entire time that he took your
2 panties and pants off?

3 A Right.

4 Q Do you see anything to that effect in your statement?

5 A That I, quote, unquote, struggled?

6 Q On page two I think you just said, he took my pants
7 and panties off.

8 A Right.

9 Q What's that next sentence, I was still? I'm sorry, I
10 went back to page two.

11 A Yes.

12 Q But that was your statement, that he took my pants
13 and panties off, I was still?

14 A Afterwards.

15 Q Let's go back to page three again. You had testified
16 that you were in the kitchen or that you got scared?

17 A That I was in the kitchen, yes.

18 Q And you told him that you loved him?

19 A Yes, I did.

20 Q In the next to the last sentence you said, he told me
21 to get in his car and not to cry; is that true? It's at
22 the bottom of the page.

23 A Yes.

24 Q And what's that next sentence?

25 A All three of us walked outside.

1 Q So all three of you were walking out at the same
2 time?

3 A Right.

4 Q And Randy had picked Zach up at this point?

5 A Yes.

6 Q When you walked outside you screamed to the neighbor?

7 A Right.

8 Q And Randy was still holding Zach at that point?

9 A Yes.

10 Q You said, I heard a door slam and I turned around.
11 Could you read that next sentence, I saw Zach?

12 A Is this on page four?

13 Q Right.

14 A After what sentence?

15 Q You said, I heard a door slammed and so I turned
16 around; I saw Zach sitting in the front driver's seat.

17 A Yes.

18 Q Could you just read that sentence, please?

19 A I saw Zach sitting in the front driver's seat in
20 Randy's lap.

21 Q There's nothing in that description about seeing Zach
22 crying?

23 A He was crying.

24 Q I mean, there's nothing in your statement about that;
25 isn't that true?

1 A No, there's not.

2 Q And if we go down almost to the bottom of that
3 paragraph, at this point you had said Randy had Zach in
4 the car. They turned around.

5 So Randy turned his car around and let Zach out
6 of his car?

7 A Uh-huh.

8 Q So Randy had pulled out of the driveway, correct?

9 A Yes, he had pulled out of the driveway.

10 Q And started going down the street?

11 A He started going down the street.

12 Q Towards the -- to the left?

13 A Yes.

14 Q Towards a cul-de-sac down there that branches off of
15 that street; isn't that true?

16 A He didn't go down the cul-de-sac.

17 Q No, but I mean that he went in that direction?

18 A Right.

19 Q Then your testimony, in your statement you said Randy
20 turned his car around to come back towards you?

21 A No, he didn't come back towards me.

22 Q What's in your statement?

23 A He had turned around but he didn't approach me.

24 Q But he turned his car around and let Zach out?

25 A Yes.

1 Q He then turned around again and left?

2 A Right, in a circle.

3 Q During the time that you -- what time did you arrive
4 at the hospital that day?

5 A Later that afternoon. I don't remember the exact
6 time.

7 Q Was it an hour, two hours, three hours?

8 A I can't put a definite time on it. It was a couple
9 of hours. It took awhile for the police to get there and
10 then they had to take pictures.

11 Q When you went to the hospital, you were there for
12 awhile?

13 A Yes.

14 Q And you were given some aftercare instructions when
15 you left?

16 A I could have.

17 MS. DURANT: May I approach the witness, your
18 Honor?

19 THE COURT: All right.

20 THE WITNESS: Oh, yes.

21 BY MS. DURANT:

22 Q Do you recognize that?

23 A Yes.

24 Q And that's your signature?

25 A Yes.

1 Q And can you read at the top the diagnosis that's
2 highlighted?

3 A Sexual assault without evidence of trauma.

4 Q And you signed that?

5 A Yes.

6 Q When you and Randy were in Clemson and you had said
7 you were trying to break up with him, I think you said you
8 felt sorry for him?

9 A Uh-huh.

10 Q And you'd tried to break up with him several times?

11 A Yes.

12 Q And feeling sorry for him, that must have been very
13 difficult for you?

14 A Feeling sorry for him was difficult for me?

15 Q I mean breaking up with him?

16 A No, I wanted to break up with him, but seeing him I
17 felt bad.

18 Q So that was a difficult thing for you to do?

19 A It was difficult for me to see him so upset, yes.

20 Q And I think you testified that in Columbia when you
21 were in the kitchen on October 30th that you were into
22 survival mode?

23 A Yes.

24 Q And you were terrified and were trying to do anything
25 you could?

1 A Yes.

2 MS. DURANT: Beg the Court's indulgence, your
3 Honor.

4 THE COURT: All right.

5 BY MS. DURANT:

6 Q Lauren, you testified that you talked with Officer
7 Gonzales?

8 A Yes.

9 Q And you told him about the sexual intercourse?

10 A I had told him about the oral and he asked me to tell
11 him about all of it, oral and vaginal.

12 Q You told him there was full penetration, didn't you,
13 or there was no vaginal penetration?

14 A I explained to him that I didn't know if it was
15 vaginal penetration because it only went halfway, and he
16 was like, that is vaginal penetration.

17 Q Officer Gonzales told you that was vaginal
18 penetration?

19 A Yes.

20 Q Just a couple of questions. You said Zach was
21 wearing the Spider-Man outfit when Randy came in?

22 A Right.

23 Q And that was something his mother had sent you,
24 Randy's mother purchased that and then sent it to you?

25 A Yes, in the mail.

1 MS. DURANT: No further questions, your Honor.

2 THE COURT: All right. Any redirect?

3 MS. COOPER: Briefly, your Honor.

4 REDIRECT EXAMINATION

5 BY MS. COOPER:

6 Q Lauren, can you tell the jury how many pages your
7 written statement to the Richland County Sheriff's
8 Department is?

9 A Six.

10 Q When did you give that statement?

11 A November 1st.

12 Q So two days after this incident?

13 A Right.

14 Q And do you recall who you met with?

15 A Yes.

16 Q And who was that?

17 A It was Officer Godfrey.

18 Q Is that him right there seated at the State's table?

19 A Yes.

20 Q Ms. Durant went over a few areas of your statement.
21 Could you please -- she asked you about the sentence, I
22 wasn't really scared of him at that point, on page number
23 one?

24 A Uh-huh.

25 Q If you could read the four sentences that follow that

1 to put it in context, starting with, I wasn't really
2 scared of him at that point.

3 A Three or four sentences into that?

4 Q Continue reading four more sentences.

5 A Okay. I wasn't really scared of him at that point
6 because I thought he was really sorry. He was crying and
7 then hysterical. I just kept telling him to leave. I
8 told him to leave several times.

9 Q One more sentence.

10 A I think that he knew that he wasn't getting through
11 to me.

12 Q Then you were asked on page number two about your
13 wrists being grabbed?

14 A Right.

15 Q And I think it's five lines down you were asked about
16 the sentence, He grabbed my wrists again?

17 A Uh-huh.

18 Q Read the seven following sentences. Just read and I
19 will tell you when to stop.

20 A Okay.

21 Q To put this statement or sentence into context.

22 A Okay. I got turned around and he bearhugged me from
23 behind trapping my arms and he carried me halfway up the
24 stairs. I squirmed out of his arms. He grabbed me and
25 picked me up again like a child. I told Zach to stay

1 there. He carried me up the stairs. I grabbed the beam
2 at the top of the stairs with my hands. He grabbed my
3 feet and dragged me into my parents' bedroom. The room is
4 right next to --

5 Q Okay. That's good.

6 Then you were asked about your shirt being
7 removed and how you still couldn't do it even though you
8 knew he would probably leave you guys alone?

9 A Uh-huh.

10 Q If you could, start reading, I believe that, and then
11 continue reading and I will tell you when to stop to put
12 that into context.

13 A I believed that he would leave us alone but I still
14 couldn't do it. He ended up doing it. I was crying. He
15 took my pants and panties off. I was still. When he got
16 up to take his pants off, I got up and tried to walk out.
17 He was blocking the door and we had another struggle.

18 Q Okay. Then you were asked how you ended up on your
19 back on the bed?

20 A Uh-huh.

21 Q Starting that he ejaculated in my mouth, can you read
22 that sentence in context, please?

23 A He ejaculated in my mouth and I spit it on the
24 bedspread. That made him mad. He turned me around and I
25 was laying on my back. He held my hands above my head by

1 my wrists and told me not to move.

2 Q Okay. And so when he turns you around is he gentle
3 with your body when he turns around or did he throw you?

4 A No, he was not gentle with my body.

5 Q Okay. Then page number three you're asked about the
6 kitchen when he grabbed the knife and put it to your neck.
7 Towards the bottom it says, I was sure I was going to die
8 then?

9 A Yes.

10 Q Can you please read that sentence and continue until
11 I tell you when to stop so that that can be put into
12 context as well?

13 A I was sure I was going to die then. This was the
14 first time that I stopped crying. I told Randy that I
15 understood what he was doing and that he hadn't done
16 anything wrong. I told him that I loved him. He left
17 off. He turned me around and placed the knife to my neck.
18 I could feel the tears on the back of my neck, his tears
19 on the back of my neck. I told him that I didn't want my
20 parents to see me like this.

21 Q Okay. Stop there.

22 So when you told him that you loved him and that
23 you didn't think he had done anything wrong to you, was
24 that -- were you trying -- was that the truth?

25 A No, that was not the truth.

1 Q What was the point of you telling him these things?

2 A So that he would let off so that -- because
3 apparently my tactic of trying to fight him off didn't
4 work.

5 Q Now, then you were asked about how -- there's an
6 insinuation that the three of you, meaning you, Zach, and
7 the defendant, Randy, walked out like one big happy
8 family. Could you please put this in the context when you
9 were asked about the sentence, All three of us walked out,
10 starting with he told me that he wanted to take a drive,
11 to put that into context?

12 A He told me that he wanted to take a drive. He picked
13 up Zach and told me that he had a knife in his back
14 pocket. He told me to get into his car and not to cry.
15 All three of us walked outside. I saw the knife in his
16 back pocket.

17 Q Okay. And, again, that's when he's carrying Zach; is
18 that correct?

19 A Yes.

20 Q Then you were asked on cross-examination how you
21 screamed to your neighbor, Katria, but she didn't respond
22 at the very top page, number four?

23 A Uh-huh.

24 Q Can you describe how it is that you first tried to
25 make contact with your neighbor Katria?

1 A It says, I looked at my neighbor Katria who was
2 mowing the lawn and mouthed to me, help me.

3 Q So you did not scream; isn't that true?

4 A Right.

5 Q Then you were asked concerning the fact that you left
6 out in your statement that Zach was crying?

7 A Right.

8 Q Where is it in your statement that Zach was wearing a
9 Spider-Man outfit?

10 A Nowhere.

11 Q Does that mean he wasn't wearing a Spider-Man outfit?

12 A No.

13 Q So the fact that you did not put Zach is crying in
14 your statement --

15 MS. DURANT: Your Honor.

16 THE COURT: Pardon me. Hold on.

17 MS. DURANT: Objection, your Honor. I think the
18 Solicitor's testifying.

19 THE COURT: Well, when a portion of a statement
20 is admitted, the other side is entitled, of course, to
21 present anything else in the statement to make it, to give
22 it, the context of what the statement or what was being
23 said, and I think I almost have to allow some limited
24 leading to get to that point. I overrule the objection.
25 You may continue.

1 MS. COOPER: Thank you.

2 BY MS. COOPER:

3 Q So the fact that you failed to write in your written
4 statement that Zach was crying when you saw him on Randy's
5 lap in his car in the driver's seat, does that mean that
6 it wasn't happening?

7 A No, it was happening.

8 Q Then you were asked about your aftercare instructions
9 when you were discharged from the hospital.

10 A Uh-huh.

11 Q At the top it indicates, what does it say?

12 A Sexual assault without evidence of trauma.

13 Q Okay. Have you ever said that your vagina was torn
14 in any way by the vaginal penetration of that man in your
15 vagina?

16 A No, I did not.

17 Q And, in fact, how far was he able to get his penis
18 inside of you?

19 A Halfway.

20 Q And did he tear your vagina in any manner?

21 A No.

22 Q In fact, you were not even aware; isn't it true?

23 A Right.

24 Q That that constitutes vaginal penetration?

25 A Right.

1 Q Who had to inform you of what the law is?

2 A The officers.

3 MS. COOPER: Thank you, Lauren.

4 THE COURT: All right. Any recross?

5 MS. DURANT: Yes, your Honor.

6 THE COURT: All right. You're limited this time
7 around, Ms. Durant.

8 RE-CROSS-EXAMINATION

9 BY MS. DURANT:

10 Q Lauren, you took quite a beating that day and you
11 were terrified?

12 A Yes, I was.

13 Q I mean, he grabbed your wrists several times, he held
14 your arms above your head, he dragged you up the stairs,
15 you were kicking, you grabbed the beams with your hands,
16 you grabbed beams with your legs so much that it hurt?

17 A Right.

18 Q And he had a knife to your throat and he took your
19 child out and it was a terrifying day.

20 A It was.

21 Q And you took quite a beating?

22 A Yes.

23 Q And those are the pictures from that day?

24 A It was of that day.

25 MS. DURANT: Thank you. No further questions,

1 your Honor.

2 THE COURT: All right. You may step down.

3 MS. COOPER: Your Honor, in case she has to take
4 the exam, may she be excused?

5 THE COURT: She's excused for that purpose.

6 MS. COOPER: Thank you.

7 THE COURT: Before you call your next witness,
8 let me just ask the jury, we've been going about an hour
9 or a little over an hour. Does anybody need to take a
10 short break at this time?

11 I've got one hand going up. We'll take about
12 ten minutes and then we'll continue until late this
13 afternoon. So, please, use the restroom, stretch your
14 legs. Don't discuss the case.

15 You're excused to your jury room. Everyone else
16 stay seated, please.

17 (The jury left open court at approximately 3:48
18 p.m.)

19 THE COURT: Ten minutes.

20 MS. COOPER: Your Honor, later on this afternoon
21 we're going to be calling Sena Long, one of the witnesses
22 who called 911, and so I just wanted to bring that to your
23 attention. If you want to take that up at a later time.

24 THE COURT: Have you got the tape that I can
25 hear?

1 MS. COOPER: Yes, sir. We're getting it ready
2 right now, Judge.

3 THE COURT: I want to hear the tape. I can
4 listen to it in chambers. I can't make a final ruling on
5 whether or not it will be admissible until I've heard it.
6 How long is it?

7 MS. COOPER: Not very long, your Honor.

8 THE COURT: That's like me asking my mother,
9 when is dinner? Okay.

10 (Audiotape played.)

11 MS. COOPER: That is Katria Weyl and she's here
12 to testify to that tape. She can identify her husband's
13 voice. And you can also hear the victim in the background
14 relaying information to him.

15 THE COURT: All right. Were those calls made
16 back to back?

17 MS. COOPER: This is one simultaneous phone
18 call. Katria Weyl actually calls and then she starts
19 aiding the victim and the baby and so she hands the phone
20 over to her husband, but they're all together.

21 The next 911 call is by Sena Long. She will be
22 testifying momentarily.

23 THE COURT: All right.

24 (Audiotape played.)

25 MS. COOPER: That's it, your Honor.

1 THE COURT: All right. I believe the objection
2 is on the grounds that it would be cumulative and
3 prejudicial because of the tenor of it, things of it; is
4 that right?

5 MS. VANGINHOVEN: Yes, your Honor. And also
6 Sena Long that was the second, according to her it appears
7 halfway into it she is talking to someone else at the
8 scene and is getting information from that person, which,
9 number one, is hearsay and completely cumulative and
10 bolstering of whoever testifies about Katria Weyl, the
11 statements where Katria Weyl made a phone call. That was
12 the second recording that you heard. But clearly all Sena
13 Long is doing is trying to get law enforcement to come and
14 is talking to someone, and I'm not sure if it's Mr. Weyl
15 or Ms. Weyl, and then relaying information back to 911
16 that had already be relayed from the prior call.

17 THE COURT: All right. Solicitor.

18 MS. COOPER: Your Honor, it's present sense
19 impression. I believe there's a hearsay exception to
20 that.

21 Number one, she's relaying information
22 simultaneously that's being requested by the 911
23 dispatcher. And it's not cumulative. There's totally
24 different information being relayed concerning which
25 direction he went to, what she was observing on her own.

1 THE COURT: All right. The objections are
2 overruled. I think it is admissible. It will be
3 permitted as long as it is properly identified and a
4 foundation laid.

5 I do need to put one other thing on the record
6 before we take a short break and that is, in my analysis
7 of Lyle, I think I failed to indicate that the analysis
8 that I made was to the clear and convincing standard. I
9 know I talked about that yesterday, but it was that
10 standard that the Court applied in making that
11 determination.

12 We'll take a short break, about five minutes.

13 MS. COOPER: Thank you, your Honor.

14 (A recess was taken.)

15 THE COURT: State ready?

16 MS. COOPER: Yes, your Honor.

17 THE COURT: Defense ready?

18 MS. DURANT: Yes, your Honor.

19 THE COURT: All right. Let's get the jury in,
20 please.

21 (The jury came into open court at approximately
22 4:23 p.m.)

23 THE BAILIFF: The jurors are all present, your
24 Honor.

25 THE COURT: Thank you, sir.

1 We'll continue. Call your next witness, please.

2 MS. GARFIELD: Thank you, your Honor.

3 The State calls Ashley Mishoe.

4 ASHLEY MISHOE, after being duly sworn, testified
5 as follows:

6 THE CLERK: Please have a seat in the witness
7 stand and state your full name for the record.

8 THE WITNESS: Ashley Elizabeth Mishoe.

9 DIRECT EXAMINATION

10 BY MS. GARFIELD:

11 Q Ashley, where are you from?

12 A Conway, South Carolina.

13 Q Is that where you grew up?

14 A Yes.

15 Q And is that where you went to high school?

16 A Yes.

17 Q When did you graduate from high school?

18 A 2002.

19 Q Upon graduating from high school where did you go to
20 further your education?

21 A Clemson University.

22 Q And did you go there the fall after you graduated?

23 A Yes.

24 Q And what are you studying at Clemson University?

25 A Pre-pharmacy.

1 Q Are you currently a student enrolled at Clemson?

2 A Yes.

3 Q And so you've been there -- what year are you now?

4 A I'm a senior.

5 Q And so you've been there, this is your fourth year?

6 A Yes.

7 Q Have you had occasion to become friends while you
8 were at Clemson with Lauren Byrd?

9 A Yes.

10 Q And just tell the jury how you became friends with
11 Lauren.

12 A In the summer of 2004 we had a biology class
13 together.

14 Q And did you meet at this class?

15 A Yes.

16 Q And afterwards did you become friends with her?

17 A Yes. We saw each other pretty much every day for
18 about five hours a day.

19 Q And was that through your course of study?

20 A Yes, and we hung out after class and went to the
21 pool.

22 Q And you also became friendly, I suppose, with her son
23 Zach?

24 A Yes.

25 Q Did you also have the occasion to know Randy Thomas?

1 A Yes.

2 Q And how did you know Randy Thomas?

3 A Through Lauren Byrd.

4 Q You met him through Lauren?

5 A Yes.

6 Q And when you met Randy, did you know him to be

7 Lauren's boyfriend?

8 MS. VANGINHOVEN: Your Honor, we'd object to the
9 leading.

10 THE COURT: Sustained to the last question.
11 Rephrase your question, please.

12 MS. GARFIELD: Thank you, your Honor.

13 BY MS. GARFIELD:

14 Q How did you -- what was the relationship between
15 Lauren and Randy Thomas?

16 A When I first met Lauren, she and Randy were dating.

17 Q And were you also friends with Lauren when she broke
18 up with Randy?

19 A Yes.

20 Q And can you just describe to the jury what their
21 relationship was like when they were breaking up?

22 A They were off and on a lot, and when she finally
23 broke it off he became very clingy, like he didn't want to
24 let her go. She wanted to end all relationships with him
25 and he just --

1 MS. VANGINHOVEN: Your Honor, I'm going to
2 object to her trying to testify as to what Lauren thought
3 or what Randy thought.

4 THE COURT: You can't talk about what people
5 thought. She can testify to what she observed.

6 All right. Go ahead.

7 BY MS. GARFIELD:

8 Q What was your characterization of their relationship?

9 A He has very possessive.

10 Q And about what time was this, what month and what
11 year?

12 A That was August, early August, 2004.

13 Q Thank you.

14 I'm going to direct your attention to
15 August 22nd of 2004. At that time, were you at Clemson
16 University?

17 A Yes.

18 Q And classes were back in session at that time?

19 A Yes.

20 Q And did you get a phone call from Lauren Byrd that
21 day regarding Randy Thomas?

22 A Yes.

23 Q And just explain to the jury what Lauren Byrd told
24 you in that phone call.

25 A She told me that he had come over.

1 THE COURT: Wait just a minute.

2 MS. VANGINHOVEN: Your Honor, placing --
3 understanding your ruling, just placing our objections to
4 this line of questioning.

5 THE COURT: All right. Overruled.

6 Go right ahead.

7 THE WITNESS: Can you repeat the question?

8 BY MS. GARFIELD:

9 Q Just tell the jury what Lauren told you in that phone
10 conversation.

11 A She told me that he came over. She had stayed at a
12 friend's the night before. He had come over because he
13 was wanting to know who the guy was she was seeing. He
14 was very angry and upset. They started fighting.

15 MS. VANGINHOVEN: Your Honor, again, we object
16 to the hearsay of Lauren told her.

17 THE COURT: No, Lauren has been on the stand
18 subject to cross-examination. It is not hearsay.

19 You may continue. Go ahead.

20 BY MS. GARFIELD:

21 Q Go ahead.

22 A He -- they had got in a fight. He took her upstairs
23 and he raped her. She said that she felt disgusting. She
24 went in the bath, took several baths, and she didn't come
25 out until she had to go pick up Zach from Greenville.

1 Q Do you know about what time of day this conversation
2 was between you and Lauren?

3 A It was later that evening, Sunday evening.

4 Q Ashley, what did you tell her to do?

5 A I told her immediately she needed to go to the cops.

6 Q And how did she respond?

7 A She said she didn't want to go to the cops, she
8 didn't want any -- she said she would go the next day just
9 to get a restraining order but she didn't want to pursue
10 the matter any further, she just wanted him to be away.

11 Q Did you make any phone calls to law enforcement?

12 A I did. I immediately called the City of Clemson
13 Police Department and told them what happened and what I
14 as a friend needed to do to get her help.

15 Q And you made this phone call when?

16 A That night after I got off the phone with Lauren.

17 Q And did you ever go to the City of Clemson Police
18 Department?

19 A Yes, we went the following day a little after noon.

20 Q And who did you go with?

21 A I went with Lauren.

22 Q And were you with Lauren when she spoke with law
23 enforcement?

24 A Yes.

25 Q Explain to the jury what you observed go on at the

1 City of Clemson Police Department?

2 A She went to get a restraining order but the detective
3 told us that that was not possible unless she had more
4 than one -- I don't know what they're called -- reports,
5 more than one incident report, and the detective also told
6 us that it would be very hard for her to press charges of
7 rape because --

8 MS. VANGINHOVEN: Your Honor, I would object to
9 what the officer told her.

10 THE COURT: I sustain that objection.

11 You cannot go into what he may have told you.

12 I sustain that objection.

13 MS. GARFIELD: Thank you, your Honor.

14 BY MS. GARFIELD:

15 Q Ashley, just tell the jury what Lauren did at the
16 police department.

17 A She filled out an incident report.

18 Q Did you witness her do this?

19 A Yes...

20 Q About how many pages do you recall was it?

21 A Three.

22 Q Did you see her sign that report?

23 A Yes.

24 Q Did you also see her fill out anything regarding the
25 trespass notice?

1 A Yes, actually I did.

2 Q And can you just tell the jury what you saw?

3 A She filled out a trespass notice against Randy Thomas
4 for -- and he said it wouldn't be the same as a
5 restraining order but it would be something that he could
6 not get into her apartment.

7 Q Now, in between this incident, which would be
8 August 23rd, 2004, correct?

9 A Uh-huh.

10 Q And we'll say late October, 2004, did you have any
11 contact with Randy Thomas?

12 A No.

13 Q Specifically on October 30th, 2004, and you know why
14 you're here today, correct, Ashley?

15 A Uh-huh.

16 Q Did you get another -- did you get any sort of
17 correspondence with Lauren Byrd?

18 A Yes. A little after noon she sent me a text message
19 that said, help, call now.

20 Q First of all, Ashley, where were you when you
21 received this text message?

22 A I was outside the Clemson game. We had a football
23 game that day and it started at noon, so I was about to go
24 inside the game.

25 Q And you said you got a text message?

1 A Yes.

2 Q Can you just explain to the jury, some members of the
3 jury may not know, what exactly is a text message?

4 A It's kind of like e-mailing but you do it from phone
5 to phone instead of computer to computer. It's little
6 messages.

7 Q So you got a message on your telephone?

8 A Yes.

9 Q How did you know that this message was from Lauren
10 Byrd?

11 A Because it said from Lauren Byrd.

12 Q It came from her phone?

13 A It came directly from her phone number.

14 Q And what did that message say again?

15 A Help, call now.

16 Q And what did you do, Ashley?

17 A I immediately called her.

18 Q And what did she say to you?

19 A She was whispering. I could tell that she was very
20 concerned, she was very upset, and she said, he's here,
21 and she really didn't have to say much more after that, I
22 knew who she was talking about that was there.

23 Q And who did you assume was there, Ashley?

24 A Randy Thomas.

25 Q And what did you tell her to do?

- 1 A I was like, stay. She said that she was in the
2 bathroom and I told her to stay on the phone in the
3 bathroom with me until he left. She stayed on the phone
4 with me until she heard the door shut and she said, all
5 right, I'm going to get off the phone, he just left.
- 6 Q Did you tell her anything else?
- 7 A I told her to go lock the door.
- 8 Q And did you get off the phone with her at that time?
- 9 A Yes.
- 10 Q And what did you do after you hung up with your
11 friend Lauren?
- 12 A I went to the football game for a little bit, but I
13 had to work, so I had to leave the game early and go home
14 and changed for work.
- 15 Q And where did you work at this time?
- 16 A I work at the Galley restaurant.
- 17 Q Where is the Galley restaurant?
- 18 A It's in Anderson. It's about 15 minutes away from my
19 apartment.
- 20 Q You actually live in Clemson?
- 21 A Yes.
- 22 Q You left the football game, you went home to change?
- 23 A Uh-huh.
- 24 Q And you went to work?
- 25 A Yes.

1 Q And did you have any other contact that afternoon
2 with Lauren Byrd?

3 A Yes. I had a missed call from her around 5:30, so I
4 tried calling her back and I left her a message. Then I
5 saw a few minutes later I had a voice mail from her and I
6 checked it and she was crying, she was very upset. She
7 said, He came back, he took Zach, he had a knife, he raped
8 me. She said, Call me back.

9 Q This was all in your voice mail, Ashley?

10 A Yes.

11 Q What did you do when you heard this message?

12 A I immediately called her back.

13 Q What did she say to you?

14 A She was crying, she was very upset. She said that he
15 came back, he came in the house, he had a knife, he raped
16 me. She was telling me about trying to hold on for dear
17 life to a beam inside the house and that her legs were
18 hurting. She said that he took Zach, he let him out in
19 the middle of the street, and that Zach was with the
20 neighbor now and that she was on her way to the hospital
21 and that law enforcement had been called.

22 Q At this time, Ashley, you were at work?

23 A Yes.

24 Q What did you do?

25 A The very last thing she said to me was, I was so

1 afraid that he was going to kill me and kill Zach, and I
2 told her I would come there immediately. So I went to my
3 manager, told her I had to leave, and I went straight to
4 my apartment, changed clothes, and came to Columbia.

5 Q Why did you have to change clothes?

6 A It was Halloween at work and we all dress up and I
7 didn't want to drive down the interstate in an I Dream of
8 Jeannie costume.

9 Q After you changed clothes and packed your bags, where
10 did you go?

11 A Straight to the hospital.

12 Q And that hospital being where?

13 A Richland County Memorial.

14 Q Here in Columbia?

15 A Yes.

16 Q And when you got to the hospital what did you do?

17 A I asked to see Lauren and they wouldn't let me back
18 at first because I wasn't immediate family. Then Lauren
19 told them that it was okay and I went back to where she
20 was.

21 Q And when you first walked in and you saw Lauren, what
22 did you observe?

23 A She was crying still. She was still very shaken. I
24 could tell she was scared. I could tell that she had been
25 through a lot. Seeing her in that much -- going through

1 that much made me upset. It just wasn't the Lauren that I
2 was used to seeing.

3 Q How long did you stay with Lauren in the hospital?

4 A I stayed with her until she left, she was released
5 from the hospital.

6 Q Do you know about how long it was from the time you
7 got there until the time that she was released?

8 A Maybe an hour or so.

9 Q So you're talking about maybe 9:30, 10 o'clock?

10 A Yes.

11 Q And once you left the hospital with Lauren, where did
12 you go?

13 A We went directly to Lauren's home in Irmo.

14 Q Had you ever been to her home before?

15 A Never.

16 Q And when you got to the home, to Lauren's home, how
17 was Lauren when she got there?

18 A As soon as we pulled up in the driveway, it was
19 almost like she was having flashbacks, she started shaking
20 really bad, she didn't want to go in the house, she got
21 really scared, started crying and screaming again. It was
22 horrible.

23 Q She didn't want to go into her own home?

24 A No. She didn't want to be subjected to anything that
25 had happened in that house earlier that day.

1 Q Once you got inside the home, was the house in
2 disarray?

3 A No. Her dad had come home. He had cleaned
4 everything up. He put everything back like it was just to
5 do anything to try to comfort her.

6 Q How long did you stay with Lauren?

7 A I stayed with her for two or three days.

8 Q Within your time period of staying with Lauren, did
9 you ever observe any bruises on Lauren's body?

10 A Yes. A few days later she started getting bruises on
11 her wrists, on her right bicep, and in her legs from where
12 she was crunching on to the beam.

13 Q And you saw this firsthand?

14 A Yes.

15 Q Ashley, are you currently a student at Clemson?

16 A Yes.

17 Q And are you in classes this week?

18 A Yes.

19 Q Do you intend to be in the courtroom this week?

20 A I have tests going on this week and I have projects
21 to do, but I will be here as much as possible for Lauren.

22 MS. GARFIELD: Thank you. Beg the Court's
23 indulgence.

24 Ashley, please answer any questions that defense
25 counsel may have for you.

1 THE COURT: All right. Cross-examine.

2 MS. VANGINHOVEN: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MS. VANGINHOVEN:

5 Q Good afternoon, Ashley.

6 Ashley, you said that you met Lauren in the
7 summer of 2004; is that right?

8 A Correct.

9 Q So you remember testifying at a previous hearing that
10 you said you met her in July of 2004?

11 A Yes.

12 Q And the Clemson incident happened August 22nd,
13 correct?

14 A Yes.

15 Q Now, you knew Lauren -- well, you knew who Randy
16 Thomas was through Lauren; is that right?

17 A Correct.

18 Q They had a relationship, he was at her apartment a
19 lot?

20 A Yes.

21 Q They did things together so you did things with them
22 and you knew who he was through the relationship that he
23 had with Lauren?

24 A Yes.

25 Q Okay. Now, on August 22nd, you weren't at Lauren's

1 apartment?

2 A No.

3 Q Okay. So basically what you just testified to is
4 what everything Lauren said happened?

5 A Correct.

6 Q And you're the one who actually called the police,
7 you're the complainant?

8 A Yes.

9 Q Lauren didn't call the police?

10 A No, she didn't.

11 Q Now, the October incident, again, you weren't in Irmo
12 when this happened?

13 A No.

14 Q So, again, everything about what happened on that day
15 is what Lauren told you happened?

16 A Yes.

17 Q And you testified that you got the text message and
18 that she was in the bathroom?

19 A Yes.

20 Q And that you told her to stay there until he left?

21 A Yes.

22 Q This is a text message that you got around
23 12 o'clock; is that correct?

24 A Yes.

25 Q Then the next message you got, the recorded message,

1 wasn't until 5:30; is that correct?

2 A Correct.

3 Q And you went to the hospital and met Lauren?

4 A Yes.

5 Q Then you actually stayed at her home for two or three
6 days?

7 A Yes.

8 Q Staying with her at her home is when you say that you
9 observed the bruises; is that right?

10 A Yes.

11 Q And just to be clear, in October when this incident
12 happened in Irmo, you were at the Clemson game, right?

13 A Yes.

14 Q And then you were at work in Anderson, South
15 Carolina?

16 A Yes.

17 MS. VANGINHOVEN: Beg the Court's indulgence.

18 THE COURT: All right.

19 BY MS. VANGINHOVEN:

20 Q Ashley, did you testify -- I know there's a couple of
21 messages involved. There's a text message that says,
22 help, call me; right?

23 A Yes.

24 Q Then there's a recorded message where Lauren's voice
25 is actually on your phone?

1 A Yes.

2 Q And did you testify with Ms. Garfield that on that
3 tape Lauren said she was raped? Is that what you
4 testified to?

5 A Yes.

6 MS. VANGINHOVEN: No further questions. Thank
7 you, Ashley.

8 THE COURT: All right. Redirect.

9 MS. GARFIELD: Yes, your Honor, just one
10 question.

11 REDIRECT EXAMINATION

12 BY MS. GARFIELD:

13 Q Ashley, when you accompanied Lauren to the Clemson
14 Police Department, what was the main thing Lauren wanted
15 to get out of that?

16 A A restraining order.

17 Q She wanted Randy to stay away from her?

18 A Yes.

19 MS. GARFIELD: Thank you. Nothing further.

20 THE COURT: You may step down.

21 MS. VANGINHOVEN: Your Honor.

22 THE COURT: Okay. You're limited this time to
23 that one question.

24 MS. VANGINHOVEN: Briefly.

25 THE COURT: All right.

1 RECROSS-EXAMINATION

2 BY MS. VANGINHOVEN:

3 Q She wanted Randy to stay away from her, right?

4 A Yes.

5 Q And she signed a trespass order so that he could not
6 come back to that apartment; is that right?

7 A Yes.

8 MS. VANGINHOVEN: No further questions.

9 THE COURT: All right. You can step down.

10 MS. GARFIELD: Your Honor, may this witness be
11 excused? She has to go back to Clemson for her classes.

12 THE COURT: Any objection?

13 MS. DURANT: No objection, your Honor.

14 THE COURT: All right. She can be excused.

15 Call your next witness.

16 MS. COOPER: Thank you, your Honor.

17 The State calls Sena Long.

18 SENA LONG, after being duly sworn, testified as
19 follows:20 THE CLERK: Have a seat in the witness stand and
21 state your full name for the record.

22 MS. VANGINHOVEN: Your Honor, may we approach?

23 THE COURT: Yes.

24 (A bench conference was held with the judge and
25 attorneys in the presence of the jury but out of the

1 hearing of the jury.)

2 DIRECT EXAMINATION

3 BY MS. COOPER:

4 Q Good afternoon, Ms. Long. Ms. Long, state for the
5 jury where you live?

6 A Where I currently live?

7 Q Yes, ma'am?

8 A First, my name is Sena Long.

9 Q Thank you. Mr. Bowman just reminded me to ask you
10 that. Thank you. -

11 A I currently live at [redacted] in
12 Irmo.

13 Q And is that where you lived back in October of 2004?

14 A No.

15 Q Where did you live then?

16 A At 9 Cavendish Court in Irmo.

17 Q And is that -- what subdivision is that?

18 A It's in the Ashford Hall subdivision.

19 Q Okay. And are you familiar with a road called West
20 Ashford Way?

21 A Yes.

22 Q How long had you lived in that neighborhood?

23 A I moved in originally in 1992 but then moved away for
24 a few years and had moved back in 1999.

25 Q Okay. So would it be fair to say that you are

1 familiar with the streets?

2 A. Absolutely.

3 Q I'm going to bring your attention to October 30th,
4 2004. Can you tell the jury where you were headed on that
5 afternoon?

6 A I was headed to Home Depot to buy pine straw. I was
7 winterizing my yard.

8 Q Were you with anybody?

9 A I had my five-year-old daughter in the truck with me.

10 Q Was she seated in the front passenger seat?

11 A Yes, she was.

12 Q Can you describe the kind of car you were driving?

13 A I was driving a white Ford pickup, F-150.

14 Q Would you say that it's a pickup truck?

15 A It is a pickup truck, yes.

16 Q And do you recall approximately what time it was in
17 the afternoon?

18 A I'm thinking it was early afternoon, maybe around 1
19 o'clockish.

20 Q And it's been a while, you're not sure?

21 A Right.

22 Q Can you tell the jury what it is you observed while
23 you were traveling in the vehicle, in your pickup truck,
24 while you were traveling down West Ashford Way?

25 A Yes. As soon as I pulled onto West Ashford Way off

1 of West Ashford Court, I saw a car in the street and I saw
2 someone that appeared to be holding onto the car and
3 falling away from the car. And at first I thought, well,
4 it's a kid that was running after the vehicle, but the
5 person got up and started going towards the car again and
6 I started hearing sounds coming and so I knew that there
7 was something more going on than just a kid playing.

8 Q And what did you believe at first that child to be
9 doing?

10 A The first I thought that maybe they were holding on
11 to the car with roller blades. I've seen kids do that,
12 you know, hold onto the side of the car. That was my
13 split second thought initially of what had happened when I
14 saw them fall. But when I saw them get up and go, you
15 know, back towards the car and started hearing the sounds,
16 I knew there was more to it than that.

17 Q And when was it that you realized the person -- can
18 you describe the person when you first were able to get a
19 good look at that person?

20 A I knew it was a girl, a female. She had her hair in
21 a ponytail. She had like a tie-dyed shirt on and shorts.

22 Q Okay. I'm going to show you a picture and ask if you
23 recognize State's No. 49. Do you recognize that person in
24 that photograph?

25 A I recognize the T-shirt.

1 Q Does that appear to be the same T-shirt you observed
2 that person wearing?

3 A Yes.

4 Q And you don't know who that person is?

5 A No.

6 Q Do you know today who that person is?

7 A No.

8 Q Okay. And you indicated that the person was wearing
9 shorts. I'm going to show you what's marked as State's
10 Exhibit No. 51. Can you describe what kind of pants those
11 are or what she's wearing below the waist?

12 A That looks like sweat pants.

13 Q And is it -- could it be -- is it fair to say you
14 could have made a mistake about the bottom half; would
15 that be possible?

16 A That's possible.

17 MS. VANGINHOVEN: Your Honor, I would object.
18 That is leading at this point.

19 THE COURT: All right.

20 MS. COOPER: I apologize, your Honor. I will
21 correct that.

22 THE COURT: Go ahead.

23 BY MS. COOPER:

24 Q You mentioned you heard a sound?

25 A Yes.

1 Q Can you describe the sound that you heard?

2 A It was noises she was making. The easiest way to say
3 would be screaming, but I would call it more than that.
4 It was something that made me know that there was help
5 needed. It was sounds that I had never heard somebody
6 make before. They were -- I had my windows up in my
7 truck, I had the radio on, and I heard them over that.

8 Q What did you do when you heard those sounds coming
9 from this girl?

10 A I was on my cell phone at the time and I rolled my
11 window down and stuck my head out as she was coming
12 towards me and I said, What is going on? And she just
13 kept making the sounds and started to come towards me but
14 then diverted over to the passenger side, which my
15 reaction was almost irritation because I couldn't help her
16 because I didn't know what was going on. And I rolled
17 that window down and very firmly said, What is going on?
18 And at that point she said, My son, my son, he has my son,
19 and she sort of fell off to the side of the road at that
20 point.

21 Q And when you say fell off to the side of the road,
22 where did she fall?

23 A She -- like to the curb, like just sort of just went
24 limp and went to the ground.

25 Q Okay. What did you do once you saw her collapse on

1 the side of the road?

2 A Well, as soon as she was coming around I hung up and
3 I just hung up on the call that I was on and I started to
4 dial 911 and I pulled into I believe it's Clair Court,
5 it's the little cul-de-sac where it was happening, just
6 right there, I pulled in there to back up to follow. All
7 I could think to do was to follow the car to get a license
8 number or something on the car. And --

9 Q Do you recall what kind of car it was?

10 A I remember thinking it was something like a smaller
11 version of a Toyota or a Nissan.

12 Q Do you remember the color?

13 A It was somewhere in the champagne, tannish, that sort
14 of a range. It was a lighter color.

15 Q And where did you see -- which direction did you see,
16 and I'm going to show you an overview aerial of that area.
17 Do you recognize this street?

18 A Yes.

19 Q Okay. State's No. 2. Which direction was the
20 vehicle, the beige car traveling?

21 A It would be going this direction, heading this way.
22 I was heading that way, so I pulled in here to turn
23 around.

24 Q Okay. And it was heading the opposite direction?

25 A That's correct.

1 Q How far -- tell the jury how far you followed the
2 vehicle.

3 A Well, before I could get turned around, because there
4 were people out and about and I could see children running
5 towards me so I had to be careful not to back up into
6 them, but as I was doing all of that, I saw the car stop
7 and the door open and I saw --

8 Q Do you recall which door opened on the vehicle?

9 A It was the driver door.

10 Q Okay.

11 A And I saw the person set a little boy down in the
12 middle of the street.

13 Q And could you describe the approximate age of the
14 little boy?

15 A My guess would be around three.

16 Q And what did you do next? Or what did you see that
17 car do next?

18 A As soon as the little boy was on the street, I saw
19 the girl kind of crawling out to grab him and the car took
20 off.

21 Q And which direction did you see the car travel?

22 A In the same direction it was going.

23 Q And what did you do next?

24 A I continued to try to back out to follow him to again
25 try to see what direction he was going. There was fairly

1 easy access to the interstate and it was a Saturday, there
2 were kids out everywhere and I was concerned for their
3 safety, so I wanted to get some sort of idea, and by this
4 time I was getting in touch with the 911 dispatcher.

5 Q And how far did you travel around in this
6 neighborhood?

7 A I traveled to the ends of West Ashford Way to
8 Hollingshed and I turned right and went to the entrance of
9 the subdivision. That would be the closest access to the
10 interstate.

11 I couldn't see the car anywhere at that point,
12 and again my concern was for the kids in the neighborhood
13 that were out, and so I turned around and drove to the
14 clubhouse, which is on Glen Eagle Circle, because that
15 would be the highest concentration of people out and about
16 on a day like that and I just wanted to make sure that
17 there was nobody else that would be taken.

18 Q So you had no idea what motive this person had for
19 taking that child?

20 A No.

21 Q And can you describe when you saw the beige car drive
22 away after the person left the child on the street how
23 fast he drove away, the rate of speed?

24 A It was considerably fast because I couldn't catch up
25 to them. As a matter of fact, by the time I got, you

1 know, over the little hill it was out of sight.

2 Q You indicated that you called 911; is that correct?

3 A That's correct.

4 Q And, by the way, do you recall what the little boy
5 was wearing?

6 A Yes. He had on a Spider-Man pajama costume outfit.

7 Q Did you have an opportunity to review the call you
8 had made to 911?

9 A Yes.

10 Q Was that your voice on that recording?

11 A Yes.

12 MS. COOPER: Your Honor, at this time the State
13 would seek to introduce State's No. 68, the portion where
14 Sena Long calls 911.

15 THE COURT: All right. Same objection as
16 earlier?

17 MS. VANGINHOVEN: Yes, Your Honor.

18 THE COURT: That objection is overruled. It is
19 admitted. Was that State's 68?

20 MS. COOPER: No. 68, yes, sir.

21 THE COURT: That portion of it. Have you got it
22 to that portion?

23 MS. COOPER: Yes, sir, I do.

24 (WHEREUPON, State's Exhibit No. 68 was marked
25 for identification and received into evidence.)

1 MS. COOPER: May I play it for the jury, your
2 Honor?

3 THE COURT: You may.

4 (Audiotape played.)

5 BY MS. COOPER:

6 Q And is that how the events transpired, Ms. Long?

7 A Yes.

8 Q Ms. Long, do you know the defendant, Randy Thomas?

9 A No.

10 Q Have you ever seen him before this courtroom?

11 A No.

12 Q You never actually saw who the driver was of that
13 car, did you?

14 A I did not.

15 MS. COOPER: Thank you, Ms. Long.

16 THE COURT: Cross-examination.

17 MS. VANGINHOVEN: Thank you, your Honor.

18 CROSS-EXAMINATION

19 BY MS. VANGINHOVEN:

20 Q Hello, Ms. Long.

21 A Hello.

22 Q Basically you just drove up on this; is that right?

23 A That's correct.

24 Q And you saw the girl. Did you say she was on the
25 ground on the asphalt, is that where she fell?

1 A The first time that she fell when she fell from the
2 car, yes, she fell to the ground. The second time after
3 she told me that he had her son, she collapsed over -- I
4 mean I was up in a pickup truck. I'm assuming it was to
5 the side of the road, the curb area.

6 Q And then she got up and -- I mean clearly the car
7 that was driving away did stop and put the child out; is
8 that right?

9 A That's correct.

10 Q And by the time you came up he was already heading
11 out, is that what you testified to? He didn't turn around
12 at any time?

13 A He did not turn around. He may have backed up, but
14 he did not turn around. But he passed me.

15 Q Right.

16 A And I saw the child standing up in the front seat of
17 the car as he passed me.

18 Q And you saw him in the passenger side?

19 A No, in the middle. He was standing right next to the
20 driver. Because at that point as that car was passing I
21 wasn't even -- I mean I'd seen her fall but I wasn't sure
22 of what was going on. I just knew something was going on
23 and to try to pay attention.

24 Q Okay. So he backed up and then he was leaving out
25 and stopped to put the child out; is that right?

1 A I'm not sure he backed up. It's possible that he
2 did, but he did stop, open the door, and sat the child in
3 the street.

4 Q Okay. And I think you acknowledged this but you're
5 saying that this is the cul-de-sac that you turned around
6 in?

7 A That's correct.

8 Q And it's basically right across the street from these
9 houses?

10 A Yes.

11 Q It's right near both these houses marked on this
12 diagram?

13 A Right.

14 MS. VANGINHOVEN: No further questions. Thank
15 you. Thank you, Ms. Long.

16 THE COURT: Any redirect?

17 MS. COOPER: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MS. COOPER:

20 Q Where in the street did you see the child dropped
21 off?

22 A May I point to the map?

23 Q Sure. Well, I'm just asking this: Was it on the
24 curb or where was it?

25 A No, no, in the middle of the street.

1 MS. COOPER: Thank you.

2 No further questions, your Honor.

3 THE COURT: Anything further?

4 MS. VANGINHOVEN: No, your Honor.

5 THE COURT: You may step down, ma'am.

6 MS. COOPER: Your Honor, may she be excused?

7 THE COURT: Any objection?

8 MS. VANGINHOVEN: No, your Honor.

9 THE COURT: Without objection this witness is
10 excused. Call the next witness, please.

11 MS. COOPER: Investigator Rodney Gonzales.

12 RODNEY GONZALES, after being duly sworn,
13 testified as follows:

14 THE WITNESS: Rodney M. Gonzales.

15 DIRECT EXAMINATION

16 BY MS. COOPER:

17 Q Deputy Gonzales, can you please tell this jury where
18 you're employed?

19 A I'm employed with the Richland County Sheriff's
20 Department.

21 Q And as a deputy, can you tell the jury what your
22 duties are?

23 A They are to answer calls as they come through
24 dispatch and try to ascertain what occurred at the time so
25 I can define what's the course of action.

1 Q And when you get called on dispatch, do you respond
2 to scenes, crime scenes?

3 A Yes, ma'am.

4 Q And when you get a crime scene, what is the first
5 thing you like to do when you get to a crime scene?

6 A I try to find who is the ones who are being involved
7 so they can go ahead and tell me exactly what occurred
8 straight from them.

9 Q And those people would be victims and witnesses to
10 the crime?

11 A Both.

12 Q And where do you put all this information when you
13 gather it from these different people?

14 A Eventually it will culminate into an incident report.

15 Q So when you come upon a scene, do you immediately
16 start writing out your incident report or do you wait to
17 fill it out?

18 A I will usually wait to fill it out.

19 Q Do you recall being called to a crime scene on
20 October 30th of 2004?

21 A Yes, I do.

22 Q Okay. And before we go on, when you do complete an
23 incident report, what is the protocol of the sheriff's
24 department, what do you do with that report?

25 A I will fill out that report, then the supervisor will

1 end up signing it. Then it goes to headquarters. That
2 will then get assigned to an investigator who will then do
3 additional follow-up if necessary.

4 Q Okay. And so when an investigator gets involved,
5 they do more in-depth interviews of witnesses and so
6 forth?

7 A That's correct.

8 Q Can you tell the jury where you were dispatched to on
9 October 30th of 2004?

10 A Yes, ma'am. I was dispatched at 300 West Ashford Way
11 in Irmo.

12 Q And whose residence did that belong to?

13 A To the parents of a Lauren Byrd.

14 Q And can you tell the jury what time it was that you
15 received the call to respond to that address?

16 A We received a call at approximately 2:16 in the
17 afternoon and I arrived at about 2:25.

18 Q And could you describe, is this a region of Richland
19 County that you typically patrol?

20 A Yes, ma'am.

21 Q Are you familiar with the area?

22 A Yes, ma'am.

23 Q And is that how you were able to arrive in nine
24 minutes?

25 A Yes.

1 Q Or 11 minutes?

2 A Yes, roughly. I was already in the -- I was the
3 outbound unit at that time and I just happened to be
4 fairly close to the location.

5 Q Tell the jury what you did when you got to the scene.

6 A As I arrived to the scene, I went to the front door
7 and I was greeted by a lady who introduced me to another
8 young lady that ended up being Ms. Byrd. Small
9 conversation at first and she advised me that she had been
10 assaulted.

11 Q And can you describe for the jury Lauren Byrd's
12 demeanor when you encountered her?

13 A It was definitely that whatever had happened to her
14 at that point was causing her to be extremely agitated and
15 very distraught.

16 Q And was she crying?

17 A Absolutely.

18 Q And do you recall if you were in the residence of
19 Katria Weyl at that time?

20 A Yes.

21 Q And when you first approached Ms. Byrd, the victim,
22 can you describe who was present when you started asking
23 her about what happened?

24 A It was a couple, if I'm not mistaken, an elderly
25 couple taking care of her, and apparently I believe they

1 were friends of Ms. Byrd, the family, friends of the
2 family.

3 Q Were they the neighbors of Ms. Byrd?

4 A Neighbors, yes.

5 Q And can you please tell the jury what exactly was
6 reported to you?

7 A Yes, ma'am. I had a chance to talk to Ms. Byrd and
8 she advised me that someone came to the door as she was at
9 her parents' house, and when she came to the door, she
10 recognized the person at the door as being her
11 ex-boyfriend, that being Mr. Randy Thomas. When she
12 realized that he was there she decided not to open the
13 door and hid in the residence. Apparently he continued to
14 knock on the door and eventually he ended up coming into
15 the residence.

16 She then told me that as he was walking into the
17 residence he found her in the living room area and they
18 sat on the couch. She advised me at that time you could
19 tell when she was telling me this she was very nervous
20 about what's going on.

21 She continue on to advise me that everything --
22 she had told him to leave, that he was not supposed to be
23 there, but he would not stop and continued talking, trying
24 to make conversation with her.

25 Eventually this escalated to a physical.

1 confrontation and he ended up grabbing her wrists and
2 began to drag her up the stairs. This residence had two
3 floors. She continued to fight him and was able to pull
4 away but then he ended up having to bearhug her from
5 behind and started trying to go up the stairs again. She
6 was able to break again, but he was able to grab her by
7 the hair and started dragging her up the stairs or turned
8 around, picked her up to take her up the stairs.

9 At top of the stairs there is a column and she
10 was able to grab on to that. She stated that he started
11 pulling her so hard that it made her -- that it caused her
12 to break her grip. At that exact point is when she told
13 me that she felt like -- that she knew that she was going
14 to get raped. Then they went into the mother's bedroom.

15 Q Did she indicate how she ended up in the bedroom?

16 A Well, first when she fell on the ground, she ended up
17 getting dragged into the bedroom and then onto the bed.

18 Once in that bedroom, she stated that he told
19 her to calm down and that he was not going to hurt her and
20 he said at the same time something to the effect of, Do
21 you want Zach to be okay, Zach being the son that was also
22 in the residence. Then the conversation continued with a
23 series of questions and he told her -- she stated that he
24 told her to take off his shirt and she didn't do it, so
25 she stated to me that he said to her, If you do this I

1 will not kill you or Zach. She still didn't do it so he
2 ended up taking the shirt off for her.

3 They sat on the bed and he ended up touching her
4 breasts and then he assaulted her at that point. Then she
5 tried to get away.

6 The fight per se continued on and she was able
7 to get down to the first floor, down to the kitchen area,
8 and during that time he was able to grab onto her hair,
9 grab the knife and put it to her neck.

10 She was able to break away from that, but then
11 somehow if I recall he decided to grab the son, went
12 outside and jumped in his car with the son, with
13 Ms. Byrd's son, and as he was driving away she was to the
14 side of the vehicle yelling, That's my son, that's my son,
15 as he was pulling away.

16 One of the witnesses, Ms. Long, observed this,
17 seeing her fall and then later on down, a couple of blocks
18 down, saw the kid being dropped off in the middle of the
19 road. And he continued on and then the mother, of course,
20 was able to make it to the child and brought him back to
21 214 west Ashford where I ended up going when they called
22 us.

23 Q When you -- you were referring to your incident
24 report when you were just testifying; is that correct?

25 A That's correct.

1 Q And would it be fair to characterize this report as
2 pretty detailed?

3 A As detailed as possible, yes, ma'am.

4 Q Did you fail to include mention about the oral sex
5 and vaginal sex in your report?

6 A Yes, I did.

7 Q In fact, if I could refer you to page number four,
8 you indicated that she, the victim, C/V, can you read that
9 to the jury?

10 A Yes. On the report it reads, C/V, meaning
11 complainant/victim, stated that he did not penetrate her.
12 What I failed to add in there conflicted. This is
13 definitely a criminal sexual conduct act.

14 It's very possible at the time because I was
15 trying to gather all my thoughts together that I just
16 failed to put in that word because I was trying to
17 remember how to write it, then I just continued on so I
18 wouldn't forget my place.

19 Q And also you did not write that the victim told you
20 about oral sex; is that correct?

21 A That's correct. She advised me of that.

22 Q Going off of your own memory without referring to
23 your notes, tell this jury what you remember her telling
24 you about the oral sex.

25 A As we finally -- she advised me, she told me

1 everything that was going on, I noticed that she was a
2 little uncomfortable with the two people that were there,
3 the neighbors. I asked her if she could talk to me by
4 herself and she advised me then that he actually
5 penetrated her, not completely, and then she advised me
6 that he made her do oral sex. And at that point I
7 remember her having a glass of water and I told her
8 because of that I need you not to drink anything else
9 because of any further evidence that we might be able to
10 collect from her mouth.

11 Q And you advised her to quit drinking water; is that
12 correct?

13 A Yes, ma'am.

14 Q Now, after you were able to determine, talking to
15 Ms. Byrd, did you fill out what kind of incident type this
16 kind of call was?

17 A It's an incident report that ended up being criminal
18 sexual conduct and then I titled it kidnapping, assault
19 and battery with intent to kill.

20 Q And you understand that he is charged with assault
21 and battery of a high and aggravated nature and not
22 assault and battery with intent to kill?

23 A That's correct.

24 Q But did she report to you a type of weapon, any type
25 of weapon?

1 A Yes, the knife as I explained during the kitchen
2 time.

3 Q I'm going to show you a photograph. Is this the way
4 the victim appeared when you met with her, State's No. 51
5 and 49?

6 A Yes.

7 Q And that's the clothes that she was wearing?

8 A Yes, ma'am.

9 Q When you got an idea of what kind of crime had
10 occurred at this residence, what did you do next? What
11 are your duties as a deputy?

12 A Protect the scene; make sure that nobody else goes in
13 or out; try to have the victim tell me, show me
14 specifically what happened so I can have a chronological
15 order so I can pass on the information to the investigator
16 that might show up on top of the analyst, like the
17 photographer that's going to come to take pictures of the
18 scene and so forth.

19 Q Do you recall who the on-call investigator was?

20 A We had an on-call investigator as Deirdre Brown and
21 also Investigator Livingston.

22 Q And you stated Investigator Deirdre Brown?

23 A Yes, ma'am.

24 Q Can you describe for the jury what she looked like?

25 A She's maybe five-four, black female, short hair, dark

1 skinned.

2 Q And she worked in which unit of the Richland County
3 Sheriff's Department?

4 A Forensics division.

5 Q And Investigator Roy Livingston also was on call at
6 that time?

7 A That's correct.

8 Q Did he respond to the scene?

9 A Yes, he did.

10 Q And as he was the on-call investigator, did he take a
11 more detailed interview of the victim?

12 A Yes, ma'am.

13 Q Did you escort the victim throughout the house and
14 allow her to show you where certain events took place?

15 A Yes, I did.

16 Q And, specifically, what do you remember her showing
17 you around the house?

18 A Something that really stuck in my mind was the bed,
19 the bedroom where the actual act occurred. You could
20 actually see the V shape where somebody would be laying
21 down. And I asked her is this the indentation of your
22 legs and just the way you were positioned at that time,
23 and she advised me, yes, it was.

24 Q I'm going to show you what's been marked as State's
25 Exhibit 41. Are you able to see that dent in the

1 comforter?

2 A Yes, ma'am.

3 Q Is it as clear in that photograph as it was to you
4 when we were physically there looking at it?

5 A Yes, ma'am.

6 Q And if you would refer to the first page of your
7 report. What information were you able to gather about
8 the suspect in this case?

9 A I was able to gather that he was a white male, 26
10 years of age, his date of birth, his height being in the
11 vicinity of six-three, weight, his hair color, his eye
12 color, and Social Security number.

13 Q And how were you able to get his Social Security
14 number?

15 A Usually when you get a date of birth and a name you
16 can pull it up in the computer and you can get the
17 information from your driver's license and in your
18 driver's license information your Social Security number
19 is there.

20 Q How long does that procedure take?

21 A However long or short, within minutes.

22 Q Did you happen to come into contact with any children
23 while you were there?

24 A Yes.

25 Q Describe the children and what age, approximate age

1 they were.

2 A There was a variety of ages in there, but mostly
3 between -- well, of course, the son and then --

4 Q But I mean witnesses.

5 A Witness-wise, in the vicinity of 12 to 15, in there.

6 Q And did you take names of any of those children or
7 kids?

8 A I took names of several witnesses. Or actually I
9 advised one of the units to do that for me because they
10 were, the kids were going to be outside of the residence,
11 and since I was taking care of it on the inside, I had
12 them gather the information about that.

13 Q And once you secured the scene, did you allow anyone
14 other than the victim and yourself and other law
15 enforcement to enter that house?

16 A Nobody else.

17 Q Nobody else.

18 Do you have a personal recollection of what
19 happened and what you were told or do you need to rely on
20 your notes to remember everything?

21 A The majority I'd rely on my notes, but there's
22 certain things that do just stick out in your mind.
23 Unfortunately, by the way that I ended up wanting to
24 listen to her and she was telling me so I could get every
25 bit of information, then I repeated it to the investigator.

1 that came in, then I repeated it to Ms. Deirdre Brown, and
2 then of course I have to come back and make sure that all
3 the proper paperwork is filled out and so forth and then I
4 go ahead and do my report.

5 Q So how many officers do you think came and responded
6 to the scene?

7 A At least four.

8 MS. COOPER: Beg the Court's indulgence.

9 THE COURT: All right.

10 MS. COOPER: Thank you. No further questions.

11 THE COURT: Cross-examine.

12 MS. VANGINHOVEN: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MS. VANGINHOVEN:

15 Q Good afternoon, Officer Gonzales.

16 A Good afternoon, ma'am.

17 Q Tell me how long you've been with the sheriff's
18 department?

19 A Roughly ten years.

20 Q Were you in law enforcement before that?

21 A Yes, ma'am.

22 Q How long in total have you been in law enforcement?

23 A Approximately 20 years.

24 Q Okay. And part of being in law enforcement is you
25 have to be trained; is that correct?

- 1 A Yes, ma'am.
- 2 Q You go to school to be trained?
- 3 A Yes, ma'am.
- 4 Q And you go to school to be trained and you're saying
5 that incident reports are very important; is that right?
- 6 A That's correct.
- 7 Q You're supposed to be thorough?
- 8 A Yes, ma'am.
- 9 Q Accurate?
- 10 A Yes, ma'am.
- 11 Q Complete?
- 12 A Yes.
- 13 Q Okay. And the incident report is written at the time
14 of the incident; is that right?
- 15 A Yes.
- 16 Q That's why it's an incident report, right?
- 17 A Correct.
- 18 Q Now, you want to put as much as you can in the
19 incident report, especially important information; is that
20 correct?
- 21 A Yes, ma'am.
- 22 Q And you do that because, like in this situation, over
23 a year later you may have to be testifying in court; is
24 that right?
- 25 A Yes.

1 Q And what you do is you look at your report to refresh
2 your mind as to all the important information that you
3 wrote in the report; is that correct?

4 A Yes.

5 Q So you would agree with me that very important
6 information should be in an incident report that is
7 written on the day of the incident?

8 A Yes.

9 Q Now, and this incident report, you just basically
10 testified up there and went through your entire incident
11 report; is that correct?

12 A Yes.

13 Q You have a lot of details in that incident report?

14 A Yes, ma'am.

15 Q You have witness names?

16 A Yes.

17 Q You have the victims' names?

18 A Yes.

19 Q You have birth dates?

20 A Yes.

21 Q You have Social Security numbers?

22 A Yes.

23 Q Officer Gonzales, in your incident report you wrote
24 down that the suspect did not penetrate the victim; is
25 that correct?

1 A Yes, that's the way it was written.

2 Q Now, let me ask you something else. Since the
3 incident date over a year ago, have you spoken with the
4 Solicitor's office in preparation for this case?

5 A Yes.

6 MS. VANGINHOVEN: Beg the Court's indulgence.

7 BY MS. VANGINHOVEN:

8 Q Okay. This incident report was written
9 October 30th, correct?

10 A Correct.

11 Q You report everything in depth to the point that in
12 the beginning of your incident report you're talking
13 about, let's see, the good first five or six sentences
14 about him knocking at the door?

15 A Correct.

16 Q And her seeing him and then hiding from him and then
17 he knocks on the door again and you go through about five
18 or six lines of that; is that right?

19 A Right.

20 Q You in depth describe the struggles that go on, her
21 being grabbed by the wrist, her being grabbed by the hair,
22 her being dragged, her grabbing onto posts, you go into
23 depth with that; is that right?

24 A That's correct.

25 Q And, again, this is written on the incident date?

1 A That's correct.

2 Q And in this report you state that the victim told you
3 she was not penetrated by the suspect?

4 A That's what I wrote.

5 Q And since October 30th of 2004, over a year ago, in
6 preparation for this trial, you have spoken with the
7 Solicitor's office; is that correct?

8 A Yes, ma'am.

9 Q And now you're testifying that you just left stuff
10 out of this report; is that right?

11 A Yes, ma'am.

12 Q And you're going on your memory from over a year ago?

13 A Yes, ma'am.

14 Q Okay. Also on the report that you did on the day of
15 the incident over a year ago you don't describe any injury
16 that you saw to the victim, do you, in your report?

17 A No, I do not.

18 Q You don't describe any red marks on her neck or on
19 her wrists?

20 A No, I do not.

21 Q Nor on her legs?

22 A That's correct.

23 Q And also, Officer, just to clarify, on
24 October 30th, over a year ago when this incident
25 happened, you responded to the scene within nine minutes

1 after receiving the dispatch call; is that correct?

2 A That's correct.

3 MS. VANGINHOVEN: I have no further questions.

4 THE COURT: Redirect.

5 REDIRECT EXAMINATION

6 BY MS. COOPER:

7 Q Deputy Gonzales, did Lauren Byrd tell you she was
8 orally and vaginally raped on October 30th?

9 A Yes, she did.

10 Q Did you make a mistake by omitting that from your
11 report?

12 A Yes, I did.

13 Q Are you human?

14 A Yes, I am.

15 MS. COOPER: Thank you, your Honor.

16 THE COURT: Any recross?

17 RECROSS-EXAMINATION

18 BY MS. VANGINHOVEN:

19 Q My only question is of course that statement, the
20 statement about oral sex and the statement about possibly
21 having, about vaginal penetration, are extremely important
22 facts to write down; isn't that right?

23 A That she advised me of that I failed to add in the
24 report.

25 Q And they're extremely important?

1 A. That she advised me.

2 Q On October 30th you didn't put them in your report?

3 A That's correct.

4 MS. VANGINHOVEN: No further questions.

5 THE COURT: All right. Sir, you may step down.

6 THE WITNESS: Thank you.

7 THE COURT: Counsel, you all step up for one
8 minute, please.

9 (A bench conference was held with the judge and
10 attorneys in the presence of the jury but out of the
11 hearing of the jury.)

12 THE COURT: Mr. Foreman, ladies and gentlemen,
13 we're going to break for the afternoon.

14 Let me again remind you that all of you are not
15 to discuss the case with family or friends or anyone else.

16 We're going to start a little bit earlier
17 tomorrow morning, 9 o'clock. If you'll be in your jury
18 room, please, at 9 o'clock, we'll start then.

19 Please be on time. I know of no reason, no
20 other pretrial matters or other matters to take up. We'll
21 start at 9 o'clock.

22 Have a good night and we'll see you at 9
23 o'clock. Everyone else stay seated, please.

24 (The jury left open court at approximately 5:35
25 p.m.)

1 (A bench conference was held with the judge and
2 attorneys in the presence of the jury but out of the
3 hearing of the jury.)

4 THE WITNESS: Zachary Scott

5 DIRECT EXAMINATION

6 BY MS. COOPER:

7 Q Zach, can you tell the jury how old you are?

8 A I'm 14.

9 Q Fourteen. And what grade are you in?

10 A Eighth.

11 Q Eighth grade. Where do you go to school?

12 A Dutch Fork Middle.

13 Q And what neighborhood do you live in?

14 A Ashford.

15 Q And what do you like to do after school when you're
16 not in classes? Do you have any extracurricular
17 activities?

18 A I just got done with wrestling.

19 Q Wrestling. Are you a member of the Boy Scouts?

20 A Yes, ma'am.

21 Q And how long have you been in the Boy Scouts?

22 A Two or three years.

23 Q You got lots of patches and badges?

24 A Yes, ma'am.

25 Q What's the most recent one you've gotten?

1 A My Life Scout, which is the second highest.

2 Q Second highest. Since you live in the Ashford
3 neighborhood, do you know Lauren Byrd?

4 A Yes, ma'am.

5 Q And how do you know Lauren?

6 A I had played with her brother Alex.

7 Q And how old is Alex?

8 A He's 14, too.

9 Q Okay. Now, Zach, do you know the difference between
10 what the truth is and what a lie is?

11 A Yes, ma'am.

12 Q Can you kind of explain what you know that to be?

13 A That the truth is what actually happened and a lie is
14 kind of exaggerating it or not telling the full truth.

15 Q Okay. And are you going to tell us the truth of what
16 you remember happening on October 30th, 2004?

17 A Yes, ma'am.

18 MS. COOPER: Your Honor, are there any more
19 questions from the defense?

20 MS. VANGINHOVEN: No, your Honor.

21 THE COURT: All right. Go ahead.

22 MS. COOPER: Thank you, your Honor.

23 BY MS. COOPER:

24 Q Zach, can you tell the jury what you were doing on
25 October 30th of 2004?

1 A Me and some of my friends were playing football in
2 the yard next to Alex's.

3 Q Okay. And I'm going to show you an overview of that
4 neighborhood and ask you if you could point out to the
5 jury what backyard you were in.

6 A I was right there.

7 Q Okay. And what's around that yard?

8 A That's just Adam's basketball court and the fence.

9 Q Okay. How tall is the fence?

10 A It's five maybe six feet, but it's sloped so you can
11 see over it most of the time.

12 Q Okay. And when you were playing football, what did
13 you guys do after you got done playing football?

14 A We went to my friend Adam's house, Adam Forand.

15 Q Okay.

16 A He lives right there and we got some ice cream.

17 Q All right. And do you recall hearing anything when
18 you were going over there to get ice cream?

19 A We heard screams and we didn't think much of it at
20 the time.

21 Q And could you tell where the screams were coming
22 from?

23 A Right about there.

24 Q Okay. And where does Alex and Lauren live?

25 A Right there.

1 Q Okay. And tell the jury what you and your friends,
2 who were you with, by the way?

3 A I was with Kevin Howard, Brian Asbury, Adam Forand,
4 and I think Adam Strothers but I'm not sure.

5 Q And you were at Adam Strothers' backyard playing
6 football, right?

7 A Uh-huh.

8 Q Okay. So what did you do after you went to Adam
9 Forand's house?

10 A Whenever we got our popsicles we just stood outside
11 because we were waiting for the football game and we saw
12 just some screaming. We heard some more screaming and
13 stuff and a car, I think like a goldish car was parked
14 right there, and we just heard a bunch of yelling and
15 someone walking to the car.

16 Q Okay. And could you tell who walked into the
17 goldish-looking car?

18 A A man with black hair and a hat, blue jeans and
19 everything.

20 Q Okay. And do you know Randy Thomas?

21 A I met him once.

22 Q Okay. Could you tell if it was him?

23 A Not from that distance.

24 Q You were too far away?

25 A Uh-huh.

1 Q Okay. And what did you see after that? Did you see
2 the car go anywhere?

3 A I saw the gold car drive up there and the white truck
4 tailing him.

5 Q A white truck?

6 A Uh-huh.

7 Q And what did you see after that?

8 A We walked up there and we saw Lauren kind of shaken
9 up.

10 Q Okay. And can you tell us more about how she was
11 acting?

12 A Just real scared and like kind of petrified about
13 what happened.

14 Q Okay. And did you stay there long enough for the
15 police to get there or what did you do? How long did you
16 stay?

17 A We stayed until the police got there. It was
18 probably like 45 minutes or so. It was a real long time
19 before they got there, and we all just told them what we
20 saw.

21 Q Okay. And did you give your name to the police?

22 A Yes, ma'am.

23 Q And all your friends saw the same thing?

24 A Uh-huh.

25 Q Yes?

1 A Yes.

2 Q Okay. Did you ever see Lauren's baby, Zach?

3 A Yes.

4 Q And do you remember what he was wearing?

5 A A Spider-Man costume.

6 Q And after you told the police what happened, where
7 did you go?

8 A I think we just all went back to our houses. We
9 didn't talk the rest of the day.

10 Q Did it shake you up?

11 A Not as much as it probably should have, but it was
12 kind of scary.

13 Q And did you go home after that?

14 A Yes, ma'am.

15 Q And who lives with you at your home?

16 A My mom and my dad.

17 Q Okay. And is your mom in the courtroom today?

18 A Uh-huh.

19 Q Could you point her out to the jury?

20 A Right there.

21 Q Okay. The blonde lady with the black shirt?

22 A Yes, ma'am.

23 MS. COOPER: Beg the Court's indulgence, your
24 Honor.

25 THE COURT: All right.

1 MS. COOPER: Thank you very much, Zach. Answer
2 any questions the defense attorney has for you, okay?

3 THE WITNESS: Okay.

4 THE COURT: Ms. VanGinhoven.

5 MS. VANGINHOVEN: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MS. VANGINHOVEN:

8 Q Hi, Zach.

9 A Hello.

10 Q I just want to get straight on this board, where did
11 you see the parked car again?

12 A I saw it right there.

13 Q Okay. And originally where were you playing?

14 A We were playing right there in that fenced-in yard.

15 Q Okay. The fenced-in yard. Whose house is that?

16 A Adam Strothers.

17 Q And then you heard screaming; is that right?

18 A Yes, ma'am.

19 Q And then where did you go, Zach?

20 A Then we went to Adam Strothers's house, which is right
21 there, and we got some ice cream and we just walked back
22 outside.

23 Q Okay. So you were down here after the screaming
24 started?

25 A Uh-huh.

1 Q And when did you -- did you see -- you said you saw a
2 car go this way?

3 A Yes.

4 Q But right after you heard the screaming you were way
5 down here?

6 A Correct.

7 Q Okay. You say it took a long time for the police to
8 come, about 45 minutes?

9 A Yes.

10 Q And you said you saw Zach in a Spider-Man costume; is
11 that right?

12 A Yes.

13 Q He was with Lauren at that time?

14 A Uh-huh.

15 MS. VANGINHOVEN: Okay. No other questions.

16 Thank you, Zach.

17 THE COURT: Any redirect?

18 MS. COOPER: No, your Honor.

19 May Zach be excused?

20 THE COURT: Without objection. You can step
21 down.

22 Call your next witness.

23 MS. COOPER: Thank you, your Honor.

24 The State calls Katria Weyl.

25 KATRIA WEYL, after being duly sworn, testified

1 as follows:

2 THE CLERK: Please have a seat in the witness
3 stand and state your full name for the record.

4 THE WITNESS: Katria Michelle Weyl.

5 DIRECT EXAMINATION

6 BY MS. COOPER:

7 Q Good morning, Ms. Weyl.

8 A Good morning.

9 Q Ms. Weyl, can you tell the jury where you live?

10 A I'm presently living in Asheville, North Carolina.

11 Q And when did you come to Columbia to come testify?

12 A Last night.

13 Q Where did you used to live prior to moving to
14 Asheville?

15 A I lived in West Columbia, and prior to that I lived
16 at in Irmo.

17 Q And were you next-door neighbors to the victim,
18 Lauren Byrd?

19 A Yes, I was.

20 Q Can you tell the jury how close you were to the Byrd
21 family or what your relationship was like with the Byrd
22 family?

23 A We were just next-door neighbors. We really had no
24 relationship at all other than saying hello, things like
25 that if we saw each other come and go.

1 Q And do you have any children the age of the Byrds'
2 children?

3 A No, I do not.

4 Q And are you married, ma'am?

5 A Yes, I am.

6 Q What is your husband's name?

7 A Donald Weyl.

8 Q I'm going bring your attention to the morning or the
9 afternoon of October 30th, 2004. Could you please tell
10 the jury what it was you were doing around noon or 1
11 o'clock in the afternoon or 2 o'clock in the afternoon?

12 A I was out mowing the lawn.

13 Q Describe for the jury what it was you heard or what
14 happened while you were mowing your lawn.

15 A Well, I was mowing and I saw a man come out of Dean's
16 house and put a child in his car and a few moments later I
17 saw Lauren come out. There was a lot of activity and I
18 just kept mowing the lawn not really paying much
19 attention, but I could hear Lauren screaming over the lawn
20 mower.

21 Q And how loud is your lawn mower?

22 A Well, it's a power mower so it's pretty loud.

23 Q And when you heard her screams what did you do?

24 A Well, I couldn't tell what she was saying, I really
25 didn't know what was going on, so I released the mower,

1 it's a power mower so when you release the handle it turns
2 off, and then I heard her screaming, He's got my son, he's
3 got my son.

4 Q And what did she ask you to do?

5 A She really didn't ask me. She was just screaming a
6 lot, very hysterical, running down the street. I was
7 trying to get to her and find out exactly what was going
8 on.

9 Q And did you at any point call the police?

10 A As soon as I kind of figured out that he had taken
11 the boy, I ran inside and got the phone. And we have
12 cordless phones so they were sitting right inside the door
13 and I dialed 911 and then went back outside to be with
14 her, to try to help her.

15 Q And what exactly did you do to help her?

16 A Mostly it was trying to get her to calm down and
17 trying to find out what exactly had happened while I was
18 on the phone with 911, and she was kind of running around
19 while I was on the phone.

20 Q Did you see her run after any particular car?

21 A She went across the street and fell down in the yard
22 across the street from our house, and a car had come by
23 and she got up and was yelling, pointing down the street
24 saying, He's got my son.

25 Q And when you saw this man get into the car with her

1 son, were you familiar with who her son was?

2 A Yeah, we had seen them before.

3 Q And did you see what kind of color car he was getting
4 into with her son?

5 A It was a grayish blue car. I really didn't pay that
6 much attention; it was an older model, small sedan.

7 Q And so you weren't really focused on the vehicle as
8 much as on her?

9 A Yes. My attention was directed to her.

10 Q Okay. And did you ever see her chase after that car?

11 A That's what she was doing, running down the street.

12 You know, it was only about -- the homes are pretty

13 good-sized homes in that neighborhood, so she was

14 hysterical and running and, you know, I'm trying to talk

15 on the phone and calm her down, too, so --

16 Q And you had seen Lauren as your next-door neighbor
17 before; is that correct?

18 A Yes.

19 Q What about her appearance did you notice was
20 different?

21 A That day?

22 Q Yes, ma'am.

23 A She was -- her clothes were very disheveled. It
24 seems to me her shirt was on inside out. She looked just
25 like something serious had happened, but I couldn't, you

1 know, there was no way to know what.

2 Q I'm going to show you a picture, State's No. 49, and
3 ask you if that looks like Lauren on that day.

4 A Definitely.

5 Q And do you notice anything about her shirt?

6 A Well, it is on inside out.

7 Q You indicated that you then saw Lauren run up to
8 another vehicle; is that correct?

9 A The one that had come down the street during all
10 this.

11 Q Okay. Do you remember what kind of car that was?

12 A No, I really don't. It was a van or a truck, but I
13 don't remember exactly.

14 Q And what did you see that truck do after Lauren made
15 contact with the driver of that truck?

16 A Well, after we got her, we were kind of watching the
17 car that the little boy had been taken in to see what he
18 was doing, and the truck, van, whatever it was turned
19 around and she said she was going to try to go find out if
20 she could catch it, so --

21 Q Did you at any point see the small sedan stop the car
22 that had Zach in it, did you ever see it stop?

23 A Yeah, about a block and a half away there's another
24 street that runs into West Ashford Way and it stopped and
25 turned around.

1 Q The car turned around?

2 A Uh-huh.

3 Q And what did you see it do after it turned around?

4 A It took the little boy out of the car and set him in
5 the middle of the street.

6 Q Do you recall what side of the car the little boy was
7 let out from?

8 A No, I don't.

9 Q And where in the street did the driver put the baby?

10 A Right in the middle of the street.

11 Q Could you describe the volume of traffic on that
12 street?

13 A There's quite a few homes on that street so it's
14 pretty active, and it's up and down so there's rolling
15 hills, and so cars come over faster than they should, but
16 there's enough traffic on there to be cautious.

17 Q Could you describe the maneuvering of the vehicle
18 that let the child out of the car?

19 A After he left the child out of the car, he then
20 turned around, around the child, and then left the scene.

21 Q And in your observations did it appear like careful
22 driving?

23 A No. He had been -- it appeared he'd been careful up
24 until --

25 MS. DURANT: Objection, your Honor.

1 THE COURT: Wait, hold on.

2 MS. DURANT: A leading question, your Honor.

3 THE COURT: Rephrase your question. Sustained.

4 BY MS. COOPER:

5 Q What did you observe with the driving of that
6 vehicle?

7 A Up until that point he had not been reckless in the
8 car, but once he set the child and turned the car around
9 the child, he could have hit that child easily.

10 Q What did you see Lauren do once the child was placed
11 in the middle of the street?

12 A She went running after him, and I was trying to
13 follow. I gave the phone to my husband and I tried, I
14 went up to her and we were getting the child.

15 Q Once you were able to get the child, where did you go
16 next?

17 A We took her back and took her inside to our home with
18 her son and trying to calm them down and wait for the
19 police to come.

20 Q And how long approximately do you think it took the
21 police to get there?

22 A It seemed like it took about a half an hour. I think
23 my husband said it was 35 minutes, but it was awhile.

24 Q Okay. And what were you doing while you were waiting
25 on the police?

1 A Sitting on the love seat with Lauren and her little
2 boy. We had gotten her some water and was trying to calm
3 her down and talk to them and see if we could find out
4 what had happened.

5 Q And could you describe what the little boy's demeanor
6 was like?

7 A He was a little upset. You know, he didn't
8 understand. He was at an age where he didn't understand
9 what was going on, so he was whimpering a little bit, but,
10 you know, as long as he was with his mom he was okay.

11 Q Okay. And describe for the jury what it is Lauren
12 told you while you were with her on your sofa waiting for
13 the police.

14 A She told me that --

15 MS. DURANT: Objection.

16 THE COURT: Just a minute.

17 MS. DURANT: I withdraw that objection.

18 THE COURT: All right. Go right ahead.

19 BY MS. COOPER:

20 Q Please proceed.

21 A She told me that he had gotten a knife and threatened
22 to kill her and her son if she didn't do what he said.
23 She said he had pulled her hair and held her down, and
24 later in the conversation she had told me that he had
25 raped her.

1 Q And could you describe for the jury how she was
2 behaving when she was talking about the rape?

3 A Well, the whole time she was shaking very badly. I
4 had gotten her some water and she couldn't hold the cup by
5 herself. She was very upset.

6 She was very hesitant to tell me -- after she
7 told me about the knife and pulling her hair down and his
8 threats, she was very hesitant to tell me if anything else
9 had happened, but I wanted to make sure that she didn't
10 need an ambulance or something as well as the police.

11 Q And so at that point did she indicate -- did she go
12 into details about how the rape occurred or what happened
13 during the rape?

14 A She just told me that he had forced her and that he
15 had raped her.

16 Q Do you remember the police arriving to your
17 residence?

18 A Yes, I do.

19 Q Do you recall the name of the officer that you made
20 contact with at your residence?

21 A Officer Gonzales.

22 Q Describe for the jury what transpired with Officer
23 Gonzales in your home.

24 A Well, we took -- my husband took the little boy
25 outside so they could talk to her and we went into our

1 formal living room and sat on the couch and they talked
2 with her. They asked me to leave part of the time but to
3 stay within eye shot of her so she could see me. She
4 seemed to be fairly comfortable with me being around, and
5 they questioned her about everything that had happened.

6 Q Were you present? Did you hear what she was saying
7 to the officer?

8 A Yes. She was having a lot of trouble talking to
9 them. She was crying. She was -- she had gone back into
10 a little bit of the hysterical behavior that she had
11 obviously before, but she had told them that he had
12 threatened to kill her and the child and that he forced
13 her and raped her.

14 Q And so you actually heard her report the rape?

15 A Yes.

16 Q To Officer Gonzales?

17 A Yes.

18 Q And you do recall giving her a glass of water; is
19 that correct?

20 A Yes, ma'am.

21 Q Did you ever ask her whether or not the man had used
22 any protection?

23 A Yes, I did. I was concerned about -- I really wanted
24 to make sure she didn't need an ambulance, and so, you
25 know, that was for whatever reason I just asked that, I

1 was concerned from disease or pregnancy or something else.

2 Q How did she reply to your question?

3 A I don't recall.

4 Q Okay. Did you notice any other people on the street
5 while you were dealing with Ms. Byrd?

6 A There were children playing, you know, and they were
7 very curious. I don't know what all they saw. There
8 were -- it seemed to me there were other cars that had
9 come before the little boy had been let out because it is
10 a busy street, but there were children playing.

11 Q Did you see any other adults outside?

12 A No, I don't really recall any other adults.

13 Q Did you have an opportunity to review the recording
14 of the 911 call you made to the police?

15 A Yes, I did.

16 Q Did you recognize your voice on that recording?

17 A Yes, it was my voice and my husband's voice.

18 Q And your husband again is who?

19 A Donald Weyl.

20 MS. COOPER: Your Honor, at this time the State
21 seeks to introduce that portion of State's Exhibit 68 into
22 evidence.

23 MS. DURANT: Your Honor, we renew our objection.
24 And may we approach, your Honor?

25 THE COURT: Sure.

1 (A bench conference was held with the judge and
2 attorneys in the presence of the jury but out of the
3 hearing of the jury.)

4 THE COURT: State your objection on the record,
5 please.

6 MS. DURANT: Your Honor, we renew our objection
7 to the 911 tape coming in as stated earlier and we renew
8 our objection to her husband being on the tape as hearsay.

9 THE COURT: All right. The objection is
10 overruled under the present sense impression exception to
11 that rule. You may play the exhibit.

12 This will include -- I know on that exhibit
13 there was one conversation already played. Will this be
14 everything that's on that exhibit?

15 MS. COOPER: Yes, sir, your Honor.

16 THE COURT: State's 68 is admitted in its
17 entirety. You may publish it to the jury.

18 MS. COOPER: Thank you, your Honor.

19 (WHEREUPON, State's Exhibit No. 68 was admitted
20 into evidence.)

21 (Audiotape played.)

22 MS. COOPER: Thank you very much, Mrs. Weyl.

23 THE COURT: All right. Cross-examine.

24 CROSS-EXAMINATION

25 BY MS. DURANT:

1 Q Ms. Weyl, how are you?

2 A Fine.

3 Q You were out mowing your grass that day; is that
4 correct?

5 A Yes.

6 Q And you were mowing your grass when the incident
7 started?

8 A Yes, ma'am.

9 Q So it's your testimony that you saw Lauren come out
10 of the house screaming?

11 A Yes.

12 Q And that the defendant had come out of the house
13 prior to that?

14 A Correct.

15 Q As far as the 911 tape goes, there's nothing on the
16 911 tape about a rape, is there?

17 A No, there's not.

18 Q And I think you had testified, and I want make sure I
19 have this correct, that Lauren told you he had a knife and
20 held her down and raped her?

21 A No, I said he threatened he was going to kill her and
22 her son if she didn't do what he said.

23 Q She told you about the rape later?

24 A Yes. Well, we sat on the couch for quite awhile and
25 I was concerned about her being injured or hurt and that

1 we needed to get an ambulance as well as police officers.

2 Q You say the car stopped about one and a half blocks
3 at another street?

4 A Correct.

5 Q What was the name of that other street?

6 A I don't recall. It's a little street, a small street
7 that intersects with West Ashford Way. It's visible from
8 my house.

9 Q You were probably upset yourself when this was going
10 on; is that correct?

11 A I think I was more concerned.

12 Q All right. And you said the child was whimpering and
13 then he calmed down?

14 A Uh-huh.

15 Q And this is a residential neighborhood?

16 A Yes, it is.

17 Q And it's not on a main thoroughfare as far as
18 highways go?

19 A No, it's not on a main thoroughfare. This is just a
20 fairly busy road that runs through that neighborhood.

21 MS. DURANT: Beg the Court's indulgence.

22 THE COURT: All right.

23 MS. DURANT: I have a couple more questions.

24 BY MS. DURANT:

25 Q You did testify that when Randy had Zach that his car

1 did turn around, the gold car that he was in with the
2 child?

3 A Yes.

4 Q And started back?

5 A No, he hadn't started back. He just turned around
6 and stopped.

7 Q But he did turn around facing the direction he had
8 come from?

9 A Correct.

10 Q And when you were there, you said when the police
11 came later to talk to Lauren, you were present during that
12 interview?

13 A Yes, I was.

14 Q And Lauren didn't ask you to leave while she talked
15 to them?

16 A No, she did not.

17 Q She seemed fairly comfortable with you being there?

18 A Yes, ma'am.

19 MS. DURANT: No further questions, your Honor.

20 THE COURT: Any redirect?

21 MS. COOPER: No, sir, your Honor.

22 THE COURT: All right. Ma'am, you may step
23 down.

24 MS. COOPER: Your Honor, may she be excused?

25 THE COURT: Any objection?

1 MS. DURANT: No objection, your Honor.

2 THE COURT: The witness is excused.

3 MS. GARFIELD: Thank you, your Honor.

4 The State calls Dr. John Stewart.

5 JOHN STEWART, M.D., after being duly sworn,
6 testified as follows:

7 THE CLERK: Please have a seat in the witness
8 stand and state your full name for the record.

9 THE WITNESS: Nathaniel Johnson Stewart, Jr.

10 DIRECT EXAMINATION

11 BY MS. GARFIELD:

12 Q Dr. Stewart, where do you work?

13 A I'm at Palmetto Health Richland, department of
14 emergency medicine.

15 Q And what do you do at Palmetto Richland Hospital?

16 A I'm director of education and professional services.

17 Q And what exactly does that mean?

18 A Well, I direct the ER and I'm one of the attending
19 physicians that work in the ER.

20 Q If you could pull the microphone a little bit closer.

21 A Okay.

22 Q And if you'll just repeat that answer.

23 A I am an attending physician who works in the
24 emergency department and I also direct the emergency
25 department.

1 Q And on a daily basis what do you do in the emergency
2 department?

3 A Beyond all the meetings I end up having to go to to
4 solve the problems in the emergency department, I work and
5 see patients, patients who come in for a variety of
6 complaints, both pediatric and adult.

7 Q And these would be patients that come into the
8 emergency room?

9 A That's correct.

10 Q And does this include all types of complaints?

11 A That's correct.

12 Q And were these your same duties back in October of
13 2004?

14 A That's correct.

15 Q Specifically I'm going to bring you to October 30th,
16 2004. Were you working that day?

17 A Yes, I was.

18 Q And that is at the emergency room at Richland
19 Memorial Hospital?

20 A That's correct.

21 Q And, Dr. Stewart, did you have an occasion to conduct
22 an examination on Lauren Byrd?

23 A I did.

24 Q Could you explain to the jury when you first come in
25 contact with a patient, what is your normal routine?

1 A Basically after my introduction I ask them to tell me
2 what happened, why they're there. People present to the
3 emergency department for a variety of reasons and I need
4 to understand why they're there.

5 Q And that could be anything from a broken finger to
6 something more serious?

7 A Lacerations, fractured bones, whatever.

8 Q Is this the same protocol that you used when you
9 conducted the examination of Lauren Byrd?

10 A That's correct. We prefer to use the word
11 "guidelines."

12 Q Guidelines, yes, sir.

13 And when you were conducting these guidelines,
14 did you first have the opportunity to speak with Ms. Byrd
15 about why she was there?

16 A I did.

17 Q And if you need to refer to your notes please do so,
18 but share with the jury what Ms. Byrd reported to you.

19 A She initially presented in to the section of the ER
20 called triage, which is where the nurses take a brief
21 history to find out why the patient's there and then place
22 them in a certain section of the ER which is more suitable
23 for that particular complaint.

24 THE COURT: Doctor, I'm going to ask you to
25 speak up, please. Everybody's got to be able to hear what

1 you're saying, please, sir.

2 THE WITNESS: I'm terribly sorry.

3 THE COURT: All right, sir.

4 THE WITNESS: I'll move closer.

5 MS. GARFIELD: Thank you, Doctor.

6 THE WITNESS: Do you want me to repeat that?

7 THE COURT: That's all right. Go ahead.

8 THE WITNESS: Okay. Triage will then place the
9 patient after gaining a history from the patient in the
10 appropriate area of the emergency department for
11 evaluation. Triage identified her as being there for a
12 forensic examination, closer in the area I was working in
13 which is the area of the ER called Pod 9. In that area I
14 went in, introduced myself, and asked her what
15 particularly happened, what brought her there, and why
16 she -- when this happened, those types of things.

17 BY MS. GARFIELD:

18 Q At that time what did she report to you had happened
19 to her?

20 A She told me at that time that her former boyfriend, I
21 believe he's around 26 years of age if my notes are
22 correct, had come over to her parents' house where she was
23 staying by herself with her three-year-old son and that he
24 had come into the house and forced her against her will to
25 participate in sexual activity.

1 Q Did she describe that sexual activity to you, Doctor?

2 A She said that she wasn't sure that he was able to
3 penetrate her vaginally during the attempt, but he did
4 fondle her breasts and did force her to have provide oral
5 sex. She also seemed to be quite upset that -- she seemed
6 to have consented because of a threat to her
7 three-year-old son.

8 Q How did she appear to you when she was in the
9 hospital?

10 A She was distraught. She was psychologically upset,
11 she was crying.

12 Q And about how many hours are you aware that this
13 occurred before your examination?

14 A I believe she told me what I put in my notes that it
15 was about 1 o'clock in the afternoon. I think I remember
16 that. I don't recall exactly, but approximately 1 o'clock
17 in the afternoon.

18 MS. DURANT: Objection, your Honor. I don't
19 know that he can testify as to her psychological state.
20 He hasn't been qualified as an expert in that area.

21 MS. GARFIELD: I asked him what time.

22 THE COURT: I didn't hear testimony along those
23 lines. Overrule the objection.

24 Go ahead with your questions, please.

25 MS. GARFIELD: Thank you, your Honor.

1 BY MS. GARFIELD:

2 Q Do you recall about what time this examination that
3 you're conducting was performed?

4 A The patient presented to the emergency room at 6:16
5 in the evening.

6 Q So we're talking about approximately five hours you
7 said after?

8 A In coming to the emergency room and then she was
9 brought back to my area found 22:45, which is 9:45.

10 Q So after you do this initial assessment with the
11 patient, what do you do afterwards?

12 A Well, the physician's responsibility to the patient
13 is to provide several distinct issues or look at several
14 issues; for instance, her psychological evaluation to
15 support them psychologically. That's the first aspect of
16 the physician's job. Secondly, provide a physical
17 examination to make sure that no trauma's involved; third
18 is to collect particular specimens for evaluation; and
19 fourth is to basically provide prophylaxis for those more
20 common venereal diseases or communicable diseases from
21 sexual activity and also provide prophylaxis for
22 pregnancy.

23 Q First you would assess her psychological issues; is
24 that correct?

25 A Well, support her psychological care, that's correct.

1 Q And how do you go about assessing that?

2 A Well, obviously witness what's going on and listen to
3 their story, the way they present it, whether or not
4 they're crying, whether or not they're emotionally
5 distraught over the incident.

6 Q And did you observe her to be crying?

7 A She was.

8 Q And next did you conduct a physical examination?

9 A I did.

10 Q And what did that entail?

11 A Basically you listen to the patient's story, what
12 their complaints are, and then you do a complete
13 head-to-toe physical examination, looking for any evidence
14 of trauma, anything which may warrant further evaluation
15 through radiology or through a laboratory work-up.

16 Q And what were Ms. Byrd's complaints to you at that
17 time, Doctor?

18 A Her complaints at that time besides being sexually
19 assaulted, she had some soreness on the left side of her
20 neck and her right calf. She also had a diffuse headache.

21 Q And did she report to you why she had these aches?

22 A She said that she felt this occurred during the
23 struggle.

24 Q I'm sorry?

25 A During the struggle.

1 Q And did you conduct a physical examination?

2 A I did.

3 Q And what does that mean?

4 A With a physical examination, basically you look at
5 every area of the body through observation, palpation,
6 percussion, auscultation, and evaluate whether or not that
7 system, the organ system you're looking at is basically
8 functioning properly.

9 Q So you examined her entire body?

10 A That's correct.

11 Q Is this basically a physical examination?

12 A That's correct.

13 Q Just like you'd get in any doctor's office?

14 A That's correct.

15 Q Did this also entail a vaginal examination?

16 A That's true.

17 Q In this particular case because it's sexual and what
18 was reported to you, are you conducting an examination
19 along what had been reported to you?

20 A Yes, I am, but I'm also making sure she's not
21 traumatized in any way.

22 Q When you say "not traumatized," what does that mean?

23 A I'm looking for evidence of abrasions, lacerations,
24 contusions, things of that nature.

25 Q And did you find any abrasion or contusions?

1 A Did not.

2 Q Is that common?

3 A It can be. I mean, you can sustain a minimal
4 traumatic injury that will not show up for days later.

5 Q So it's obvious that she could have had contusions,
6 and contusions mean bruises; is that right?

7 A That's correct.

8 Q It's possible she could have had bruising days later?

9 A It's possible.

10 Q And you would not have seen any markings to that
11 effect at your examination?

12 A That's correct.

13 Q During your vaginal examination, Doctor, were you
14 able to determine if Ms. Byrd had been raped?

15 A Not really.

16 Q Please explain to the jury why.

17 A Well, the difficulty is in an adult female or even in
18 younger children, you get a lot of mothers who bring their
19 children in to see if they've been having sexual activity
20 with their boyfriends and there's really no way to tell
21 unless there's been some trauma to the area. Typical
22 sexual activity does not cause trauma to the area. And
23 most people think that the hymenal ring is what you look
24 for in a non-pubescent child, but they may not have that.
25 It may be broken by just normal play, not from sexual

1 activity.

2 In adults they don't have a hymenal ring and
3 basically I'm looking for any evidence of trauma, but you
4 don't usually find that following normal sexual activity.

5 So what I did with her is I basically looked at
6 some of the material contained in the vaginal wall. I did
7 what's called a saline wet wrap and I analyze it for any
8 evidence of seminal fluid and spermatozoa. In this
9 particular incident I found no spermatozoa. I found no
10 mobile or non-mobile spermatozoa, indicating that if there
11 was vaginal penetration there was not ejaculation on the
12 part of the male participant.

13 Q So basically what you're saying, Doctor, am I correct
14 that if someone comes to you and says, Can you tell if
15 I've just had sex, can you do that?

16 A Unless there's seminal fluid in the vaginal wall I
17 usually cannot.

18 Q And what you're basically looking for with this
19 examination is for evidence of trauma?

20 A Evidence of trauma primarily and I also look for
21 spermatozoa.

22 Q And that also mean tears?

23 A Tears, abrasions, contusions in that area also.

24 Q But with Ms. Byrd's examination you did not find any
25 bruising?

1 A That's correct.

2 Q But that doesn't mean that she was not raped,
3 correct?

4 A I can't say yes or no, that's correct.

5 Q You can't say yes or no.

6 Were you able to prepare a written report after
7 you examined Ms. Byrd?

8 A I did.

9 Q And just if you'll refer -- do you have your report
10 before you?

11 A I do.

12 Q If you'll just refer to the history of present
13 illness just to refresh your memory. If you'll just once
14 again explain to the jury exactly what information she did
15 give you.

16 A History of present illness is basically what brought
17 them to the ER, why they're there, and what I have is that
18 she's a 19-year-old female who presented to the emergency
19 room complaining of a rape by a former boyfriend. She
20 stated that she was at home in her parents' house when he
21 forced his way in. There was a struggle. He threatened
22 her verbally, he did not hit her with his fists.
23 Ultimately, he tried to penetrate her vaginally, but she
24 does not think he was capable of doing so and he did not
25 ejaculate vaginally but that he forced her to perform oral

1 sex on him and at that time he did ejaculate. She denies
2 any genital fondling with foreign objects, although he did
3 use his hands to fondle her breasts. And she denies any
4 pain in the areas except the left side of her neck and the
5 right lower leg.

6 Q So she reports to you that she had been penetrated
7 vaginally?

8 A That she was unsure if she was penetrated vaginally.

9 Q Read the rest of the sentence.

10 A I'm sorry?

11 Q Read the rest of that sentence about penetrating her
12 vaginally.

13 A Ultimately -- let's see. She does not think he
14 ejaculated vaginally. The sentence from the report,
15 Ultimately, he tried to penetrate her vaginally but does
16 not think he was able to completely penetrate her.

17 Q And she did not report any ejaculation vaginally?

18 A That's correct.

19 Q She did report to you oral sex, however?

20 A That's correct.

21 Q And she did report to you that he ejaculated in her
22 mouth?

23 A That's correct.

24 Q Did you do any sort of examination of her mouth?

25 A I did.

1 Q And were you able to find anything?

2 A I saw nothing unusual on the oral examination.

3 Q And she reported to you that she had drank water
4 since the incident?

5 A That's correct.

6 Q And had she also reported to you that she had gone to
7 the bathroom since the incident?

8 A She had gone to pass her urine on one occasion.

9 Q And all of these are factors when making your
10 examination, correct?

11 A Well, naturally you'd prefer a patient who had not
12 urinated and not had anything orally to drink for
13 evaluation.

14 Q Thank you, Doctor.

15 Before this incident did you know Lauren Byrd?

16 A I'm sorry?

17 Q Before this incident did you know Lauren Byrd?

18 A I did not.

19 Q And you did not know the defendant, Randy Thomas?

20 A I did not.

21 Q When Lauren was discharged, what did you instruct her
22 to do?

23 A She was instructed to follow up with either her
24 physician or one of our clinics for return of some of the
25 lab tests I did on her, test results. We did test for

1 chlamydia which is normally obtained to make sure that she
2 didn't require further treatment.

3 Q Are you familiar with rape protocol kits?

4 A Yes.

5 Q And was a rape protocol kit conducted on Lauren Byrd?

6 A It was.

7 Q Was any portion of that kit conducted by you?

8 A Yes, a pelvic and swabs from the pelvic region were
9 obtained by me.

10 Q Will you just explain to the jury what that means?

11 A The kit is basically comprised of a number of
12 questions that the forensic examiners requests they have
13 when they're evaluating certain materials, and my
14 understanding is that the kit goes to SLED, South Carolina
15 Law Enforcement Division, which analyzes the kit once it's
16 obtained. The nurse generally obtains hair clippings,
17 nail clippings, and oral swabs, and I obtain as the
18 physician the pelvic swabs that are sent in for analysis
19 of seminal fluid.

20 Q What does a swab look like?

21 A A Q-tip.

22 Q And basically what do you do with that swab?

23 A I swab out the vaginal wall and place it in
24 containers which are provided by the kit and they're sent
25 off to SLED for analysis.

1 MS. GARFIELD: Beg the Court's indulgence.

2 BY MS. GARFIELD:

3 Q Doctor, I'm going to hand you what's been marked for
4 identification as No. 66. Do you recognize this?

5 A Well, I recognize it as being a sexual assault kit.

6 Q Can you open that kit, Doctor? And do you see the
7 swabs in that kit?

8 A They may be contained in sealed envelopes. I don't
9 see them lying open in here.

10 Q Go ahead and open it. Doctor, I want you to explain
11 to the jury what those swabs are.

12 A These are the vaginal swabs, the oral swabs, the
13 fingernail scrapings.

14 Q Are those the swabs that you would have used during
15 the examination of Lauren Byrd?

16 A Some of them would have been mine, yes. Some would
17 have been the nurse's.

18 Q But once you got those from the nurse, who was the
19 nurse?

20 A I'm sorry?

21 Q Who was the nurse that assisted you?

22 A I'll have to look at that.

23 Q Her name may be on the front of the kit.

24 A Jhoana Pineda-Kim.

25 Q Thank you, Doctor. One last question. I just want

1 to refer you to page two of your written report.

2 A Okay.

3 Q Tell the jury what your clinical impression of this
4 examination was.

5 A The clinical impression was sexual assault.

6 MS. GARFIELD: Thank you. Please answer any
7 questions the defense counsel may have.

8 THE COURT: All right. Ms. Durant.

9 MS. DURANT: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MS. DURANT:

12 Q Doctor Stewart, how are you today?

13 A I'm doing okay.

14 Q I think you have testified that typical sex does not
15 leave any trauma?

16 A That's correct.

17 Q So basically your diagnosis of sexual assault would
18 be based on what Lauren told you?

19 A That's correct.

20 Q So your tentative diagnosis was based on what she
21 said?

22 A That's correct.

23 Q And any information you had about what happened was
24 from Lauren?

25 A That's correct.

1 Q And you were not there when it happened?

2 A Correct.

3 Q You said there was no bruising on her anywhere?

4 A Not at that time. I saw nothing.

5 Q Right. And you didn't see any carpet burns?

6 A No.

7 Q No marks on her neck anywhere?

8 A No, I saw no evidence of trauma in my physical exam.

9 Q So when you examined her for tenderness in those
10 areas, basically that's based on her telling you it was
11 tender; isn't that true?

12 A It's subjective, that's correct.

13 Q Right. You had no way of getting inside her mind to
14 know what's painful?

15 A I did not.

16 Q And you don't -- in your report you don't describe
17 any red marks anywhere either, do you?

18 A I do not.

19 Q And you said you didn't find -- you didn't find any
20 sperm on her anywhere, did you?

21 A I did not. On my examination of the vaginal wall
22 swab, I found no spermatozoa.

23 Q No semen anywhere?

24 A Well, I can't see semen on a wet wrap only. I don't
25 see spermatozoa, which is part of the seminal fluid, but

1 dried on her skin or anything like that.

2 Q And I think in your report you also said that her
3 skin had no evidence of trauma anywhere?

4 A That's correct.

5 Q I think you did sign the report for the sexual
6 assault foundation?

7 A Yes.

8 Q Do you have that document?

9 A Yes.

10 Q If you will look at that, I think it says in that
11 first paragraph?

12 A Page one?

13 Q Right. In the first paragraph where it talks about
14 the 19-year-old victim, doesn't it state partial vaginal
15 penetration there?

16 A Yes, it does.

17 Q And on the last page, again I just want to reiterate
18 where you signed, you wrote no bruising seen?

19 A That's correct.

20 Q So, Doctor, you can't -- based on your examination
21 there was no evidence of a rape?

22 A Well, I can't say if she was raped or not. I
23 couldn't say that about anyone, whether it's consensual
24 sex or not consensual.

25 Q But you said you looked for trauma?

1 A Right.

2 Q Isn't it true that in most rapes you find some kind
3 of trauma?

4 A In a lot you do, but some you don't.

5 Q Isn't that more common, though?

6 A Maybe a little more common. It depends on how valid
7 it is.

8 Q Just the fact that you're looking for trauma would
9 indicate this probably occurs more frequently?

10 A Well, rape in and of itself is not a loving sexual
11 activity. It's violence against women.

12 MS. DURANT: I beg the Court's indulgence, your
13 Honor.

14 BY MS. DURANT:

15 Q Doctor, let me go back to your final report. I
16 apologize for jumping around.

17 A The dictation?

18 Q Yes, sir.

19 A Okay.

20 Q In this first paragraph you did say that she told
21 you, Lauren told you that he had tried to penetrate her
22 vaginally but does not think he was able to completely
23 penetrate her?

24 A That's correct.

25 Q So basically she was telling you that there hadn't

1 been any real vaginal penetration?

2 A That was my understanding.

3 MS. DURANT: Thank you, Dr. Stewart.

4 No further questions, your Honor.

5 THE COURT: Redirect.

6 MS. GARFIELD: Briefly.

7 REDIRECT EXAMINATION

8 BY MS. GARFIELD:

9 Q Dr. Stewart, when you have your clinical impression,
10 you're basing your clinical impression, are you also
11 basing that on the demeanor of the victim?

12 A That's true.

13 Q So you took into account Lauren's crying?

14 MS. DURANT: Objection, your Honor. Leading.

15 THE COURT: Sustained.

16 BY MS. GARFIELD:

17 Q Did you take into account Lauren's demeanor when you
18 made that clinical assessment?

19 A I did.

20 Q And what was her demeanor?

21 A Well, during the exam she was crying, she was quite
22 distraught, she was worried about her three-year-old.

23 Q Okay. And you just also told Ms. Durant that you
24 found no spermatozoa. Am I saying that right?

25 A Spermatozoa?

1 Q Spermatozoa.

2 A Right.

3 Q And that is consistent with a patient telling you
4 that she only had partial penetration and no ejaculation,
5 isn't it?

6 A That's true.

7 Q You can't find that if there's no ejaculation,
8 correct?

9 A Even if he fully penetrated her I wouldn't be able to
10 find it if he didn't ejaculate.

11 Q Thank you, Doctor.

12 Also you report that you did not find any trauma
13 on her skin as in markings, correct?

14 A That's correct.

15 Q And this incident had occurred five hours before your
16 examination?

17 MS. DURANT: Objection, your Honor. Leading.

18 THE COURT: Sustained.

19 BY MS. GARFIELD:

20 Q How many hours before had this incident occurred?

21 A Well, she told me that it occurred around 1 p.m. and
22 I saw her around 9, 9:30.

23 Q So it had been several hours?

24 A That's correct.

25 Q Can bruising occur in just five hours?

1 A It can, but it's often delayed. I can give you a
2 personal example. I was hit by a intoxicated patient last
3 year and didn't have a bruise on my face until the next
4 day.

5 MS. DURANT: Objection, your Honor.

6 THE COURT: Wait just a minute.

7 Overruled. He can answer that question.

8 Go ahead.

9 BY MS. GARFIELD:

10 Q Thank you, Doctor. Please continue.

11 A I just said that last year I was struck in the face
12 by an intoxicated patient and I had no mark on me until
13 the next day. It can occur.

14 Q And everyone bruises differently; is that correct?

15 A That's true.

16 Q And did the victim ever claim that this was rough sex
17 with the defendant?

18 A No. My impression in talking with her was that she
19 was more worried about physical harm coming to her
20 three-year-old so she basically did not struggle.

21 Q So there were no weapons involved or reported to you?

22 A Not reported to me.

23 MS. GARFIELD: Thank you, Doctor.

24 Nothing further.

25 THE COURT: Any recross?

1 MS. DURANT: Just briefly, your Honor.

2 RE-CROSS-EXAMINATION

3 BY MS. DURANT:

4 Q Dr. Stewart, you just said that she was more
5 concerned about her three-year-old, but there's nothing in
6 your report that she said that to you?

7 A Well, what's in my notes, which is on the front page
8 of the ER sheet, states that he threatened the patient and
9 her son but was not hit, and then my recollection of
10 dealing with her, she was worried about her son.

11 Q Right. But that's not in your final report that she
12 said that to you?

13 A That's correct.

14 Q So, Dr. Stewart, you're a good doctor, you do your
15 best to do your best for every patient that comes in?

16 A Try to.

17 Q And you checked her all over, vaginally, orally, her
18 skin, and you found no evidence of trauma or bruising
19 anywhere?

20 A That's correct.

21 Q And you found no sperm anywhere?

22 A That's correct. I don't know what SLED found. That
23 part is not part of my record. I collected the specimens
24 for SLED, but I don't know what they found.

25 Q Yes, sir. And bruising can occur right away?

1 A It can. Well, it's not so much a bruise as it would
2 be more of a red mark or a laceration or something of that
3 nature.

4 Q And you found none of that?

5 A I didn't.

6 MS. DURANT: No further questions, your Honor.

7 THE COURT: All right. Anything further?

8 MS. GARFIELD: Nothing further.

9 May this witness be excused?

10 THE COURT: Any objection?

11 MS. DURANT: No objection, your Honor.

12 THE COURT: Doctor, you're excused. Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Call you next witness,
15 please.

16 MS. GARFIELD: Thank you, your Honor.

17 The State calls Investigator Roy Livingston.

18 ROY LIVINGSTON, after being duly sworn,
19 testified as follows:

20 THE CLERK: Please have a seat in the witness
21 stand and state your full name for the record.

22 THE WITNESS: Investigator Roy Livingston.

23 DIRECT EXAMINATION

24 BY MS. GARFIELD:

25 Q Investigator, where are you employed?

1 A The Richland County Sheriff's Department.

2 Q How long have you been employed at the Richland
3 County Sheriff's Department?

4 A Seventeen years.

5 Q And what is your duties with the Richland County
6 Sheriff's Department?

7 A I work with the special victims unit specializing in
8 sex crimes.

9 Q And how long have you worked in the sex crimes unit?

10 A I've been there about 16 years.

11 Q And these were your duties back in October of 2004 as
12 well?

13 A Yes, it was.

14 Q Do you recall, Investigator Livingston, reporting to
15 250 Elm Street, I'm sorry, to 300 West Ashford Way in Irmo
16 back on October 30th, 2004?

17 A Yes.

18 Q What was the nature of that call?

19 A It was a sexual assault.

20 Q And when you got to that house, who did you come in
21 contact with?

22 A I met first with the responding officer, which was
23 Deputy Gonzales.

24 Q And what did Deputy Gonzales report? Just the gist,
25 characterize what he informed you.

1 A He informed me that the victim's ex-boyfriend had
2 came into the house and physically assaulted her and had
3 sexually assaulted her.

4 Q And did you have an opportunity to come in contact
5 with the victim in the case?

6 A Yes, I did.

7 Q Who was the victim in this case?

8 A The victim was Lauren Byrd.

9 Q Did you attempt to interview Ms. Lauren Byrd?

10 A Yes, I did.

11 Q And what did she report to you had occurred,
12 Investigator?

13 A She told me that she was sitting in the -- her and
14 son was in the house watching television. Her son was
15 playing and the door bell rang. She got up and went to
16 the door, looked outside and saw her former boyfriend
17 standing at the door.

18 She stated that he was not supposed to be around
19 her. She said she came back, didn't open the door, she
20 came back and moved to a different position in the house
21 and continued to watch television.

22 She stated after awhile she looked up and he was
23 coming through the door. She stated he came over, sat
24 down with her. Again she stated that he wasn't supposed
25 to be around her. She told him he had to leave, she said

1 he wouldn't leave, came over and sat down beside her.
2 They started talking. She stated he then moved closer to
3 her and she again asked him several times to leave the
4 house, but he would not leave. She stated then they
5 started arguing and a physical altercation broke out so
6 they started fighting.

7 Q When you say "fighting," exactly what do you mean?

8 A I mean they were -- he was grabbing hold of her and
9 she was trying to keep him off of her.

10 Q And then what did she report happened?

11 A She reported that he grabbed her and was trying to
12 get her to go upstairs and she was trying to fight to keep
13 from going upstairs. He grabbed her by the wrists first,
14 she jerked away and then he grabbed her by the waist and
15 took upstairs. She stated as they were going up the steps
16 she was grabbing hold to anything that she could to keep
17 from going upstairs.

18 She stated that he then took her into her
19 parents' bedroom. She stated before going into the
20 bedroom she again was grabbing hold to bed posts or
21 anything to keep from going into the bedroom. She grabbed
22 hold of the stairway or anything she could to keep from
23 going upstairs, period.

24 Q Investigator, while she's telling you the acts that
25 occurred to her, what is her demeanor like?

1 A She was upset, very upset.

2 Q About what time did you get there?

3 A It was going on, rough guesstimate, around 3 in the
4 afternoon.

5 Q She seemed upset?

6 A Yes.

7 Q Was she crying?

8 A Yes, she was. She was crying; not out-of-control
9 crying, but tears were coming down.

10 Q Was she comfortable talking about this?

11 A Somewhat comfortable. She was still upset about what
12 had happened.

13 Q And once she reported they get upstairs, then what
14 did she report to you?

15 A She reported the defendant took her and threw her
16 down on her parents' bed in her parents' bedroom. She
17 stated that she did not want to go into that bedroom at
18 all but he put her on the bed, told her to take off her
19 blouse. She told him that she would not take it off. She
20 stated that he took it off and then took off all of his
21 clothes.

22 Q And then what did she report?

23 A She said that he told her to perform oral sex on him,
24 at which time she did perform oral sex and he ejaculated
25 into her mouth.

1 She stated that he then pushed her back onto the
2 bed and tried to have sexual intercourse with her but it
3 didn't last very long. She said he stopped and started
4 crying and he was saying all kind of things.

5 She said they both got dressed and that's
6 when -- once they got dressed the fight started again,
7 they started fighting each other again in the bedroom.
8 The fight left the bedroom and went downstairs into the
9 kitchen area.

10 She stated the suspect grabbed a knife out of a
11 drawer and put it to her throat. She stated even with the
12 knife to her throat, she was still fighting him. She
13 wanted to protect her son is what she was trying to do.
14 And he kept asking her, Do you want your son to be all
15 right, and she said yes.

16 He grabbed the son -- he left her, grabbed her
17 son, ran out the door. She ran after him. He put her son
18 in a car and drove off. She stated that she ran after him
19 yelling to put her son out.

20 She stated that at that time some neighbors came
21 out and was trying to help her. He drove off down the
22 street and a few blocks away is when she told me that he
23 did stop, put her son out and drove off. She went down
24 and grabbed her son with some neighbors and walked back
25 and called 911 for assistance.

1 Q And did you also see her son that day?

2 A Yes, I did.

3 Q How did he appear?

4 A He was fine. He was fine. He wasn't upset. When I
5 saw him he was at the neighbor's house. He was not there
6 in the house while we were there processing the scene or
7 anything. He was at a neighbor's house. I walked over
8 and talked with the neighbor, asked them was it okay for
9 him to be there, they said yes. He was fine. He was
10 playing with the neighbor's kids.

11 Q So how many law enforcement officers were out at the
12 house?

13 A When I got there, there was myself, the forensics,
14 and Officer Gonzales.

15 Q When you say "forensics," who would that be?

16 A That would be Deirdre Brown, Investigator Brown.

17 Q Can you explain to the jury or describe to the jury
18 what Deirdre Brown looks like?

19 A Deirdre Brown is a black female about five-seven.

20 Q And what did she exactly do at this house?

21 A She was forensics. She collected the evidence in the
22 house and photographed the house as well.

23 Q Did you observe her take photographs?

24 A Yes, I did.

25 Q Did you observe her collecting evidence?

1 A I observed her collecting the comforter off the bed.
2 She collected the comforter, put the comforter into a --
3 it was a very large comforter, so she had to put it in two
4 big paper bags, grocery bags that you might see, and place
5 it inside of her vehicle.

6 Q Is that a standard evidence collection procedure?

7 A Yes, it is.

8 Q Investigator Livingston, I want to show you what's
9 been marked as State's Exhibit 67. Do you recognize this?

10 A It looks like the comforter.

11 Q The comforter, where have you seen it?

12 A Off the bed. It was on the parents' bed.

13 Q Thank you.

14 I will also show you State's Exhibit 49. Do you
15 recognize this photograph?

16 A Yes, I do.

17 Q What is that a photograph of?

18 A This is the victim.

19 Q Is that how she appeared the day that she reported to
20 you that she had been raped?

21 A Yes, it is.

22 MS. GARFIELD: Beg the Court's indulgence.

23 BY MS. GARFIELD:

24 Q I'm going to show you what looks like just a bunch of
25 brown paper. Do you recognize this kind of paper,

1 Investigator Livingston?

2 A Yes, it is.

3 Q What kind of paper is this?

4 A It's like a paper that you would wrap something up
5 in. We have that in our -- back in the forensics lab,
6 it's on a large roll, that we wrap things up in.

7 Q I show you more of that paper. Is this the same kind
8 of paper?

9 A Yes, it is.

10 Q Is this standard paper used at the sheriff's
11 department?

12 A Yes, it is.

13 Q Have you ever collected evidence, Investigator
14 Livingston?

15 A Yes, I have.

16 Q Would you also use the same kind of paper?

17 A Yes, I would.

18 Q And you observed Deirdre Brown wrapping that
19 comforter into that brown paper?

20 A Yes.

21 Q Did you observe what she did with it?

22 A She placed it in an area in the forensics once she
23 was done back at her office. At the house she placed it
24 inside of her Jeep. Once she got back to her office she
25 wrapped it in a little area where she puts all of her

1 evidence in and then she turns in to the evidence locker.

2 Q And these are standard areas that investigators have
3 in their offices?

4 A Yes, it is.

5 Q Do you have one in your office?

6 A Yes.

7 Q And is that to keep the evidence secure?

8 A It is to keep the evidence secure. Once the evidence
9 is collected, in Deirdre's area where she collects
10 evidence, we all have an area that is called evidence
11 locker, which is downstairs in the Richland County
12 Sheriff's Department. Once we collect evidence we take it
13 down there and drop it. They have a drop box or a locker.

14 Q Do you have access to each other's lockers?

15 A No, we don't.

16 Q Thank you, Investigator.

17 Back to this incident. After the victim, Lauren
18 Byrd, reported to you what had happened, what did you do
19 next?

20 A After I interviewed her, I told her she had to go to
21 the hospital to have a sexual protocol. I told her she
22 would likely go to Palmetto Richland Hospital because we
23 have a SANE area there and she said okay.

24 Q Did you give her instructions before going to the
25 hospital?

1 A Well, we told her she couldn't eat or drink anything
2 and couldn't wash or change clothes or anything, that we'd
3 have to collect all her clothing.

4 Q Did she go to the hospital as dressed?

5 A As dressed, yes, she did.

6 Q And who -- how did she get to the hospital?

7 A She drove to the hospital. Deirdre and I followed
8 her to the hospital.

9 Q And Deirdre, you're referring to the investigator?

10 A Investigator Brown.

11 Q That collected the evidence?

12 A Yes.

13 Q And once you got to the hospital, what did Ms. Byrd
14 do?

15 A We got to the hospital and she met -- one of her
16 friends met us at the hospital. Investigator Brown was
17 there. I told her what was about to happen while at the
18 hospital, that her clothes and everything would be
19 collected as evidence. And I told her someone will be in
20 contact with her on the following day, another
21 investigator, to have her come in and do a more detailed
22 statement from her. At that time I left the hospital.

23 Q I think you mentioned that -- you said that you --
24 why did you go to Richland Memorial Hospital?

25 A It's a SANE area. Richland Memorial Hospital has a

1 SANE facility there. That stands for Sexual Assault Nurse
2 Examiner, and these are female nurses that examine rape
3 victims and they collect all the evidence for us.

4 Q As your guidelines at the sheriff's department, is
5 that where you take all sexual assault victims?

6 A We recommend that they go there. They don't have to,
7 but we recommend. We explain to them the reason why we
8 recommend that they go to Palmetto Richland Hospital,
9 because of the SANE area there.

10 Q And you said that you were out there. Were you the
11 chief investigator on this case?

12 A That day I was.

13 Q Why were you just that day?

14 A Because I was the investigator on call.

15 Q What does that mean?

16 A I was working on Saturday about to get off. I work
17 from 7 until 3 on Saturday.

18 Q 7 a.m.?

19 A Yes.

20 Q And so you got the call?

21 A Yes, I got the call and I responded to it, so I was
22 the investigator on call to handle sex crimes that day.

23 Q And about what time, though, was it that you went to
24 the hospital?

25 A It was late. I'm going to say around 16:30.

1 Q Which would be?

2 A 4:30.

3 Q In the afternoon?

4 A In the afternoon.

5 Q And who was this case eventually assigned to?

6 A Investigator Godfrey.

7 Q And when did he come in contact with the case?

8 A He would have gotten it Monday morning.

9 Q And that's when the normal shift begins?

10 A Yes.

11 Q And did you brief Investigator Godfrey about this
12 case before he got involved?

13 A Yes, I did.

14 MS. GARFIELD: Beg the Court's indulgence.

15 Please answer any questions the defense counsel
16 may have for you.

17 THE COURT: All right. Cross-examine.

18 MS. VANGINHOVEN: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MS. VANGINHOVEN:

21 Q Good morning, Officer Livingston, Investigator
22 Livingston.

23 Now, what you just testified about Lauren told
24 you after you responded to the scene is what Lauren
25 basically told you; is that right?

1 A That's correct.

2 Q Now, you also responded to the scene and you spoke
3 with Deputy Gonzales?

4 A Yes, I did.

5 Q And he was the first one on the scene; is that right?

6 A Well, he was there when I got there and he was taking
7 the report when I got there.

8 Q He was the responding officer?

9 A Yes, he was.

10 Q All right. And you spoke with him; is that right?

11 A That's correct.

12 Q And then you say you also spoke with Lauren?

13 A Yes.

14 Q And you stated in your testimony that what Lauren
15 told you was the door bell rang, she saw her ex-boyfriend
16 at the door, she kind of walked to the door and she hid
17 from him and then he finally came in; is that right?

18 A Well, she walked to the door, saw that he was
19 outside, did not open the door, walked back and moved to
20 another position in the house, another area in the house,
21 and that was it, and then the next thing she knows he was
22 coming in.

23 Q Okay. And door bell rang; is that right?

24 A Right.

25 Q And I think you were testifying earlier that -- in

1 other words, it wasn't just the door bell ringing and
2 someone walking in.. It was that she went to the door, saw
3 who it was, tried to hide from him or move away, and then
4 eventually he just came in; is that right?

5 A Yes. She -- again, the door bell rang, she went to
6 see who was there, saw it was him, didn't open the door,
7 she walked back and moved to another area of the house.

8 Q Okay. And she told you only a few blocks away is
9 when the car stopped and the child was let out?

10 A That's what she said, yes.

11 Q And your testimony is that when you were over
12 speaking with her that Zach was fine, he was playing with
13 some kids?

14 A Yeah, he was okay.

15 Q You were at the crime scene, so was Officer Gonzales
16 and Officer Deirdre Brown; is that right?

17 A That's correct.

18 Q Now, you said you saw Deirdre Brown collect that
19 comforter?

20 A Yes, I did.

21 Q Then you saw her put it in her Jeep?

22 A Yes.

23 Q You actually saw her do it?

24 A I saw her do it, yes.

25 Q And then you said you saw her put it in her evidence

1 area in her office?

2 A Yes. It's an area back in the lab. It's a wide area
3 that they have.

4 Q And you're saying that you actually saw her do that?

5 A Yes, I did.

6 Q When you got back?

7 A When we got back to the office. I went back to my
8 office there at the time when we got back, stopped in to
9 see her and she was back in the back wrapping up
10 everything and I was just walking. I was leaving and saw
11 her doing it.

12 Q Okay. And just to be clear on time frames here, you
13 go to Lauren's house?

14 A Yes..

15 Q With Ms. Brown?

16 A Yes.

17 Q She gets the comforter, right?

18 A Okay.

19 Q Then you go to Richland Memorial and you met one of
20 her friends and Investigator Brown was there, but that's
21 when you left the hospital; is that right?

22 A Yes, I went back to my office.

23 Q So Investigator Brown now is at the hospital with the
24 victim by herself?

25 A Yes.

1 Q And you're saying at some later point is when you saw
2 her doing all this in the evidence room, you actually saw
3 her with all of it?

4 A Yes, she came back to the office, yes.

5 Q And you went into an evidence area, and maybe I'm
6 confused, but you're saying that in your office you have a
7 separate area within your office where you put evidence?

8 A No. It's at the Richland County Sheriff's Department
9 we have an evidence locker that's called evidence, and in
10 her area, she has an area in her office which is the
11 forensics area which is a lot different from mine.

12 Q So there's no access? No one else has access to her
13 evidence locker?

14 A No one has access to her area. The other forensics
15 can come in there, but they have their own lockers within
16 the area where they put their evidence, and no one can go
17 inside their lockers but them.

18 Q And you're just saying you saw her but you didn't
19 have access to that locker?

20 A No.

21 Q You say you saw Officer Brown collect photos and saw
22 her dust for fingerprints and things of that nature?

23 A Yes.

24 Q Also, you responded to the scene and talk to Officer
25 Gonzales. He tells you his version, and then basically

1 what you have testified to is what Lauren told you in your
2 report on the day that you responded, and in your report
3 you state that she told you that she and the suspect,
4 Mr. Thomas, actually had sexual intercourse; is that
5 right?

6 A That's what she told me, yes.

7 MS. VANGINHOVEN: No further questions. Thank
8 you.

9 THE COURT: Any redirect?

10 MS. GARFIELD: Yes, your Honor.

11 REDIRECT EXAMINATION

12 BY MS. GARFIELD:

13 Q Investigator Livingston, is it possible that Lauren
14 told you that the defendant, Randy Thomas, knocked on the
15 door as opposed to ringing the door bell? And please
16 refer to your notes if that will help.

17 A Okay. Beg the Court's indulgence.

18 She could have, but I don't have it in my notes
19 here.

20 Q Thank you, Investigator.

21 I want to take your attention to the 12th line
22 in your notes starting with "the victim" and I want you to
23 read that, please.

24 A Which one?

25 Q The 12th line starting with "the victim."

1 A During the interview?

2 Q The victim states.

3 A During the interview the victim states that the
4 suspect --

5 Q I'm sorry. The victim states she thought the door?

6 A Okay. The victim states she thought the door was
7 locked but it wasn't.

8 Q Just read that entire line.

9 A Okay. The victim states she thought the door was
10 locked, but the next thing she knew, the suspect was
11 coming in the door.

12 Q Thank you, Investigator.

13 Investigator Livingston, you said that when you
14 saw Zach that he was relatively calm?

15 A Yes, he was okay.

16 Q And this was approximately two hours after the
17 incident had occurred; is that right?

18 A Approximately, yes.

19 Q So Zach was calm two hours later?

20 A Yes.

21 Q And you said that back at the Richland County
22 Sheriff's Department you saw Investigator Deirdre Brown
23 put the comforter into her own forensic evidence locker?

24 A It was into her locker that she had.

25 Q Is that everything you saw into her locker?

1 A Yes, because I just stuck my head in there to tell
2 her I was leaving and that's it.

3 Q Did you see other brown packaging or just that
4 package?

5 A Well, she had some more stuff in that area.

6 MS. GARFIELD: Thank you, Investigator.

7 I have no further questions.

8 THE COURT: Recross.

9 RE-CROSS-EXAMINATION

10 BY MS. VANGINHOVEN:

11 Q Now, Officer Livingston, you just testified about the
12 door bell and about looking out the window and hiding and
13 all that. Did you not just testify to that right now?

14 A Yes.

15 Q Okay. Now, you're a trained investigator and you
16 know how important it is to be accurate and thorough in
17 your reports; is that right?

18 A Yes, I do.

19 Q All right. Now, you just sat there and told the jury
20 about the door bell and about going to the door and about
21 her hiding and all of that, you just told this jury, but
22 it's not in your notes, is it?

23 A About a door bell? No, it's not.

24 Q Nor is the part about her hiding from you and
25 whatnot?

1 A Yes, it is. She didn't hide. She moved to another
2 position in her house. She didn't hide.

3 Q Let me ask you something else. When you wrote this
4 report, had you looked at Investigator Gonzalez's report?

5 A No, I didn't have his report.

6 Q Did you talk to him?

7 A I talked to him at the scene.

8 Q Now, when you were telling the jury about the door
9 bell and this incident we were talking about, you were
10 going off memory versus the actual notes that you had
11 written down?

12 A I guess you could say that.

13 Q And, of course, the incident happened in October of
14 '04 and it's been a year later?

15 A Yes.

16 Q Okay. And before this trial you've spoken to the
17 Solicitors about this case, right?

18 A Yes.

19 Q In preparation for trial?

20 A Yes.

21 Q Okay. And let me ask you one more question. You
22 just said that when you were in, just to be clear, Deirdre
23 Brown takes the comforter from the house, puts it in her
24 Jeep?

25 A Right.

1 Q You all follow the victim, who is driving the car, to
2 the hospital?

3 A Yes.

4 Q And you leave and Deirdre Brown is left at the
5 hospital; is that right?

6 A Yes.

7 Q Okay. Then you get -- at some later point you're
8 back at the sheriff's department and you peak your head in
9 and you see the comforter?

10 A Yes.

11 Q And the comforter only?

12 A There's some more stuff in the office.

13 Q You saw other brown bags but you couldn't tell what
14 was in those bags?

15 A No.

16 Q Okay. The only item that you saw that was wrapping
17 or unwrapping was the comforter that's in this box?

18 A That's correct.

19 Q Nothing else?

20 A Nothing else. As I said, I stuck my head in to tell
21 her I was leaving and that was it.

22 MS. VANGINHOVEN: Thank you, Officer.

23 THE COURT: Any redirect?

24 MS. GARFIELD: No, sir.

25 May this witness be excused?

1 THE COURT: Any objection?

2 MS. VANGINHOVEN: No, your Honor.

3 THE COURT: You are excused. Thank you.

4 All right. Mr. Foreman, ladies and gentlemen,
5 we'll take about a ten or fifteen-minute break.

6 Please don't discuss the case. You're excused
7 to your jury room.

8 Everyone else stay seated, please.

9 (The jury left open court at approximately 11:14
10 a.m.)

11 THE COURT: All right. We'll take about ten or
12 fifteen minutes.

13 (A break was taken.)

14 THE COURT: Is the State ready?

15 MS. GARFIELD: Yes, your Honor.

16 THE COURT: Defense?

17 MS. DURANT: Yes, your Honor.

18 THE COURT: Let's get the jury back in.

19 THE BAILIFF: The jurors are all present, your
20 Honor.

21 THE COURT: Thank you.

22 We will continue, Mr. Foreman and ladies and
23 gentlemen.

24 Call your next witness, please.

25 MS. GARFIELD: Thank you, your Honor.

1 The State calls Andy Jones.

2 LEONARD A. JONES, after being duly sworn,
3 testified as follows:

4 THE CLERK: Please have a seat in the witness
5 stand and state your full name for the record.

6 THE WITNESS: Leonard A. Jones.

7 DIRECT EXAMINATION

8 BY MS. GARFIELD:

9 Q Mr. Jones, where are you employed?

10 A Richland County Sheriff's office.

11 Q And how long have you been employed there?

12 A A little over three years. I was there 27 years and
13 then retired and in 2001 I've been back part-time since
14 then.

15 Q And what do you do part-time?

16 A Work in the evidence room.

17 Q And when you say "work in the evidence room," what
18 does that mean?

19 A Basically we intake evidence, store it, and then give
20 it out as it needs to be given to go to court or whatever,
21 testing or whatever it needs.

22 Q Where is the evidence room located?

23 A At the Richland County Sheriff's Department.

24 Q Tell the jury what it looks like. What does it look
25 like?

1 A It's a big room with shelves and a refrigerator and
2 you've got a counter there and people bring the stuff up
3 and we log it in, give it a number, and put it on a shelf.
4 It's all locked up and secured. Only very few people have
5 access to it.

6 Q Is there where all evidence in all cases with the
7 Richland County Sheriff's Department is kept?

8 A Yes, ma'am.

9 Q You said very few people have access to it. How many
10 people?

11 A Probably no more than four.

12 Q And are these people that all work in the evidence
13 room?

14 A Yes, ma'am.

15 Q Do you have any special training to work in the
16 evidence room?

17 A Training from the evidence people that are there now,
18 yes.

19 Q And what kind of logging system do you have?

20 A At the time -- well, right now we have a computer
21 log-in system which is different than what we had at the
22 time of this case. At this point we logged everything in
23 by hand and everything was given a stamped number, so it's
24 a lot different now than it was then.

25 Q But back then and you said or you referred to this

1 case which would be Randy Jones (sic), that would be back
2 in October of 2004?

3 A Yes.

4 Q I said Randy Jones. I'm sorry, Randy Thomas.

5 Were you able to come into possession of any
6 evidence in this case?

7 A Yes, ma'am, I was.

8 Q And specifically did you come into the possession of
9 a rape kit?

10 A Yes, I did.

11 Q And do you know when you came into possession of that
12 rape kit?

13 A On November the 1st of 2004, approximately 8:30 in
14 the morning.

15 Q Where did you retrieve this rape kit?

16 A I would have been left in the refrigerator outside
17 and then I would have taken it. It's a locked
18 refrigerator that has a little slot to drop it in. We
19 have a key to it unlock it and bring it into the evidence
20 room and then put it into another refrigerator in the
21 evidence room after that.

22 Q And this refrigerated box, what is it referred to?

23 A Do what, now?

24 Q The refrigerated box outside?

25 A It's a refrigerator outside that rape kits go into.

1 When the evidence room is not open, they put it in there.

2 Q And is that for when the evidence room is not open?

3 A Right.

4 Q Because crimes occur all the time of the day or
5 night?

6 A Yes, ma'am.

7 Q Mr. Jones, I want to hand you what's been marked as
8 State's Exhibit No. 66. Do you recognize this?

9 A Yes, ma'am. This looks like the rape protocol kit
10 that was turned in that morning.

11 Q Has it changed in any way since you saw it?

12 A Essentially it's the same.

13 Q And how do you know that that's the one that was
14 turned in?

15 A The numbers match. This is my handwriting.

16 Q And when you would have come into possession of that
17 rape kit, exactly what would you have done with it?

18 A I would have given it a number and put the number on
19 the box and then put the box in the refrigerator.

20 Q This must be a large refrigerator?

21 A Yes, ma'am, it's a good-sized refrigerator.

22 Q And was it packaged correctly?

23 A Yes.

24 Q Do you have any standard procedures in the evidence
25 room as far packaging is concerned?

1 A Yes, we do.

2 Q Explain to the jury what they are, please.

3 A Basically it depends on the case. Items are supposed
4 to be turned in in sealed condition in whatever packaging
5 it needs to be in for the appropriate size and everything.

6 Q Are the people working in the evidence room there on
7 weekends?

8 A Not normally, no.

9 Q So if there's any evidence collected during the
10 weekend, what do the investigators basically do with it?

11 A They put it in what we call a drop box and then we
12 get it when we come in on Monday morning.

13 Q Is that what happened with this rape kit?

14 A Yes.

15 Q Thank you.

16 Did you ever have the occasion to come into
17 possession of any what we call buckle swabs?

18 A Yes, ma'am, I did.

19 Q I'm sorry. I'm going to get off of that.

20 Let's first talk about did you ever come into
21 possession of a box that would have contained items such
22 as a comforter, T-shirt, pants, and panties?

23 A Yes, I did.

24 Q And who did you come get that box from?

25 A The paperwork was signed by Investigator Deirdre

1. Brown. She would have turned it in.

2. Q She would have turned it in?

3. A Uh-huh.

4. Q She gave it to you?

5. A Yes, it would have come from her.

6. Q And what date did she give it to you?

7. A I got it on November 2nd of 2004, approximately
8. 1:30 in the afternoon.

9. THE COURT: What time was that? I did not hear
10. you.

11. THE WITNESS: 1:30 in the afternoon.

12. THE COURT: Thank you. Go ahead.

13. BY MS. GARFIELD:

14. Q Mr. Jones, I'm going to show you what has been marked
15. State's Exhibit No. 67. Do you recognize this box?

16. A Yes, ma'am. That looks like the box that that
17. evidence was turned in in.

18. Q When this box is turned into you, how is it packaged?

19. A Sealed up. Everything was taped over, sealed, and
20. the box is sealed.

21. Q Was it in proper condition?

22. A Yes, it was.

23. Q What if it had not been, what would you have done?

24. A Got in touch with the investigator and told him we
25. have a problem and we need to fix it.

1 Q How did you know what all was in this box?

2 A From the evidence form that's turned in.

3 Q And what does the evidence form list in this box?

4 A It lists a multi-colored bed comforter, a
5 multi-colored shirt, white pants, lime in color underwear,
6 and two swabs.

7 Q Thank you.

8 Q Once you got this box, what did you do with it?

9 A I went over again and give it a number and stored it
10 on a shelf.

11 Q Would anybody else in the evidence room have access
12 to this box?

13 A My supervisor would have had access to it in the
14 evidence room.

15 Q The people that work in the evidence room, right?

16 A Just the evidence people, yes.

17 Q Okay. Mr. Jones, also regarding this case, did you
18 have any contact -- did you ever have any possession of
19 buckle swabs?

20 A Yes, I did.

21 Q And when did you come into contact with those?

22 A Looks like July the 18th of 2005, approximately
23 7:15 a.m.

24 Q And where did you retrieve those buckle swabs?

25 A These would have been left in the drop box.

1 Q And this is the box you referred to earlier?

2 A Yes, sir.

3 Q Could this have been dropped off sometime after
4 hours?

5 A Yes, ma'am.

6 Q And do you know what buckle swabs are?

7 A No.

8 Q A lot of times do you know what things are?

9 A No, I do not.

10 Q It's your job as the custodian to store it?

11 A Right.

12 Q Do you do anything with evidence after store it?

13 A No.

14 Q Do you tamper with it in any way?

15 A No.

16 Q Any of these items that would have been presented to
17 you today, have they been tampered with while they were in
18 your possession?

19 A Not while they're in my possession, no.

20 Q You didn't expose them to any contamination?

21 A No.

22 MS. GARFIELD: Beg the Court's indulgence.

23 BY MS. GARFIELD:

24 Q You referred to your evidence form regarding the
25 buckle swabs?

1 A Yes, ma'am.

2 Q Who were those buckle swabs belonging to?

3 A Who do they belong to?

4 Q Yes, who were the swabs from?

5 A According to the sheet, they came from it looks like
6 a Randy Thomas.

7 Q And who would have dropped off those buckle swabs?

8 A Again, according to the sheet, they were submitted by
9 Investigator Brian Godfrey.

10 Q When would they have been submitted?

11 A I got them on July the 18th of 2005.

12 Q I forgot to ask about the rape test kit. Who dropped
13 that off?

14 A Investigator David Goff.

15 MS. GARFIELD: Thank you. I have nothing
16 further. Please answer anything the defense may have for
17 you.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: All right. Cross-examine.

20 MS. VANGINHOVEN: Thank you, your Honor.

21 CROSS-EXAMINATION

22 BY MS. VANGINHOVEN:

23 Q Hi.

24 A How you doing?

25 Q Officer Jones, now, the rape kit came from Officer

1 Goff and you retrieved it on November 1st; is that
2 right?

3 A According to my paperwork, yes, ma'am.

4 Q Is there a date when he submitted that box into the
5 drop box?

6 A Not on this sheet, no, ma'am.

7 Q So you don't know when he dropped it off. You just
8 know when you got it out of the box?

9 A I just know when I got it, yes.

10 Q And the comforter, pants, panties, shirt, and swabs,
11 those you actually received personally from Deirdre Brown;
12 is that correct?

13 A That I do not know. I could have since it came in at
14 1:30 in the afternoon, but I could have gotten it out of
15 the evidence locker downstairs also.

16 Q Now, I think you were talking to Ms. Garfield about
17 your job and your job is the evidence custodian; is that
18 right?

19 A Yes.

20 Q And as evidence custodian you are supposed to be able
21 to determine where every piece of evidence is at any time;
22 is that right?

23 A Yeah, we should be able to find it if somebody needs
24 it.

25 Q But you're telling me right now that you can't say

1 for sure whether you got it from Officer Brown or whether
2 you got it from an evidence box downstairs; is that right?

3 A That's right.

4 Q Shouldn't that be noted in your paperwork someplace?

5 A I don't see why it would be important because if she
6 brings it and drops it into the holding locker, it's
7 locked up, so there's no way to tamper with it or anything
8 until we get it.

9 Q You don't know when she -- you have that you received
10 it on November 2nd of 2004; is that right?

11 A Yes, ma'am.

12 Q And I believe when you were being asked by
13 Ms. Garfield, you said that you received it from Deirdre
14 Brown; is that right?

15 A According to the paperwork it came from Deirdre
16 Brown, yes. She signed it in.

17 Q And that was November 2nd?

18 A Yes, November 2nd.

19 Q And you can't say for sure whether it came from her
20 or it came from some other box and she would have dropped
21 it off at some unknown date?

22 A Right. If I got it out of the locker, it would have
23 been that day is the day I got it from her.

24 Q Okay. So either you received it from Deirdre Brown,
25 this comforter, pants, panties, all this?

1 A Right.

2 Q Either you received it from her on November 2nd or
3 you retrieved it from a locker on November 2nd?

4 A Right.

5 Q But you have no idea when she put it in the locker
6 that you may have retrieved it from?

7 A No, exactly.

8 Q And these buckle swabs from Randy Thomas, those you
9 said were also left in the drop box?

10 A Yes.

11 Q And, of course, you don't know when they were put in
12 the drop box?

13 A No.

14 Q So you have two pieces of evidence, the rape kit and
15 the buckle swabs from Ms. Thomas that you for sure know
16 were in the drop box, but then you have this comforter,
17 pants, panties, and shirt that you're not sure whether you
18 got it from her or from some locker?

19 A That's right.

20 Q Okay. I think you testified this is the rape kit,
21 and I think Ms. Garfield asked you if it's in the same
22 condition as it was when you retrieved it, right?

23 A Basically. I mean the box is opened, but other than
24 that it's the same.

25 Q But, again, when you retrieved this, it was not

1 sealed? It was sealed?

2 A Yes.

3 Q And now it's not?

4 A Right.

5 Q So it's in a different condition now?

6 A Right. Essentially it's the same, but it's not.

7 Q Essentially it's the same in that it's the same box?

8 A The box looks the same is what I mean.

9 Q But when you retrieved it it was sealed and now today
10 it's not?

11 A Right, uh-huh.

12 MS. VANGINHOVEN: No further questions.

13 Thank you, your Honor.

14 THE COURT: All right. Redirect.

15 MS. GARFIELD: Just briefly, your Honor.

16 REDIRECT EXAMINATION

17 BY MS. GARFIELD:

18 Q Mr. Jones, the box that contained the comforter, the
19 panties, the pants, and the shirt?

20 A Yes, ma'am.

21 Q Was that box tampered with in any way?

22 A No.

23 Q And regardless if Deirdre Brown gave it to you
24 personally or you retrieved it from a locker where Deirdre
25 Brown put it, you received it from Deirdre Brown?

1 A Yes.

2 MS. GARFIELD: Thank you. Nothing further.

3 MS. VANGINHOVEN: Very briefly, your Honor.

4 THE COURT: All right.

5 RE-CROSS-EXAMINATION

6 BY MS. VANGINHOVEN:

7 Q You received it from Deirdre Brown and it was in a
8 sealed box?

9 A What are you talking about?

10 Q The comforter, pants, panties, and shirt?

11 A Okay. Yes.

12 Q That big box?

13 A Yes, ma'am.

14 Q And you don't know when Deirdre Brown dropped that
15 big box off?

16 A No.

17 Q Don't know if you got it from her or you got it from
18 the locker?

19 A No.

20 MS. VANGINHOVEN: No further questions.

21 THE COURT: All right, sir.

22 Anything further?

23 MS. GARFIELD: No.

24 THE COURT: You may step down.

25 MS. GARFIELD: And may Mr. Jones be excused?

1 THE COURT: Any objection?

2 MS. VANGINHOVEN: No, your Honor.

3 THE COURT: You're excused, sir.

4 THE WITNESS: Thank you.

5 THE COURT: All right. Call your next witness,
6 please.

7 MS. GARFIELD: Thank you, your Honor.

8 The State calls Lieutenant Zane Padgett.

9 ZANE PADGETT, after being duly sworn, testified
10 as follows:

11 THE CLERK: Please have a seat in the witness
12 stand and state your full name for the record.

13 THE WITNESS: Zane Padgett.

14 DIRECT EXAMINATION

15 BY MS. GARFIELD:

16 Q Lieutenant Padgett, where are you employed?

17 A I'm employed with the Richland County Sheriff's
18 Department.

19 Q And how long have you been employed with the
20 sheriff's department?

21 A Twenty-four and a half years.

22 Q And what are your duties at the sheriff's department?

23 A I am the supervisor of the crime scene investigation
24 unit.

25 Q And what does that mean?

1 A It means I'm in charge of all the individuals, the
2 crime scene investigators that actually go out and process
3 the crime scenes, photograph, fingerprint, collection of
4 evidence, and then I'm also in charge of the laboratories
5 when they come back and actually analyze some of the
6 evidence that they bring back.

7 Q About how many people would you say you supervise?

8 A At present, 14.

9 Q Were these your same duties back in October of 2004?

10 A Yes, ma'am.

11 Q Do you also assist in the training of these people
12 that you supervise?

13 A I do.

14 Q And what goes into their training?

15 A We have a standard training manual that every new
16 forensic investigator that comes to the laboratory has to
17 go through. It's a step-by-step process. They're
18 evaluated, they take competency tests once they finish
19 individual sections. And once they've completed all their
20 training, we actually give them a proficiency test to
21 ensure that they have actually met the standards of the
22 laboratory.

23 Q And where do these specific standards come from?

24 A They come from us. We actually have written manuals,
25 training manuals, and protocols.

1 Q Have you also attended any conferences regarding
2 that?

3 A Absolutely.

4 Q And any national?

5 A Yes, ma'am.

6 Q As well as statewide?

7 A That's correct.

8 Q Do you also have in-house training?

9 A Yes, ma'am, very much so. We do a lot of in-house
10 training, a lot of hands-on training.

11 Q And these investigators that you supervise, they also
12 attend these types of training?

13 A That's correct.

14 Q Specifically, Lieutenant Padgett, if an investigator
15 in your unit was responding to a sex assault incident
16 location, what would be their duties?

17 A Their duties initially when they get to the scene was
18 to ensure that the scene is secured, make sure any people
19 that are in the scene that don't need to be there, to get
20 them out.

21 Once they get there, they'll do a walk-through
22 or a look-through just to get a general idea of the scene.
23 And then the very next thing that they should do is
24 obviously to photograph the scene so they'll have an exact
25 representation of what the scene looked like when they got

1 there.

2 Q Do they also engage in evidence collection?

3 A Right. Once they actually document the scene with
4 photographs, they will actually look for certain items of
5 evidence that they think may be pertinent to the case.
6 Those items are also photographed again and then they're
7 collected at the scene by the forensic investigator.

8 Once they're collected, there's some types of
9 analysis or tests that they may do at the scene, but
10 generally a lot of these tests are done back at the
11 laboratory, so they would actually collect the evidence
12 from the scene, package it, and then bring it back to the
13 laboratory to continue with it.

14 Q If you would just explain to the jurors the
15 packaging, what is the manner of handling all the evidence
16 at these crime scenes?

17 A Well, all evidence, depending on the type of
18 evidence, has to be handled in a certain way. If it's
19 anything that you're going to attempt to get, you know,
20 DNA, trace, fibers, or fingerprints off of it, it has to
21 be handled very carefully. Obviously the --

22 MS. VANGINHOVEN: Your Honor, may we approach
23 for a second?

24 THE COURT: Sure.

25

1 (A bench conference was held with the judge and
2 attorneys in the presence of the jury but out of the
3 hearing of the jury.)

4 THE COURT: Let the record note that there is an
5 objection made that will be placed on the record when we
6 take a break. The objection at this time has been
7 overruled.

8 Go ahead.

9 BY MS. GARFIELD:

10 Q I'm sorry, Lieutenant, I can't recall what the last
11 question was to you.

12 A Just about collecting evidence and the way we collect
13 evidence.

14 Q Thank you.

15 A It depends on the evidence the way it's collected.
16 Each piece of evidence is different. We obviously wear
17 gloves while we're working at a scene. Even if we're
18 going to touch a piece of evidence and then have to touch
19 another piece we may feel that would cross-contaminate
20 evidence, we'll actually change gloves several times at
21 the scene. And each piece of evidence is packaged
22 differently depending on the type of evidence it is.

23 Q And all of your investigators follow these same
24 rules?

25 A Yes, ma'am. We have written protocols that say

1 actually how to package evidence and what type.

2 Q Back in October of 2004, were you supervisor of
3 Investigator Deirdre Brown?

4 A Yes, I was.

5 Q Are you familiar with Ms. Brown?

6 A Yes, ma'am, very much so.

7 Q Can you describe her to the jury, what she looked
8 like?

9 A She was a kind of I want to say tiny, kind of a small
10 black female, kind of petite looking, probably about five
11 foot two, had short hair.

12 Q Are you familiar with where Ms. Brown is presently?

13 A Yes, I am.

14 Q And can you tell the jury where she is?

15 A I believe it was last December or so, November or
16 December, she told me that she had taken a job in Kosovo
17 with a private security firm. And she gave two weeks
18 notice and she left on very good terms and everything.
19 And in two weeks she was gone. She pretty much had turned
20 all her stuff in and we packed up a lot of her cases and
21 she went to Kosovo. She had told me that once she got
22 there she would contact us to give us a forwarding --

23 MS. VANGINHOVEN: Your Honor, I object to
24 hearsay.

25 THE COURT: Sustained to that last statement.

1 Go ahead and ask your next question, Counsel.

2 MS. GARFIELD: Thank you, your Honor.

3 BY MS. GARFIELD:

4 Q Have you heard from Ms. Brown since she's been in
5 Kosovo?

6 A I have not.

7 Q Was she supposed to contact you once she got there?

8 A Yes, she was.

9 Q And has she contacted you?

10 A No, she has not.

11 Q There's been no contact since December of last year?

12 A Not to my knowledge, no.

13 Q Lieutenant Padgett, do your investigators when they
14 go to crime scenes fill out any sort of forms?

15 A Yes, ma'am.

16 Q And are those forms as directed by the sheriff's
17 department?

18 A That's correct.

19 Q What are those forms called?

20 A When they complete a crime scene they fill out what's
21 called a crime scene analysis report, and basically it
22 states on there the specifics of the call, what time they
23 were called, when they got there, when they left, the
24 address of the call, names of victims or subjects, and a
25 narrative or synopsis of what they actually did at the

1 scene.

2 Q And that's what all crime scene investigators fill
3 out?

4 A Yes, ma'am, on every call.

5 Q And this is a regular business activity of the
6 sheriff's department?

7 A That's correct.

8 Q And all investigators have these forms on file?

9 A That is correct.

10 MS. VANGINHOVEN: Your Honor, we would object to
11 leading at this point.

12 THE COURT: Yes. Let the witness do the
13 testifying.

14 MS. GARFIELD: Thank you.

15 BY MS. GARFIELD:

16 Q Is it in the regular practice of the sheriff's
17 department?

18 A Right. This is within the forensic laboratory we
19 have a standard crime scene analysis report that has to be
20 completed after every call.

21 Q As Deirdre Brown's supervisor, do you have her crime
22 scene investigation report?

23 A Yes, I do. I have the analysis report that she did
24 on the 30th of October, 2004.

25 Q And does she report in that document how she

1 collected the evidence?

2 A Yes, she does.

3

4 MS. VANGINHOVEN: Your Honor, again, I would
5 object at this point to the report. The report, obviously
6 Mr. Padgett or Officer Padgett is nowhere on that report
7 and we'd be objecting to hearsay.

8 MS. GARFIELD: Your Honor, this comes under
9 exception 8036, regular business activity records.

10 THE COURT: All right. I think I probably need
11 to send the jury out to argue this and maybe some
12 additional testimony.

13 Mr. Foreman, ladies and gentlemen, please don't
14 discuss the case right now. I need to take this matter up
15 outside of your presence. If I see -- well, I'll tell you
16 what, let's go ahead and break so you can go ahead and get
17 lunch and that won't hold us up anymore. If you'll be
18 back in your jury room at 2 o'clock, we'll continue at
19 that time. That will give me time to deal with this and
20 then we'll break for lunch, but you can go ahead and go to
21 lunch at this time.

22 Don't discuss the case. Be back in your jury
23 room at 2 o'clock, please.

24 You folks are excused.

25 Everyone else stay seated.

1 (The jury left open court at approximately 12:19
2 p.m.)

3 THE COURT: All right. Let's go ahead before
4 anything else and get the objection that was made here at
5 the bench on the record and then we'll go from there.

6 MS. VANGINHOVEN: Your Honor, we're objecting at
7 this point I would say to all of the evidence that has
8 come in.

9 Deirdre Brown is the officer who retrieved the
10 comforter from the crime scene and the pants, shirt, and
11 panties from the hospital, and she also obtained swabs
12 from the crime scene. Clearly she retrieved those on
13 October 30th and the evidence custodian received it on
14 November 2nd, which is three days later, and can't tell
15 us where he retrieved them from or what happened with the
16 evidence in the meantime. Ms. Brown's not here.

17 We objected to the evidence that has been
18 allowed, the physical evidence, the comforter, pants,
19 panties, and shirt based on their credibility in that when
20 they were taken into evidence, there were no cuttings.
21 They have thus been changed by cuttings, through testing,
22 and whatnot. And I guess we haven't gotten to that chain
23 part at this point.

24 But clearly right now what we're dealing with is
25 a supervisor of Deirdre Brown who was not there on the day

1 of the incident, who did not collect the evidence.

2 And what we've heard from Investigator
3 Livingston is that yes, he saw her take the comforter and
4 put it in her Jeep, but he left the hospital before she
5 took the clothes into evidence. He has no idea what
6 happened once she got back. He says he saw the comforter
7 being wrapped in packaging at the locker room. He
8 mentions nothing -- he said he saw other bags, but he has
9 no idea what was in those other bags.

10 At this point what you've got is physical
11 evidence that's submitted into evidence where Deirdre
12 Brown needs to be here to establish that she took it from
13 one place to another to be clear in that it was packaged
14 correctly, because there can be cross-contamination,
15 especially in a rape case where there's semen involved and
16 other bodily fluids. It's compounded by what your Honor
17 will hear later on that the comforter has DNA that doesn't
18 belong to anybody, we don't know who that belongs to.

19 The objection regarding this testimony is that I
20 understand he's the supervisor, but the person present was
21 Investigator Livingston on the crime scene investigation
22 report done by Deirdre Brown, it was processed by Deirdre
23 Brown, and requested by Deputy Gonzales. Mr. Padgett or
24 Officer Padgett has nothing to do with this report other
25 than he's the supervisor. And I understand that he's in a

1 supervisory capacity, but I think -- I'm sure he doesn't
2 know what each person that was employed by him did on each
3 incident that they were responded to.

4 Your Honor, I have case law here where clearly
5 the chain has to be proven as practically as possible.
6 And I have another case where -- it's a drug case where
7 the chemist had moved to Michigan and the State proceeded
8 to try to get an affidavit in through Rule 6 under
9 criminal procedures, and when the defense objected to
10 that, that it did not come in, that they still allowed the
11 evidence in based on the fact that she was unavailable
12 because she had moved to Michigan. The Court of Appeals
13 said that the fact that she lived in another state does
14 not make her unavailable as a witness.

15 Now, they know where Ms. Deirdre Brown is. I
16 understand that they haven't had any contact from her, but
17 they are saying now that she's in Kosovo. They know where
18 she is. This is not about convenience for the State in
19 trying the case when they can get the person here.

20 Your Honor, I'll be happy to hand that case law
21 up.

22 The case law regarding a supervisor testifying,
23 in all honesty I've not read that case, but I'll be happy
24 to look at that.

25 I think that this is clearly prejudicial.

1 And also in the this case involving the chemist
2 who moved to Michigan, this was handled pretrial. These
3 issues should have been brought up pretrial so we could
4 have discussed it before all this evidence has been
5 entered into evidence.

6 Clearly, Deirdre Brown is a significant link in
7 the chain. She's the one who collected the items, she's
8 the only one that can testify how she packaged them, and
9 she's the only one who can testify as to when she gave it
10 to the evidence custodian because he has testified here
11 today that he can't even remember if he got it from her or
12 whether he got it from a lock box, which is three days
13 later.

14 THE COURT: All right. Let me see your case law
15 and then let me hear from the State. I don't want to cut
16 you off. Go ahead.

17 MS. VANGINHOVEN: And the only other issue, your
18 Honor, is, my understanding regarding -- excuse me -- my
19 understanding regarding the rest of the DNA evidence that
20 you're going to hear and the reason that they started
21 getting into the black lamp with the victim is because
22 Deirdre Brown processed the scene using a black lamp and
23 said she found semen on the bedspread and on the floor.
24 Those items were then taken into custody and were tested
25 by SLED and that's what's going to come out later on as to

1 whether or not there's DNA, semen, bodily fluids on those
2 items.

3 She clearly processed the scene for prints,
4 which I'm not sure how those are going to come in if she's
5 not here to testify.

6 And also we would throw in at the end of all
7 this that, first of all, to be clear for the record, she's
8 major link in the chain, she is not unavailable as a
9 witness per case law, and she should be here. No one else
10 can testify what she did with the items, how they were
11 packaged, or anything of that nature, especially since
12 there's others who were there but can't testify to it.

13 And it also is a violation of the confrontation
14 clause in cross-examining a witness, an essential witness
15 to the case and in a substantial link in the chain.

16 THE COURT: All right. Solicitor.

17 MS. COOPER: Thank you, your Honor.

18 As for the physical evidence that has been
19 admitted so far, it's just the items of evidence that are
20 not fungible; the victim was able to identify her own
21 clothing and her parents' bed comforter. So those would
22 come in not as a fungible item but just as physical
23 evidence that is unique and she was able to recognize. We
24 laid the foundation to have those admitted.

25 We did not go into the DNA results when we

1 introduced those items into evidence. We're in the
2 process of establishing a chain of custody so that when we
3 call Dr. Gray Amick to testify about his DNA results, the
4 chain will be complete.

5 I've handed up to the Court three cases. One of
6 them is State versus Taylor. That is a case cited at 598
7 SE2nd 735.

8 In that case, your Honor, the police custodian
9 did not testify in the chain of custody, rather a
10 successor custodian testified; therefore, the identity of
11 each person and the manner of handling the items, the
12 fungible item in that case in the chain of possession was
13 established and the arresting officer was shown to have
14 placed the drugs -- it was a drug case, your Honor -- in a
15 concealed or contained seal and that the item was then put
16 into evidence and the custodian received that in the
17 property room and then later on the chemist was able to
18 retrieve the items of evidence and begin testing on it.

19 In State versus Taylor, your Honor, you do not
20 have to have the actual person who collected the evidence
21 testify as long as that person is identified, which we
22 have done profusely, the victim identified a black female
23 officer, she did not know her by name, but Deputy Gonzales
24 testified that he was the one that requested Investigator
25 Deirdre Brown come to the scene to process it. Roy

1 Livingston testified that he saw her collect the item, the
2 bed comforter from the crime scene, wrap it in that brown
3 paper bag.

4 And this is a bit preliminary, your Honor, and
5 we were going to bring it to your attention before the DNA
6 expert testified so we could put on the record that the
7 DNA expert is going to testify that when he collects the
8 bed comforter, it's wrapped in the manner that Roy
9 Livingston described it.

10 Your Honor, also we had established that the
11 victim said that the same female officer collected her
12 clothes from the property room. Now, we have Zane Padgett
13 on the witness stand -- I'm sorry, from the hospital. We
14 have Zane Padgett on the witness stand now to explain how
15 he trained Deirdre Brown, he knows her, and what they are
16 required to do what, what their protocol and procedures
17 are, what their manner in handling such evidence is about
18 in order to comply with State versus Taylor.

19 Your Honor, State versus Mathis holds on page
20 number nine, in applying this rule, we have found evidence
21 inadmissible only where there is a missing link in the
22 chain of possession because the identity of those who
23 handled the blood was not established at least as far as
24 practicable. On the other hand, where the identity of
25 persons handling the specimen is established, which we

1 have done in this case, your Honor, we have found evidence
2 regarding its care goes only to the weight of the specimen
3 as credible evidence; in other words, where there is a
4 weak link in the chain of custody as opposed to a missing
5 link, the question is only one of credibility, not
6 admissibility.

7 So here, your Honor, we have clearly identified
8 Deirdre Brown, she's witnessed by the victim at the crime
9 scene collecting the items, also by Investigator Roy
10 Livingston. She's identified again by Deputy Gonzales
11 with three different people saying who it was. And then
12 we have her on the form, the evidence form with her name
13 clearly identified by Andy Jones, evidence custodian. So
14 there is no missing link in the chain of custody, your
15 Honor.

16 And as far as it being convenient, your Honor,
17 this woman is gone. We don't know if she's alive or dead
18 in Kosovo. And the State is doing everything as far as
19 practicable to establish a complete chain of evidence or
20 custody.

21 THE COURT: Where was it from October 30th until
22 November 2?

23 MS. COOPER: The investigator will testify that
24 they have procedures to lock the evidence, and also on her
25 report, which is a business record, your Honor, it shows

1 in her report, the date she issued the report,
2 investigator puts all collected items into evidence. She
3 documents what she did with it on her report issued
4 October 30th, 2004, the day of this incident. The
5 evidence custodian doesn't retrieve it until
6 November 2nd, 2004.

7 Now, whether he can recall whether he got it
8 directly from her or from the lock box is irrelevant, your
9 Honor. That goes to the weight of the evidence, not it's
10 admissibility.

11 THE COURT: Where does the report say she put
12 it?

13 MS. COOPER: It just says she put it in
14 evidence. She doesn't say she handed to Andy Jones. She
15 says she puts it in evidence.

16 And also, your Honor, the standard is if the
17 identity of each person in the chain handling the evidence
18 is established, and the manner of handling is reasonably
19 demonstrated, which we are attempting to do right now is
20 to show the manner of handling, and no abuse, there is no
21 abuse of discretion -- I'm sorry, no abuse of discretion
22 is shown, admission of such evidence absent proof of
23 tampering, bad faith, or ill motive.

24 And you just heard from Andy Jones that the
25 package that contained the bed comforter and victim's

1 clothing was in a sealed box and did not appear to be
2 tampered with whatsoever. He would not have accepted the
3 evidence had it not been in compliance with their
4 procedures and guidelines.

5 I also have a case, your Honor, Sly versus
6 Johnson, which is a civil case cited at 342 SE2nd 620,
7 where a gap was created by the death of the physician who
8 drew a blood sample and that did not render proof of chain
9 or custody fatally defective, where all available
10 witnesses were called to establish at least as far as
11 practicable the complete chain of custody, and he was
12 dead, your Honor. For all we know, she's dead.

13 THE COURT: All right. What efforts have the
14 State made to contact her?

15 MS. COOPER: She went to Kosovo and she was
16 required to contact us to let us know where she would be
17 and how we could contact her, and we have not heard from
18 her.

19 THE COURT: All right.

20 MS. VANGINHOVEN: Your Honor, in State versus
21 Taylor it says, The identity established and --

22 THE COURT: Where are you reading from?

23 MS. VANGINHOVEN: Actually I'm reading from the
24 case note, State versus Taylor, No. 6. If the identity of
25 each person in the chain handling the evidence has been

1 established and the manner of handling is reasonably
2 demonstrated.

3 Now, Mr. Padgett can sit up here all day long
4 and say that he trains his officers to do something one
5 way. That doesn't mean that on October 30th she did it
6 that way. And the problem becomes, they saw her take the
7 comforter and put it in her Jeep. They see her wrapping
8 it up in a brown bag at her office. They see her take
9 clothes from the hospital, but they don't talk about how
10 it was packaged. And clearly if you've got a comforter
11 and clothes mixing together where there's semen on any of
12 them, there could be cross-contamination.

13 We don't have anything anybody to testify -- I
14 understand that Mr. Padgett is going to say what they
15 should be doing, but there's no testimony as to what she
16 did with this evidence.

17 Investigator Livingston said he saw her collect
18 the comforter from the house, put it in her Jeep. He goes
19 with her to the hospital. He leaves her there, so he
20 doesn't see her do anything with the clothes. He then
21 says that he goes to the office and he's peaking his head
22 in when he leaves work and sees her wrapping the comforter
23 in a brown bag.

24 MS. COOPER: That's incorrect. She did that at
25 the scene, the crime scene.

1 MS. VANGINHOVEN: That's not what he testified
2 to.

3 MS. COOPER: Yes, it is. And then he went and
4 told her he was leaving and she had the evidence at the
5 office.

6 MS. VANGINHOVEN: I almost guarantee you that he
7 said that she was wrapping the comforter in a bag. Now,
8 maybe I'm mistaken with that, but then he said he saw
9 other bags but he didn't know what were in those bags.

10 The problem here is they can't establish that
11 Deirdre Brown reasonably handled the items of evidence.
12 And a supervisor saying what someone is trained to do
13 doesn't mean that they did it on that day.

14 MS. COOPER: Your Honor --

15 MS. VANGINHOVEN: I'm pretty sure that he said,
16 Livingston said that she was putting it in two grocery
17 bags.

18 MS. COOPER: At the scene and then put it in her
19 Jeep.

20 THE COURT: They were talking about grocery bags
21 at the scene.

22 MS. COOPER: Your Honor, those are them right
23 there. Those are them right there.

24 We haven't heard from all the chain witnesses
25 which is why this wasn't brought up until we had all the

1 testimony on the record.

2 THE COURT: I understand that, but let me ask
3 you this: As I recall, Livingston or someone, I believe
4 Livingston testified that she put the comforter in two
5 large brown paper bags --

6 MS. COOPER: Yes, sir. And I --

7 THE COURT: Wait, wait, wait -- at the scene.
8 And then he also testified that he stuck his head in at
9 wherever their office is and she was wrapping the
10 comforter in brown paper.

11 Now, if it's in brown paper bags, why is it
12 being wrapped in brown paper?

13 MS. COOPER: Your Honor, I have the paper right
14 here. This is what he was referring to, and it's
15 documented with her initials that Zane Padgett can
16 recognize.

17 THE COURT: All right.

18 MS. COOPER: He knows her handwriting, he's
19 worked with her for years.

20 THE COURT: So you say that that's what she was
21 wrapping it in?

22 MS. COOPER: Yes, sir. And then we also have
23 Dr. Gray Amick will come and testify that he retrieved
24 this box, it was sealed. You already heard from Andy
25 Jones who said that I collected this box and on the

1 evidence form it indicated it had the comforter, the
2 panties, the pants, and the T-shirt which belonged to the
3 victim, and two swabs. We're not even -- the two swabs
4 are not at issue. Those were never tested and we do not
5 seek to introduce that into evidence.

6 Your Honor, at that point this box remained
7 sealed, and Dr. Gray Amick, who is a DNA expert, will come
8 and testify -- and he's due here at 2 o'clock to come
9 testify -- that he is the one that broke the seal on this
10 box. And when he opened it, he's going to testify that
11 the comforter was wrapped in a brown paper bag, this kind
12 of brown paper.

13 He's also going to testify that the clothing was
14 wrapped completely separately. Again, your Honor, we have
15 Deirdre Brown's handwriting on this bag. And inside of
16 the bag, your Honor, Dr. Gray Amick will be able to
17 testify that inside the bag, all the different items of
18 clothing were wrapped individually inside the bag. And,
19 again, we have Deirdre Brown's handwriting on the brown
20 paper, that there again is her indicating shirt, it
21 indicates pants, which would be State's No. 63, the shirt
22 is State's No. 62, and then lastly the panties were
23 State's No. 64, and that he will testify the evidence did
24 not appear to be tampered with, it was individually
25 wrapped, and that there appeared to be no contamination of

1 these clothing items with the bed comforter.

2 Again, your Honor, we have identified the
3 identity of the person who collected these items of
4 evidence.

5 If I could return you to page two of State
6 versus Taylor, and it's on the bottom right corner, the
7 paragraph on the bottom right corner, At the time of
8 trial, Dale Blackman, who's the missing witness, the
9 person that was not called, he was no longer employed by
10 the Department of Public Safety and he did not testify.
11 In lieu of his testimony, Blackman's testimony, the State
12 called the successor custodian, Corporal Price. Price
13 explained that only the evidence custodian had access to
14 the evidence locker, which is what Andy Jones testified
15 to, with the exception of a supervisor and an
16 administrative assistant who could receive evidence when
17 the custodian was not on duty.

18 He further testified regarding protocol and
19 procedure for the handling and storage of evidence by the
20 custodian, explaining each officer was assigned his or her
21 own storage locker inside a safe within a locked log-in
22 room.

23 According to Price, a dangerous drug such as
24 cocaine is not retained by the custodian in an evidence
25 locker but it's immediately taken by the custodian to

1 SLED. Once analyzed, it's placed back in its original
2 evidence bag at the SLED chemist, by the SLED chemist, and
3 it's heat-sealed in another bag.

4 Basically, your Honor, in this case the
5 successor evidence custodian was able to testify in the
6 manner of handling of such evidence. They did not even
7 call Dale Blackman to testify; however, he was identified.
8 And as long as the person is identified, that is not a
9 missing link. It is a weak link perhaps, but not a
10 missing link. And the rule that is established in this
11 case, which is on page four at the very bottom on the
12 right corner, it's paragraph number six, We believe that
13 it's clear from these decisions, it went through a series
14 of decisions, that the identity of each person in the
15 chain handling evidence is established and the manner of
16 handling is reasonably demonstrated, no abuse of
17 discretion is shown, and then they mention absent proof of
18 tampering, bad faith, or ill motive.

19 Also at the very bottom of the paragraph on page
20 number five, the middle paragraph on the left column,
21 State versus William, Each person handling the crack
22 cocaine in that case was identified and the manner in
23 which it was handled explained sufficiently to establish
24 admissibility of the evidence here. And it also says
25 that, We reject Taylor's reading of State versus Chisholm

1 and State versus Joseph to require that all persons in the
2 chain of custody testify in order to establish
3 admissibility. And that even overrules Chisholm in this
4 case, requiring that the State is not required to call
5 every single person that handled the evidence.

6 Beg the Court's indulgence.

7 I think it might be helpful for the Court if we
8 could play back Investigator Roy Livingston's testimony on
9 direct examination where he testified that she had wrapped
10 the comforter at the crime scene and she had to break it
11 up in two paper bags to wrap the bed comforter at the
12 crime scene and that he saw her at the sheriff's
13 department later on that day and she was wrapping up other
14 items of evidence.

15 THE COURT: All right. Ms. VanGinhoven.

16 MS. VANGINHOVEN: Your Honor, again, I
17 understand what they're saying in the Taylor case and the
18 portion that she cited to you about at the time of trial.

19 Here's the difference. First after all,
20 evidently there they knew for sure that it went into the
21 lock box. Again, they identified the person and the
22 manner of handling it, the evidence, was reasonably
23 demonstrated.

24 Now, Ms. Brown gave them to them on
25 October 30th, there's no doubt about that. I mean in her

1 report she just said, I placed them into evidence. She
2 didn't say her evidence locker, she didn't say to the
3 evidence custodian.

4 Clearly, the custodian doesn't get it until
5 November 2nd. There's going to be testimony from
6 Investigator Livingston that he said that he saw her
7 wrapping the comforter when he was getting ready to leave
8 and he peaked his head in to say good night but that the
9 other items were in bags. He doesn't know what those
10 items were. He wasn't there when she took them into
11 evidence.

12 I don't see how they can show that she
13 reasonably handled the material through a supervisor who
14 can only testify as to what she was trained to do. Being
15 trained to do something does not mean that you did it on
16 the day of the offense or the day that she went there.

17 I think this is a significant link in the chain,
18 and the case that I cited, which is State versus Joseph,
19 clearly states that the fact that this chemist had moved
20 to Michigan did not render that person unavailable or make
21 it impracticable for the State to produce her for trial.

22 I would be happy to listen to Investigator -- if
23 you would listen to Investigator Livingston's testimony,
24 but I think it's clear that Deirdre Brown took it on
25 October 30th, the custodian did not get it until November

1 2nd, he doesn't know whether he got it from her or whether
2 he got it from the lock box. If he got it from her on
3 November 2nd, it was in her custody for three days after
4 she took it into evidence. And she would need to be here
5 to explain how it was handled.

6 No one can say what she did with the clothes
7 that she received from the victim at the hospital, because
8 no one saw her do it. Investigator Livingston had already
9 left. Ms. Byrd can say that yes, she took her clothes.
10 Can't tell how it was packaged, can't tell how it was
11 handled, whether there was cross-contamination, whether it
12 touched the comforter, and why is Ms. Brown wrapping the
13 comforter once she's back at the office.

14 Clearly I think there are a lot of -- there's a
15 lot there that needs to be answered based on the testimony
16 we've heard so far.

17 What happens afterward I will admit that
18 probably the rest of the people are going to testify that
19 the boxes were sealed. The problem is, how was it handled
20 before it got in the box. And DNA is very, very specific;
21 you have to wear gloves. No one has testified that she
22 was wearing any gloves I don't think, not that I remember,
23 and you have to wear gloves because you can contaminate
24 the product. DNA is very specific. It's not drugs, it's
25 not something in a vial that you can touch the vial. It's

1 something that must be handled very carefully. And
2 without that testimony, I don't see how this evidence can
3 come in.

4 MS. COOPER: The evidence in State versus Mathis
5 was DNA, your Honor, and the Court found in that case that
6 there was no missing link where the identity of the person
7 was established. It goes to the weight of the evidence,
8 not its admissibility. It was DNA evidence there.

9 And Roy Livingston did testify she wore gloves.

10 Also, your Honor, there is no proof whatsoever
11 of any tampering.

12 THE COURT: You're going to have offering the
13 form as a business record through this witness; is that
14 right?

15 MS. COOPER: Yes, sir.

16 THE COURT: Let me take a look at the form.

17 MS. GARFIELD: Your Honor, just for
18 clarification, we're not seeking to introduce the
19 document. We just wanted Lieutenant Padgett testify to
20 information on the document.

21 THE COURT: All right. I will take a look at
22 these cases that you've handed up to decide whether --
23 assuming what the State has indicated, whether it would
24 present a sufficient chain to permit the evidence. And as
25 far as what has already been admitted, shirt, pants,

1 clothes and comforter themselves, they're in, and I don't
2 think there is any problem with them being in. But what
3 may or may not be inadmissible would be the results of any
4 tests performed on those items. If someone can identify a
5 particular tangible object and even if there's a changed
6 condition and they explain what the changes are, such as
7 the samples being cut out, then that obviously I think is
8 still inadmissible. So I'm not going to remove anything
9 that's already been admitted, but it would have
10 significant impact on the results of any testing that was
11 done on any samples.

12 I will take a look at these cases. And if you
13 all can be back about five to 2, I'll rule on this issue
14 at that point in time. The jury's coming back at
15 2 o'clock.

16 Anything further at this time?

17 MS. COOPER: Nothing from the State, your Honor.

18 MS. DURANT: No, your Honor.

19 MS. VANGINHOVEN: No, your Honor.

20 THE COURT: I'm sure you'll think of something
21 over lunch.

22 You all have a good lunch.

23 (A lunch break was taken.)

24 THE COURT: I have read all the cases you folks
25 handed up as well as some others that I was able to take a

1 look at. These would include, those handed up, State
2 versus Governor, a 2005 case; State versus Joseph, a 1997
3 case; State versus Mathis, a 2004 case; State versus -- it
4 would be Sly versus Johnson, a 1986 case; and then the
5 Taylor case, which is a 2004 case.

6 My analysis after doing that, number one, I
7 think it confirms what I had already determined as far as
8 the items that had been admitted. I don't think there's
9 any question after reading these cases that they have
10 properly been admitted. The question is whether any
11 portions of exhibits that are in evidence upon which tests
12 have been made, whether a proper chain of custody can be
13 established.

14 Under the Taylor case in particular, just
15 quoting a portion of that: We have found the evidence
16 inadmissible only where there is a missing link in the
17 chain of possession because the identity of those who had
18 handled the blood was not established, at least as far as
19 practical. On the other hand, when the identity of
20 persons handling the specimen is established, we've found
21 that evidence regarding its care goes only to the weight
22 of the specimen as credible evidence.

23 Also in quoting the Chisholm case, Where there
24 are unexplained gaps in the chain of possession leading to
25 conjecture, the identities of the people who handled the

1 evidence and the manner of its handling, the evidence is
2 inadmissible, where they said that Chisholm does not
3 require all people in the chain of custody to testify to
4 establish admissibility, and then the rest of the portions
5 of that case as well as the others that Counsel had cited.

6 The question here, what it boils down to is
7 this: We have got from the testimony of the victim that
8 the black female officer took her clothes and placed them
9 in bags at the hospital. We have got the custodian at the
10 sheriff's office indicating that he got possession either
11 from the drop box or from the officer on November 2nd,
12 and I believe the incident date is October 30th. The form
13 that was being testified to I think at the time that we
14 broke prepared by the Officer -- what's her name?

15 MS. VANGINHOVEN: Deirdre Brown.

16 THE COURT: Ms. Brown indicates that she placed
17 all the items, she describes what she sees and that she
18 placed all the items in evidence. We've got testimony
19 from Mr. Livingston that at least as to the comforter, he
20 saw it being wrapped by Ms. Brown in her office on the
21 30th.

22 Taking all of those factors into consideration,
23 if that is established, that would create a sufficient
24 chain and the evidence would be admissible.

25 I would, however, caution that in the Taylor

1 case, in the Taylor case where there was testimony from a
2 hospital about the hospital's customary practice regarding
3 the mailing of blood, they said that the customary
4 practice didn't really matter, you have to establish what
5 actually happened in the case.

6 So to some degree what the training is and what
7 the customary procedures are don't get you there, but I
8 take that into consideration.

9 All right. Having said that, that's almost like
10 an advisory ruling, but it's not an advisory ruling. I
11 just have to assume that what Counsel indicated the
12 testimony's going to be and what chain they intend to
13 establish will in fact occur. If it doesn't, then I will
14 make a ruling at that time. I think just to be sure that
15 we're all on the same page, objections still need to be
16 made from you folks.

17 MS. VANGINHOVEN: Thank you, your Honor.

18 I understand your Honor's ruling, but also at
19 this time just to preserve the record we would move for a
20 mistrial at this point.

21 Clearly all of this should have been taken up
22 prior to trial. This issue was known by the State when we
23 started this case, that Deirdre Brown would not be here by
24 their own admission, and really all of these issues should
25 have been taken care of pretrial so we wouldn't have this

1 issue now. We're now in a murky position and the jury's
2 already seen most of the case and the evidence that's in.

3 THE COURT: All right. That motion is denied.
4 Anything further?

5 MS. GARFIELD: Your Honor, may I use the crime
6 scene analysis report that Ms. Brown prepared in
7 Lieutenant Padgett's testimony?

8 THE COURT: As I recall your previous statement,
9 you're not intending to offer that document; is that
10 correct?

11 MS. GARFIELD: That's correct. I just wanted
12 him to use it to explain to the jury what Ms. Brown did
13 with the evidence. He has already testified that these
14 are records that are used as business records at the
15 Richland County Sheriff's Department.

16 THE COURT: Ms. VanGinhoven.

17 MS. VANGINHOVEN: Your Honor, I don't know that
18 he testified to that, but clearly under the hearsay rules,
19 public records excludes those records along with others,
20 and I'm not -- and I don't understand why it wouldn't be
21 excluded under public records and reports and why it would
22 be allowed in under records of regular business activity.
23 And I'm not so sure that he's already testified yet about
24 that being the normal records, but he is a person who has
25 different records in each case, different investigative

1 reports each time, so we'd have something different as to
2 the reports. It's not something that is used in every
3 case.

4 We would also like put on the record our
5 objection to all of the testimony and the fact that we
6 can't confront Ms. Deirdre Brown. That would be a
7 violation of Mr. Thomas's state and federal confrontation
8 rights.

9 MS. GARFIELD: Your Honor, as far as the chain
10 is concerned, it's our position that it's not only the
11 link, it goes to the weight. Certainly Lieutenant
12 Padgett's testimony would go to the weight.

13 And I believe he did testify that this is a form
14 that is used in regular business activity at the Richland
15 County Sheriff's Department for each one. It's the same
16 form and the same protocol that is used every time.

17 Once again, I'm not seeking to actually
18 introduce the document. I'm just asking that Lieutenant
19 Padgett be able to use it when testifying.

20 MS. VANGINHOVEN: In subsection six, business
21 records, your Honor.

22 THE COURT: I'm looking at that. It defines the
23 term business to include business institution,
24 association, profession, occupation, and calling of every
25 kind, whether or not conducted for profit. I see no

1 exclusion under that exception for public documents.
2 There is an exception under public records and reports
3 which is different from what the State is intending to use
4 this particular form or this information for.

5 I would overrule the objection on that.

6 MS. VANGINHOVEN: Your Honor, our other basis
7 for that would be that and our objection is that clearly
8 in the rules of criminal procedure there are forms that
9 are allowed to be used and clearly it's not allowed in
10 this case. In Rule 6, the chemist, the drug analysis,
11 there are no rules that provide for these types of forms
12 to be used in a case like this.

13 Our argument basically is to the point that
14 under the rules of criminal procedure there are certain
15 forms that can be used under Rule 6 for drug analysis.

16 In this case, this has nothing to do with drug
17 analysis. It is not provided for under the rules of
18 criminal procedure.

19 And I understand your Honor's ruling. Our only
20 issue is that it sounds like they're basically -- that
21 they can't get it under public records. It's clearly
22 restricted, it's not allowed, what law enforcement is
23 coming here to testify, and they're then just relying on
24 records of regular conducted activity when normally this
25 would be a public record or report.

1 MS. GARFIELD: Your Honor, Rule 6 refers to
2 certain forms that are used in drug cases, mostly
3 affidavits by chemists, so that's completely different
4 from the situation at hand. Under the hearsay exception,
5 we honestly do have an unavailable witness and we have a
6 record that is completed in the regular conduct of
7 business activity at the sheriff's department which has
8 already been testified to by Lieutenant Padgett. And,
9 once again, I'm not seeking to introduce the actual form
10 as you would under Rule 6 for drug cases.

11 THE COURT: All right. Rule 6 of the Rules of
12 Criminal Procedure does not apply.

13 Has this form, was it supplied in discovery?

14 MS. COOPER: Yes, sir, it was?

15 THE COURT: So you all have seen the form?

16 MS. DURANT: Yes, sir.

17 THE COURT: I didn't hear any objection on that
18 grounds. I just wanted to be sure.

19 MS. VANGINHOVEN: Yes, your Honor.

20 THE COURT: All right. Anything further at this
21 time?

22 MS. VANGINHOVEN: No, your Honor.

23 Only just for clarification, though, if they're
24 going to use the document, of course we get to go into
25 everything on the document as well.

1 examination.

2 MS. GARFIELD: Thank you, your Honor.

3 BY MS. GARFIELD:

4 Q Lieutenant Padgett, I'm not sure where we were.

5 You know Deirdre Brown?

6 A Yes.

7 Q How do you know Ms. Deirdre Brown?

8 A She's worked for me in the laboratory since around
9 June of 2004.

10 Q And I believe we've established she left the country?

11 A That's correct. She took a job, resigned from the
12 sheriff's department and took a job in Kosovo.

13 Q And since she's left have you had any contact with
14 her?

15 A No, ma'am.

16 Q And what were her duties with the sheriff's
17 department when she was employed there?

18 A She was a forensic investigator in charge of
19 processing crime scenes and taking care of all the
20 evidence that happened at the crime scene.

21 Q Were you her supervisor?

22 A Yes, I was.

23 Q What did she have to do as far as training in that
24 capacity?

25 A We have a standard training format in the laboratory

1 where every new forensic investigator has go through
2 certain types of training. There's a lot of book reading,
3 a lot of studying, a lot of hands-on training. Then when
4 they complete each section they have to take a proficiency
5 test to ensure that they're competent in that area.

6 Q Did Investigator Deirdre Brown go through this type
7 of training?

8 A Yes, she did.

9 Q And did she go under this training under your
10 direction?

11 A Yes, she did.

12 Q Do you specifically -- are you aware that she was
13 involved in this case involving State versus Randy Thomas?

14 A Yes, ma'am, I am.

15 Q Are you aware that she reported to 300 West Ashford
16 Way on October 30th, 2004?

17 A Yes, I am.

18 Q And are you aware of what kind of crime she was
19 reporting to?

20 A It was a criminal sexual assault.

21 Q Did she only report to sexual assault cases?

22 A I'm sorry, I didn't hear you.

23 Q Did she only report to sexual assault cases?

24 A No, ma'am. She does all types of cases, anywhere
25 from larcenies to homicides.

1 Q Is she trained in all of these types of crimes?

2 A Yes, ma'am.

3 Q But she's also trained in sexual assault cases?

4 A That's correct.

5 Q You have before you the crime scene investigation
6 report Investigator Deirdre Brown would have prepared in
7 the normal course of business at Richland County Sheriff's
8 Department?

9 A Yes, I do.

10 Q You have that before you?

11 A I do now.

12 Q And as her supervisor, would you have had access to
13 this form?

14 A I would have access to it as soon as it was
15 completed.

16 Q Specifically on this form, what are the types of
17 things that investigators have to fill out?

18 A A lot of it is basic information, the date of the
19 call, the case number, the address that they went to, the
20 type of call, the time they were notified, the time they
21 arrived, the time they completed the call, names of
22 victims, names of subjects, who was present at the scene
23 with her, the weather, the lighting, and then also a
24 narrative of what actually took place of what she
25 accomplished on that particular call.

1 Q Do you have that form before you?

2 A Yes, ma'am.

3 Q And that's the one she filled out regarding this
4 case?

5 A That's correct.

6 Q Tell the jury, what was the weather like that day?

7 A She has on here that it was clear and daylight.

8 Q And what time would she have arrived at 300 West
9 Ashford Way?

10 A At 15:42, which would be 3:42 in the afternoon.

11 Q Is there also notes by Investigator Brown as to what
12 all she exactly did at the incident location?

13 A Yes, ma'am. That is indicated in the narrative of
14 the crime scene portion of this report.

15 Q Using those notes, can you just paraphrase for the
16 jury what all Investigator Deirdre Brown did at this crime
17 scene.

18 A Yes, ma'am. She responded and was requested by
19 Deputy Gonzales, informed that a criminal sexual assault
20 took place. She photographed the entire scene using 35
21 millimeter camera and film. She listed all the areas of
22 the residence that she photographed. She also
23 photographed the victim and some injuries on the victim.

24 She observed things out of place, a lamp
25 overturned, an area where a struggle may have took place

1 and some items in disarray. And she also listed items
2 that she collected at the scene and at the hospital. And
3 she also states here what she processed for latent prints
4 and her results.

5 Q And what areas of the home did she photograph
6 according to this report?

7 A The living room, den, kitchen, stairs, and the first
8 bedroom, in parentheses, located in the upstairs area to
9 the left. And she also photographed the victim's arms and
10 legs, the arms and legs of the victim.

11 Q Did she mention anything about -- I'm sorry, you just
12 said that also writes down the items that she collected?

13 A That's correct.

14 Q Can you go over all the items that she claims to have
15 collected in her report?

16 A Yes. On her report she collected a multi-color bed
17 comforter from the bed in the first upstairs bedroom on
18 the left that was in the house, and then she collected a
19 multi-colored shirt, one pair of white pants, and one lime
20 colored underwear that was collected at the Richland
21 Memorial Hospital.

22 And she also collected an Integra swab of a
23 sample from the first bedroom floor to the left, near the
24 left side of the bed facing the bed.

25 Q You also mention that she made indication she tested

1 for latent prints?

2 A Yes, ma'am. She said she processed the kitchen
3 counter and the stairs area for latent prints and she
4 explains what method she used and she came up with
5 negative results, which means there's no identifiable
6 prints that she could come up with.

7 Q Explain to the jury what latent prints means.

8 A Latent prints are -- the term "latent" means that
9 they cannot be seen with the human eye. If you touch a
10 surface you're going to leave the amino acids basically
11 from your perspiration on the surface. That will leave an
12 outline, the little ridge linings that you have on the
13 tips of your fingers. If you leave that amino acid on the
14 surface, it can be processed using many different methods.
15 There's black powder and many different chemicals. We
16 have probably over a hundred chemicals that we can use to
17 process an area.

18 What you're trying to do is to develop a
19 fingerprint on the surface that you can physically see
20 with your eye. Once that is developed you can lift it,
21 and/or photograph it where you can take it back to the
22 laboratory to perform analysis on it and attempt to match
23 it to an individual.

24 Q But in this case there was nothing?

25 A There was nothing of any value that she could get,

1 that's correct, which is not unusual.

2 Q Did she also make notations in her report as to the
3 condition of the living room?

4 A Yes, ma'am.

5 Q Can you just explain for the jury again what she
6 observed according to her notes?

7 A Yes, ma'am. She said she observed the living room
8 area in disarray. There appeared to be a struggle. One
9 portion of the lamp stand on the sofa and the bottom
10 portion on the floor area.

11 Q Lieutenant, if you can just read for me the last
12 entry on this form by Investigator Deirdre Brown.

13 A The last entry she says is I/O, which means
14 investigating officer, placed all collected items into
15 evidence.

16 Q Lieutenant, I'm going to show you some items that
17 have been placed in State's Exhibit No. 67. Can you
18 identify what this is?

19 A That is a --

20 Q Or what does it look like?

21 A Well, we have many items in our laboratory to package
22 evidence, anything from small paper envelopes to paper
23 bags. It looks something like a grocery bag to shopping
24 bags, which looks like a Macy's shopping bag but it's all
25 brown, and we also have what's called just brown wrap

1 paper that comes on rolls.

2 We use this paper mainly to wrap evidence of any
3 type of biological nature; in other words, a piece of
4 evidence that we don't want to deteriorate or degrade
5 because we don't want to put it in plastic because that's
6 what happens to it, so generally any biological evidence
7 of this kind is usually put in paper.

8 Q And what is the marking on this piece of paper, what
9 does that say?

10 A It says item number one and then it has the initials.

11 Q What are those initials of?

12 A Those are initials of Deirdre Brown.

13 Q And how do you know that those are her initials as
14 far as writing them?

15 A Because I have probably seen --

16 MS. VANGINHOVEN: Your Honor, I'm going to
17 object. He's not a handwriting expert or anything of that
18 nature.

19 THE COURT: Establish a foundation.

20 MS. GARFIELD: Thank you, your Honor.
21 Certainly.

22 THE COURT: Sustained at this point.

23 BY MS. GARFIELD:

24 Q Lieutenant Padgett, how long have you known Deirdre
25 Brown?

1 A Actually I knew her before she came to the lab in
2 June of 2004. I've probably known her for maybe four
3 years.

4 Q And did you ever have an opportunity to view her
5 handwriting?

6 A When she came to the laboratory hundreds and hundreds
7 of times.

8 Q Are you familiar with her handwriting?

9 A Absolutely.

10 Q Are you familiar with her signature?

11 A Yes, ma'am.

12 Q When you see her signature do you know whose it is?

13 A Yes, ma'am.

14 Q Is that signature her handwriting?

15 A That is her initials. And those are her initials
16 done in her handwriting.

17 Q Thank you.

18 Can you identify this before me also which is
19 brown paper from Exhibit 67?

20 A This appears to be the same type of brown paper that
21 we wrap things in. It doesn't have any markings. It
22 could have been ripped off here.

23 Q Thank you.

24 I'm going to show you the evidence sheet that's
25 attached to Exhibit No. 67. Can you testify as to what

1 kind of sheet that is?

2 A Yes, ma'am. This is a copy, I guess a carbon copy of
3 the evidence turn-in document or evidence submission
4 document. When anybody turns something into evidence they
5 have to fill out this form as basic information again,
6 address, type of crime, victim, subject's name, and it
7 also lists the evidence that you're turning in, and then
8 it has a signature of the individual that's actually
9 turning in the evidence and then we'll have the signature
10 of the individual in the evidence room that is retrieving
11 the evidence.

12 Q Is there an item 1A listed on that paper?

13 A Yes, there is.

14 Q And what does that item 1A refer to?

15 A It says Item 1A; quantity one; articles, one
16 multi-colored bed comforter.

17 Q Thank you. If you'll just keep that for the moment.

18 Back to her crime scene investigation report.

19 Does she also make any notations to the victim's clothing?

20 A Yes, she did.

21 Q And I think you've already read this but if you'll
22 just read again what those clothing are?

23 A Item No. 2B, one multi-color shirt; one pair of white
24 pants; one lime in color underwear. They were collected
25 from the victim at RMH, which is Richland Memorial

1 Hospital.

2 Q That is Richland Memorial Hospital?

3 A That is correct. That's an acronym that we use, RMH.

4 Q Lieutenant Padgett, I'm going to hand you a bag
5 containing State's Exhibits 62, 63, 64. Can you identify
6 what kind of bag that is?

7 A Can you hand me a pair of gloves? Just the
8 laboratory experience that I need gloves.

9 This is commonly what we call a grocery bag that
10 we use in the laboratory. We order them. There's
11 obviously no markings on it, and it's for biological
12 evidence. On the outside it has Item No. 2B as well as
13 the remnants of evidence tape. Inside is a multi-colored
14 shirt which also has paper with it.

15 Q Are there any markings on that paper?

16 A All of the papers have been torn. It kind of hard to
17 see them all. It says "shirt" and then it's got 2B.1 and
18 some numbers and somebody else's initials which is not
19 Deirdre Brown's. It appears to be one of the chemist's
20 initials when they tested it.

21 Q What else is in this bag?

22 A There is a white pair of pants. On the outside it
23 says "pants" and also with the same numbers and initials
24 that refers to the chemist's initials on here. And
25 there's a pair of underwear, lime in color, and also

1 identified as underwear.

2 Q And all those were inside that bag?

3 A Yes, ma'am.

4 Q And this is a bag that's used in the normal course of
5 operations at the Richland County Sheriff's Department?

6 A Yes, ma'am.

7 Q This is a bag used to collect evidence?

8 A That's correct.

9 MS. DURANT: Your Honor, I object to the leading
10 nature:

11 THE COURT: Wait just a minute.

12 I sustain your objection to the form of the
13 question. Let the witness do the testifying.

14 (WHEREUPON, State's Exhibit No. 69 was marked
15 for identification only.)

16 BY MS. GARFIELD:

17 Q Lieutenant Padgett, the bag that you were just
18 previously looking into has now been marked for
19 identification as State's Exhibit No. 69.

20 A Yes, ma'am.

21 Q This is the bag you're referring to?

22 A Yes, ma'am, it is.

23 MS. GARFIELD: Your Honor, at this time I would
24 like to enter this bag into evidence.

25 MS. VANGINHOVEN: I have no objection to the

1 paper bag.

2 THE COURT: State's 69 is admitted.

3 (WHEREUPON, State's Exhibit No. 69 was admitted
4 into evidence.)

5 BY MS. GARFIELD:

6 Q Lieutenant Padgett, if you'll refer back to the form,
7 State's Exhibit 67?

8 A Yes, ma'am.

9 Q Are there any other entries on that form?

10 A There is. Under Item No. 2B, quantity three and the
11 articles of one multi-colored shirt, one white pants, and
12 lime in color underwear.

13 Q And whose signature is on that form?

14 A There are two signatures. The submitting officer's
15 signature is Deirdre Brown's and the receiving
16 individual's signature in the evidence room is Andy Jones.

17 Q What does it mean when you say submitting officer?

18 A Submitting officer is the person that actually placed
19 the items into evidence.

20 Q Thank you.

21 Lieutenant Padgett, do you know what day of the
22 week October 30th, 2004 was?

23 A Yes, ma'am, it was a Saturday.

24 Q Are there different investigators that work on the
25 weekends as opposed to the week?

1 A My forensic investigators rotate shifts, some of them
2 work some weekends and some of them don't. It's a 12-hour
3 rotation shift. And Investigator Brown was working on
4 that Saturday, she was scheduled to work.

5 Q If you work on a weekend do you work all the next
6 week as well?

7 A No, ma'am. On 12-hour shifts you'll generally work
8 either a Friday, Saturday, or Sunday, or you may work a
9 Saturday, Sunday, and Monday, a three-day stretch, and
10 then you'll have two to three days off.

11 Q As Investigator Deirdre Brown's supervisor, if she
12 was collecting evidence on Saturday, what would she have
13 done with it after collection?

14 A Depending whether she was finished processing it, if
15 she was still processing the evidence or needed to package
16 it up, all the forensic investigators in my laboratory
17 have an individual secured locker. The only keys to that
18 locker is that they have one and that I have one just as a
19 supervisor for inspection purposes and emergencies. No
20 one else in the laboratory can get into their locker. But
21 if they're storing evidence or they need to process or
22 pack it at a later time, the evidence is placed in their
23 own secured locker and secured by them until they can get
24 back to do what they need to do.

25 Q Would she have kept it in her car over the weekend?

1 A No, ma'am. That's against our protocol.

2 Q And when you say she may have had to further process
3 it, what does that mean?

4 A Well, many times if you collect something from a
5 scene, you may pick it up and just place it in a paper bag
6 separately. You generally don't have time at the scene to
7 continually wrap it and tape it because you'd have to take
8 it back out at the lab and look at it again. So they're
9 pre-packaged possibly at the scene, and most scenes they
10 are, then they're brought back to the laboratory and then
11 you can sit down and actually properly package and wrap
12 and label all the evidence that you collected.

13 Q If she were to put this into her locker, what would
14 she have done when she came back to work?

15 A If there was any additional processing she needed to
16 do or any additional packaging she needed to do, she would
17 have done that and then she would have placed them into
18 evidence.

19 Q And when you say place it into evidence, what do you
20 mean by that?

21 A There's two ways to place an item into evidence: One
22 is person to person; in other words, she would have
23 physically handed the items of evidence to an evidence
24 custodian, Andy Jones. If the evidence room is closed or
25 there's no one there, the evidence room has secured

1 lockers located in the hallway outside the evidence room.
2 She could have placed the box into one of those lockers,
3 and there's only one large enough to hold that box. She
4 obtains a lock from the desk sergeant, signs it out and
5 locks the locker. At that point no one can go into that
6 locker except the evidence custodian to retrieve it. She
7 can't even go back into it at that point.

8 Q So only the evidence custodian can retrieve it at
9 that point?

10 A That's correct.

11 MS. GARFIELD: Beg the Court's indulgence.

12 BY MS. GARFIELD:

13 Q Let me show you again the evidence sheet from State's
14 Exhibit No. 6. You referred to 2B. What is 2B
15 indicating?

16 A Item No. 2B, quantity three, it indicates the one
17 multi-color shirt, one white pants, and a lime in color
18 underwear.

19 Q So there's actually three items?

20 A Right. It's normal that we may list an item, one
21 item number to three pieces of evidence if they're all
22 related and they all came from the same source.

23 Q Everything listed on that particular sheet, is that
24 the way you would normally write something down?

25 A That's correct. This is absolutely the way it's

1 supposed to be done.

2 MS. GARFIELD: Thank you. I have nothing
3 further. Please answer anything the defense has.

4 THE COURT: Hand me that exhibit, please, ma'am.
5 All right. You may cross-examine.

6 MS. VANGINHOVEN: Thank you, your Honor.

7 CROSS-EXAMINATION

8 BY MS. VANGINHOVEN:

9 Q All right. Let me get it right. Officer Padgett,
10 Investigator Padgett?

11 A You can call me anything you want to. I'm a
12 lieutenant with the sheriff's department, but it doesn't
13 matter.

14 Q Lieutenant. First of all, let's go right to the
15 report. She took pictures of five different areas: The
16 living room, the den, the kitchen, the stairs, and the
17 first bedroom; is that correct?

18 A That is what she's indicated here, yes, ma'am.

19 Q And she only notices disarray in the living room area
20 where they had the lamp stand laying on the sofa; is that
21 right?

22 A She has annotated in her narrative that the living
23 room area was in disarray.

24 Q She does not have annotated that the den was in
25 disarray, the kitchen was in disarray, the stairs were in

1 disarray, or the first bedroom was in disarray?

2 A She does not have that indicated on this report.

3 Q Also in this report she indicates that she used a
4 black light to detect semen; is that correct?

5 A That's correct.

6 Q And she, therefore, detected in her report she said
7 she detected semen on the bed comforter; is that right?

8 A That's correct.

9 Q And the left side of the floor near the bed facing
10 the bed?

11 A That's correct.

12 Q And then she took swabs from the -- she took swabs
13 from the semen she saw on the floor with the black light;
14 is that correct?

15 A That's correct.

16 Q Now, she also dusted for fingerprints in the stairs
17 area; is that correct?

18 A She has that listed, yes, ma'am.

19 Q And there were no results from those tests?

20 A She has listed negative results, which means either
21 there's no prints that she could find or any prints of any
22 value that we could actually compare to anybody.

23 Q Now, let me ask you this: You were her supervisor;
24 is that correct?

25 A Yes, ma'am.

- 1 Q You didn't go to the crime scene?
- 2 A No, I did not.
- 3 Q You did not see this comforter at the crime scene?
- 4 A I didn't go to the crime scene.
- 5 Q So you did not see it?
- 6 A I did not see it, that's correct.
- 7 Q You did not see it wrapped in this paper?
- 8 A No, ma'am.
- 9 Q You did not see the victim in this case in this
10 shirt?
- 11 A No, ma'am.
- 12 Q Nor it wrapped in this paper?
- 13 A No, ma'am.
- 14 Q Nor the pants nor the underwear; is that correct?
- 15 A That's correct.
- 16 Q Nor did you see it put in this paper bag?
- 17 A No, ma'am, that's correct.
- 18 Q You didn't see Ms. Brown take these items back to the
19 station?
- 20 A I don't recall.
- 21 Q You didn't see her put it in any type of locker?
- 22 A I don't recall this particular case.
- 23 Q That's because you didn't see it, right?
- 24 A I mean I could have and not remembered, it's a year
25 and a half ago, but I don't recall in particular her doing

1 that because I may have not been there.

2 Q And you don't recall -- you didn't see her do
3 anything this day that you know of?

4 A I don't recall, no, ma'am.

5 Q You testified that you train your employees; is that
6 correct?

7 A That's correct.

8 Q But you don't know what practices she employed on
9 this date, do you?

10 A I wasn't there. I would assume she would have
11 followed protocol. That's how she was trained.

12 Q But you don't know because you weren't there?

13 A I don't know a fact. I was not there.

14 Q You weren't at the house and you weren't at the
15 hospital?

16 A That's correct.

17 MS. VANGINHOVEN: No further questions.

18 THE COURT: Any redirect?

19 MS. GARFIELD: No, sir.

20 THE COURT: You may step down.

21 MS. GARFIELD: May Lieutenant Padgett be
22 excused?

23 THE COURT: Any objection?

24 MS. VANGINHOVEN: No, your Honor.

25 THE COURT: You're excused.

1 Call your next witness, please.

2 MS. COOPER: The State calls Jhoana Pineda-Kim.

3 JHOANA PINEDA-KIM, after being duly sworn,
4 testified as follows:

5 THE CLERK: Have a seat in the witness stand and
6 state your full name for the record.

7 THE WITNESS: It's Maria Jhoana Pineda-Kim.

8 DIRECT EXAMINATION

9 BY MS. COOPER:

10 Q Good afternoon, Ms. Pineda-Kim.

11 Ms. Pineda-Kim, can you please tell the jury
12 where you're employed?

13 A I work at Palmetto Health Richland Memorial Hospital.

14 Q And what is your occupation there?

15 A I'm a registered nurse.

16 Q And how long have you been there?

17 A Since September of 2001.

18 Q Did you have an opportunity to work at Richland
19 Memorial Hospital?

20 A Yes, that's it now. That's Richland Memorial.

21 Q I'm sorry. I thought you said --

22 A Palmetto Richland.

23 Q You don't work at Providence Northeast anymore?

24 A Yes, I work in both places.

25 Q I apologize. And tell the jury what your training,

1 educational background, experience in nursing entails?

2 A Let me see. I have a bachelor's degree in nursing,
3 which is a four-year degree, and basically I mean as far
4 as what is your question?

5 Q Just explain to us --

6 A Clinical experience, you know, you have clinicals in
7 different areas of nursing. My background is in ER.

8 Q And ER meaning the emergency room?

9 A Emergency department, yes, ma'am.

10 Q And you have been employed with Palmetto Richland
11 Hospital since 2001; is that correct?

12 A That's correct.

13 Q Could you describe a day in the life of
14 Ms. Pineda-Kim at the emergency room at Palmetto Richland
15 Memorial.

16 A Well, basically it kind of can be busy, can be not
17 busy. It just kind of depends what comes in the door.

18 Q Do you treat patients and assist doctors?

19 A Yes, I do.

20 Q And those patients, do they have all the exact same
21 injuries or are there a variety?

22 A No, it's a variety. It comes from sore throat all
23 the way to trauma.

24 Q When you say "trauma," what do you mean by that?

25 A Gunshot wounds, stab wounds, NVCs.

1 Q Do you ever have an occasion to assist in the
2 treatment of sex victims, of sexual assaults?

3 A From time to time.

4 Q Do you know Dr. John Stewart?

5 A Yes, I do.

6 Q How do you know him?

7 A He's an attending at the emergency department. He's
8 the director of the emergency department, too.

9 Q Have you had an occasion to work with Dr. Stewart?

10 A I have.

11 Q I'm going to bring your attention to
12 October 30th of 2004. Did you have an opportunity or
13 occasion to treat a patient by the name of Lauren Byrd and
14 assist Dr. Stewart in treating this patient?

15 A Yes, ma'am. I recognize from the paperwork, yes.

16 Q And the paperwork you're referring to, can you please
17 explain to the jury what paperwork that is?

18 A From the nurse's notes from the emergency department
19 and also for the sexual assault paperwork.

20 Q When a rape victim comes to the hospital, just
21 describe what it is that you or the doctor would do to
22 this patient or how you would treat her.

23 A Usually it starts out, I guess, when they first come
24 in to triage. We have to determine whether the victim
25 is -- I guess whether law enforcement needs a rape kit

1 done and that's after talking to the victim. And then if
2 a kit is needed, then basically we do two steps: One is
3 to see if there's a SANE nurse available.

4 Q What is a SANE nurse?

5 A It's a sexual assault nurse examination, I believe.

6 Q Okay. And what is step number two?

7 A The other step is that if there's not a SANE nurse
8 available or on call, basically the nurse and the ED
9 performs the same kit.

10 Q Okay. And on this October 30th, did you assist Dr.
11 Stewart in a rape protocol examination of a victim by the
12 name of Lauren Byrd?

13 A Yes, I did.

14 Q I'm going to show you what's been marked State's
15 Exhibit No. 66 and ask if you recognize any handwriting on
16 this object.

17 A Yes, it's my handwriting.

18 Q What is that? What is that box?

19 A This is the box that we use when we do a sexual
20 assault kit, protocol kit.

21 Q And can you identify who that rape protocol kit
22 belongs to?

23 A This one is -- the victim's name is Lauren Byrd.

24 Q And if you would, please open that kit and describe
25 for the jury what evidence you collected from Ms. Byrd

1 during this rape exam. And also when you identify each
2 item, please specify whether you see your initials on the
3 envelope.

4 A Okay. Do you want me to go through each of the
5 steps?

6 Q Yes, ma'am. Just do exactly what you would have done
7 when you treated Lauren Byrd on October 30th, 2004.

8 A Okay. Basically I go through the box and there's a
9 sheet here of steps that need to be followed. And
10 basically the first thing is clotheswise, if they haven't
11 changed yet from the time the incident happened, then make
12 them take it off, including underwear, and then we put it
13 in a bag and that's part of the evidence and then after
14 that we gown them up.

15 Then after they gown up, then we go through the
16 process of collecting evidence, whatever is pertinent to
17 the victim.

18 Basically we start out with collecting hair
19 samples, fingernail scrapings.

20 Hair samples can come from -- well, we get it
21 from the head and I believe three different places.

22 We also collect hair in the vaginal area. If
23 it's shaved or something, then basically we just try to
24 use tweezers to pluck them and then we also scrape for any
25 I guess evidence of other hair, sample of hair.

1 And we also take blood from the patient to be
2 sent to SLED and it's included in the kit.

3 Q And in this case, did you collect clothes from this
4 victim?

5 A Yes, I did.

6 Q Are you sure about that? Would the clothes be in
7 there?

8 A No, it won't be in here. It was in a separate big
9 bag that's given to the officer.

10 Q Okay. And did you collect any blood from this
11 patient?

12 A Yes, a blood sample was collected and sent to SLED.

13 Q And did you collect -- do you see your initials on
14 any of that article?

15 A Yes, here.

16 Q Okay. And so you drew the blood of Lauren Byrd on
17 that day?

18 A That's correct.

19 MS. VANGINHOVEN: Leading.

20 THE COURT: All right. Watch your leading
21 questions, Counsel.

22 MS. COOPER: I apologize, your Honor.

23 BY MS. COOPER:

24 Q What were the results? Were you able to collect any
25 fingernail scrapings?

1 A I really don't know. I mean, I don't -- I basically
2 put it in the white film and I scrape it, but I don't look
3 into what I see. I leave that for SLED to do.

4 Q Let's go through each article, then.

5 MS. COOPER: Let me get this mark real quickly.

6 (WHEREUPON, State's Exhibit No. 70 was marked
7 for identification only.)

8 BY MS. COOPER:

9 Q I'm going to show you State's No. 70 again and ask
10 you if you can identify what that is.

11 A Yes, this is the blood sample for the "collect a
12 lavender top for the blood sample."

13 Q Okay. And do you see your initials on that?

14 A Yes, I do.

15 Q And the date?

16 A Yes.

17 Q Okay. What's the date?

18 A 10-30-04, collected at 21:10.

19 MS. COOPER: Your Honor, at this time the State
20 would seek No. 70 into evidence.

21 MS. VANGINHOVEN: No objection, your Honor.

22 THE COURT: Without objection, State's 70 is
23 admitted.

24 (WHEREUPON, State's Exhibit No. 70 was admitted
25 into evidence.)

1 BY MS. COOPER:

2 Q Did you have to do a rectal swab on this victim?

3 A This one, no.

4 Q Okay.

5 A And usually the doctor does that collection when they
6 do the pelvic exam.

7 Q All right. Did you have to collect any samples from
8 any bite marks on this victim?

9 A No.

10 Q And was a vaginal swab done in this case?

11 A Yes.

12 Q And do you see the initials on that?

13 A I do.

14 Q Okay. Whose initials are those?

15 A Those are mine.

16 Q All right. And this is again for Lauren Byrd?

17 A Yes, it is.

18 Q What about that envelope? What did you collect from
19 Lauren?

20 A This one is the oral swabs that we do, a Q-tip around
21 the mouth area.

22 Q Okay. And what other term is used for that swab, do
23 you know? Have you heard of the term "buckle swab"?

24 A That's -- well, it's like that.

25 Q So that's another term for the oral swab?

1 A Uh-huh.

2 Q And then you collected fingernail scrapings; is that
3 correct?

4 A That's correct.

5 Q Thank you.

6 And you indicated you collected known pubic
7 hair; is that correct?

8 A That's correct.

9 Q Okay. And known head hairs; is that correct?

10 A That's correct.

11 Q All right. And then I'm going to show you this item.
12 What is that? Describe what that is, please.

13 A This one is -- okay. This is the bag that comes with
14 the kit, and basically this is what we put the clothing of
15 the patient, so it looks like here I indicated that the
16 investigator had already collected the patient, I mean the
17 clothes from the patient prior to me doing the kit.

18 Q Okay. And describe what that is.

19 A This one is the container that you put the underwear
20 in, and none was collected. The officer had it already.

21 Q Okay. The officer took it?

22 A Yes.

23 Q And these are all from this box, No. 66; is that
24 correct?

25 A That's correct.

1 Q Now I'm going to ask you to review this box. And
2 when you collect all the samples from a victim of a rape
3 case, what do you typically do with the rape kit after
4 you're done and you've completed it?

5 A Once I complete the box, I seal it, and basically I
6 keep it in my possession until the investigating -- I mean
7 an officer picks it up from me and then we do a chain of
8 custody of who collected it.

9 Q Okay. And can you please tell this jury who it is
10 that you turned this evidence, this entire rape kit sealed
11 to?

12 A It looks like it says a David Goff.

13 Q A David Goff?

14 A Yes.

15 MS. COOPER: Beg the Court's indulgence.

16 BY MS. COOPER:

17 Q And just to clarify, State's No. 70, the victim's
18 blood would be in that sealed box?

19 A It would be in this sealed box.

20 MS. COOPER: Okay. Thank you.

21 Your Honor, I have no further questions of
22 Ms. Pineda-Kim.

23 THE COURT: All right. Cross-examine, please.

24 MS. VANGINHOVEN: Thank you, your Honor.

25 CROSS-EXAMINATION

1 BY MS. VANGINHOVEN:

2 Q Ms. Pineda-Kim, did you say you did get a known pubic
3 hair or not?

4 A Well, I didn't pluck one, but we combed some. Not --
5 I guess what I'm saying is if the patient's vaginal area
6 is shaved, we don't have to technically pluck one if
7 there's no hair present but we comb it just in case
8 there's anything.

9 Q And do you know when you gave this to David Goff?

10 A The box, October 30th, '04, at 22:51.

11 Q Were you with the doctor while the exam was going on?

12 A Yes.

13 MS. VANGINHOVEN: And, your Honor, can I
14 approach the witness?

15 THE COURT: Sure.

16 BY MS. VANGINHOVEN:

17 Q Are you familiar with these documents or have you
18 never seen those before?

19 A Yes, this is what the doctor fills out that comes in
20 the box.

21 Q Okay. So you basically assist the doctor; is that
22 right?

23 A No, I am the one that collects the samples. He does
24 the pelvic part.

25 Q He actually collected the vaginal swabs?

1 A That's correct, yes. He does that, the anal swab or
2 smears or stuff like that. I do the preliminary as far as
3 the hairs and all that and film for the pelvic part, then
4 the M.D. does the pelvic.

5 Q Have you been trained as a SANE nurse?

6 A I have not formally as far as going to a SANE class,
7 but we have a SANE nurse in our staff that has trained the
8 staff.

9 Q But you haven't actually gone to that class?

10 A No.

11 Q And you said earlier that you collected the clothes
12 but you think that you gave them to law enforcement that
13 day?

14 A Well, I made a note that says here that I did not
15 collect as far as putting it in the box, that it was
16 collected prior to doing the kit. So I'm not sure, I
17 can't remember whether that was done before triage because
18 she saw another nurse before I got involved.

19 Q So you don't know which officer got the clothes?

20 A That's correct.

21 MS. VANGINHOVEN: No further questions. Thank
22 you.

23 THE COURT: Any redirect?

24 MS. COOPER: No, your Honor.

25 May she be excused?

1 THE COURT: Any objection?

2 MS. VANGINHOVEN: No, your Honor.

3 THE COURT: You're excused, ma'am. Thank you.
4 Go ahead.

5 MS. GARFIELD: The State calls Investigator
6 David Goff.

7 DAVID GOFF, after being duly sworn, testified as
8 follows:

9 THE CLERK: Please have a seat in the witness
10 stand and state your full name for the record.

11 THE WITNESS: My name is David Goff.

12 DIRECT EXAMINATION

13 BY MS. GARFIELD:

14 Q Investigator Goff, where are you employed?

15 A Richland County Sheriff's Department.

16 Q How long have you been employed there?

17 A Twenty years.

18 Q And what are your duties with the sheriff's
19 department?

20 A I'm a major crimes investigator.

21 Q Do you recall having an opportunity to work on the
22 State versus Randy Thomas case?

23 A Yes, ma'am.

24 Q And do you know what your capacity in this case was?

25 A Yes, I was notified by the desk that there was a

1 protocol kit at the hospital and that I needed to go pick
2 it up.

3 Q Let me show you what's been marked as State's Exhibit
4 No. 70. Do you recognize this exhibit?

5 A Yes, I do.

6 Q And what do you recognize that to be?

7 A This is the protocol kit I picked up from the
8 hospital on 10-30-04 and I signed it.

9 Q Is there a time when you picked it up?

10 A The time from my signature there is the time 22:51
11 above mine. I'm not sure if that's when the nurse signed
12 it or I put the time on mine and signed it.

13 Q And you picked this up from Richland Memorial
14 Hospital?

15 A That's correct.

16 Q And what did you do with it after you picked it up?

17 A Took it back to the evidence locker at Richland
18 County Sheriff's Department and placed it inside the
19 locker.

20 Q Where is the Richland County Sheriff's Department?

21 A 5623 Two Notch Road, Columbia, South Carolina.

22 Q And you went straight to the sheriff's department?

23 A Yes, ma'am.

24 Q And where did you place it once you got there?

25 A For the protocol kits we have a refrigerated unit.

1 Inside the refrigerator there is a metal security box. If
2 you pull the handle down, it has a lip on the inside so
3 you can't reach in the box. And you pull the handle down
4 and just side this, it's exactly the same width as this,
5 and I slid it in and then closed the lid and it drops the
6 box inside the locked metal container.

7 Q Who gets it out of the locked metal container?

8 A The evidence technician either the next business
9 working day. If it's a weekend, it would be probably
10 Monday.

11 Q Is that why you did not give it to them?

12 A That's correct.

13 Q Did you tamper with that rape protocol kit?

14 A No, I did not. I just signed my name on it. That's
15 all I did with it.

16 Q Is that the extent of your involvement with the case?

17 A That's it.

18 MS. GARFIELD: Thank you. Please answer any
19 questions the defense may have for you.

20 MS. VANGINHOVEN: We have no questions. Thank
21 you.

22 THE COURT: All right. You may step down.

23 MS. GARFIELD: May Investigator Goff be excused?

24 MS. VANGINHOVEN: No objection.

25 THE COURT: If there's no objection, you're

1 excused, Mr. Goff.

2 THE WITNESS: Thank you, sir.

3 MS. GARFIELD: The State calls Bev Crane.

4 BEVERLY CRANE, after being duly sworn, testified
5 as follows:

6 THE CLERK: Have a seat and state your full name
7 for the record.

8 THE WITNESS: Beverly Leonard Crane, Jr.

9 DIRECT EXAMINATION

10 BY MS. GARFIELD:

11 Q Mr. Crane, where are you employed?

12 A Richland County Sheriff's Department.

13 THE COURT: Slide up to the microphone, please,
14 sir.

15 THE WITNESS: Richland County Sheriff's
16 Department.

17 BY MS. GARFIELD:

18 Q What are your duties with the Richland County
19 Sheriff's Department?

20 A Evidence technician.

21 Q And what does that mean?

22 A I work in the evidence room. I sign evidence in,
23 sign evidence out for laboratory testing and to bring it
24 to the courtroom, et cetera.

25 Q How long have you been with Richland County Sheriff's

1 Department?

2 A About seven years with the sheriff's department.

3 Q Have you always been an evidence technician?

4 A No, ma'am. I've worked as sex offender registrar and
5 worked in investigations for awhile.

6 Q How long have you been an evidence technician?

7 A Since last August.

8 Q Since August of 2005 or 2004?

9 A August of '05.

10 Q Were you not working in the evidence room in 2004?

11 A No. No, ma'am.

12 Q Did you have in any involvement with the case of the
13 State versus Randy Thomas?

14 A I checked the evidence out for laboratory testing.

15 Q And do you know what those dates were or what year
16 that was?

17 A I checked the evidence, the rape protocol kit I
18 checked back in from lab testing. It was on 10-25-05.

19 Q Specifically let's start with September 8th, 2005.

20 Do you recall receiving any evidence regarding this case?

21 A I did. I signed back in the evidence on 9-8-05.

22 Q What evidence would that have been?

23 A That would have been the comforter and pants, that
24 package, that sealed package that had a number of items in
25 it.

1 Q Who did you receive that evidence from?

2 A I'm having a difficult time reading the name on the
3 list.

4 Q Could it be the name of Dr. Amick?

5 A Yes, it could.

6 MS. VANGINHOVEN: Your Honor, I object to that.
7 Basically she's supplying an answer or she's testifying
8 for the witness at this point. If we could approach for
9 one minute.

10 THE COURT: All right. Come up.

11 (A bench conference was held with the judge and
12 attorneys in the presence of the jury but out of the
13 hearing of the jury.)

14 THE COURT: The last objection is overruled.
15 Let's continue.

16 MS. GARFIELD: Thank you, Judge.

17 BY MS. GARFIELD:

18 Q And what is the protocol for collecting evidence into
19 the evidence room?

20 A The person who is bringing the evidence down to
21 submit it would bring it down to the evidence window.
22 They would, once it's brought in and set down on the
23 counter, then we would pull the sheet on that evidence as
24 far as the evidence inventory sheet.

25 With this particular box of evidence, there was

1 several items in that single box. The box was sealed. It
2 is signed by the person who was submitting it. Then I
3 would receipt for that box of evidence that is sealed, and
4 then I would take possession of that and put it back into
5 the evidence room at its location where it's supposed to
6 be stored until it's needed.

7 Q On this particular date, who sealed that evidence?

8 A Gray Amick would have sealed that evidence and
9 presented it to me.

10 Q Do you actually see what all is inside the box?

11 A No, I do not.

12 Q Did you also have any involvement with this case on
13 September 21st, 2005?

14 A September 21st?

15 Q Yes, sir, regarding the same piece of evidence.

16 A The same package.

17 Q And what did you do with it at that time?

18 A It was released to the lab for DNA testing.

19 Q Who was it released to?

20 A Gray Amick.

21 Q Did you ever receive that item back?

22 A It was returned and Tena Goff signed it back in on
23 the next time it was returned.

24 Q Was the evidence ever taken out of the evidence room
25 at a later date after back and returned to you again?

1 A It was released on 10, it looks like 10-14-05.

2 Q Was it returned back to the evidence room?

3 A It was returned back to me at the evidence room on
4 10-25-05.

5 Q And who took it back into the evidence room on that
6 day?

7 A I did. Gray Amick was the one who returned it to me.

8 Q Again, what was the condition of that box when it was
9 returned to you on that date?

10 A It was a sealed box.

11 Q What if it wasn't sealed, what would you do?

12 A Then he would have to seal it before I would take
13 possession.

14 MS. GARFIELD: Beg the Court's indulgence.

15 BY MS. GARFIELD:

16 Q When you were taking this evidence and giving this
17 evidence to various people or actually to Dr. Amick, did
18 you tamper with this evidence at all?

19 A No, ma'am.

20 Q Would you have tampered with it at all while it was
21 in your custody?

22 A No, ma'am.

23 MS. GARFIELD: Thank you. Please answer any
24 questions that defense counsel has for you.

25 MS. VANGINHOVEN: Your Honor, I don't have any

1 questions.

2 THE COURT: All right. You may step down, sir.

3 MS. GARFIELD: The State calls Tena Goff.

4 TENA GOFF, after being duly sworn, testified as
5 follows:

6 THE CLERK: Please have a seat in the witness
7 stand and state your full name for the record.

8 THE WITNESS: Tena Goff.

9 DIRECT EXAMINATION

10 BY MS. GARFIELD:

11 Q Ms. Goff, we just heard from Investigator Goff. Is
12 there any relation?

13 A Down the road there is.

14 Q Where are you employed?

15 A Richland County Sheriff's Department.

16 Q And what are your duties at the sheriff's department?

17 A I am the evidence custodian or supervisor of the
18 evidence room.

19 Q Do you supervise Bev Crane?

20 A I do.

21 Q Do you supervise Andy Jones?

22 A I do.

23 Q And how long have you been their supervisor?

24 A I have been --

25 Q How long have you been the supervisor of the evidence

1. room, I'm sorry?

2. A It will be almost ten years in the evidence room.
3. Andy I've been supervisor over probably a year and a half;
4. and Bev Crane, the last six months.

5. Q Do you have any previous law enforcement experience?

6. A Only with the sheriff's department.

7. Q What are your duties as the supervisor in the
8. evidence room?

9. A My job is to accept, inventory, and store evidence as
10. the officers turn them in and then maintain a chain of
11. custody on that evidence.

12. Q Is this all evidence that's investigated by the
13. Richland County Sheriff's Department?

14. A Yes, ma'am.

15. Q So you would have been in charge of the evidence
16. collected in the case of State versus Randy Thomas?

17. A Yes, ma'am.

18. Q Specifically did you have any involvement with
19. collecting a rape protocol kit?

20. A No.

21. Q Can you refer to entries --

22. MS. GARFIELD: Beg the Court's indulgence.

23. BY MS. GARFIELD:

24. Q Do you have an evidence sheet for a rape protocol
25. kit?

1 A Yes, ma'am, I do.

2 Q Do you know who collected that at the sheriff's
3 department?

4 A Investigator David Goff collected it.

5 Q I'm sorry, who collected it in the evidence room?

6 A Andy Jones.

7 MS. GARFIELD: May I approach the witness, your
8 Honor?

9 THE COURT: All right.

10 BY MS. GARFIELD:

11 Q I'm going to hand you a copy of the evidence sheet.
12 Is that the front and back?

13 A This is the front, and yes, ma'am, this is the back.

14 Q And whose initials is that?

15 A Those are my initials.

16 Q So what does that mean you did with the rape protocol
17 kit?

18 A I signed it over to Dr. Gray Amick when he came down
19 for analysis from the DNA lab.

20 Q And did you ever do anything else with the rape
21 protocol kit?

22 A I accepted it back from Dr. Amick on February 18th.

23 Q Of 2005?

24 A Yes, ma'am.

25 Q And did you have anything to do with any buckle swabs

1 that were collected in this case?

2 A Just a moment, please. I did.

3 Q And what was your involvement with those buckle
4 swabs?

5 A I signed those out to Dr. Gray Amick on August 11th,
6 2005.

7 Q Let's back up to the rape kit. How was it packaged
8 when you signed it out?

9 A When rape kits are turned in they're in a white box
10 that's already sealed by the hospital when the evidence is
11 collected and it's turned over to one of the investigators
12 at the sheriff's department who in turn turns it into the
13 evidence room.

14 Q And when you turned it over are they tampered with in
15 any way?

16 A No, ma'am.

17 Q Do you accept any evidence that's been tampered with?

18 A No, ma'am.

19 Q What would you do if somebody brings you something
20 that's not wrapped to your protocol?

21 A We would call that officer back and have them to
22 repackage it and seal it appropriately.

23 Q Thank you.

24 Okay. Specifically we have had some testimony
25 about a box that contained a bed comforter, T-shirt,

1 panties, and pants. Did you ever have any involvement
2 with that box?

3 A Several occasions.

4 Q And can we just go through one by one what your
5 involvement was?

6 A I first signed over all contents of the box or the
7 box in its entirety to Dr. Amick on March 25th of 2005.

8 Q And what would be the condition of the box when you
9 gave it to Dr. Amick?

10 A Sealed as it was received.

11 Q And would you have seen the items inside the box at
12 that time?

13 A No.

14 Q Would you have tampered with them in any way?

15 A No.

16 Q Would anyone in the evidence room have tampered have
17 with them?

18 A No.

19 Q What happened next with regard to the box?

20 A Dr. Amick brought it back to me on April 25th of
21 2005.

22 Q What was the condition of the box when it was
23 returned to your custody?

24 A It was sealed again.

25 Q And what did you do with the box at that time?

1 A Put it back on the shelf, the bin location in the
2 evidence room where it's stored.

3 Q And you made a notation?

4 A On the chain of custody on the back of the form, yes,
5 ma'am.

6 Q And what did you do next concerning this box?

7 A We again signed it out again to Dr. Amick on June 8th
8 of 2005.

9 Q And again what was the condition of the box when you
10 signed it out then?

11 A Sealed.

12 Q And did you ever have that returned?

13 A It was returned on September 8th of 2005.

14 Q And who was it returned from?

15 A It was returned from Dr. Amick to Bev Crane.

16 Q So you wouldn't have been involved in that?

17 A No.

18 Q And then was there more involvement with this box of
19 items?

20 A It was then again signed back out to Dr. Amick on
21 September 21st of 2005 by Bev Crane.

22 Q And, again, you didn't have anything to do with that?

23 A No, ma'am.

24 Q And was it ever returned?

25 A It was returned on October 3rd of 2005, and I did

1 collect it at that time.

2 Q And what was the condition of the box when you
3 collected it?

4 A Sealed.

5 Q And would you have collected it had it not been
6 sealed?

7 A No.

8 Q Was it ever signed out again?

9 A It was signed out again on October 14th, 2005, again
10 in its entirety to Dr. Amick.

11 Q Was it ever turned in?

12 A It was, October 25th, 2005, and it was received by
13 Bev Crane.

14 Q And where -- when was -- was the items ever taken out
15 of evidence a final time?

16 A February 2nd, 2006, to Investigator Godfrey to come
17 to court.

18 Q Do you see Investigator Godfrey in the courtroom?

19 A I do.

20 Q And, Ms. Goff, since you are the supervisor of the --
21 I'm sorry, let me back up.

22 Who is this Gray Amick that we hear so much
23 about?

24 A Dr. Gray Amick is one of our DNA analysis or
25 technical leader of the DNA lab at the sheriff's

1 department.

2 Q Thank you.

3 As supervisor and custodian of the evidence
4 room, can you just explain to the jury a little bit what
5 the procedures are for investigators dropping off evidence
6 during the weekend?

7 A On the weekend we have lockers or a drop box and
8 refrigerator outside the evidence room. Each one is --
9 you have to go to the desk sergeant and sign out a lock
10 and log it down in the log book.

11 If you sign out lock number one, you go to
12 locker number one.

13 You put your evidence in, you lock the lock, no
14 one can get into it.

15 Our drop box is the same way. It's an old
16 mailbox that's locked and you pull down the slot, put your
17 evidence in and close it and the evidence drops down. No
18 one has a key to that other than myself, the officers in
19 the evidence room, and my immediate supervisor.

20 Q Do some investigators also have lockers in their
21 offices?

22 A No.

23 Q They don't have any kind of -- not evidence lockers,
24 storage lockers?

25 A The only other storage lockers in the building are

1 with the forensic lab unit upstairs.

2 Q So an investigator's on call on the weekend and they
3 need to log in evidence, where would they put it?

4 A If they finish processing the evidence, that evidence
5 is turned in downstairs to the evidence lockers. If they
6 haven't finished processing their evidence yet, then it
7 stays in their lockers locked in the lab.

8 MS. GARFIELD: Please answer any questions that
9 defense counsel may have.

10 Thank you, Ms. Goff.

11 THE COURT: All right. Cross-examine.

12 MS. VANGINHOVEN: Thank you, your Honor.

13 CROSS-EXAMINATION.

14 BY MS. VANGINHOVEN:

15 Q Good afternoon.

16 A Good afternoon.

17 Q I just have a couple of questions.

18 The buckle swabs that you testified about --

19 MS. VANGINHOVEN: May I approach, your Honor?

20 THE COURT: Sure.

21 BY MS. VANGINHOVEN:

22 Q On the second page, what does it say on the top, the
23 very first entry?

24 A July 15th, 2005, at 10:50, item number one, the
25 reason released was EIN, released to Richland County

1 Sheriff's Department drop box by Investigator Godfrey.

2 Q Thank you. So in this report it actually states that
3 it was placed into a drop box?

4 A Yes.

5 Q And the evidence papers regarding the box and the
6 comforter, the panties, whatnot, on the back of that does
7 it mention it being dropped in a drop box?

8 A No, it does not.

9 Q And for the evidence sheet again on that box, the
10 comforter, pants, panties, and shirt, the submitting
11 officer is Deirdre Brown, there's no date as to when she
12 submitted this; is that correct?

13 A The date of offense was 10-30 of 2004. The date and
14 time that we received it in the evidence room was
15 November 2nd of 2004.

16 MS. VANGINHOVEN: No further questions. Thank
17 you.

18 THE COURT: Any redirect?

19 MS. GARFIELD: Beg the Court's indulgence.

20 REDIRECT EXAMINATION

21 BY MS. GARFIELD:

22 Q Investigator Goff, did you have any contact in the
23 evidence room with the buckle swabs?

24 A I did when I signed them out to Dr. Gray Amick.

25 Q When was that?

1 A August 11th, 2005.

2 Q And that would have adhered to the same protocol on
3 packaging as well?

4 A Yes, ma'am.

5 MS. GARFIELD: Thank you. Nothing further.

6 THE COURT: Anything further?

7 MS. VANGINHOVEN: No, your Honor.

8 THE COURT: You may step down.

9 Mr. Foreman, ladies and gentlemen, we have about
10 reached that point where I'm going to have to leave.

11 We will start tomorrow morning at 9:30. I've
12 got another hearing at 9 o'clock, 9:15, not anything to do
13 with this case, but we'll start at 9:30. Please be in
14 your jury room at that time.

15 Don't discuss the case or watch or listen or
16 read anything about the case.

17 Have a good night and we'll see you at 9:30
18 tomorrow.

19 Everyone else stay seated, please.

20 (The jury left open court at approximately 3:35
21 p.m.)

22 THE COURT: Solicitor, give me an idea of where
23 we are. So Dr. Amick, I guess he's going to testify?

24 MS. COOPER: Yes, sir. Our next witness is Dr.
25 Amick and then the last witness is Investigator Godfrey.

1 (WHEREUPON, State's Exhibit No. 71 was marked
2 for identification only.)

3 THE COURT: All right. Anything from the State
4 before we get started?

5 MS. GARFIELD: Nothing from the State, your
6 Honor.

7 THE COURT: From defense?

8 MS. DURANT: Your Honor, I think whenever they
9 call Dr. Amick, we would have an objection to his
10 testimony. I don't know what you feel would be the
11 appropriate time to do that.

12 THE COURT: Is it an objection I would have to
13 take up outside the jury's presence?

14 MS. DURANT: I think so. And it's the same
15 objection we made yesterday. We just want to reiterate it
16 for the record.

17 THE COURT: Is he the next witness?

18 MS. GARFIELD: Yes, sir.

19 THE COURT: All right. Let's go ahead and deal
20 with it now rather get the jury in here and have to send
21 them back.

22 MS. DURANT: Your Honor, we do raise an
23 objection to his testimony about the DNA coming in, any
24 testimony about it because we feel like there's a missing
25 link in the chain of custody and it is the officer who

1 retrieved the items from the crime scene and the hospital
2 on October 30th. She had them in her custody from
3 October 30th to November 2nd, three days later. It's
4 compounded by the fact that the evidence custodian can't
5 say whether he got the items from a lock box or from a
6 person.

7 There's been no testimony as to how the items
8 from the hospital were packaged. In fact, there's been no
9 real testimony about who actually took the items from the
10 victim. The SANE nurse yesterday said at one point she
11 did and then she said the officer got it, so we don't know
12 for sure who took the items from the victim at the
13 hospital.

14 The testimony regarding the comforter, they said
15 the comforter came wrapped in a paper bag at the office.

16 Regarding the case that the State raised, State
17 V Taylor that your Honor relied on, it involves an
18 evidence custodian whose sole purpose was to store the
19 evidence once it had been turned over to the evidence
20 custodian. So it's not actually how the process was
21 completed before it was turned over to the custodian.

22 In this case, the missing link is the officer
23 who processed and counted the evidence before it even got
24 to the evidence custodian.

25 It's compounded by two other issues, your Honor:

1 The fact that DNA is extremely sensitive and the fact that
2 there's a third DNA, the DNA of a person is on this
3 comforter and that's an unknown person. We do not know,
4 there's nothing indicating who that DNA belongs to.

5 Further, State V Taylor not only requires the
6 identity of each person in the chain but the manner in
7 which each person in the chain handled the evidence, and
8 that that has to be reasonably demonstrated. We feel that
9 was not done in this case, your Honor. The only testimony
10 to that was Zane Padgett who is the supervisor of Deirdre
11 Brown and he only testified as to how she was trained. He
12 can't testify as to what she actually did on October 30th
13 or between the time of October 30th and November 2nd.

14 The State could have -- there's also the problem
15 that Ms. Brown is not here and that they know where she
16 is. We feel that the State could have made more efforts
17 to investigate and get her here. I think the only
18 testimony was she was supposed to call back and give them
19 her address and how to reach her. There's been no
20 testimony that the State made any aggressive measures to
21 find her.

22 Lastly, your Honor, we submit that the items,
23 the comforter, the pants, the panties are fungible items
24 because they were changed by the cuttings taken from them.

25 And finally, we feel like that it is a violation

1 of the defendant's state and federal constitutional rights
2 regarding the right to confront witnesses, your Honor. So
3 our objection would be based on those issues.

4 THE COURT: All right. Solicitor.

5 MS. GARFIELD: Thank you, your Honor.

6 We believe that we have followed the guidelines
7 in accordance with State V Taylor. We provided testimony
8 to your Honor thus far regarding how the evidence was
9 collected by Deirdre Brown, customary practice, which is
10 something we don't even need to give the customary
11 practice for what really what happened.

12 And, your Honor, furthermore, we have told you
13 or Ms. Cooper told you earlier yesterday that Dr. Amick
14 would be testifying and he would be testifying as to how
15 he found the evidence, the condition the evidence was in.
16 That's what he will refer to at this time.

17 There was testimony, and I believe Ms. Durant is
18 incorrect, there was testimony from the victim, Lauren
19 Byrd, saying that she gave her clothing to the black
20 female office at Richland Memorial Hospital, so that link
21 has been established.

22 We don't have to establish the entire link. We
23 know who did this. Everyone has testified as to her
24 customary practice and how she would collect the evidence.
25 We've had witnesses testify as to what they observed her

1 do and that she was carrying out the proper evidence
2 collection in accordance with the Richland County
3 Sheriff's Department's guidelines.

4 As far as to the DNA sample that has been found
5 on the comforter, Dr. Amick is here. He is prepared to
6 testify. And this is quite embarrassing for our victim,
7 but this was her parents' bedroom, your Honor, and Dr.
8 Amick will be able to testify that the DNA that was found
9 on that comforter is a DNA from a female related to Lauren
10 Byrds. It's not impossible that perhaps her mother's DNA
11 would be on that comforter.

12 We're prepared to go forward, your Honor, and
13 proffer Dr. Amick and go through an in camera hearing so
14 that you can hear exactly what he will testify to.

15 THE COURT: Well, the question is not the chain
16 once he gets it, it's the chain leading up to when he got
17 it. I don't think I need to have anything in camera from
18 him.

19 Again, if there's a question and I think the
20 question is whether it goes to the weight of the evidence
21 or the admissibility of it, it's between
22 October 30th and November 2.

23 The evidence that the Court is relying on is a
24 report that was testified to by the supervisor where the
25 investigator, Ms. Brown, is that her name?

1 MS. GARFIELD: That's correct.

2 THE COURT: Indicated on the report that she put
3 all the evidence, all the items that she had taken in
4 evidence. And the testimony from Mr. Livingston that he
5 observed her wrapping the comforter on the 30th in the
6 lab at the sheriff's department, that is evidence that all
7 of that was done on the 30th, which means that the gap,
8 if you will, from October 30th until November 2, it
9 really isn't a gap, that the evidence was placed in
10 evidence and was in the evidence locker and was not taken
11 out of the locker until November 2nd. And that's the
12 evidence the Court is relying on in making the
13 determination that the State has established sufficiently
14 the chain of custody of these items.

15 And I will be glad to respond to anything along
16 those lines, Ms. Durant.

17 MS. DURANT: Yes, sir. Your Honor, I think --

18 THE COURT: And that's what gave me a problem
19 yesterday. That's why I wanted to read the cases and
20 whatnot is because of that time period from
21 October 30th, the day of the incident, until
22 November 2nd, which is when it's clear that the evidence
23 custodian actually took the items and put them in the
24 evidence, the main big evidence locker at the sheriff's
25 office.

1 MS. DURANT: Yes, sir, your Honor. We'd add one
2 think in response, please.

3 I don't think the victim testified to the name
4 of the black officer who took her clothes who was at the
5 house, so I think at that point because there's was two
6 different places, she stopped at two different places and
7 two different environments, I think it becomes an identity
8 issue at that point, your Honor, and there's been no
9 evidence to that, just the victim's testimony.

10 MS. GARFIELD: Your Honor, Investigator
11 Livingston did testify that he went to the hospital with
12 Investigator Deirdre Brown and left Deirdre Brown with the
13 victim and I believe the victim described her.

14 THE COURT: Well, I think the evidence along as
15 far as identification of who took the items at the
16 hospital, you've got the victim who testified the black
17 female officer or a black female officer, you've got
18 Livingston testifying that he was there with Ms. Brown,
19 and then you've got the evidence initialed and described
20 by Ms. Brown in the report and whatnot. So I think
21 there's sufficient evidence there to indicate that it was
22 in fact Investigator Brown who collected the clothing at
23 the hospital.

24 Again, to me, the issue is that time period from
25 October 30th to November 2nd, and that's really your

1 challenge.

2 MS. DURANT: Yes, sir.

3 THE COURT: All right. But in looking at all of
4 the evidence that has been presented, I think that the
5 State has met its burden. It certainly is a case where
6 there is not a perfect chain, but these cases say a
7 perfect chain is not required as long as it's reasonable,
8 and what has been established, again I feel like taking
9 all of the circumstances and evidence into consideration,
10 the State has made a sufficient showing.

11 MS. DURANT: Your Honor, can we have a standing
12 objection when Dr. Amick testifies?

13 THE COURT: I hesitate to say one way or the
14 other because if I say yea, the Court of Appeals and
15 Supreme Court says no, then we've got a problem. I think
16 out of an abundance of caution you probably need to object
17 on the record once he takes the stand, and once you've
18 done that I think you're fine.

19 MS. DURANT: Your Honor, if I may add two more
20 things.

21 Randy's buckle swab evidence sheet shows the
22 items were removed from the drop box. Ms. Brown's items
23 doesn't show whether the items were in the lock box or not
24 in person. And we don't think they would have been
25 handled reasonably if they were wrapped at the office from

1 the time they were picked up at the crime scene.

2 THE COURT: All right.

3 MS. DURANT: Thank you, your Honor.

4 THE COURT: I appreciate that.

5 Anything further from the defense?

6 MS. DURANT: Nothing, your Honor.

7 THE COURT: From the State?

8 MS. GARFIELD: No, sir.

9 THE COURT: All right. Let's get the jury in.

10 (The jury came into open court at approximately
11 10:00 a.m.)

12 THE BAILIFF: The jurors are all present, your
13 Honor.

14 THE COURT: Thank you.

15 Mr. Foreman, ladies and gentlemen, we will
16 continue.

17 Solicitor, call your next witness, please.

18 MS. GARFIELD: Thank you, your Honor.

19 The State calls Dr. Gray Amick.

20 MS. DURANT: Your Honor, we'd renew our
21 objection to the testimony of Dr. Amick based on our prior
22 objection.

23 THE COURT: The objection is overruled. The
24 State may proceed.

25 GRAY D. AMICK, M.D., after being duly sworn,

1 testified as follows:

2 THE CLERK: Thank you. Please have a seat in
3 the witness stand and state your full name for the record.

4 THE WITNESS: My name is Gray D. Amick.

5 DIRECT EXAMINATION

6 BY MS. GARFIELD:

7 Q Dr. Amick, where are you employed?

8 A I'm currently employed with the Richland County
9 Sheriff's Department.

10 Q How long have you been at the Richland County
11 Sheriff's Department?

12 A I've been at Richland County Sheriff's Department for
13 approximately two years, since March of 2004.

14 Q What is your job at Richland County Sheriff's
15 Department?

16 A I'm currently the DNA technical leader, supervisor of
17 the DNA department and the forensic unit at Richland
18 County Sheriff's Department.

19 Q Have you only been in DNA two years?

20 A No. Previous to that I worked at the South Carolina
21 Law Enforcement Division commonly known as SLED for 11
22 years.

23 Q Did you have the same job there?

24 A I didn't. For the last six and a half years there I
25 was a DNA analyst at SLED.

1 Q And what do you do in the DNA lab at Richland County
2 Sheriff's Department?

3 A Like I said, I'm the DNA technical leader. That
4 means I handle all supervisory technical issues that come
5 up with DNA testing, validated the method that we use and
6 wrote the protocol that we use, and also function as a DNA
7 analyst, so I receive evidence, develop profiles, offer
8 reports, and testify in court.

9 Q Do all sheriff's department have their own DNA labs?

10 A No. In South Carolina SLED does all the DNA criminal
11 DNA for the state, except for Richland County. Richland
12 County is the only other criminal DNA forensic lab in the
13 state.

14 Q What is your educational background?

15 A I have a bachelor of science and I got that in 1989
16 and a Ph.D. in biochemistry in 1993 from the University of
17 South Carolina.

18 After that, that's when I was hired at SLED, s
19 around 1993. Like I said, the last six and a half years
20 at SLED I was in the DNA department and was trained by a
21 corp of qualified experts there in the field of forensic
22 serology, forensic DNA analysis. There I had the
23 opportunity also to validate their current method and
24 write their current protocol before I was asked to join
25 Richland County Sheriff's Department, and at that point I

1 became the technical leader at Richland County Sheriff's
2 Department and have undergone since my training there
3 yearly continuing education and attendance at scientific
4 meetings.

5 Q So you keep up with all the DNA standards?

6 A That's correct?

7 Q Have you ever been qualified as an expert in the
8 field of forensic serology?

9 A I have.

10 Q Have you ever been qualified as an expert in the
11 field of DNA analysis?

12 A I have.

13 Q How many times?

14 A Approximately 30 to 40 times.

15 Q Is that all in the courtroom setting?

16 A Yes.

17 MS. GARFIELD: Your Honor, at this time I'd like
18 to offer Dr. Amick as an expert in the field of serology
19 and DNA analysis.

20 THE COURT: Is there any objection or
21 cross-examination as to qualification at this time?

22 MS. DURANT: No objection, your Honor.

23 THE COURT: All right. Without objection.

24 Mr. Foreman, ladies and gentlemen, let me
25 explain to you very briefly that normally witnesses are

1 not permitted to voice their opinions. One exception to
2 that general rule is when a witness is qualified as an
3 expert. That gives that witness the right to voice his or
4 her opinion in that particular field.

5 This witness has just been qualified by the
6 Court as an expert in the of serology and DNA analysis.

7 And I will have some further instructions about
8 expert testimony when I talk to you about what the law is,
9 but I wanted to explain that to you at this point in time.

10 You may continue, Solicitor.

11 MS. GARFIELD: Thank you, Judge.

12 BY MS. GARFIELD:

13 Q Now that you've been qualified as an expert in the
14 field of forensic serology, will you explain to the jury
15 what forensic serology is?

16 A Forensic serology is simply identification of body
17 fluids on evidence. So if it's blood, if it's semen, if
18 it's saliva, those type things.

19 Q And what is forensic DNA analysis?

20 A Forensic DNA analysis is taking that evidence that
21 may or may not have the body fluid and trying to develop a
22 DNA profile from it; similar to trying to develop a
23 fingerprint on a piece of evidence, you try to develop a
24 DNA profile, a DNA fingerprint from evidence.

25 Q DNA seems to be a common term today, Dr. Amick, but

1 can you just explain to the jury briefly what DNA is?

2 A Sure. DNA is an acronym for deoxyribonucleic acid.
3 It's a large molecule in your body. It's basically the
4 blueprint of being a human being. So every living
5 organism will have DNA, whether you're an ant or an oak
6 tree, earth worm or human, and that DNA tells you what to
7 be, so to speak.

8 Everybody's DNA is different except for
9 identical twins. So if you have an identical twin, you
10 have the same DNA profile.

11 Otherwise, there is differences in DNA. You can
12 look around and see people look different, and that's the
13 basis for forensic DNA analysis, you're able to take that,
14 explore the differences, and have a unique DNA profile for
15 each individual.

16 Q Specifically when we're talking about DNA
17 terminology, what does "a match" mean?

18 A "Match" means basically that at every point you test,
19 every location that you test on the DNA molecule you get
20 the same result.

21 Q What would "exclusion" mean?

22 A "Exclusion" means that any one of the places you
23 test, you may test 13 different places, if any one of
24 those didn't have the same result, that would be an
25 exclusion.

1 Q And finally, Doctor, what would an "inconclusive
2 result" mean?

3 A Inconclusive could cover a number of things. It
4 could be a technical issue that you didn't get a result
5 from that item. It could be there wasn't enough DNA there
6 to give you a full profile so you could deem it
7 inconclusive. It's kind of a catchall for any technical
8 issue that it's not a clear inclusion/exclusion to
9 determine conclusive.

10 Q You just can't make a decision?

11 A Correct.

12 Q Did you perform any analysis on evidence in this
13 particular case, State versus Randy Thomas?

14 A Yes, I did.

15 Q And who directs you to perform such tests?

16 A We were requested by the investigators at Richland
17 County to do this test.

18 Q Are you actively involved in the investigation of
19 criminal cases at the sheriff's department?

20 A No. We don't interview witnesses, so in that
21 context, but we're involved with investigators and what
22 they need forensically from us.

23 Q Do you ever go to crime scenes?

24 A At SLED I used to respond to crime scenes, yes, and
25 I'm on call for crime scenes, meaning if they have an

1 issue that comes up at a crime scene they can call one of
2 the DNA analysts and ask a question, but I don't go out to
3 crime scenes and collect evidence on a routine basis.

4 Q In this particular case, did you go to the crime
5 scene?

6 A No, I did not.

7 Q In this particular case, Dr. Amick, what is the first
8 item that you would have tested?

9 A My recollection would be that, and in most of these
10 cases I speak in generality, on a criminal sexual conduct
11 case the first evidence we look at is the rape kit, which
12 is the box of evidence collected from the victim at like
13 an emergency room.

14 Q And do you recall when you would have obtained that
15 rape kit?

16 A Yes, it looks like January 18th of 2005.

17 Q And who would you have gotten the rape kit from?

18 A I get all the evidence in a routine basis from the
19 evidence room, the evidence custodian, and in this case
20 Tena Goff.

21 Q Dr. Amick, I'm going to hand you what's been marked
22 in this case as State's Exhibit No. 66. Do you recognize
23 this item?

24 A Yes. This is a rape kit for Lauren Byrd. It bears
25 my initials on the seal.

1 Q And why does it bear your initials?

2 A Because when I received it, when I receive any
3 evidence, I check the condition of it, whether it's
4 properly sealed, satisfactorily sealed, and then I will
5 break that seal to analyze the evidence, and then I will
6 seal it back and put my initials and the date when I did
7 that on it.

8 Q Can you explain to the jury what items in that rape
9 kit that you would have tested?

10 A Yes. Let me get my notes.

11 I can speak again, most all rape kits, what they
12 have in them, it's a standard set of items. So in a rape
13 kit you'd have swabs, vaginal swabs, rectal swabs, oral
14 swabs from the victim as well as vaginal, rectal, oral
15 smears, which are microscopic slides from the victim.
16 You'd have any fingernail scrapings, any kind of
17 miscellaneous material collected. There's also some
18 combings, and sometimes there's the victim's underwear.

19 Let me check my notes to make sure if there's
20 anything else.

21 That's generally what's collected in a rape kit.

22 In this case, we have -- I did leave out one
23 thing, blood from the victim which is collected as a
24 standard for the DNA analysis.

25 So sexual assault kit from Lauren Byrd contained

1 blood. It also contained the toxicology blood, which is
2 another tube of blood which is for blood alcohol testing
3 of the victim. Vaginal swabs and sides, oral swabs and
4 slides, fingernail scrapings, head hair standard, and
5 pubic combings.

6 Q Did you perform DNA tests on all those items?

7 A I did.

8 Q Can you tell the jury what your results were on those
9 tests?

10 A Yes. There was no semen identified on the vaginal or
11 oral swabs, oral samples. There was no analysis performed
12 on the fingernail scrapings and no hair found in the pubic
13 combings. And the panties were not in the rape kit, they
14 were in another piece of evidence, so those weren't
15 included in the rape kit in this case.

16 Q When you say there was no semen, scientifically what
17 does that actually mean?

18 A It means when I -- I have a specific chemical test
19 for that body fluid, and when I performed that test,
20 actually there's several different tests, and if I perform
21 it and I don't get a positive result, it gets reported as
22 no semen identified, no semen on that piece of evidence.

23 Q So is it actually male semen is what you're looking
24 for?

25 A Yes. Semen, there's no other source of semen but

1 from the male. So if we find semen in a rape kit, that is
2 what we're pretty much looking for as far as foreign
3 evidence, foreign DNA evidence.

4 Q What did you do with that rape kit after you
5 conducted your tests?

6 A I would have packaged the evidence back up and
7 returned that to Tena Goff in the evidence room.

8 Q And do you know about when you would have returned
9 it?

10 A Around February 18th, I believe.

11 MS. GARFIELD: Your Honor, at this time I would
12 like to move the rape kit into evidence.

13 THE COURT: Any objection?

14 MS. DURANT: We'd renew our objections, your
15 Honor.

16 THE COURT: All right. It is overruled.

17 Is that 66?

18 MS. COOPER: No. 66, yes, sir, your Honor.

19 THE COURT: All right. State's 66 is admitted
20 over objection.

21 MS. GARFIELD: Thank you, your Honor.

22 (WHEREUPON, State's Exhibit No. 66 was admitted
23 into evidence.)

24 BY MS. GARFIELD:

25 Q Dr. Amick, after you concluded these tests, did you

1 perform any other DNA analysis in this case?

2 A I did.

3 Q And do you recall what exactly you tested?

4 A Yes. What again generally happens in a rape test is
5 the first thing you test is the rape kit. That's the best
6 evidence in a rape case. It's directly from the victim.
7 We turn that evidence into samples, and if we don't get
8 any probative evidence from the rape kit we'll move to the
9 clothing generally. So in this case I recall we tested a
10 bag of clothing from the victim.

11 Q Let me back up to the rape kit just briefly, Dr.
12 Amick. Were you able to get a DNA sample from the victim,
13 Lauren Byrd?

14 A We did eventually do that, correct.

15 Q Thank you.

16 Do you recall when you went to get this evidence
17 to test it that you're referring to?

18 A Yes. I've got a notation that I got a box, which
19 would be a cardboard box of evidence 3-25 of '05.

20 Q Dr. Amick, I'm going to show you this cardboard box
21 that's been marked as State's Exhibit No. 67. Do you
22 recall this box?

23 A It looks familiar.

24 Q If you need to stand up, you can.

25 A I just want to verify my initials on it.

1 Yes, I do recognize the box.

2 Q Who did you get that box from?

3 A Again, from Tena Goff in the evidence room.

4 Q And what did you do with the box once you got it?

5 A Well, I would open it up, and in this case there's a
6 bag of clothing, and that is what I analyzed at that time.

7 Q Where did you open this box?

8 A I opened it on the top where it's open presently.

9 Q Were you in the evidence room?

10 A No, I was in my laboratory.

11 Q And that's at the Richland County Sheriff's
12 Department?

13 A That's correct.

14 Q I'm going to hand you what's been marked as State's
15 Exhibit No. 69. Do you recognize this bag?

16 A Yes. This is the bag of clothing, Item 2B, that was
17 in the box that also bears my initials.

18 Q And how was that bag packaged when you first opened
19 it, when you first opened the box?

20 A Somewhat the way it is now, folded over and sealed
21 and taped.

22 Q Was the box, did it appear to be tampered with in any
23 way when you got it from Tena Goff?

24 A No.

25 Q And you're the one that opened this box?

1 A That's correct.

2 Q What did you do with that bag once you got it out of
3 the box?

4 A I processed those pieces of evidence for semen in
5 this case. So lay each item out, do some presumptive
6 testing to look for body fluids on these items.

7 Q When you say "presumptive testing," what does that
8 mean, Doctor?

9 A That means it's basically a chemical test and has a
10 color change. It's quick and easy to do to identify body
11 fluids.

12 Q Inside that bag what did you find on the list of the
13 items?

14 A The list, I found a tie-dyed shirt, a pair of pants,
15 and a pair of panties.

16 Q And were they all in that bag? How were they
17 packaged?

18 A They were wrapped in brown paper individually and
19 placed in that bag.

20 Q If you'll just put on some gloves and go through that
21 bag and see if you can identify the items inside that bag.

22 A This would be the shirt, the tie-dyed shirt.

23 Q And how was that shirt packaged when you first looked
24 at it?

25 A It's packaged like this, wrapped in paper and in this

1 bag. And again, it bears my initials and the item number
2 that I used for it.

3 Likewise, this would be the pants, the long
4 white pajamas pants; again the item number that I used and
5 my initials.

6 Then likewise the panties packaged the same way
7 with my initials and item number.

8 Q Thank you, Dr. Amick.

9 Were these items packaged appropriately for
10 scientific testing?

11 A Yes, they were.

12 Q If you could just leave them out.

13 If they had not been properly packaged what
14 would you have done?

15 A If something's not properly packaged, then I will
16 notate that on my work sheet.

17 Q And is there any notation on your work sheet
18 regarding packaging?

19 A No.

20 Q If you could just go through one by one these three
21 items, what would you have done in this first initial
22 test? You can actually show them to the jury.

23 A What I do, I mean, it's the same for each item so I
24 will do just one. Actually, I'm going to stand up.

25 Q Yes, please.

1 MS. GARFIELD: Your Honor, may he step down?

2 THE COURT: You may. Just keep your voice up,
3 please, while you're testifying.

4 THE WITNESS: Yes, sir.

5 I'd take this item and I have a large table and
6 we can lay out paper, kind of like in the doctor's office
7 where they put fresh paper down, so I would lay this item
8 out, look at it inside out, look at it under an alternate
9 light source, kind of like a black light. This also is a
10 presumptive test for semen.

11 BY MS. GARFIELD:

12 Q You can just leave those out.

13 A Okay. So I would look at that under that light.
14 Semen naturally fluoresces under that light, which mean it
15 lights up, kind of glows. So if I found any stain or any
16 fluorescent material, I'll circle that and then turn the
17 lights back on and do a presumptive test on that spot
18 test. So I can see the item where it was with normal
19 light now that I've circled it, either cut that or swab
20 it, do a presumptive chemical test and see, okay, could
21 this possibly be semen or not.

22 Q Now, when you say you circle it, do you mean you
23 actually circle the material?

24 A Usually I do, yes.

25 Q Can you just show the jury any circles you made?

1 A These are inside out, so on these you can see the
2 circle there and then there's a cut as well and then
3 there's circles up here, and then my initials are up here
4 on this tag.

5 Q And does only semen -- is only semen caused to be
6 fluorescent under the black light?

7 A No, there's other stuff that will fluoresce: Milk
8 will fluoresce, urine will fluoresce. So that's why it's
9 a presumptive test. It's not confirmatory. It's not
10 okay, it's semen for sure. It is presumptive, which means
11 it could be semen.

12 Q And did you also do that with the T-shirt?

13 A I did.

14 Q Did you find any spots on the T-shirt?

15 A I did not. So there shouldn't be any.

16 Q Does that correspond with your report?

17 A Correct.

18 Q And, finally, if you will do the panties.

19 A Again, rape kits commonly include the panties, so
20 this would be the panties. Vaginal fluid also normally
21 fluoresces under this light, so you usually see
22 fluorescence with panties when you use your spot test to
23 see if perhaps it is semen or not.

24 Q After you did these tests that you're referring to
25 now, did you make a report?

1 A I did do that. I'm going to move these.

2 Q And based on your report, at this time what are you
3 reporting?

4 A All right. For the clothing was -- for all that
5 clothing the item number was 2B.

6 Q Is that the number you give it?

7 A Well, actually it may be the number that Deirdre
8 Brown, who collected the evidence, would have given. I
9 may modify that number from my reporting purposes. So I
10 don't recall if she gave it that number or not. I think
11 she did actually. Yes, 2B is the number she gave it.

12 Then I would sub item that stuff, so the shirt,
13 pants, and panties within that bag, 2B.1, 2B.2, and 2B.3.

14 So the results from that item 2B is that there
15 was no semen detected on 2B, the shirt as it is called.

16 There was nothing, no serological evidence on
17 the shirt.

18 And the pants, 2B, there was semen indicated,
19 and the panties. So the pants, those white pants and the
20 panties, the serology result is that there was semen
21 indicated.

22 Q So at this time are you comparing this to any other
23 random DNA sample?

24 A No. At this point we're not even looking at DNA.
25 This is a protein marker, a serology protein marker

1 identifying body fluid.

2 Q And you generate a report as to these findings?

3 A That's correct.

4 Q And after you make the report, what did you do with
5 this evidence that's in your possession?

6 A I would have repackaged it, resealed it, and at some
7 time returned it to the evidence room.

8 Q And do you recall about when you would have returned
9 it?

10 A My notes here are I believe around March 25th,
11 2005.

12 Q I believe that's the date you said you got the box.

13 A I'm sorry, April 25th, 2005.

14 Q So you had that box in your possession in the lab for
15 approximately a month?

16 A Correct.

17 Q Where do you store that box while it was in your
18 possession?

19 A Well, there's several places in the laboratory I can
20 store the evidence. We have locked basically cabinetry
21 that I can lock. The access to the laboratory itself is
22 controlled by a magnetic card reader. So to answer that
23 question, evidence can be stored short termly in the lab
24 because it's a locked controlled environment, and also
25 within the lab there's locked cabinets that we store

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

James W. Johnson, Jr., Circuit Court Judge

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RESPONDENT,

V.

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1 evidence in when we're not working on it.

2 Q Can it be tampered?

3 A No.

4 Q Can it be subject to contamination?

5 A No. We ensure that it's packaged and stored
6 properly.

7 Q Dr. Amick, did you specifically through the pajama
8 pants during this testing, were you able to create any
9 kind of diagram as to your findings?

10 A I believe I did.

11 Q And that is a copy of your report? That's made as a
12 copy of your report?

13 A I beg your pardon?

14 Q I'm sorry. Was the diagram a part of your report or
15 a part of your work product?

16 A No, it's not a part of the report, it's part of the
17 case file.

18 Q I'm going to show you what's been marked as State's
19 Exhibit No. 71. Do you recognize this?

20 A I do.

21 Q And please just explain what this is.

22 A I want to take these gloves off.

23 Q Go ahead.

24 A That looks to be a larger version of the work sheet
25 that I use when I processed the pants.

1 Q And is this work sheet the same as it was in your
2 case file?

3 A It appears to be, yes.

4 Q Has it been altered in any way?

5 A It does not appear to be altered.

6 MS. GARFIELD: Your Honor, at this time I would
7 like to introduce State's Exhibit No. 71 into evidence.

8 MS. DURANT: No objection, your Honor.

9 THE COURT: State's 71 is admitted.

10 (WHEREUPON, State's Exhibit No. 71 was admitted
11 into evidence.)

12 BY MS. GARFIELD:

13 Q If you could just step down, Dr. Amick, with the
14 Judge's permission and just explain to the jury what this
15 diagram is.

16 A What is the question?

17 Q Explain to the jury what the diagram means.

18 A Okay. So a lot of times when we do clothing we'll
19 draw a diagram of it. I will draw a diagram of the pants,
20 front and the back, and if I did any testing on them. And
21 to do this there may be -- the reason we do this is there
22 may be multiple stains, and if the item is 2B.2, which is
23 what this is, okay, then there's multiple cuttings from
24 it. Sometimes we'll write right on the item 2B.2.1 for
25 that cutting; sometimes we'll do a diagram. In this case

1 I did a diagram.

2 So what this means is, as I looked at it, I
3 said, okay, I see a stain, I'm going to circle it, I'm
4 going to call that stain A, and here's the testing that I
5 did on that stain and so forth. So stain A,B,C, and D are
6 the ones that I did some presumptive testing on. Also did
7 some presumptive testing on some other stains.

8 This symbol that actually looks like an equals
9 is actually negative. That means negative in our
10 nomenclature. So these stains were negative for
11 presumptive semen.

12 Q That's a stain caused by something else then?

13 A Right. Exactly.

14 And then A,B, and C, they were positive for the
15 alternate light source, ALS, and they were positive for
16 AQ, which is the abbreviation for acid phosphate, which is
17 a presumptive test that I use. So A,B, and C were all
18 positive presumptively for semen, and that's what the
19 diagram indicates.

20 Q I'm sorry, Doctor, I forgot to ask you one question.
21 Do you have a notation as to the packaging description on
22 the diagram?

23 A Yes, it's packaged in brown paper.

24 Q Thank you.

25 Did you have an opportunity to conduct any

1 further tests on this box of evidence?

2 A I did.

3 Q And when did you do those tests?

4 A In regards to the other items of evidence in there?

5 Q No, in regards to those same items.

6 A Yes. What happens next if you presumptively identify
7 semen is you try to find out whose it is and that leads
8 to the DNA part of it. So I will make the cuttings and
9 try to run a DNA profile from those, and that's what I did
10 in this case.

11 Q Were you able to obtain a sample of DNA from the
12 defendant, Randy Thomas?

13 A Yes, I was.

14 Q And how did you obtain that sample?

15 A In the routine way we receive evidence: It's
16 collected by an investigator or somebody, logged into our
17 evidence room, and I would pick it up from the evidence
18 room.

19 Q Did you obtain such a sample from the evidence room?

20 A I did.

21 Q And when did you obtain that sample?

22 A Approximately 8-11-05.

23 Q Did you also obtain the box of evidence from the
24 evidence custodian?

25 A I did.

1 Q And approximately when did you obtain that box of
2 evidence?

3 A I think around September 21st.

4 Q Could it possibly have been before you received the
5 DNA sample?

6 A Yes. And to explain what that is, it's a little
7 confusing because the evidence comes to me then it goes
8 back to evidence, it comes to me and it goes back to
9 evidence. So to explain that, what happens is I test the
10 rape kit, it's negative, I return it to evidence. I go to
11 the clothing, I get the clothing, I test it, do whatever,
12 return it to evidence. I get whatever evidence is
13 involved for whatever other requests that are made, I test
14 it, and give it back to evidence. So that's why it's back
15 and forth, so to speak.

16 Q And each time it's transported back and forth is it
17 sealed properly?

18 A Yes. I would seal it, initial it and date that, and
19 return it to the evidence locker.

20 Q So it's not subject to contamination at any time?

21 A Correct.

22 Q Not subject to any tampering?

23 A I mean, it could be tampered with, but when I get it
24 back if the seal's intact, so I know it's not been
25 tampered with.

1 Q So the seal is just as if you gave it to them before?

2 A Correct.

3 Q So you did get this box of evidence to compare with
4 the DNA samples?

5 A I did.

6 Q And explain to the jury what you did once you had
7 this evidence back in your custody?

8 A So the next result is getting a DNA profile from
9 those pants basically and comparing that to a DNA profile
10 from a suspect. So I would run the DNA from the suspect,
11 in this case swabs from Randy Thomas, I believe, and
12 develop a DNA profile from those pants and see if they
13 match, if they were a common source.

14 Q And what were the results?

15 A Well, the results were that the DNA profile
16 developed -- I will just read the result from my report to
17 be more accurate.

18 The DNA profile developed from Items 2B, the
19 pants, Cutting A and B match Randy Thomas. And in
20 addition, the DNA profile developed from 2B, the pants,
21 the C cutting also match Randy Thomas.

22 Q So could you just point out on this diagram to the
23 jury which cuttings on the pants match the defendant?

24 A A down here, B and C.

25 Q And this would be the front of the pants?

1 A Correct.

2 Q And this would be the back?

3 A Correct.

4 Q And did you conduct any further tests on the panties?

5 A Yes. The panties, I developed a DNA profile from the
6 panties, and the result is that it was from an unknown
7 female at the time. I hadn't run the victim's profile.
8 So what you would expect to find is what I reported later
9 in a subsequent report was that the DNA profile from the
10 panties was consistent with the victim's DNA.

11 Q So that DNA found on the panties belonged to Lauren
12 Byrd?

13 A Correct.

14 Q What did you do after you conducted these tests?

15 A Once we realize we needed to run her sample as well,
16 I obtained a blood sample of her and that is in that kit,
17 I would have gotten that.

18 Q Do you keep any DNA samples on file anywhere?

19 A How do you mean?

20 Q Are they put into any sort of log where you do DNA
21 tests without samples being taken at a later time?

22 A Some items are collected and what I believe you're
23 describing is what is called CODIS, the national DNA
24 database. We develop evidence profiles and what we'll do
25 is put those into CODIS and try to develop a suspect.

1 It's a national DNA database, and if we have unknown DNA
2 profiles or any evidence of DNA profiles, we put those
3 into the database and try to develop a suspect or match to
4 other cases if it's a serial rape or a serial burglar or
5 somebody committing many crimes with many pieces of
6 evidence from cases.

7 Q Doctor, do DNA samples get old?

8 A No. In that form that we're putting them in the
9 database, it's basically data. The evidence itself can be
10 destroyed or returned to evidence and preserved for
11 testing by whoever else or additional testing later or
12 whatever.

13 Q Did you also generate a report as to these findings?

14 A I did.

15 Q Dr. Amick, this entire time this box has now been in
16 your possession twice. Is that bag of clothing the only
17 thing in that box?

18 A No, there was a bed comforter in there.

19 Q How was it wrapped when you first saw it?

20 A It was also wrapped in brown paper.

21 Q Wrapped in paper similar to this paper?

22 A Yes, I believe so.

23 Q Had you performed any tests on that comforter?

24 A No, I did not.

25 Q After you did these tests on this clothing, what did

1 you do with the box of evidence?

2 A I believe I returned it to the evidence room.

3 Q And do you know about when you returned it?

4 A I believe around September 21st I would have
5 returned that evidence, or I'm sorry, October 3rd.

6 Q Could it possibly have been earlier?

7 A It could have been. I'm looking at a note sheet.

8 Q If you'll look at your notes and see if it was any
9 time early September.

10 A September 8th I did give the box back to Bev Crane.

11 Q And is that someone in the evidence room?

12 A Yes, it is.

13 Q What did you do with the buckle swabs or the DNA
14 samples from Randy Thomas?

15 A That swab was destroyed. So when we make a DNA
16 profile from a suspect's standard, which is basically a
17 Q-tip and you put it in your mouth, we'll cut that,
18 develop a DNA profile, and then that swab itself, we
19 destroy it instead of having to store it.

20 Q And that's proper procedure?

21 A It is. It was our procedure, yes, or it is our
22 procedure.

23 Q Thank you, Dr. Amick. And at this time did this
24 conclude your tests in this case?

25 A No. I was requested to do some additional testing.

1 Q And what were you asked to do additional testing on?

2 A Well, I was requested to look at the bed comforter as

3 well.

4 Q And did you obtain this evidence box once again?

5 A I did.

6 Q When did you obtain that?

7 A I believe September 21st is when I got that.

8 Q And this was for the purposes of the bed comforter?

9 A Yes.

10 Q And what did you do with -- was the box itself

11 packaged just as you had returned it before?

12 A It was.

13 Q Did you open it again?

14 A I did.

15 Q And at this time did you retrieve the bed comforter?

16 A I did.

17 Q And what did you do with the bed comforter at that

18 time?

19 A I did the same thing that I did with the other pieces

20 of evidence, which is lay this evidence out, look for

21 semen on the evidence.

22 Q And did you do both sides of the comforter at this

23 time, the entire comforter?

24 A From the information that I got from the

25 investigators I was requested to do this additional

1 analysis. So I looked to find the first semen piece of
2 evidence, so to speak. So I did look at and found semen
3 evidence on the comforter and cut that out and developed a
4 DNA profile.

5 Q And did that DNA profile belong to Randy Thomas?

6 A I believe it did not.

7 Q Did you find anyone that that DNA profile could have
8 belonged to?

9 A I did not.

10 Q At that time did you return the comforter into
11 evidence?

12 A I did.

13 Q And did that conclude your tests in this case?

14 A No, it did not.

15 Q And what were you requested to do, Dr. Amick?

16 A The request was to look at the comforter and test
17 another semen spot on the comforter basically.

18 Q Did you do so?

19 A I did.

20 Q And did you get the evidence box back out of
21 evidence?

22 A I did.

23 Q And who did you get that evidence box from?

24 A Tena Goff on October 14th.

25 Q And, again, was it still packaged appropriately?

1 A It was.

2 Q And did you open this box?

3 A Yes.

4 Q And did you retrieve the comforter?

5 A I did.

6 Q And at that point what did you do?

7 A At that point I went to the next potential semen
8 stain on there, made a cutting, and tried to develop a DNA
9 profile.

10 Q And at that particular time were you able to make a
11 match?

12 A At that time that particular semen stain I was able
13 to develop a DNA profile that matched the suspect in this
14 case.

15 Q And do you have notes of where that DNA profile was
16 made on the comforter?

17 A I would have notated that on the comforter. I did
18 not do a diagram of the comforter.

19 Q If I pull the comforter out, can you show the jury
20 where those matches were made?

21 A I guess I can.

22 Q Dr. Amick, is this the comforter that you tested?

23 A That is. I can verify that.

24 Q And how can you verify that?

25 A By looking at my initials right here on one of the

1 cuttings.

2 Q Those were initials that you wrote?

3 A That's correct.

4 Q Dr. Amick, I'm going to put this on the floor as if
5 it were on the bed.

6 Dr. Amick, before we go further, I'm going to
7 show you a picture that's been marked as State's Exhibit
8 No. 40. Do you recognize the bed comforter in that
9 picture?

10 A Yes, it appears to be the same comforter, the same
11 pattern.

12 Q First let's go on this side, Dr. Amick. If you can
13 just show --

14 A May I step down?

15 MS. GARFIELD: Your Honor, may he?

16 THE COURT: All right. He can step down.

17 Again, keep your voice up, please, sir.

18 THE WITNESS: Yes, sir.

19 BY MS. GARFIELD:

20 Q If you can show the jury what cuttings you made from
21 this.

22 THE COURT: If any member of the jury needs to
23 stand up, please feel free to do that.

24 THE WITNESS: So you can see up here the black
25 Magic Marker would be where I would identify with that.

1 light a stain, and then I would do testing on that stain.
2 And if it may be positive, I'd mark positive or negative.
3 It's also on the work sheet. And then I would describe
4 the stain with an item number, 1A.2, 1A.1 for the positive
5 ones, and there could be some miscellaneous negative
6 stains as well.

7 When I first looked at this, that's the stains I
8 identified and made small cutting here that you can see as
9 well, made cuttings to develop profiles from those stains.

10 BY MS. GARFIELD:

11 Q And if you'll refer your to report. Was any profile
12 found to match anybody on these particular stains?

13 A To match, no. 1A.1 was a mixture and Randy Thomas
14 was eliminated from being a contributor, so he was not in
15 that stain. And 1A.2 was also a mixture and he was also
16 eliminated from being in that stain.

17 Q Was there female DNA found?

18 A Female DNA found?

19 MS. DURANT: Your Honor, I object to the leading
20 question.

21 THE COURT: I'll overrule it.

22 MS. GARFIELD: Your Honor --

23 THE COURT: On that question overruled. Go
24 ahead.

25 THE WITNESS: 1A.1, there was female DNA. It's

1 a mixture of male and female. It was female as well.

2 BY MS. GARFIELD:

3 Q And were you able to find anybody that matched that
4 female?

5 A I was not.

6 Q Were you able to find any relatives?

7 A I did not have any other standards submitted in this
8 case.

9 Q And you were asked to do tests again on another side,
10 right?

11 A Correct.

12 Q Now, Dr. Amick, if you will take that photograph. If
13 this is the headboard where I'm standing, is this the way
14 the quilt would be on the bed according to that
15 photograph?

16 A I believe so. And there's a tag on the corner of
17 this comforter. This would correspond to this tag that I
18 can see in this picture, so this would be consistent, yes.

19 Q Thank you.

20 And if you'll just show the jury what cuttings
21 you made to this comforter and what were your test
22 results?

23 A Again you can see -- it's not easy to see, but there
24 were circles here, a circle there, and there's a circle
25 here again with a Magic Marker. We looked at that with

1 the light, seen it, circled it, put the lights on,
2 presumptive test, cut those out and tried to develop a DNA
3 profile. So those are also labeled 1A.3 and 1A.4 in this
4 case.

5 Q And were you able to find any DNA matches in those
6 samples?

7 A I was. 1A.3 matched Randy Thomas.

8 Q Show the jury where exactly that would have been.

9 A 1A.3, this one here. That was in the shape of a golf
10 tee. And then 1A.4 matched Lauren Byrd and it was a
11 mixture and Randy Thomas could not be eliminated, which
12 means they were both in this mixture. 1A.4 was right
13 here.

14 Q Thank you, Dr. Amick.

15 So the cuttings you made on this comforter
16 matched Randy Thomas?

17 A Two of them did, correct.

18 Q And you also generated a report as to these findings?

19 A I did.

20 Q In your expert opinion, those two cuttings matching
21 Randy Thomas, could they be anybody else's DNA?

22 A No. In my opinion the source of the semen on those
23 cuttings, the DNA on those cuttings was Randy Thomas.

24 Q Thank you, Doctor Amick.

25 Just one last area, Dr. Amick. If you can

1 A They collected a stain from the floor, correct.

2 Q And I think the black lamp had said it was semen, but
3 your report here says that that was not semen?

4 A Right. The black light doesn't -- if something
5 lights up from the black light it doesn't mean it's semen.
6 It means it could be, but it doesn't mean it is semen.

7 Q And what is that last statement on that page?

8 A Semen identified on item 1A.1, is that what you're
9 talking about?

10 Q Right. And 1A.1 was the first cutting from the
11 comforter, correct?

12 A That's correct.

13 Q And that's the only place in your report that you use
14 the word "semen," where semen was found?

15 A That's the only place on that report of the three
16 that says semen identified on that cutting.

17 Q Right. Throughout the rest of your report you use
18 the words "DNA"?

19 A Correct.

20 Q And DNA can come from lots of different sources?

21 A That's correct.

22 Q And did you take any samples from the family members,
23 from her father?

24 A No, I did not.

25 Q Any from her mother?

1 A No.

2 Q Her brother?

3 A No.

4 Q Sister?

5 A No, the only two suspects -- I mean the only two
6 standards I got were from Lauren Byrd and Randy Thomas.

7 Q So you don't know who that semen on 1A.1 belongs to?

8 A I did not match that semen to anybody on 1A.1,
9 correct.

10 Q So it could be anyone?

11 A It could be a number of people, correct.

12 Q Were you aware at the time of this testing that
13 Lauren Byrd and Randy Thomas had been in a consenting
14 relationship?

15 A I was not.

16 Q So basically what I am understanding, Dr. Amick, is
17 you don't know when the DNA got there, it could have been
18 there for a long time?

19 A That's correct.

20 Q You don't know that all the DNA on that comforter or
21 pants got there at the same time?

22 A That's correct.

23 Q So you don't know if saliva from one person got on
24 the spot one day and semen from someone else got on the
25 spot another day?

1 A The only place I used the word "identified" -- I used
2 semen in other places on the report. Semen indicated was
3 how I reported some things as well.

4 Q But you cannot say that that was Randy Thomas's semen
5 on the comforter?

6 A What I can say is that semen was indicated and that
7 the DNA from that stain matched Randy Thomas.

8 Q Right. But you didn't do the confirmatory test for
9 semen?

10 A That's correct.

11 Q And there have been presumptive tests, and I won't go
12 into that. I withdraw that.

13 So I just want to reiterate one more time that
14 the DNA does not say there was a sex act on that day on
15 that comforter?

16 A That is not a result that I report.

17 MS. DURANT: Thank you, your Honor.

18 MS. GARFIELD: No further questions.

19 THE COURT: All right. You may step down.

20 MS. GARFIELD: Your Honor, may Dr. Amick be
21 excused?

22 THE COURT: Any objection?

23 MS. DURANT: No objection.

24 THE COURT: Doctor, you're excused.

25 All right. Mr. Foreman and ladies and

1 State's Exhibit No. 1 for ID.

2 MS. DURANT: Again, your Honor, it has been a
3 long time since we addressed this.

4 THE COURT: The objection is overruled.

5 All right. Let's get the jury back in.

6 (The jury came into open court at approximately
7 11:54 a.m.)

8 THE BAILIFF: The jury's all present, your
9 Honor.

10 THE COURT: Call your next witness, Solicitor..

11 MS. COOPER: Thank you, your Honor..

12 The State calls Investigator Brian Godfrey.

13 BRIAN GODFREY, after being duly sworn, testified
14 as follows:

15 THE CLERK: Thank you. Please have a seat in
16 the witness stand and state your full name for the record.

17 THE WITNESS: Brian Godfrey.

18 DIRECT EXAMINATION

19 BY MS. COOPER:

20 Q Good morning, Investigator Godfrey.

21 A Good morning.

22 Q Can you tell the jury where you're employed?

23 A At the Richland County Sheriff's Department.

24 Q And what is your title there?

25 A I'm an investigator.

1 reference evidence that was collected. The incident
2 location, the victim, their contact numbers, witnesses and
3 their contact numbers, a suspect if one. In fact, there
4 was a suspect in this case. Sometimes there's not a
5 suspect, but you have the suspect and things that may help
6 you identify the suspect.

7 Q And based on the information concerning the victim
8 and the witnesses, do you have contact information?

9 A Yes, ma'am.

10 Q What did you do with that information?

11 A I made contact with the persons that were listed to
12 include the victim, had the victim come in and give a
13 detailed statement to me at the sheriff's department.
14 Normally we -- the investigator will respond and he'll get
15 a verbal statement about what occurred and necessarily
16 take his own notes, but the biggest part, especially when
17 you have a sexual assault, you're trying to preserve
18 evidence obviously, you're going to want to collect those
19 things, you're going to want to get her to the hospital
20 where she can undergo that sexual assault protocol kit. A
21 statement you can get; that you can't get again. You have
22 to take care of that.

23 Q And you were present when Investigator Roy Livingston
24 testified, correct?

25 A That's correct.

1 Q And are you aware of whether he took notes of his
2 interview with Lauren?

3 A That's correct.

4 Q Now, what day did Lauren come in to see you?

5 A Ms. Byrd came in on November 1st, 2004.

6 Q And what time?

7 A Twelve noon.

8 Q Where did she come to?

9 A My old office was at the Richland County Sheriff's
10 Department at 5623 Two Notch Road and that's where she
11 came.

12 Q And when she got there, what did you do with
13 Ms. Byrd?

14 A We sat down. I asked her a series of questions and
15 she answered those questions concerning this incident.

16 Q Did she provide to you a written statement?

17 A Yes, ma'am, she did.

18 Q And you have been present for this entire trial; is
19 that correct?

20 A Yes, ma'am.

21 Q And you were here when Ms. Byrd testified; is that
22 correct?

23 A That's correct.

24 Q Everything she testified to, is that consistent with
25 the written statement that you took from her on

1 November 1st, 2004?

2 A Yes, ma'am.

3 Q And, in fact, how many pages long is Lauren Byrd's
4 statement to you?

5 A Six pages, and the sixth page is about halfway
6 complete.

7 Q I'm going to refer to page three of her statement.

8 Do you recall the testimony of Ms. Byrd
9 concerning the fact that she tried to or did call 911 on
10 her cell phone and hid the cell phone from the defendant
11 on the couch?

12 A Yes, ma'am, I do remember that.

13 Q Were you able to corroborate or confirm the fact that
14 she made that call?

15 A That's correct. During that, when we got to that
16 point in her statement, when she explained to me that she
17 had dialed 911, she gave me that detail, I asked her to
18 hand me her cell phone that she had made that call from.
19 I scrolled through her phone and I acknowledged and I
20 actually documented in my statement that according to her
21 phone, it appeared that she called 911 at 13:55 hours.

22 Q And what kind of time is that in civilian time?

23 A 1:55 p.m.

24 Q On October 30th, 2004?

25 A That's correct.

1 Q Then I'm also going to refer to you, you were present
2 when the witness Katria Weyl testified; is that correct?

3 A Yes, ma'am.

4 Q And do you recall the line of questioning concerning
5 whether or not the victim came running out of the house
6 screaming? Do you recall that line of testimony?

7 A Yes, ma'am.

8 Q If I may refer you to page number four of Lauren
9 Byrd's statement, the very top line? Could you please
10 read only the top line?

11 A Okay. It kind of starts on page -- that sentence
12 kind of starts on page three.

13 Q Again, just that sentence, please.

14 A Okay. I looked at any neighbor, Katria N. Weyl, who
15 was mowing the lawn and mouthed to her, Help me. I don't
16 know if she saw me.

17 Q And one more sentence, please.

18 A I saw about six kids and a car go by.

19 Q So she relayed to you on November 1st, 2004, that
20 she did try to just mouth, help me?

21 MS. DURANT: Objection, your Honor. Leading.

22 THE COURT: No, on the last question I overrule
23 the objection. Go ahead.

24 BY MS. COOPER:

25 Q But, in fact, she did tell you on November 1st that

1 she mouthed the words, she didn't scream them, she
2 mouthed, help me?

3 A That's correct.

4 Q Okay. And she also indicated she was unsure of
5 whether Ms. Weyl noticed that?

6 A That's correct.

7 Q Based on the testimony or the written statement
8 provided by Lauren Byrd -- before I get there, can you
9 describe for the jury what training you've received in
10 determining what type of criminal charges to charge a
11 defendant with?

12 A Obviously you attend the Criminal Justice Academy and
13 you attend training. Every year you're mandated to attend
14 training. Also you go through an investigator's training,
15 you have to complete their training before you get cut
16 loose as an investigator, and in that they detail and
17 outline different crimes, especially those crimes that
18 you're going to investigate. When I was assigned to the
19 sexual assault unit or the special victims unit, they
20 again outlined those different statutes that you'd
21 commonly use in these type of crimes.

22 Q Now, based with your training and experience as a law
23 enforcement officer and an investigator, based on the
24 statement provided by Lauren Byrd, what charges did you
25 determine you should charge the defendant, Randy Thomas,

1 with?

2 A Criminal sexual conduct in the first degree.

3 Q Why first degree?

4 A Because she was held against her will, forced, and
5 was threatened and was forced to have oral sex and vaginal
6 sex alleged, and in that CSC first, when you're talking
7 about sexual assault and penetration, it can be any
8 orifice. Even though in this case we do have alleged
9 vaginal, we also have oral penetration, and so I felt that
10 was the proper charge.

11 Q Okay. Then what other charge did you -- what other
12 crime did you charge him with?

13 A Assault and battery high and aggravated nature.

14 Q Why? Why not assault and battery with intent to kill
15 like Gonzales had put down?

16 A He never actually stabbed her with the knife. He
17 merely put it up to her neck, placing it against her neck,
18 but there was never any actual deadly injury that
19 occurred.

20 Q And, again, because a knife was used; is that
21 correct?

22 A Yes.

23 Q And then next, what other charges or crimes did you
24 charge the defendant with?

25 A Two counts of kidnapping.

1 Q And explain why two counts.

2 A I put one for Ms. Byrd because he held her against
3 her will and dragged her up the stairs, and my
4 interpretation of kidnapping, he held her against her
5 will. By dragging her up, he forcibly dragged her up and
6 held her down as he sexually assaulted her allegedly.

7 For the child I also charged him. And I charged
8 him from the point -- I could have charged him from the
9 point in the residence, but I solidified that with the
10 corroboration from the witnesses when he took the child
11 without the mother's permission in a vehicle and left the
12 residence and that's kidnapping of a child.

13 Q And as a result when you determine what crimes to
14 charge a defendant with, what kind of paperwork do you
15 prepare in order to affect an arrest?

16 A I prepare sworn affidavits which come from a
17 magistrate for arrest warrants.

18 Q For arrest warrants?

19 A That's correct.

20 Q And what day did you obtain arrest warrants in this
21 case?

22 A November 1st, 2004.

23 Q Could you describe Lauren's demeanor when she was
24 providing this written statement to you?

25 A Visibly upset, crying at times throughout the

1 interview.

2 Q And, in fact, can you refer to the last page of her
3 written statement and tell the jury how long it took her
4 to write this statement?

5 A Started this statement at exactly 12:05 in the
6 afternoon and this statement was completed at 14:15, which
7 is 2:15 in the afternoon, so it was approximately two
8 hours and ten minutes.

9 Q Now, based on -- after you obtained arrest warrants,
10 did you interview or make contact with the witness, Katria
11 Weyl?

12 A I did.

13 Q Okay. And what about Sena Long?

14 A I did.

15 Q And you were present for both of their testimony; is
16 that correct?

17 A That's correct.

18 Q And is everything that they testified to in that
19 witness stand consistent with what they reported to you
20 when you interviewed them in your investigation?

21 A That's correct. That's correct.

22 Q Now, you indicated that you had the warrants issued
23 for the arrest of the defendant on November 1st; is that
24 correct?

25 A Yes, ma'am.

1 Q When and where was the defendant arrested?

2 A The defendant was arrested on November 15th, 2004,
3 in North Carolina.

4 Q And I'm going to show you a document and ask you if
5 you recognize this.

6 A Yes, ma'am.

7 MS. COOPER: Okay. Beg the Court's indulgence.

8 (WHEREUPON, State's Exhibit No. 72 was marked
9 for identification only.)

10 BY MS. COOPER:

11 Q Could you please identify what is marked for
12 identification purposes as State's Exhibit No. 72?

13 A It's a Richland County Sheriff's Department
14 extradition approval request.

15 Q And what date was that filled out?

16 A November 1st, 2004.

17 Q So did you request permission to have the defendant
18 extradited to face charges in South Carolina?

19 A Yes, ma'am, I did.

20 MS. COOPER: Your Honor, at this time I would
21 seek to introduce State's Exhibit No. 72 into evidence.

22 THE COURT: Any objection?

23 MS. DURANT: No objection, your Honor.

24 THE COURT: What number was that, 73?

25 MS. COOPER: Seventy-two.

1 THE COURT: State's 72 is admitted.

2 (WHEREUPON, State's Exhibit No. 72 was admitted
3 into evidence.)

4 BY MS. COOPER:

5 Q When Mr. Thomas was arrested on November 15th, did
6 you make contact with him?

7 A Yes, ma'am, I did.

8 Q Can you tell the jury where it was you made contact
9 with him?

10 A At the Alvin S. Glenn Detention Center which is the
11 Richland County Detention Center.

12 Q Where is that located?

13 A 201 John Mark Dial.

14 Q Okay. Is that off of Bluff Road?

15 A Off of Bluff Road, yes, ma'am.

16 Q Past the stadium?

17 A Yes, ma'am.

18 Q Describe for the jury, where inside of the jail did
19 you make contact with him?

20 A When I arrived at the jail he was still in
21 pre-booking area. That's where you take everyone you
22 arrest, they have to go through the pre-booking area
23 initially. You go into the pre-booking area, there will
24 be a first room that has several chairs lined up, a desk,
25 and you have like a detention center officer that will

1 check people in, ask them a series of medical questions,
2 and they'll check his property, annotate what they've
3 taken from them.

4 I didn't interview him there because off of that
5 room there's another door that's just an open door, I've
6 never seen it shut. It's actually where you go in and
7 you'll have like breathalyzer tests for people that come
8 in for DUI and then they'll have some holding cells, but
9 in that corridor there's desks, desks where the DUI
10 operator is, and there's just a desk at the end of the
11 hall and that's where we actually got the interview was at
12 the desk there.

13 Q And when he's in the pre-booking area or any person
14 is in the pre-booking area, is there a report issued about
15 their biographical information?

16 A There's an arrest report, that's correct.

17 Q And what information does that arrest report contain
18 for this defendant?

19 A On this arrest report it indicates the date and time
20 of arrest, the case number, the correspondence, the
21 charges that he's been charged with, his name.

22 Q Go ahead. What name is listed?

23 A Randy B. Thomas.

24 Q And race and sex?

25 A White male.

- 1 Q Date of birth?
- 2 A 6-07-78.
- 3 Q Age?
- 4 A Twenty-six years of age.
- 5 Q Height?
- 6 A Six foot three.
- 7 Q Weight?
- 8 A 175.
- 9 Q Hair?
- 10 A Brown.
- 11 Q Eyes?
- 12 A Green.
- 13 Q Address?
- 14 A 470, it looks like -- I'm having a hard time reading
15 this copy, Cranborn.
- 16 Q Feel free to refer to the first page of your case
17 summary.
- 18 A Cranborn Chase, Fort Mill, South Carolina.
- 19 Q And is there a phone number listed?
- 20 A Yes, ma'am.
- 21 Q Can you please read it?
- 22 A
- 23 Q In fact, if you could refer to page number five of
24 Lauren's statement, did you ask her for any contact
25 numbers?

1 A Yes, ma'am, I did.

2 Q And is that number that you just recited one of the
3 numbers she said that you could possibly reach him from?

4 A Yes, ma'am, it is.

5 Q And did she indicate how she knew these numbers?

6 A Off my memory, these are just possible numbers, some
7 possible numbers that he's called her from before. In
8 fact, she says that these are all numbers that he's called
9 me at before.

10 Q Did she indicate whether she accepted those phone
11 calls?

12 MS. DURANT: Objection, your Honor.

13 THE COURT: What is the basis?

14 MS. DURANT: There was no testimony from her
15 related to any of that, your Honor.

16 MS. COOPER: I will move on, your Honor.

17 THE COURT: Go ahead. Move along.

18 BY MS. COOPER:

19 Q Okay. So now let's go back to where you're meeting
20 with the defendant in the corridor at a desk and chair.

21 A Yes, ma'am.

22 Q Explain for the jury what it is you have to do as an
23 investigator every time you make contact with someone
24 charged with a crime.

25 A If they're charged with a crime and obviously you

1 have to satisfy two things, you have custody and
2 interrogation, but if you do have -- obviously I had
3 custody, he was in the detention center, and to talk to
4 him about a crime that he was charged with you had to
5 advise them of their rights.

6 Q And did you do in this case?

7 A Yes, ma'am, I did.

8 Q Do you have a document showing that?

9 A Yes, ma'am.

10 Q Actually I think I have your copy, State's No. one
11 for identification purposes. What is that document?

12 A This is a standard Richland County Sheriff's
13 Department interrogation advise of rights form and waiver
14 of rights form.

15 Q Which defendant does that relate to?

16 A Randy Thomas.

17 Q And is that the form you filled out with the
18 defendant on November 15th of 2004?

19 A Yes, ma'am, it is.

20 MS. COOPER: Your Honor, at this time the State
21 would seek to introduce State's No. 1 into evidence.

22 THE COURT: Any objection?

23 MS. DURANT: No objection, your Honor.

24 THE COURT: State's 1 is admitted.

25

1 (WHEREUPON, State's Exhibit No. 1 was admitted
2 into evidence.)

3 BY MS. COOPER:

4 Q Tell this jury exactly how you went over that form
5 with that man right there.

6 A Yes, ma'am. Obviously I put his name in the block
7 for name, Randy Thomas, the place was 201 John Mark Dial,
8 which is the detention center address. I was the only
9 officer there that was present, so I wrote my name,
10 Investigator Godfrey, BT. The date I wrote down as
11 November 15th, 2004, and the time of 18:48, which is 6:48
12 in the evening.

13 Generally we go over this portion first. Each
14 of these lines has a block next to it that I will check as
15 I go through each one. I went through this first one,
16 Before we ask any questions you must understand your
17 rights.

18 Q Did you check that off?

19 A Yes, ma'am.

20 You have the right to remain silent. I checked
21 that.

22 Anything you say can be used against you in
23 court. I checked that.

24 You have a right to talk to a lawyer for advice
25 before we ask you any questions and have a lawyer with you

1 during any questioning. I checked that box.

2 If you cannot afford a lawyer one will be
3 appointed for you before any questioning if you wish. I
4 checked that box.

5 And if you decide to answer questions now
6 without a lawyer present, you still have the right to stop
7 answering at any time. You also have the right to stop
8 answering at any time until you talk to a lawyer. And I
9 checked that box.

10 At this point I'll stop. I asked him if he
11 understood those rights. He acknowledged that he did and
12 acknowledged by signing and I witnessed.

13 Q And that is the defendant's signature?

14 A Yes, ma'am.

15 Q And your signature?

16 A Yes, ma'am.

17 Q And then once you go over his advise of rights, these
18 are also known as Miranda rights that you see on Law and
19 Order?

20 A Yes, ma'am.

21 Q Once you go over his rights, what is the next portion
22 of the document you have to go over?

23 A I had him sign this portion. It's just saying that
24 he understood those rights, not that he waived his rights.

25 There's a separate portion that is the waiver of

1 rights and I read this to him and it also has a block next
2 to it. It says, I've read this statement of my rights and
3 understand what my rights are. I'm willing to talk and
4 answer questions. I understand and know what I am doing.
5 No promises have been made to me or no pressure or
6 coercion of any kind has been used against me. I checked
7 that box that I read that to him.

8 He acknowledged he understood and he signed it
9 and I witnessed it. And there's a separate place for him
10 to sign for that particular portion.

11 Q And in that waiver of rights, waiver means he's
12 giving up those rights; is that correct?

13 A That's correct.

14 Q And in that waiver of rights it refers to no promises
15 have been made to me?

16 A That's correct.

17 Q Did you make any promises to Randy Thomas whatsoever
18 in order to get him to give you a statement?

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

20 Q Did you make any offers of leniency if he cooperated
21 and gave you a statement?

22 A No, ma'am.

23 Q Did you threaten him with any use of violence in
24 order to give you a statement?

25 A No, ma'am.

1 Q Did you deny him any comforts such as a drink of
2 water, use of restroom to get him to waive his rights?

3 A No, ma'am.

4 Q And did the defendant give a statement?

5 A Yes, ma'am, he did.

6 Q Okay. Did he give an oral statement or a written
7 statement?

8 A Oral statements.

9 Q And, in fact, on the bottom of State's No. 1, did you
10 write something at the bottom of that page?

11 A Just for documentation I asterisked and wrote, no
12 written statement given.

13 Q Now, when you began questioning Mr. Thomas, did you
14 take any notes?

15 A Yes, ma'am.

16 Q And are those handwritten notes?

17 A Yes, ma'am, at the time they were handwritten notes.

18 Q And what do you do with those notes when you're done
19 with the interview?

20 A I generally -- I may be assigned and working on in
21 one day five or six cases. I will go throughout that day
22 following up on those cases and annotating notes of what I
23 did on those particular cases. At the end of the day I
24 will come in and transfer those handwritten notes into a
25 computerized system where we keep our follow-ups and that

1 way the supervisor can come in and say, well, he's doing
2 his job, he's not doing his job. They can check up on you
3 and it kind of gives you a running log of what you've done
4 on that case, maybe what you need to do on that case. So
5 I transferred those written notes into my computerized
6 notes.

7 Q And when you're about to go over what the defendant
8 said to you upon your questions, where are you reading
9 those notes from?

10 A Say that one more time.

11 Q Where are you going to be reading what the defendant
12 told you? Where is that going to come out of?

13 A From my computerized notes, my investigator
14 follow-up.

15 Q Okay. Then let's begin.

16 After you advised him of his rights and he gave
17 up his rights, tell the jury how you began questioning
18 him.

19 A I advised him of his rights in the written form. He
20 advised me at that point that he would only talk about --

21 MS. DURANT: Objection, your Honor, to anything
22 the defendant said.

23 THE COURT: All right. The same objection as
24 previously?

25 MS. DURANT: Yes, sir.

1 THE COURT: Overruled.

2 Go ahead.

3 THE WITNESS: Yes, sir.

4 The suspect, he told me -- when I say suspect,
5 that's how my notes are written, Mr. Thomas, he told me
6 he'd only talk about certain things and then I reiterated
7 that he could stop talking at any time and was entitled to
8 an attorney. I reiterated that he didn't have to talk
9 with me if he didn't want to talk with me. He stated that
10 there was a few things that he wanted to clarify as he
11 read over his arrest warrants. Do you want me to go into
12 that?

13 BY MS. COOPER:

14 Q Yes. If you could explain what you mean when he read
15 over his arrest warrants. Did you review the arrest
16 warrants with him?

17 A We both went over them together.

18 Q Okay. And tell the jury how you went about doing
19 that.

20 A We just took them one by one. On the assault and
21 battery high and aggravated nature, while looking at that
22 specific report, he advised me that he never did, I quote
23 and I wrote his quote, Never did I hold a knife to
24 anyone's throat or any part of anybody. He stated, We got
25 into a heated discussion, and then he never elaborated on

1 that any further.

2 Q And then what warrant did you review with him next?

3 A And in between these he would make other comments,
4 not specifically about that. He stated that at one point,
5 I know I did something wrong but not this wrong. He
6 stated, I would never hurt either one of them, meaning
7 both victims, the son and the mother.

8 Q And his demeanor during this time?

9 A He was -- he was starting to cry and attempting to
10 hold back tears and his emotions on several occasions and
11 was visibly upset throughout the interview.

12 Q Okay. Now, then when you started reviewing the
13 criminal sexual conduct first degree warrant, please
14 explain how that conversation took place.

15 A As we went through the CSC first warrant, he asked me
16 to clarify what sexual intercourse was, and at that time I
17 responded that sexual intercourse included like I
18 explained oral penetration, vaginal penetration, basically
19 any kind of penetration to include anal penetration.

20 I said specifically in this case she is alleging
21 that you forced her to have sex both orally and vaginally.
22 He stated -- at that time he stated there was no vaginal
23 penetration, never denying the oral penetration, just the
24 vaginal penetration.

25 Q So you made it clear to him that Lauren Byrd was

1 accusing him of both oral and vaginal penetration; is that
2 correct?

3 A Yes, ma'am.

4 Q And all he said to you was there was no vaginal
5 penetration?

6 A Right. And in a way to clarify, not denying the
7 oral, but that there was no vaginal penetration.

8 Q Now, what happens after you discussed the CSC first
9 warrant?

10 A We went to the kidnapping obviously and I told him
11 what the kidnapping was, taking someone against their
12 will. I explained to him pretty much the same way I
13 explained to him why I charged him with kidnapping.

14 Q And he made no comments about the kidnapping; is that
15 correct?

16 A No, ma'am.

17 Q And that's why it's not documented in your notes?

18 A Right. That's correct.

19 Q Now, what happens after this? Did you have a Q and A
20 or discussion with him?

21 A Yes, ma'am, we just had some conversation.

22 Q Describe the conversation. How would you
23 characterize the conversation you were having with him?

24 A Pretty much how I'm talking to you now is how we were
25 talking then. I mean, he was obviously upset, but there

1 was never any yelling. I was pretty much talking the same
2 way, just pretty much telling him that I wasn't there, I
3 don't know what occurred, I'm here to ask you what
4 occurred pretty much.

5 Q Trying to get his side of the story?

6 A Yes, ma'am.

7 Q Okay. Did you make any inquiries about the
8 relationship he had with Lauren Byrd?

9 A Yes, ma'am. I asked him why they broke up, and he
10 stated that he thought that she didn't think that he had
11 enough direction in his life and he clarified that, by
12 stating that he meant careerwise, maybe she didn't -- he
13 didn't have any impressive goals, I guess.

14 Q Okay. And he never denied, then, to you at this
15 point that he and Lauren had broken up?

16 A No, ma'am, he acknowledged that they had broken up.

17 Q Then what?

18 A I asked him how he knew that the victim was at the
19 residence, because in her statement she advised me that
20 she didn't invite him over, so I wanted to know how did he
21 know to go there.

22 Q And also, where did she typically live?

23 A She lived in Clemson. He stated first he couldn't
24 remember but that he didn't think she was in town because
25 Clemson had a home game that weekend. At that point I

1 asked him if she called him to come over and he stated
2 that she did not. He stated that he was in the
3 neighborhood possibly to visit a friend and that he saw
4 her car outside the residence.

5 Q Okay. Did he indicate or specify who he was there to
6 visit, what possible friend?

7 A He did not.

8 Q At first he tells you he couldn't remember?

9 A That's correct.

10 Q Whether or not --

11 A Why he ended up there, and then he came with that,
12 possibly to visit a friend and he saw the vehicle outside.

13 Q Then what?

14 A I asked him about the incident that occurred outside
15 because that was -- obviously a lot of people had seen
16 that. I asked him if what she said happened outside the
17 residence was true and he acknowledged that it was true.

18 Q How did he acknowledge it? What words did he use?

19 A He said yes.

20 Q And what else did he say?

21 A He further stated, I freaked out when everything went
22 on in the yard. I didn't want to take Zach away from his
23 mom.

24 Q Did he deny taking Zach away from his mom?

25 A No, ma'am, he didn't. He acknowledged that he did.

1 Q Now, once you completed your discussions with
2 Mr. Thomas, did you give him the opportunity to review
3 your notes?

4 A Yes, ma'am, I did.

5 Q And explain how you did that.

6 A I actually allowed him to look at the notes that I
7 took, read them to him and asked him if I'd accurately
8 wrote down what he had told me and he agreed that I did.

9 Q And, again, what is his demeanor like?

10 A He was extremely upset. He was sad and emotional but
11 it wasn't an angry upset. It was a sad, kind of emotional
12 upset. At that point I gave him my card for contact
13 information and then he was placed back -- we ended the
14 interview at that point and he was placed back there so
15 they could finish whatever the detention center does.

16 Q Okay. Now, after you finished with Randy Thomas, the
17 interview, did you make any contact with Lauren Byrd later
18 that day?

19 A I did.

20 Q Can you explain the circumstances?

21 A She arrived for -- they have a bond hearing that
22 night where you're charged. Obviously you get charged
23 with something, you'll go in front of a judge, the victim
24 has the right to be there, and the judge will establish a
25 bond for him depending on the crime and there's a lot of

1 factors that the judge -- how much it cost for you to get
2 out of jail or if you can even get out of jail. They'll
3 set a bond for you. It could be a PR bond, it could be a
4 surety bond. You may have to put something up, you may
5 not have to put something up. So that was the purpose of
6 that hearing that night.

7 Q Let me ask you this: Were you under the
8 impression -- what time did you initially believe the bond
9 setting would take place?

10 A 8 o'clock.

11 Q And what time did it actually take place?

12 A I found out it wasn't going to occur until 10 o'clock
13 that evening, 2200 hours.

14 Q Where did Lauren Byrd come from for this hearing?

15 A She came from Clemson.

16 Q What time did she arrive?

17 A She arrived at 7:50 in the evening, 19:50 hours.

18 Q And what did you do when you realized this hearing
19 wasn't going to take place for another two hours?

20 A Obviously the victim couldn't pick what time or the
21 guy who's arrested, what time he's going to go to a bond
22 hearing. She has no control over that. She thought that
23 the bond hearing was going to be at 8 o'clock.

24 She had to be back at Clemson for some testing
25 and her classes, and at that point because of the late

1 hour and her drive I asked the judge or I advised the
2 judge that the victim had come all the way from Clemson,
3 she had some schooling in the morning, she had a long ride
4 to go back, and just advised the judge of the predicament
5 that the victim was in for the bond hearing.

6 Q And at that point what did the judge -- and it's a
7 magistrate judge, right, it's not a circuit judge like
8 Judge Johnson?

9 A That's correct.

10 Q What did the magistrate judge advise you to do?

11 A The magistrate judge told me to go get the victim and
12 bring her into the office.

13 Q And at that point what happened? Were you present
14 when the victim came into the office?

15 A Yes, ma'am, I was.

16 Q And as a result of the judge hearing from the victim,
17 did you learn what the judge decided to do later on?

18 A Right. I didn't attend that bond hearing I don't
19 believe. In fact, I know I didn't attend that bond
20 hearing. Eventually the judge denied his bond.

21 Q And the defendant was not present when Ms. Byrd
22 talked to the judge; is that correct?

23 A That's correct.

24 Q And you documented this in your report, correct?

25 A Yes, ma'am, I did.

1 Q And you're not trying to hide that fact, are you?

2 A No, ma'am. I wanted to explain why, number one, you
3 should usually attend those bond hearings with the victim.
4 With these type cases you don't just want the victim to
5 just be up there by herself, you want to attend that bond
6 hearing, and that's why I annotated why I didn't attend
7 that bond hearing.

8 Q Now, are you aware that later on a circuit judge then
9 had another bond hearing?

10 A Yes, ma'am.

11 Q And are you aware that -- you're not judge, correct?

12 A That's correct.

13 Q So are you aware of the rules of conduct as a judge?

14 A No, ma'am.

15 Q Have you ever heard of ex parte communications?

16 A No, ma'am.

17 Q Now, after that, are you aware of whether or not the
18 defendant was granted a new hearing?

19 A He was.

20 Q Do you remember when?

21 A May 31st, 2005.

22 Q And do you remember what kind of conditions were put
23 in place?

24 A There is an order of no contact with the victim by
25 the defendant or family members or the defendant's family

1 members.

2 Q Now, a bond was then granted, correct?

3 A Yes, ma'am.

4 Q Do you recall being noticed to come for a hearing on
5 July 15th, 2005?

6 A Yes, ma'am, I do.

7 Q And did you make contact with the defendant on that
8 day?

9 A Yes, ma'am, I did.

10 Q And the purpose of the hearing was for what?

11 A To receive an order from the judge to obtain Randy
12 Thomas's DNA.

13 Q And did you have to testify in the hearing?

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

15 Q And did you get consent from the defendant to get a
16 sample of his DNA?

17 A That's correct.

18 Q And do you have documentation to prove that?

19 A Yes, ma'am, I do.

20 Q Identify that document, please.

21 A This is a standard Richland County Sheriff's
22 Department consent to search for DNA evidence form.

23 Q And whose signature appears on that?

24 A Randy Thomas and his acting attorney at that point
25 was Debra Ahrens and her signature is on it also.

1 Q From the Public Defender's office?

2 A That's correct.

3 Q And does it state -- is your name anywhere on there?

4 A Yes, ma'am, I'm the person that the consent was given
5 to.

6 MS. COOPER: Okay.

7 MS. DURANT: No objection, your Honor.

8 THE COURT: What number is that, 74?

9 MS. COOPER: It should be 73, your Honor.

10 THE COURT: Without objection, State's 73 is
11 admitted.

12 (WHEREUPON, State's Exhibit No. 73 was marked
13 for identification and received into evidence.)

14 BY MS. COOPER:

15 Q And please describe for the jury, after you obtained
16 consent from the defendant, Randy Thomas, and his
17 attorney, Debra Ahrens, what did you do once you got that
18 form filled out?

19 A Once we finished this form, I brought with me some
20 latex gloves.

21 Q Sort of like these right here?

22 A Yes, ma'am. Some latex gloves, some swabs which are
23 just like the doctor described, Q-tips pretty much on a
24 long stick which are wrapped in boxes that the Q-tip goes
25 into once you take a sample. I put the gloves on. And

1 how I do it, how I was taught to do it was to remove the
2 paper from the stick end and not the Q-tip end and I
3 allowed Mr. Thomas to take hold of the stick and swab his
4 own mouth, pretty much just like swabbing your mouth,
5 brushing your teeth on your gums, and you do that for
6 about 30, 45 seconds, and I've already got the box labeled
7 and he sticks it into the box and the box is closed at
8 that point.

9 Q And did you touch that Q-tip in any way, form,
10 fashion?

11 A No, ma'am, I never touched that Q-tip.

12 Q And you indicated the box was labeled?

13 A Yes, ma'am.

14 Q What information did you put on there?

15 A His name, the date and time that it was taken, who
16 took it, and I generally write the case number on there.

17 Q And you were the one that took it?

18 A And that it was an oral swab.

19 Q And once you obtained it, it was put in a box; is
20 that correct?

21 A That's correct. I actually took two samples and put
22 them in two separate boxes.

23 Q What did you do with the -- and they're called buckle
24 swabs, correct, or oral swabs?

25 A That's correct.

1 Q What did you do with the oral swabs once you were
2 done?

3 A Once I obtained them, I went to the evidence room --
4 I left here, actually did it here at the courthouse, and I
5 went back to the Richland County Sheriff's Department
6 where our evidence room is and placed both items in a
7 sealed envelope, labeled the envelope, and it was placed
8 in the Richland County Sheriff's Department drop box.

9 Q Do you recall what time that was and the date?

10 A It was the same date that I took it, which was the
11 15th of June and that was at 10:50 in the morning.

12 Q Are you sure about what month it was?

13 A 06-15-2005.

14 Q Okay. Let me refer you to the evidence form.

15 A Actually July. I don't know why I put June. It's
16 July 15th at 10:50 in the morning.

17 Q Okay. And again you were here while all the evidence
18 custodians described the drop boxes?

19 A Yes, ma'am.

20 Q Did you tamper with it in any way?

21 A No, ma'am.

22 Q In fact, other than yourself, what other law
23 enforcement official, officer from the Richland County
24 Sheriff's Department besides the arresting officers, had
25 contact with that man, Randy Thomas?

1 A Just me.

2 Q Deirdre Brown didn't?

3 A No, ma'am.

4 Q Deputy Gonzales?

5 A Not to my knowledge, no.

6 Q Roy Livingston?

7 A No, ma'am.

8 Q And I believe Dr. Amick?

9 A No, ma'am.

10 Q And the man that you questioned at the jail, do you
11 see him in the courtroom today?

12 A Yes.

13 Q Please point him out to the jury.

14 A He's there, Randy Thomas.

15 Q Describe the color shirt he's wearing for the record.

16 A A yellow shirt.

17 MS. COOPER: Your Honor, let the record reflect
18 that the investigator has identified the defendant.

19 Please answer any questions from the defense.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Cross-examine, please.

22 MS. DURANT: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MS. DURANT:

25 Q You took a statement from Lauren Byrd on November

1 1st?

2 A That's correct.

3 Q That's two days after the incident?

4 A That's correct.

5 Q And the charges that you charged Randy Thomas with
6 were based on what Lauren Byrd told you?

7 A That's correct. Well, I say that's correct in that
8 what she told me and after confirming with the
9 Investigator Livingston who obviously went to the scene,
10 that's correct.

11 Q Are you aware that the Circuit Court judge at the
12 second bond hearing ruled that it was not appropriate for
13 you and the victim to meet with the judge prior to the
14 first bond setting?

15 A I am aware of that. I was not at that hearing, but I
16 am aware that that occurred, yes, ma'am.

17 Q You are aware that that is not appropriate?

18 A I'm aware now. I was not aware at the time, but I'm
19 aware now, yes, ma'am.

20 Q When you met with Randy at the jail and you went over
21 the warrants with him, you said he was very upset,
22 emotional, he was crying?

23 A Yes, ma'am, he was, I agree.

24 Q Wasn't this the first time he had seen the warrants?

25 A I don't think it was the first time. I'm going to

1 say that -- I know they weren't the first. I would say
2 the arresting officers who went and transported him would
3 have served those warrants on him and I just went over the
4 warrants with him, but I would say he had those warrants.
5 Whenever I put someone into the system to be extradited
6 like I did on November 1st, I have to give those copies
7 of the warrants up so whenever he's obtained the persons
8 that go get him can serve those warrants on him.

9 Q But you don't know that they did that? I mean, you
10 weren't there?

11 A He already had those warrants, so I have to assume
12 that he was already served with them. He had his copies.

13 Q He had his copies with him?

14 A Yes, ma'am.

15 Q So when you talked with him, he told you, he said, I
16 did not hold a knife to anybody's throat. Those are his
17 words.

18 A I believe you're right. Let me just check my notes
19 and see exactly what he said. That's what he said, never
20 did I hold a knife to anyone's throat or any part of
21 anybody.

22 Q Or any part of anybody?

23 A Any part of anybody, that's correct.

24 Q He said, I would never hurt either one of them.

25 A That's correct, he did say that.

1 Q And he also said, I freaked out when everything went
2 on in the yard, further down?

3 A I'm with you, yes, ma'am, he did, I freaked out when
4 everything went on in the yard.

5 Q I did not want to take Zach away from his momma?

6 A Yes, ma'am, that's correct.

7 Q And just for the record, he consented to give you his
8 DNA?

9 A Yes, ma'am, he did.

10 Q He could have had a hearing if he'd wanted to and had
11 them force him to do that, right?

12 A That's correct.

13 Q But he consented to give it to you?

14 A Yes, ma'am.

15 MS. DURANT: Beg the Court's indulgence.

16 THE COURT: Sure.

17 BY MS. DURANT:

18 Q Investigator Godfrey, one more thing. He also told
19 you that there was no vaginal intercourse?

20 A That's correct.

21 Q He told you no vaginal sex?

22 A That's what he said, yes, ma'am.

23 MS. DURANT: No further questions, your Honor.

24 Thank you.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: All right. Redirect.

2 MS. COOPER: Yes, sir, your Honor.

3 REDIRECT EXAMINATION

4 BY MS. COOPER:

5 Q Did you observe the defendant with copies of his
6 arrest warrants?

7 A Yes, ma'am, I did.

8 Q And what time were you notified that he was en route
9 from North Carolina to South Carolina?

10 A Let's see. I was notified they were on their way to
11 North Carolina to pick him up at 8:20 in the morning on
12 the 15th of November, 2004.

13 Q And what time did he make it to the detention center?

14 A He made it, the transport division advised me that
15 they were at the detention center at 3:30 in the afternoon
16 on the same date.

17 Q So from 8:20 they were en route and then they arrived
18 back to the jail at 3:30 in the afternoon?

19 A Yes, ma'am.

20 Q What time was it when you finally made contact with
21 him?

22 A 18:03, which is 6:03 in the evening on the same date.

23 Q So three and a half hours later?

24 A Yes, ma'am.

25 Q Two and a half hours later?

1 A Yes, ma'am.

2 Q So for two and a half hours this man was in
3 possession of copies of his own arrest warrants?

4 A I stand corrected. I apologize. I read that next
5 line. 18:45 is when I made contact. Not 18:03. 6:45, I
6 apologize.

7 Q So for three hours he had possession of copies of his
8 arrest warrants; is that correct?

9 A Yes, ma'am.

10 Q You were asked about certain portions of his
11 statement that he made to you.

12 A Yes, ma'am.

13 Q I'm going to refer you to, if I may just look at
14 yours, if you could read that portion of it.

15 A I know I did something wrong, but not this wrong.

16 MS. COOPER: Thank you.

17 No further questions, your Honor.

18 THE COURT: Any recross?

19 MS. DURANT: Just briefly, your Honor.

20 RE-CROSS-EXAMINATION

21 BY MS. DURANT:

22 Q During this time he was sad?

23 A I would agree with that.

24 Q He was crying as you read his rights to him?

25 A Yes, ma'am, I agree with that.

1 Q He was not angry?

2 A He was not angry.

3 Q But he was apparently very upset?

4 A He was visibly upset, yes, ma'am.

5 MS. DURANT: No further questions, your Honor.

6 THE COURT: All right. Sir, you may step down.

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. Solicitor.

9 MS. COOPER: Your Honor, at this time the State
10 of South Carolina rests.

11 THE COURT: Mr. Foreman, ladies and gentlemen,
12 the State has rested. There are some matters of law that
13 I need to deal with at this time. And we're close to the
14 lunch hour so we'll break for lunch.

15 Be back in your jury room at 2:30. Do not
16 discuss the case with anyone.

17 Have a good lunch and be back at 2:30.

18 Everyone stay seated while the jury is excused.

19 (The jury left open court at approximately 12:44
20 p.m.)

21 THE COURT: All right. Any motions from the
22 defense?

23 MS. DURANT: Yes, your Honor.

24 First, we'd renew all of our objections. You've
25 allowed the Lyle in, on the burden shifting, you allowed

1 the chain of evidence, the Jackson V Denno, the 911 tape,
2 as well as any and all other objections that we have made,
3 your Honor.

4 THE COURT: All right. The objections are
5 overruled as previously ruled by the Court.

6 MS. DURANT: And we do have a motion, your
7 Honor.

8 THE COURT: All right.

9 MS. DURANT: We would move for a directed
10 verdict on all of the charges, your Honor. We feel that
11 there has been no real evidence that a criminal sexual
12 conduct first degree occurred.

13 There has been no corroborating evidence
14 offered, only what the defendant (sic) said. Even the DNA
15 expert clearly said he could not say that a sex act
16 occurred that day. Randy Thomas's semen was not -- he
17 cannot confirm that his semen was on the comforter. There
18 was no weapon found. There was nothing indicating that he
19 forced her to that bedroom except her word, your Honor.
20 And I think because the basis --

21 Beg the Court's indulgence one moment.

22 There was no semen found on her at all, orally
23 or vaginally. There were no bruises on her. There was
24 just nothing indicating criminal sexual conduct in the
25 first degree, your Honor.

1 As far as we're also requesting a direct verdict
2 on the kidnapping of Lauren Byrd. We feel that because
3 Officer Godfrey testified that the kidnapping charge on
4 Lauren Byrd was related to the criminal sexual conduct and
5 he said that the criminal sexual conduct was based on her
6 being restrained, we feel that that would be a violation
7 of double jeopardy, your Honor. Any criminal sexual
8 conduct requires kidnapping. I think even the CSC statute
9 gives kidnapping as an enhancement, an aggravating factor.

10 If you look at Drawberger, it talks about
11 additional facts that have to be meted for each offense.
12 And if you look at the statute, our argument would be that
13 the legislature, double jeopardy would be the defense,
14 punishment for the same offense, and we believe that the
15 legislature did not intend additional punishment. It is
16 clearly capable of authorizing additional punishment if
17 they feel it is necessary.

18 For example, possession of a weapon during the
19 commission of a violent crime, there's a separate statute
20 for that and clearly authorizes that that should be
21 additional punishment. That is not indicated in any of
22 these statutes, your Honor, the criminal sexual conduct
23 statute or the kidnapping statute.

24 THE COURT: Well, what about this: Based on the
25 evidence presented, couldn't the jury find that there was

1 no criminal sexual conduct but there was still a
2 restraint? And that would be sufficient evidence for the
3 kidnapping charge.

4 MS. DURANT: Well, your Honor, we just think he
5 shouldn't be charged with both. We thought that would be
6 double jeopardy to be charged with both.

7 THE COURT: Go ahead.

8 MS. DURANT: Because as Officer Godfrey,
9 Investigator Godfrey testified, the kidnapping was based
10 on the fact that she was restrained during the criminal
11 sexual conduct.

12 THE COURT: Yes, but he's not the one making
13 those decisions now. This jury's going to be making the
14 decision on whether there's evidence of kidnapping,
15 whether there was restraint at the time of the alleged
16 sexual conduct, or whether there was some other violation
17 of the statute. But go ahead. I understand what you're
18 saying.

19 MS. DURANT: And, your Honor, we would ask for a
20 directed verdict on the ABHAN, the assault and battery of
21 a high and aggravated nature. There's been no knife. No
22 knife has been presented as evidence. And there is no
23 injuries. I mean, as testimony has shown, there were no
24 bruises. There was not even a mark on her neck from which
25 she allegedly said that he held a knife to her neck, so we

1 are asking for a directed verdict based on that, your
2 Honor.

3 And we're also asking for a directed verdict on
4 the kidnapping of the child. State v Jeffries indicates
5 that intent is an element of kidnapping. In that case
6 they found it was harmless error, but we feel like there's
7 been no intent shown that he continued to kidnap the
8 child. He took the child a block down the road, he turned
9 around and put the child out. And the officer testified
10 that the defendant said to him he never wanted to take the
11 child away from his mother but that he just freaked out,
12 so we're asking for a directed verdict on that charge
13 also, your Honor.

14 THE COURT: All right. I will note that as far
15 as the motion based on the lack of corroborating evidence,
16 16-3-657, a statute of this state, testimony of the victim
17 need not be corroborated in prosecutions under 16-3-652
18 through 16-3-658. So even if there were no other
19 evidence, I don't think that's an appropriate basis for
20 the motion.

21 I will further note that there is a case, this
22 is State v Hall, 280 SC 74 310 SE2nd 429, a 1983 case that
23 apparently stands for the proposition that it is not a
24 violation of the prohibition against double jeopardy to
25 convict a defendant of both kidnapping and first degree

1 criminal sexual conduct when kidnapping is the aggravating
2 circumstance of the sexual battery which establishes the
3 offense of being first degree. Based on that and whether
4 or not to be punished for the same two offenses, that's
5 something we don't need to deal with right now. I have no
6 idea what the outcome might be, but it does not violate
7 the double jeopardy prohibition, and for that reason those
8 motions would be denied.

9 I further find that there's sufficient evidence
10 that's presented by the State, if believed by the jury,
11 that they have a case on each of the four charges that
12 have been made against this defendant, and for that reason
13 the motion for directed verdict would also be denied.

14 Go ahead.

15 MS. DURANT: I beg the Court's indulgence.

16 THE COURT: All right.

17 MS. DURANT: We have nothing further at this
18 time.

19 THE COURT: All right. We will recess until
20 2:30.

21 I still told you that I would rule on the
22 defendant's prior history. I will do that about 2:25 if
23 you all will be here then. We'll start back 2:30.

24 MS. VANGINHOVEN: Your Honor, at that time are
25 we going to go over the defendant's right to testify?

1 THE WITNESS: James Sheldon Aakhus.

2 DIRECT EXAMINATION

3 BY MS. DURANT:

4 Q James, how are you today?

5 A Pretty good.

6 Q James, how old are you?

7 A Twenty-four.

8 THE COURT: How about you slide up to the
9 microphone and speak right into it? It may sound real
10 loud to you, but we need to be sure that everybody can
11 hear you.

12 THE WITNESS: I'm 24.

13 THE COURT: All right. Thank you.

14 BY MS. DURANT:

15 Q And what do you do?

16 A I just graduated from Clemson.

17 Q In what? What was your major?

18 A Packaging science.

19 Q Packaging science?

20 A Yes.

21 Q Tell us what that is.

22 A Packaging science is the study of packaging, any
23 aspect of it, protective packaging, design, sale,
24 distribution. That's a general summary of it.

25 Q Sort of like marketing?

- 1 A Right.
- 2 Q And where do you live?
- 3 A I live in Clemson.
- 4 Q And how long have you been there?.
- 5 A I have been there since 2000.
- 6 Q Are you working now?
- 7 A Yes, ma'am.
- 8 Q What are you doing right now?
- 9 A I'm working construction for my father's company in
10 Anderson.
- 11 Q Are you seeking other employment?
- 12 A Yes, ma'am. I have an interview this week.
- 13 Q Thank you for being here.
- 14 A You're welcome.
- 15 Q Do you know the defendant, Randy Thomas?
- 16 A Yes, ma'am.
- 17 Q Do you know the victim, Lauren Byrd?
- 18 A Yes, ma'am.
- 19 Q Tell the Court how you know them.
- 20 A I live right across from where they live, where
21 Lauren lives and where Randy used to live.
- 22 Q Does Lauren still live there?
- 23 A Yes.
- 24 Q When did you first meet them?
- 25 A I met them I think around August, around the start of

1 the school year in 2003.

2 Q When did you first meet Randy?

3 A Around the same time. I think I met Randy first.

4 Q And where was Randy living then in Clemson?

5 A With Lauren.

6 Q In her apartment?

7 A Yes.

8 Q Who else was living there?

9 A Zach.

10 Q And Zach is?

11 A Lauren's son.

12 Q So Lauren, Randy, and Zach lived in that apartment?

13 A Correct.

14 Q And how long did you observe that?

15 A I observed them living together for around a year.

16 Q Did you have an opportunity to see Randy with Zach?

17 A All the time.

18 Q Tell me about that. What was their relationship

19 like?

20 A It was a good relationship. Randy was very loving to

21 Zach, played with him all the time, took care of him and

22 watched after him when Lauren was in school.

23 Q Did he ever take him in the car?

24 A Yes.

25 Q Was Lauren always with them?

1 A Not always.

2 Q What kind of relationship did you observe Lauren and
3 Randy to have?

4 A A regular relationship, boyfriend and girlfriend.

5 Q Did you ever observe any fighting between them?

6 A No fighting other than, you know, verbal fights, any
7 regular fights that any other relationship or any other
8 couple would have.

9 Q What did Zach call Randy? Did you have an
10 opportunity to observe that?

11 A Yes, I did. He called him Randy and he's also called
12 him daddy.

13 Q Did you have the opportunity to visit Randy in
14 Columbia?

15 A Yes, I did.

16 Q When was that?

17 A I'm not really sure of the time, but -- well, one
18 time was to go help his mother move the tanning bed, and
19 another time was around August.

20 Q Of what year?

21 A Of 2004.

22 Q When you visited Randy, where was he living?

23 A He was living with a girl named Amber.

24 Q So were he and Lauren together at that time?

25 A No, not that I'm aware of.

1 Q So when you visited Randy what did you all do
2 together?

3 A We just went out downtown.

4 Q And did you see Lauren at any time?

5 A No.

6 Q Well, did you ride with Randy around?

7 A Yes.

8 Q Did you go with Randy anywhere near Lauren that
9 weekend?

10 A Yes.

11 Q Tell me about that.

12 A We went for breakfast and he drove to her house to go
13 and speak with her and I stayed in the car.

14 Q Who else did you see there?

15 A I saw her father working in the garage.

16 Q Okay. So it was your understanding that Randy talked
17 with Lauren at that time?

18 A That's what I figured.

19 MS. DURANT: I beg the Court's indulgence, your
20 Honor.

21 THE COURT: All right.

22 MS. DURANT: We have no further questions.

23 Please answer any questions the State may have
24 for you.

25 THE COURT: All right. Cross-examine, please.

1 CROSS-EXAMINATION

2 BY MS. GARFIELD:

3 Q Good afternoon, Mr. Aakhus, is that how you say it?

4 A Yes, ma'am.

5 Q I'm Dolly Justice-Garfield with the Richland County
6 Solicitor's office. It's nice to meet you.

7 A It's good to meet you.

8 Q Mr. Aakhus, I'm going to just ask you a few questions
9 just to clarify some things.

10 You live across from Lauren or beside Lauren?

11 A Across.

12 Q And you met Lauren and Randy about the same time?

13 A About the same time, yes..

14 Q And you say that you are currently working?

15 A Yes.

16 Q And you obtained a degree from Clemson University?

17 A Yes, ma'am.

18 Q And you are still seeking I guess full-time
19 employment?

20 A Yes, ma'am.

21 Q You're seeking employment for something to do with
22 your degree then?

23 A Correct.

24 Q While you knew Randy Thomas, what was he doing while
25 he was at Clemson?

1 A Watching after Zach.

2 Q He didn't have a job?

3 A He had a job working at the apartment complex doing
4 some maintenance and he worked doing teaching basketball
5 on the weekends in Columbia, some weekends, mentoring
6 students. That's the most I know about that. I really
7 don't know any details.

8 Q That's fine. Do you know if Randy was helping Lauren
9 pay any of the bills in her apartment?

10 A I don't know.

11 Q You remain -- I'm sorry, I want to back up.

12 You said you came to, I guess, the Columbia area
13 with Randy twice?

14 A Yes.

15 Q And on one occasion you went to Lauren's family's
16 home, is that correct, in Irmo?

17 A No.

18 Q Did you not just testify that one time you and Randy
19 went to Lauren's?

20 A We went to Randy's mother's salon, I think it was
21 hers or a friend's, to pick up a tanning bed.

22 Q But on one occasion did you go to Lauren's family's
23 home? You said you saw her father in the garage.

24 A Oh, Lauren's?

25 Q Yes.

1 A Yes. I thought you said Randy's.

2 Q Maybe I did. I apologize.

3 A Sorry.

4 Q So you did go to Lauren's family's home?

5 A Yes, I did.

6 Q Do you recall about when that was?

7 A I'm not really sure.

8 Q Do you remember talking to Lauren on the phone Monday
9 night regarding that particular time?

10 A I don't recollect.

11 Q Do you recall telling Lauren that you believed that
12 you went to the home around June or July of 2004?

13 A Yes.

14 Q And do you recall telling Lauren that you believed it
15 coincided with a particular job interview that you had?

16 A When?

17 Q A particular job interview that you had which would
18 have been around July of 2004?

19 A This week? No, no, I didn't say that. I said I was
20 working on an intern at that time.

21 Q When you went to her family's home?

22 A Yes. I work as an intern in Georgetown, South
23 Carolina starting in June that year, and I came up to
24 Columbia that weekend to hang out with Randy.

25 Q Is that the weekend that you went to Lauren's home?

1 A Yes.

2 Q So that would have been earlier summer?

3 A I thought it was, but I'm not real sure. All I know
4 is it was after I started my job. She called me up asking
5 me if it was in September, and I hadn't even thought about
6 the timing at all at that point, and I said, you know, I
7 thought it was more closer to, you know, July.

8 Q Okay.

9 A So I'm not real sure. I never really stated what
10 month to be exact.

11 Q And I may have misunderstood. Thank you.

12 Were you still friends with Randy after he ended
13 his relationship or after the relationship ended between
14 Lauren and he?

15 A Yes.

16 Q And how did Randy, how would you characterize how he
17 appeared after the relationship ended?

18 A He was upset.

19 Q Would you have characterized him to be somewhat
20 possessive?

21 A No, not necessarily.

22 Q He was just upset?

23 A Yes.

24 Q He was upset about losing her?

25 A Yes, very upset.

1 Q He didn't want her to be with anybody else?

2 A I didn't say that.

3 Q I'm asking you.

4 A I don't know.

5 Q And would you characterize their relationship as sort
6 of off and on, at least in the last few months?

7 A I'm not real sure about that.

8 Q Okay.

9 A I know he still lived there, so --

10 Q And when was the last time he lived there?

11 A The last time I know that he lived there was the day
12 I left and that was in June.

13 Q Of what year?

14 A 2004.

15 Q Thank you. Did Randy ever try to get you to talk to
16 Lauren about this case?

17 A Yes.

18 Q And tell the jury about that.

19 A He just wanted me to ask her, you know, what, why
20 this was happening. He didn't understand it. He wanted
21 some reasoning behind it. I guess he felt like he was
22 cornered by somebody who was trying to take his life away
23 from him.

24 Q Would Lauren ever really talk to you about the case?

25 A Excuse me?

1 Q Did Lauren ever talk to you about the case?

2 A Yes.

3 Q And you all are friends? You'd characterize you and
4 Lauren as friends?

5 A Yes, we're friends.

6 Q But you weren't in Lauren's apartment on August 22nd,
7 2004, were you?

8 A No, I was not.

9 Q And were you in Lauren's parents' house on October
10 30th, 2004?

11 A I've never been there, inside.

12 Q And you also said that Randy also took Zach to the
13 park to play?

14 A Yes.

15 Q He would have had Lauren's permission to do so,
16 correct?

17 A Yes.

18 MS. GARFIELD: Thank you. I have nothing
19 further.

20 THE COURT: Any redirect?

21 MS. DURANT: Yes, sir.

22 REDIRECT EXAMINATION

23 BY MS. DURANT:

24 Q James, how long was your internship, from June
25 through?

1 A Through December.

2 Q So when you visited Randy in Columbia --

3 A Yes, ma'am.

4 Q -- were he and Lauren still together at that time?

5 A I don't know.

6 Q But you said he was living with someone else?

7 A Yes. I assumed that they weren't, but I don't know.

8 Q What did you think when you heard about Randy's
9 charges?

10 A I thought it was --

11 MS. GARFIELD: Objection, Judge.

12 THE COURT: Sustained.

13 MS. DURANT: No further questions, your Honor.
14 Please answer anything the State may have.

15 MS. GARFIELD: I have nothing further.

16 THE COURT: All right. You may step down.

17 MS. DURANT: May he be excused, your Honor?

18 THE COURT: Any objection?

19 MS. GARFIELD: No, sir.

20 THE COURT: The Witness is excused.

21 All right. Ms. Durant.

22 MS. DURANT: The defense calls Randy Thomas,
23 your Honor.

24 THE COURT: Come around, please.

25 RANDY THOMAS, after being duly sworn, testified

1 as follows:

2 THE CLERK: Please have a seat in the witness
3 stand and state your full name for the record.

4 THE WITNESS: My name is Randy Blalock Thomas,
5 Jr.

6 DIRECT EXAMINATION

7 BY MS. DURANT:

8 Q Randy, how old are you?

9 A I'm 27 years old.

10 Q And what were you doing before you were arrested?

11 A I was assisting my grandfather in his real estate
12 business. He's had his business for about 45 years but
13 he's going blind basically, so I was doing his computer
14 work and driving him around to the different sites.

15 Q And where was that?

16 A That was in Fort Mill, South Carolina.

17 Q And tell us a little bit about your family.

18 A It's a complicated family. My parents divorced when
19 I was young. They've both remarried, had kids, so I've
20 got several brothers and sisters, one brother, four
21 sisters and just got a newborn sister.

22 Q What is your relationship with your family?

23 A I have acquired later in life a very strong
24 relationship with both of my parents. I don't know how I
25 would characterize it other than that other than to say

1 that it wasn't always that way, but it has become that
2 way.

3 Q What kind of activities do you participate in?

4 A I guess specifically I was a basketball coach,
5 basketball referee. I work with youth specifically in the
6 Irmo area, Friarsgate Park to be even more specific. I
7 also coached a travel team associated with both Nike and
8 Adidas where I took a lot of underprivileged kids, and we
9 didn't tour the country but we toured the southeast pretty
10 regularly.

11 Q Did you ever do any baby-sitting?

12 A Yes, I do some baby-sitting. I mean, I actually
13 worked at the day care for two years. I worked with
14 three- and four-year-olds in the morning, I worked with
15 the after-schoolers in the afternoon program.

16 Q How much education do you have?

17 A I graduated from high school in 1997, Dutch Fork High
18 School, went to Spartanburg Methodist College in '98, left
19 there after a year, and I've also had a brief semester at
20 Midlands Technical College.

21 Q Have you ever been convicted of a crime, Randy?

22 A Yes, ma'am.

23 Q What was that crime?

24 A Criminal conspiracy.

25 Q Do you know the victim, Lauren Byrd?

1 A Yes, ma'am, I know her well.

2 Q How did you and Lauren meet?

3 A Lauren and I met through a friend of mine named Eric
4 Elsey. Lauren and Eric were seeing, I mean dating at the
5 time. I wouldn't characterize it as serious, but Eric and
6 I were roommates and she came over and I met her.

7 Q And what happened after that?

8 A Lauren and I hit it off pretty well. Like I said,
9 Eric and her weren't very serious. It wasn't too long
10 before she was coming over to visit with me. I would go
11 with her to pick up her son, Zach, from day care, and we
12 started hanging out on a pretty regular basis.

13 Q When was that?

14 A Well, we met I would say in March of 2003. I would
15 say April and May of 2003 we were seeing each other pretty
16 often on a regular basis, and in June of 2003 we kind of
17 said we were an exclusive couple.

18 Q So what happened in the fall of that year, 2003?

19 A Well, Lauren was preparing to go to Clemson
20 University. I was talking with a friend of mine, who
21 actually he's a kid I coach's father who's on the board of
22 trustees at Midlands Tech. He was trying to get me a
23 teaching scholarship to the University of South Carolina,
24 so I was planning on doing that, but Lauren wanted me to
25 move to Clemson with her. At first I said no, basically

1 because she had already asked her parents about that and
2 about us living together at Clemson and they had said they
3 did not agree with that, and so I said no. I went to move
4 her into her apartment, her dad and myself and Lauren, and
5 I remember her dad, you know, went to go get us some food
6 or something and Lauren kind of talked me into coming. I
7 was in love with Lauren at this point and I wanted to be
8 with her.

9 Q So what did you do?

10 A About a week after Lauren moved to Clemson I packed
11 my stuff up, I was at an apartment at that time, and moved
12 it up to Clemson and moved in with her at her condo.

13 Q And who else lived there?

14 A Her son Zach.

15 Q Tell me about your relationship with Zach.

16 A Well, when I moved up to Clemson I wasn't working, I
17 didn't have a car. I was driving Lauren to school. She
18 did not have a parking permit so I would take her to
19 school and then I would take Zach to school. Sometimes I
20 didn't take Zach to school. Sometimes Zach would just
21 spend the morning with me. You know, he was young, I
22 guess he was two at the time. You know, we played games,
23 read books to him, changed dirty diapers, spent a lot of
24 time with him in the mornings, especially while Lauren was
25 at school.

1 Q What were your feelings about Zach?

2 A I grew very attached to Zach. Zach was my buddy. We
3 hung out, I guess.

4 Q What did Zach call you?

5 A Well, he called me Randy at first, a variation of
6 Randy, I guess, but as I started taking him to day care
7 and started picking him up from day care, I guess a
8 natural assumption of the day care worker was that I was
9 his father. They would make comments like, daddy's here
10 to pick you up, or, tell daddy bye.

11 We were sitting out on the front porch one night
12 and Lauren had taught Zach a little identifying game, you
13 know, where she pointed at her nose and he's say nose, you
14 know, what's this, ear, and so forth, and she pointed at
15 herself and said, who's this, and he said mommy, and she
16 pointed at me and said, who's that, and he said daddy, and
17 that was the first time he had ever called me daddy.
18 Lauren and I kind of both had a big smile on our face. It
19 was kind of touching.

20 Q How long did you live there?

21 A I lived at [REDACTED] at approximately from August
22 of 2003 until August of 2004.

23 Q You recognize --

24 MS. DURANT: May I approach the witness, your
25 Honor?

1 THE COURT: All right.

2 BY MS. DURANT:

3 Q Do you recognize that?

4 A Yes, ma'am, that's my driver's license.

5 Q Does it have the address on your driver's license?

6 A Yes, ma'am. It's 2501 ...

7 Clemson, South Carolina, 29631.

8 Q What is the date of issue?

9 A The date of issue? I don't know that it has a date
10 of issue. It has an expiration date. It's expires on
11 June 7, 2014.

12 Q Is there a date on it?

13 A I mean I know it was a ten-year license.

14 Oh, issue, there we go. It was issued on
15 January 2nd, 2004.

16 MS. DURANT: Your Honor, we would ask to move
17 this into evidence at this time.

18 THE COURT: Any objection?

19 MS. COOPER: No, sir, your Honor.

20 THE COURT: Is that Defendant's 1?

21 MS. DURANT: Yes, sir.

22 THE COURT: Defendant's 1 is admitted.

23 (WHEREUPON, Defendant's Exhibit No. 1 was marked
24 for identification and received into evidence.)

25 MS. DURANT: May we publish it to the jury, your

1 Honor?

2 THE COURT: Sure.

3 BY MS. DURANT:

4 Q So you lived there from August until the next August?

5 A Yes, ma'am.

6 Q What happened in August of 2004?

7 A Well, in early August of 2004, Lauren and I went out
8 to dinner one night and the basic point of going out to
9 dinner was to discuss breaking up. She was upset with me
10 for not working and, you know, basically felt like I
11 didn't have a path in mind and she felt she needed that
12 for her and Zach. We went out to dinner to discuss
13 breaking up.

14 I guess you would say we did break up over
15 dinner. We went back to the apartment, we discussed it.
16 You know, I wouldn't -- she didn't ask me to move out that
17 night or anything, you know. She said a couple of weeks,
18 you know, get your stuff together and, you know, move out.

19 Q So you were still -- when was that, do you remember?

20 A That was in early August of 2004.

21 Q So you and Lauren had agreed you would still live
22 there but you were breaking up?

23 A Yes, ma'am. We broke up, but we were still very
24 close. I started sleeping on the couch, whereas we had
25 shared a bed before. She would come down sometimes at

1 night and ask me to come up to bed with her.

2 I remember after we broke up, you know, I kind
3 of wanted to show her that I was serious about our
4 relationship, that I wasn't just going to say, okay, I
5 won't work or whatever, and that week I went and got a
6 job. The next morning when it was time to go to work I
7 got woken up to breakfast in bed and, you know, I mean, we
8 were still very close. I mean, I used her car to go to
9 work and back.

10 Q So did something happen later in August?

11 A Yes, ma'am.

12 Q All right.

13 A There was actually it was weekend I was kind of
14 officially moving out of the apartment. Lauren and Zach
15 had gone to what I was then told was they were going to
16 Columbia. I was kind of gathering my things.

17 Q Tell me about that.

18 A Actually it was the weekend that I was kind of
19 officially moving out of the apartment. Lauren and Zach
20 had gone to what I was then told Columbia. I was kind of
21 gathering my things, going around the house --

22 Q Do you know what date it was?

23 A I believe it's August 22nd.

24 As I said, I woke up that morning. Lauren came
25 home early that morning. I would say maybe 9:30, maybe

1 10. She didn't have Zach with her. She said she was
2 picking Zach up later that afternoon from her parents in
3 Greenville. She came in, she laid down on the couch, and
4 I said, you know, did you have a good weekend, you know,
5 that sort of thing, she said yeah. She said she was
6 tired. I said, Well, let me carry you up to bed. So I
7 picked her up, she put her arms around my neck, and I
8 carried her up to her bedroom at that time.

9 When I laid her down, I kind of sat down on the
10 bed beside her. I kind of played with her hair, you know,
11 told her that I loved her. She told me that she loved me.
12 We started kissing, fondling, and basically it led to us
13 having sex. We probably were having intercourse for a
14 minute and Lauren goes, stop, stop. And I kind of -- I
15 mean I stopped and I said, What's wrong? She said, This
16 isn't right, we're not supposed to do this. You shouldn't
17 have done that. And I was kind of bewildered. I said,
18 you know, What's wrong? And she said, Nothing, nothing's
19 wrong, I just need to be alone. You need to leave me
20 alone right now. So I walked downstairs and kind of sat
21 on the couch. I heard the bath water running.

22 I was a little upset. I walked down to a friend
23 of mine's house, actually the friend that I was moving in
24 with. As I was moving out of Lauren's apartment I was
25 moving in with him temporarily, and I kind of told him

1 what had happened, and he just said, you know, don't worry
2 about it, no big deal.

3 I went back up to the apartment. Lauren was
4 getting ready to go pick up Zach. I asked her if
5 everything was okay. She said it was. I said, I'll see
6 you when you get back. She left.

7 I was finishing packing up my things. I did
8 some stuff around the house. There was some light bulbs
9 that needed to be changed and my mom had bought a light
10 switch plate for Zach's bedroom, a Spider-Man light switch
11 plate and I changed that out, and then I was taking my
12 stuff down to my new apartment. Lauren came home. Zach
13 wasn't feeling well. I kind of picked him up when he came
14 in. I mean, he went up to bed, Lauren put him up to bed,
15 and I asked her to help me move my stuff down to Aaron's
16 apartment. She helped me carry my stuff down there.

17 I remember we went and her dad had been
18 redecorating their bathrooms and we were looking at those
19 together. And she said she was going home and kind of
20 said that Mike was coming over. And I said okay. I
21 didn't realize at the time but Mike was a friend of mine
22 that Lauren had met through me. Lauren and I had been
23 going out separately during the time that we were broken
24 up but still living together. So I knew she was, you
25 know, seeing different guys, but I didn't know that she

1 had anybody or anybody in particular. So I was kind of
2 angry that Mike was coming over there right after I was
3 moving out basically, and I called Mike. And I said, you
4 know, Why are you coming over here? I said, you know, I'm
5 just moving out. And he said that Lauren had told him to
6 come over and that she was crying on the phone. And he
7 asked me did I hit Lauren. And I said, No, why do you say
8 that? And he just said that she just can't tell me what's
9 wrong and she's crying. And he said that he was -- in
10 fact, when I was on the phone with him, he was pulling up
11 to the complex. So I went outside to talk to him.

12 He was with a friend of his, Drake. Aaron and I
13 were still hanging out. Mike said that he was going up to
14 talk to Lauren. Drake and Aaron and I just sat out there
15 talking. Mike came down a couple of minutes later and,
16 you know, he said, Where's your key to the apartment? And
17 I didn't have a key to the apartment with me at that time,
18 and I said, I don't have one. And I said, What's going
19 on? And he said, Well, Lauren's saying that you raped
20 her.

21 And, of course, I was very taken aback. I
22 didn't expect to hear that. I pretty much immediately
23 said, Well, let me talk with Lauren. He said, No, she
24 don't want to talk to you. We were kind of arguing.

25 About this time two of Lauren's girlfriends show

1 up. I believe it's Cat and Carrie. I know Cat fairly
2 well. I think her friend's name was Carrie. And they
3 kind of gave me an evil look as they came up. They kind
4 of walked on past us.

5 Mike went back up to Lauren's apartment. Drake
6 was still talking to me and he was basically saying, you
7 know, it's probably a misunderstanding, blah, blah, blah.

8 Q Did you talk to Lauren any more that day?

9 A No. I tried to talk to Lauren. I got a -- I was
10 getting perturbed that I was being accused of something,
11 and I kept saying, you know, that I wanted to talk to
12 Lauren.

13 Q What did you do after that? Did you continue living
14 there?

15 A Oh, no, no.

16 Well, you know, they, I guess it was Cat in
17 particular was saying, Randy, you can't stay around here,
18 you can't stay around here. And I said, you know, I live
19 here. I mean, she was saying, Lauren's saying this, and
20 they wouldn't let me talk to Lauren. So I finally called
21 a friend of mine in Columbia, Amber, and basically told
22 her what was doing on. And we had talked about -- when
23 Lauren and I had originally broken up I had talked with
24 Amber about moving in, she was looking for a roommate in
25 Columbia and I was looking to move back to Columbia and we

1 talked about me moving in with her, so I called her and
2 said, you know, Can I just come move in tonight? She said
3 that I could, so I loaded up. And before I left, I went
4 back over by Lauren's apartment and they were still
5 standing out on the balcony and I said, Find out from
6 Lauren if I can call her later this week. And so one of
7 them went in and came back out and said, Yes, Lauren said
8 that's fine, you can call her later this week. And I kind
9 of said okay and went to Columbia.

10 Q When was the next time you saw Lauren after that?

11 A The next weekend. That's when I moved to Columbia,
12 moved in with Amber. James came up that weekend. He was
13 staying in Georgetown. He came up that weekend and he was
14 like, you ain't got a girlfriend, we're going downtown.
15 So we went down to Five Points and, you know, had a good
16 time.

17 The next morning we got up for breakfast, went
18 to Waffle House. And I had talked to Lauren later in the
19 week like she said I could. She had told me she was going
20 to be at her parents' house that weekend. So I told James
21 that I was going to go by there.

22 I drove over to her house. Her dad was outside
23 in the garage. And I got out of the car and talked to him
24 for a minute and said, you know, Is Lauren here? He said,
25 Yeah, she's inside on the couch. I said okay. I mean,

1 I've been welcome at Lauren's home, you know, for a year
2 now. I mean, it's kind of -- I walked in after talking to
3 him and he told me where she was and I walked in and
4 Lauren was in there on the couch. And, you know, I said,
5 What's going on? And she said, What are you doing here?
6 And I said, Well, I came by to talk to you. And she said,
7 Randy, I just need some time to myself right now. And I
8 said okay. I said, Why are you telling your friends that
9 I raped you? And she said, They're taking it out of
10 context. They're exaggerating what I'm saying. We kind
11 of argued about what the wording was for awhile.
12 Basically we got nowhere. I said that I'd call her some
13 other time and I left.

14 I walked out. I was upset. I kind of talked to
15 her dad, you know, shook his hand. I remember telling
16 him, I said, you know, I love Lauren very much. He said,
17 I know. And I left.

18 Q When did you -- you had testified earlier that you
19 were working in Fort Mill. At what point did you go
20 there?

21 A Well, after I had been at Lauren's that day, I was
22 very upset. I went to my mom's house. James was pretty
23 bothered by how upset I was. He said, you know, he just
24 felt like he needed to go back to Charleston or somewhere
25 in Charleston, Georgetown, I believe. So I stayed at my

1 mom's. I was very upset. My mom called my dad. My dad
2 got on the phone with me. I just told him, you know, this
3 is ridiculous. He said, Why don't you just get away from
4 there and come up and stay with me? So that day he came
5 down, picked me up, and for the first time in a long time
6 I was with my dad, and that's when I started working with
7 my grandfather.

8 Q So tell me about October 30th.

9 A October 30th. Well, October 29th I came to
10 Columbia from Fort Mill because Eric Elsey had gotten out
11 of jail. His mom had called me and said, you know, Eric
12 had been in jail for a year. Can you come down and just
13 hang out with him. Basically it was a party. So I came
14 down that Friday night. A bunch of us were hanging out at
15 Eric's house, and I spent the night there.

16 The next morning I woke up. I have several
17 basketball players that I'm close with as I've gotten
18 older that I started coaching when I was 16 and one of
19 them was Knox Burnett. I was going to go by -- he lived
20 near Eric and also near Lauren. I was going to go by
21 Knox's house. So I drove by Knox's house. I didn't see
22 his car and went out of the neighborhood. The way I went
23 to go out of the neighborhood was by Lauren's house.

24 I remember that I didn't really expect her to be
25 there because Clemson had a home football game that

1 weekend and Lauren went to the football games pretty
2 regularly and I didn't -- you know, I expected her to be
3 at the football game. I was surprised when I saw her car
4 and I pulled into her driveway.

5 We had talked, I guess this is about two months
6 after the last time I had seen Lauren. We had talked on
7 the phone. We had exchanged a couple of emails. I had
8 written her a couple of letters. And during one of our
9 discussions I was asking her about sending me some
10 Halloween pictures of the year before with Zach and asked
11 her, you know, what Zach was wearing that Halloween and
12 she said that she was just going to let him wear the same
13 uniform or the same outfit. I said, you know, he's young,
14 you know, you got to let him have fun when he's young and
15 be something different. I said, you know, I will buy him
16 a costume. So I went out and bought him -- he loved
17 Spider-Man, so I bought him a Spider-Man costume.

18 My mom was in town actually helping me buy a car
19 up in Fort Mill and she said that she had seen a
20 Spider-Man candy bucket that she would get him and some
21 shoes or something. So I gave her the costume and she
22 mailed it to him.

23 So that day when I got to Lauren's house I came
24 up to her door, knocked on the door, saw her and Zach
25 sitting in the living room, and, I mean, just out of habit

1 I just, you know, walked in. I came in, said hey. She
2 said hello. Zach came over to me and said hey. Kind of
3 gave him a hug and kind of sat down in a chair. Lauren
4 was sitting on the couch.

5 I started talking, kind of asked her how she'd
6 been, what she'd been doing, even asked her, you know,
7 about Mike. She told me that that hadn't lasted long.

8 I saw the costume that I had bought Zach over on
9 the counter. And I said, you know, Can I put his costume
10 on? She said yeah. And I went to go get the costume,
11 started putting it on him. I remember I got a phone call
12 from a girl at that time. I walked out of the house
13 because I didn't want to talk to another girl in front of
14 Lauren.

15 I came back in, got Zach dressed, and I had
16 camera phone and got him dressed in his outfit and took
17 his picture.

18 MS. DURANT: Beg the Court's indulgence.

19 BY MS. DURANT:

20 Q You're saying you took pictures?

21 A Yes, I took pictures of him, got him to pose for me
22 in the Spider-Man costume and basically sat there playing
23 with him, messing around with him with his costume.

24 MS. DURANT: May I approach the witness, your
25 Honor?

1 THE COURT: All right.

2 (WHEREUPON, Defendant's Exhibits Nos. 2, 3 were
3 marked for identification only.)

4 BY MS. DURANT:

5 Q Do you recognize these?

6 A Yes, ma'am, those are the pictures I took.

7 Q Tell me about those photos now.

8 A Basically I just dressed Zach up in his costume, told
9 him to smile, told him do his the Spider-Man pose or
10 whatever and took a couple of pictures.

11 MS. DURANT: We'd move these into evidence, your
12 Honor.

13 THE COURT: They are in evidence.

14 MS. DURANT: May we publish them to the jury?

15 THE COURT: All right.

16 (WHEREUPON, Defendant's Exhibits Nos. 2, 3 were
17 admitted into evidence.)

18 BY MS. DURANT:

19 Q You took pictures of Zach and then what happened?

20 A Then I came over and sat with Lauren on the couch,
21 started talking with her, told her I missed her. She
22 replied that she missed me, too. She -- I asked her
23 about, you know, was she seeing anyone. She said that she
24 wasn't seeing anybody in particular. Basically I just had
25 some idle chitchat. And I kind of had put my hand on her

1 knee and just kind of rested it and I was talking to her
2 kind of and rubbing her knee and I said, you know, Can we
3 go upstairs? And she said, Why? I said, Just so we can
4 have some privacy. And she said okay.

5 I started to walk upstairs holding hands. Zach
6 started to follow us. We both kind of told Zach, you
7 know, go watch cartoons. We went upstairs and I kind of
8 led her into her parents' room. We sat down on the bed.
9 We sat down on the bed and Lauren kind of leaned back on
10 the pillows. We were just sitting there talking still. I
11 reiterated that I had missed her, you know, that we were
12 still a good thing in my book, and she said, Yes, that we
13 weren't ever a bad thing.

14 We started kissing, started to push her shirt
15 up, was playing with her breasts. At this time she sat up
16 for me to take her shirt off. I kind of started undoing
17 my pants. She laid back down on the bed with her head,
18 you know, towards the side, and I offered, basically
19 offered my penis towards her face. She took it in her
20 mouth and performed oral sex. That was pretty normal for
21 how Lauren and I started sexual relations. I get aroused
22 from oral sex and that was what she did.

23 Q What happened after that?

24 A She performed oral sex. I ejaculated into her mouth.
25 As I said, that was pretty normal foreplay for us.

1 So after that happened I kind of moved her to
2 where her legs were hanging over the bed and started to
3 take off her pants and panties, moved them and started to
4 go to have intercourse with her and she kind of threw her
5 hands down in front of her crotch and said no. I said
6 okay. I said, Why not? She said, I don't want to do
7 this. I said okay. And I was upset. I mean, I think my
8 mind immediately flashed back to what had happened at
9 Clemson when she had said stop. And, I mean, I started
10 crying. She said, What's wrong? And I said, Well, are we
11 going to go through this again? And she said, No, no, you
12 didn't do anything wrong, and I was -- I was upset. We
13 kind of both got dressed and went downstairs. Zach was
14 still watching cartoons.

15 I went outside to grab an e-mail out of my car.
16 It was an e-mail that Lauren had written my mom basically
17 stating how much she loved me and how she knew we were
18 going to get married. And I brought that in and I showed
19 it to Lauren and Lauren kind of got mad. She said, Why
20 did your mom give you this? And I kind of said, you know,
21 Why is it not like this anymore? She said, It's just not
22 like that anymore.

23 She then basically was trying to trash my
24 feelings. She said, Randy, you know I cheated on you.
25 And I said, yes. She had cheated on me with one of my

1 supposed good friends, but that was during our
2 relationship. I mean, we had moved on past that along
3 time ago. She said, Yeah, I also cheated on you with
4 Zach's dad. And I kind of knew that was untrue, but she
5 kept going. She said -- or no, I asked her, I said, Well,
6 did you sleep with any more of my friends? And her reply
7 was, I don't know, you need to find that out from them.

8 So at this point I was very upset and I said,
9 What are you trying to do? Do you want me to kill myself?
10 She said, Randy, you love yourself too much to kill
11 yourself. So I started to go into the kitchen. She came
12 running after me. She said, What are you doing? I kind
13 of ignored her, was going through the kitchen drawers.
14 She was kind of saying, Randy, stop this, and she was
15 standing in front of one drawer. I mean, I kind of
16 figured, okay, that's where the knives are. I kind of
17 pushed her out of the way, pulled the drawer open, and
18 grabbed a knife.

19 Lauren kind of went into the den and I guess I
20 was kind of saying, Is this what you want me to do?

21 Q What were you going to do?

22 A Well, I mean, basically I was threatening to kill
23 myself. She stated, she said, Randy, you're scaring me.
24 And I remember, I don't know what I said, but I put the
25 knife down on the TV entertainment center and said, you

1 know, Lauren, I just want to talk to you. I just wanted
2 to talk to her.

3 She went into the other living room kind of and
4 grabbed Zach. I took the knife, put it in my pocket, and
5 kind of went into the other room with her. I said, Can't
6 we just go take a ride? And she said, Where do you want
7 to go? I said, I don't know, I just want to go somewhere
8 where we can talk. She had said something about her mom
9 coming home and I just wanted get away where we could just
10 go somewhere and talk. So she said she would go with me.

11 Well, I guess I should backtrack. First when
12 she went into the room she grabbed a lamp and kind of
13 said, What are you going to do with that? And she said, I
14 don't know. I said, Well -- I said, Stop being silly or
15 whatever, put the lamp down.

16 Like I said, she agreed to go with me. I picked
17 up Zach and started to go out the front door. We walked
18 out the front door, I'm carrying Zach, Lauren's along
19 beside me, and we're walking out to my car which is in the
20 driveway. I'm going to the driver's side and Lauren's
21 walking around to the passenger's side. And as I opened
22 the door and was starting to put Zach in the car, Lauren
23 kind of started turning away from the car towards her
24 neighbor who was cutting her grass. And I said, Lauren,
25 and Lauren took off running.

1 I panicked and I jumped in my car. Zach was in
2 the car with me. I backed out of the driveway. I started
3 to drive on the road when Lauren came running around to
4 the passenger's side and she was screaming and I was
5 saying, Get in the car, get in the car. I was kind of
6 hitting the gas, hitting the brake, hitting the gas,
7 hitting the brake telling her to get in the car. Zach
8 started crying, Lauren let go of the door and I'm pulling
9 away.

10 I'm kind of realizing as I'm leaving that, I
11 mean, I have Zach in my car, and I pull in actually to
12 someone's yard and I did a U-turn in their yard and drove
13 back towards Lauren. Another car had just turned out of
14 the road right there in front and so I was on the wrong
15 side of the road where my driver's side was next to the
16 curb; in fact, the side of the road that Lauren was on. I
17 put Zach out of my car, closed the door, saw them running
18 to each other. I backed up to the road and I left.

19 Q Randy, did you rape Lauren?

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

21 Q Did you intend to kidnap Zach?

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

23 MS. DURANT: Beg the Court's indulgence, your
24 Honor.

25 Your Honor, we have no further questions.

1 Please answer any questions the State may have.

2 THE COURT: We'll take a short break before you
3 cross-examine.

4 Mr. Foreman, ladies and gentlemen, don't discuss
5 the case.

6 We'll take about ten minutes. You're excused to
7 your jury room.

8 Everyone else stay seated, please. Please have
9 a seat, sir, while they're excused.

10 (The jury left open court at approximately 4:40
11 p.m.)

12 THE COURT: We'll take about ten minutes.

13 Mr. Thomas, step down. Don't discuss your
14 testimony.

15 (A break was taken.)

16 THE COURT: Are we ready to continue?

17 MS. DURANT: Yes, your Honor.

18 THE COURT: Anything before we get started back?

19 MS. VANGINHOVEN: Your Honor, I'd just like to
20 let you know that we did talk to Investigator Peppers and
21 he does plan to be here at 9 o'clock in the morning.

22 THE COURT: Anything from the State before we
23 get started?

24 MS. COOPER: No, sir.

25 THE COURT: All right. Let's get the jury in,

1 please.

2 (The jury came into open court at approximately
3 4:31 p.m.)

4 THE BAILIFF: The jury's all present, your
5 Honor.

6 THE COURT: All right. Cross-examine, please.

7 MS. COOPER: Thank you, your Honor.

8 CROSS-EXAMINATION

9 BY MS. COOPER:

10 Q Mr. Thomas, let me get this straight. You did not
11 rape Lauren Byrd on August 22nd in Clemson?

12 A No, ma'am.

13 Q And she accused you, falsely accused you of raping
14 her and told all of her friends that, is that your
15 testimony?

16 A Yes, ma'am.

17 Q She told Mike Anderson, Cat, Carrie. Who else?

18 A Drake.

19 Q Drake. All of those people and she falsely accused
20 you of rape?

21 A Yes, ma'am.

22 Q That's your testimony.

23 You indicated that you didn't have a car and
24 that you would get to use Lauren's car to take Zach to day
25 care or run your errands, is that your testimony?

1 A Yes, ma'am.

2 Q Do you recall testifying on direct examination that
3 after Lauren Byrd had falsely accused you of raping her,
4 that you made contact with Amber and loaded up and went to
5 Columbia?

6 A Yes, ma'am.

7 Q Whose car was that if you didn't have a car?

8 A I was with Aaron.

9 Q With Aaron. Who is Aaron?

10 A Aaron was the young man that I moved in with when I
11 left Lauren's apartment.

12 Q Isn't it true you moved into his apartment after this
13 incident?

14 A I was moving into his apartment that day, yes, ma'am.

15 Q So the address that was put on this trespass notice
16 is Aaron's address or the apartment downstairs, bottom
17 left?

18 A No, ma'am. Aaron's apartment was No. 729. That says
19 No. 7.

20 Q So his is on the bottom far left from Apartment 726?

21 A Yes, ma'am, that would be correct.

22 Q So what is Aaron's last name?

23 A Whitlock.

24 Q Whitlock. And where is he?

25 A I believe Aaron is in Virginia.

1 Q Did you ever ask him to call the police on your
2 behalf?

3 A No, ma'am.

4 Q You didn't ask this man to call the police on your
5 behalf?

6 A No, ma'am.

7 Q This is the same individual that you said you went
8 and told Lauren's falsely accusing me of rape?

9 A No, at that time Lauren wasn't accusing me of rape.

10 Q I thought you said that after she accused you of rape
11 and you went to his apartment and told him what was going
12 on?

13 A No, ma'am. At that time Lauren had not said anything
14 about me raping her.

15 Q Okay. Let me refresh your memory then.

16 You indicated that Mike showed up and explained
17 to you that Lauren is claiming you raped her and that you
18 went next to his house and told them, to Aaron's house
19 told them what she had said about you. You don't recall
20 testifying to that?

21 A No, ma'am, I did not say that.

22 Q Okay. Isn't it true that going to dinner was your
23 idea on August 9th, 2004?

24 A I can't recall whose idea it was to go to dinner.

25 Q Did you go to Ruby Tuesday's?

1 A Probably. That was a restaurant we frequented.

2 Q Okay. Isn't it true you were asked to move out right
3 away after that conversation?

4 A No, ma'am, that's not correct.

5 Q So it's your testimony that Lauren wanted to break up
6 with you and yet she was going to allow you to stay in her
7 apartment?

8 A Yes, ma'am.

9 Q Where you didn't pay any bills, you didn't contribute
10 to any of the household expenses; isn't that true?

11 A Yes, ma'am.

12 Q So she's just going to let her ex-boyfriend hang out
13 with her in her apartment when she's trying to move on
14 with her life, is that your testimony?

15 A We had agreed that I would move out but that I had
16 some time to do so.

17 Q Let's get back to this incident in Clemson,
18 August 22nd. You testified that you were still living
19 together but you had been broken up; is that correct?

20 A Yes, ma'am.

21 Q That she and you discussed going upstairs to go to
22 her bedroom to go to bed?

23 A No, ma'am, I don't believe we discussed anything.
24 She said she was tired and I carried her up to bed.

25 Q So you carried her up to bed?

1 A Yes, ma'am.

2 Q Like a child?

3 A Yes, ma'am.

4 Q She was that tired that you had to carry her up the
5 stairs to the bed?

6 A I don't know that I had to. I did.

7 Q And so when you get up to the bedroom, you laid her
8 down on the bed. Do you remember testifying to that on
9 direct examination?

10 A Yes, ma'am.

11 Q And that you told her that you loved her?

12 A Yes, ma'am.

13 Q And that you all kissed; is that correct?

14 A Yes, ma'am.

15 Q And then you used the term you began fondling her
16 breasts?

17 A Yes, ma'am.

18 Q And then you had sex for a minute and she said stop,
19 stop?

20 A That's correct.

21 Q And then just out of the blue she wanted this sex to
22 stop and told you to stop and you stopped?

23 A Yes, ma'am.

24 Q And you were bewildered?

25 A Yes, ma'am.

1 Q You indicated that you got perturbed because she
2 wouldn't talk to you, you wanted to talk to her about her
3 accusations. Do you remember saying you got perturbed?

4 A Yes, ma'am.

5 Q Describe how perturbed you got by being falsely
6 accused of raping her.

7 A I was trying to get them to let me talk to her since
8 they were saying that I had raped her but Lauren wasn't
9 ever telling me this.

10 Q So after you then go to Amber's in Columbia; is that
11 correct?

12 A Yes, ma'am, that's correct.

13 Q And it's your testimony that this is in August of
14 2004, correct?

15 A Yes, ma'am, it was in late August.

16 Q And then you said that the next weekend after she
17 falsely accuses you of raping her, the next weekend you go
18 to her house, her parent's house in Irmo?

19 A Yes, ma'am.

20 Q With James?

21 A Yes, ma'am.

22 Q Were you not in this courtroom when James said it had
23 to have been in June or July because I'd started my
24 internship?

25 A Yes, ma'am.

1 Q How do you explain that, then?

2 A I believe James said he wasn't really sure when it
3 was but it was after he started his internship.

4 Q Right, in June or July.

5 A Yes, ma'am.

6 Q While you were still dating the victim?

7 A Yes, ma'am.

8 Q So after you go inside to Lauren's house, you talked
9 to her father in the driveway, is that your testimony?

10 A Yes, ma'am.

11 Q And you just walked into the house and found her on
12 the couch?

13 A Her dad told me where she was.

14 Q Did you tell her that you were coming over to her
15 house?

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

17 Q And you said that you then confronted her on the
18 couch asking her, Why are you telling my friends that I
19 raped you?

20 A I asked her why she was telling her friends that,
21 yes.

22 Q And then you all agreed to speak about this some
23 other time?

24 A That's somewhat correct, somewhat not correct. We
25 just really didn't get anywhere that day, I guess.

1 Q And so you testified on direct examination that you
2 became very upset and your mom saw you were upset, is that
3 your testimony?

4 A Yes, ma'am.

5 Q So upset that you had to go live with your father in
6 Fort Mill?

7 A Yes, ma'am.

8 Q So you moved from Columbia to Fort Mill at that
9 point?

10 A Yes, ma'am, within the next couple of days.

11 Q So on October 29th, two months later, you showed up
12 at Lauren Byrd's house unannounced; isn't that true?

13 A I believe I came over Lauren's on October 30th.

14 Q I'm sorry, October 30th. You showed up there
15 without any phone calls, without any notice whatsoever;
16 isn't that true?

17 A Yes, ma'am, that's true.

18 Q So you have been falsely accused of raping her, you
19 go to her house a week after she accuses you of raping
20 her, and then for two months that's it, you just decide to
21 pop up and show up at her house?

22 A No, ma'am, that's not correct.

23 Q Oh, that's right, you emailed her and you called her;
24 isn't that true?

25 A Yes, ma'am.

1 Q She never returned any one of your e-mails or phone
2 calls?

3 A That's incorrect also.

4 Q And that's your word, right? We have to take your
5 word for that?

6 A Yes, ma'am.

7 Q You said that when you showed up on September 30th,
8 do you recall what time it was? I'm sorry,
9 October 30th, do you recall what time it was?

10 A It was late morning.

11 Q And you testified that you just walked in out of
12 habit?

13 A Yes, ma'am.

14 Q Even though you had been broken up with this woman
15 for over two months?

16 A Yes, ma'am.

17 Q You thought you still had the right to walk into her
18 house without her permission or without knocking?

19 A I don't think I was thinking at the time.

20 Q You weren't thinking at the time?

21 A No, ma'am.

22 Q You just walked in knowing she didn't know who you
23 were, that she was not expecting you, you just walked in?

24 A Yes, ma'am.

25 Q Weren't you concerned that you might startle her?

1 A No.

2 Q So then you testified on direct examination that the
3 both of you had a nice chitchat on the couch; is that
4 right?

5 A At first I was sitting in a chair across from the
6 couch.

7 Q And you all started talking about how you're doing
8 and if you're seeing anybody else, is that your testimony?

9 A Yes, ma'am.

10 Q And it's your testimony you dressed Zach in this
11 Spider-Man outfit?

12 A Yes, ma'am.

13 Q You indicated that you went and took a phone call
14 from another woman?

15 A Yes, ma'am.

16 Q And you didn't want to talk to this woman in front of
17 Lauren?

18 A That's correct.

19 Q Well, I thought you all had just discussed seeing
20 other people?

21 A We had.

22 Q Then why would it have been inappropriate to talk to
23 another woman in front of Lauren if you all had broken up
24 and it's fine to discuss other people?

25 A It still wasn't any of her business.

1 Q So then you return inside and you're sitting on the
2 couch. That's when you sit on the couch, you're no longer
3 on the chair, is that your testimony?

4 A Yes, ma'am.

5 Q And that's when idle chitchat begins; is that right?

6 A I guess, yes, ma'am.

7 Q And you testified on direct examination that you put
8 your hand on her knee and rested it there and began
9 rubbing her knee, is that your testimony?

10 A Yes, ma'am.

11 Q And it was your idea, you asked Lauren can we go
12 upstairs?

13 A Yes, ma'am.

14 Q And you testified on direct examination she asked you
15 why?

16 A Yes, ma'am.

17 Q And what -- you testified that you then took her
18 upstairs so you could have privacy?

19 A Yes, ma'am.

20 Q But you led her, in fact, your testimony was that I
21 kind of led her to her parents' room?

22 A Yes, ma'am.

23 Q Then you go into how you sit on the bed in her
24 parents' bedroom and that you began kissing, is that your
25 testimony?

1 A Yes, ma'am.

2 Q And that you pushed her shirt up and started fondling
3 her breasts, is that your testimony?

4 A Yes, ma'am. It was foreplay.

5 Q Then you continued to testify on direct examination
6 that she sat up for you to take her shirt off and then you
7 undid your pants; is that right?

8 A Yes, ma'am.

9 Q You also testified she laid down and I offered her my
10 penis towards her mouth and then she performed sex and
11 that you then ejaculated in her mouth, is that your
12 testimony?

13 A Yes, ma'am.

14 Q Then you go on to testify that this was normal
15 foreplay?

16 A Yes, ma'am.

17 Q Well, if it's normal foreplay, why didn't you have
18 oral sex in Clemson?

19 A I didn't say we did it all the time. I just said it
20 was normal.

21 Q You said on direct examination it was routine, normal
22 for us to have oral sex to get me aroused?

23 A Yes, ma'am.

24 Q On direct examination?

25 A Yes, ma'am.

1 Q In Clemson you failed to mention that you had oral
2 sex.

3 A She didn't perform oral sex at Clemson.

4 Q So then it's your testimony that you, after you
5 ejaculated in her mouth, and that's normal foreplay, that
6 you started to have intercourse with her and that she was
7 putting her hands in her crotch?

8 A No, ma'am, that's incorrect. That's not what I said.

9 Q What did you say?

10 A I said I went to have sexual intercourse with her and
11 she put her hands in the way.

12 Q And then she told you no, you asked why not, and she
13 said, I don't want to do this?

14 A Yes, ma'am.

15 Q Then what you testified to on direct examination is
16 that you became upset and that your mind, you had a
17 flashback to Clemson. Do you recall that testimony?

18 A Yes, ma'am.

19 Q And that's when you started crying and she asked you
20 what was wrong and you testified that she said, You didn't
21 do anything wrong, is that your testimony?

22 A I think that's somewhat correct. I think I asked
23 what was wrong and she said nothing, you didn't do
24 anything wrong.

25 Q So I think this is the question everyone is dying to

1 know, Mr. Thomas: If this woman falsely accused you of
2 rape in Clemson, why in the world would you have sex with
3 her again after she's told everybody, all of her friends
4 that you raped her and that she falsely accused you of
5 raping her? Why on earth would you have consensual sex
6 with that woman again?

7 A Because that's not what Lauren said when she wasn't
8 around other people.

9 Q You testified that you became extremely perturbed
10 when you found out she was telling people, falsely
11 accusing you after raping her at Clemson. Why would you
12 have anything more to do with that woman if she was
13 falsely accusing you of rape?

14 A I was in love with Lauren.

15 Q You were obsessed with Lauren, weren't you?

16 A No, ma'am, that would be incorrect.

17 Q You were possessive of Lauren, weren't you?

18 A That would be very incorrect.

19 Q In fact, you drove, purposely drove by her house to
20 see if she was there that day, didn't you?

21 A I can't say that I didn't do that.

22 Q Then you said after this consensual sex up in the
23 parents' bedroom, that you then went back downstairs and
24 she started trashing your feelings?

25 A Yes, ma'am. After I brought in an e-mail, she did

1 that.

2 Q You testified that she cheated on you and she told
3 you she cheated on you and you then said that she had sex
4 with Zach's father trying to get you upset, is that your
5 testimony?

6 A Yes, ma'am.

7 Q And you also then testified that you knew that wasn't
8 the truth?

9 A Yes, ma'am.

10 Q So how was she trashing your feelings saying she's
11 having sex with other people and cheating on you when you
12 know that's not the truth?

13 A I believe she was trying to get a rise out of me.

14 Q Then you testified that you got upset, you went to
15 the kitchen and you grabbed a knife from the drawer and
16 you threatened to kill yourself?

17 A I asked her is that what she wanted me to do.

18 Q And she told you, Randy, you love yourself too much
19 to kill yourself?

20 A Yes, ma'am.

21 Q Then you also admit you put the knife in your pocket
22 and picked up Zach when you all were in the den by the
23 front door?

24 A Yes, I had put the knife in my pocket and then I
25 picked up Zach, that's correct.

1 Q And you testified on direct examination that you told
2 her, Can we just go take a ride, and that she agreed to go
3 with you and that you had permission to carry Zach outside
4 of that house to your car?

5 A She did agree after the second time I asked her to
6 come with me. There was never any expressed permission
7 given to pick up Zach and take him.

8 Q You indicated that she went willingly with you
9 outside of the house to go with you in the car, that you
10 were all going to go together. Do you recall that line of
11 testimony?

12 A Yes, ma'am.

13 Q And also you even mentioned that she said my mom's
14 coming and you wanted some privacy, you didn't want to
15 have to talk to her in front of her mother. Is that your
16 testimony?

17 A Yes, ma'am.

18 Q But then while you're testifying you forgot how to
19 explain the complete disarray in the room right next to
20 the front door so you had to backtrack. Do you recall
21 saying, Oops, I have to backtrack?

22 A Yes, ma'am.

23 Q Because you had forgotten that part of your story,
24 right?

25 A I had forgotten Lauren picked up the lamp, yes.

1 Q You forgot you had to explain how the room by the
2 front door became in such disarray with the lamp on the
3 couch?

4 A I don't believe the room was in such disarray. I
5 believe the lamp was on the couch.

6 Q Then you went on to testify that you picked Zach up,
7 you walked out the front door carrying Zach, and that you
8 were going to go to the driver's side and she was going to
9 go to the passenger's side and then you noticed her
10 walking away. Do you recall that line of testimony?

11 A Yes, ma'am.

12 Q And you said, Lauren?

13 A Yes, ma'am.

14 Q Called her name?

15 A Yes, ma'am.

16 Q And all of a sudden Lauren took off running. Is that
17 your testimony?

18 A Yes, ma'am.

19 Q She ran to the neighbor mowing the lawn?

20 A Yes, ma'am.

21 Q Then this is what I find interesting. You testified,
22 I panicked. Why did you panic if you all were just going
23 for a friendly ride?

24 A Because I knew that I had a knife in my pocket.

25 Q Because you knew you were taking that child without

1 permission and making her come with you without her
2 consent; isn't that true?

3 A No, ma'am, that's incorrect.

4 Q Well, then why did you put the child in the car on
5 your lap, not even bothering to put the child in a car
6 seat and sped off? You backed out of the driveway and
7 took off?

8 A As I said, I panicked. I had already started putting
9 Zach in my car when Lauren took off running. So he was
10 already in my car and I guess I jumped in behind him and
11 started to leave the driveway.

12 Q What was there to panic about?

13 A As I said, I knew that I had a knife in my pocket.

14 Q How was the neighbor to know that?

15 A The neighbor probably wasn't aware of that.

16 Q Then you testified as you're driving away with
17 Lauren's child, that she was grabbing for the front
18 passenger door. Do you recall that line of testimony?

19 A She opened the passenger door, yes, ma'am.

20 Q And you were telling her, get in, get in?

21 A Yes, ma'am.

22 Q And that you hit the gas and then you hit the brake
23 and then you hit the gas and then you hit the brake. Do
24 you recall that line of testimony?

25 A Yes, ma'am.

1 Q How on earth did you expect her to get in the car if
2 you keep accelerating?

3 A I don't think I was acting rationally at the time.

4 Q So then you testified, then I realized I had Zach in
5 the car and I turned, did a U-turn in someone's yard and
6 headed towards Lauren. Do you recall that line of
7 questioning?

8 A Yes, ma'am.

9 Q Well, if you realized you had Zach without her
10 permission in your car and you're going to return the
11 child to its mother, why on earth would you leave this
12 child in the middle of the road?

13 A I did not leave the child in the middle of the road.
14 I wouldn't put Zach in danger like that.

15 Q So when Katria Weyl testified this morning or
16 yesterday, she was inaccurate in her description of your
17 driving?

18 A Yes, ma'am.

19 MS. DURANT: Objection, your Honor. Leading.

20 THE COURT: Pardon me?

21 MS. DURANT: She's leading the witness, your
22 Honor.

23 THE COURT: Sustained to the form of that
24 question. Go to your next question.

25 BY MS. COOPER:

1 Q It is your testimony that you did not drop that child
2 off in the middle of the road?

3 A Yes, ma'am.

4 Q That's your testimony?

5 A Yes, ma'am.

6 Q Is it also your testimony that you didn't pull a
7 U-turn around this child, almost hitting the child with
8 your car?

9 A No, ma'am. I believe there were several inaccurate
10 statements given as to how I dropped Zach off.

11 Q Okay. Then after this whole incident you left and
12 sped away so fast that Sena Long could not keep up with
13 you?

14 A Is Sena Long the one in the white truck?

15 Q That would be her, yes, sir.

16 A Sena Long was facing the other way when I was driving
17 off, so I don't think it would be very hard for me to get
18 ahead of her when she had to turn around.

19 Q So you're denying that you had sped off?

20 A No, ma'am, I'm not denying that I sped off.

21 Q Let me ask you this: If Lauren agreed to go with you
22 and agreed for you to hold her son Zach to go to God knows
23 where in your car, why would she leave her house without
24 any shoes?

25 A I can't answer that question.

1 Q Isn't it true you didn't give her a chance to put any
2 shoes on because she wasn't leaving willingly?

3 A That's incorrect.

4 Q You testified previously about how there was
5 inaccurate statements of how you dropped the child off or
6 turned around or whatever. Do you recall that just when I
7 asked you that?

8 A Yes, ma'am.

9 Q You seem to have a very good recollection of what
10 every witness says?

11 A My life's been on the line, yes, I've been paying
12 attention.

13 Q And you've also been reading the statements that
14 everybody, that at least Lauren Byrd provided, you have
15 all the discovery, the police reports and all of that,
16 right?

17 A Yes, ma'am.

18 Q And you've had it for quite sometime?

19 A Yes, ma'am.

20 Q So you have had this six-page statement of Lauren
21 Byrd's?

22 A Yes, ma'am, I believe I have.

23 Q And you've memorized it, haven't you?

24 A No, ma'am. I'm very aware of what's in there but I
25 wouldn't say that I've memorized it.

1 Q You've memorized it so you can come up with an
2 explanation to explain everything away, haven't you?

3 A No, ma'am.

4 Q Well, let's talk about what you said to Investigator
5 Goff at the jail. Do you recall his testimony, right?

6 A Yes, ma'am.

7 Q You've had a copy of his investigative report, right?

8 A Yes, ma'am.

9 Q You testified on direct examination that you
10 retrieved a knife from the kitchen, correct?

11 A Yes, ma'am.

12 Q And you told Investigator Godfrey when he asked you
13 after reviewing the warrant for assault and battery of a
14 high and aggravated nature involving Lauren Byrd, you were
15 accused of putting a knife to her neck in that warrant;
16 isn't a correct?

17 A Yes, ma'am.

18 Q In the warrant?

19 A In the warrant, yes, ma'am.

20 Q You answered, Never did I hold a knife to anyone's
21 throat or any part of anybody?

22 A Yes, ma'am.

23 Q Well, you weren't asked about anybody, you were asked
24 about Lauren Byrd?

25 A No, ma'am, I wasn't asked anything. We were going

1 over my warrant. I was simply reading what was stated in
2 the warrant and stated that that was not true.

3 Q Well, where is it that you tell Investigator Godfrey,
4 Yeah, I did have a knife, but I threatened to kill myself?

5 A I didn't tell the investigator about that.

6 Q And then you also told Investigator Godfrey at the
7 jail, I know I did something wrong but not this wrong;
8 isn't that true?

9 A Yes, ma'am.

10 Q Then when you were explained the warrant for criminal
11 sexual conduct in the first degree and he specifically
12 tells you that Lauren Byrd is accusing you, and I will use
13 the language, forcing the victim to have sex both orally
14 and vaginally, and you replied, there was no vaginal
15 penetration?

16 A Yes, ma'am.

17 Q How about saying, there was no force, she consented?

18 A I was asking him what forms of sex were being
19 involved and he informed me that there was oral sex and
20 vaginal sex. Oral sex did take place that day; vaginal
21 sex did not.

22 Q Well, you had to admit to the oral sex because your
23 DNA is all over the bed comforter, correct?

24 A That was not the first time Lauren and I have had
25 sexual relations on that bed.

1 Q Oh, so now your DNA got there before this incident?

2 A Not saying that's true either.

3 Q Then when Investigator Godfrey asked you what you
4 were doing in Lauren's neighborhood, you said, I couldn't
5 remember. In fact, this is what you said: I asked the
6 suspect how he knew that the victim was at the residence
7 and he stated that he couldn't remember?

8 A Is that in quotations?

9 Q That's his report.

10 A I'm saying he quotes me several times in the report
11 but he uses quotations. I don't believe that's a direct
12 quote from me.

13 Q And, again, you've memorized all the reports pretty
14 well in this case, haven't you?

15 A Yes, ma'am. My life is on the line and I have
16 memorized a lot of stuff.

17 Q Then you were asked about whether everything that the
18 victim said happened outside of the residence was true and
19 you answered yes, in quotes, by the way?

20 A Yes, ma'am.

21 Q So when Lauren writes in her statement that you
22 dropped Zach off in the middle of the road and took off,
23 that's true, then?

24 A No, ma'am, you're mistaken. At the time Inspector
25 Godfrey and I were looking at my warrants and not at any

1 statements that anybody had given. I had not seen any
2 statements that anybody had given at that time.

3 Q You didn't have an opportunity to memorize the
4 statement at that time to explain it away, did you?

5 A That's correct.

6 MS. COOPER: Beg the Court's indulgence.

7 BY MS. COOPER:

8 Q So you want this jury to believe that Lauren falsely
9 accused you of raping her in Clemson and that you
10 willingly went to her house and had consensual sex with
11 her again?

12 A We had oral sex. She performed oral sex on me, yes,
13 ma'am.

14 Q Against her will.

15 And you've been convicted of criminal conspiracy
16 on May 20th, 2003?

17 A Yes, ma'am. That was the date that I was convicted.
18 I was charged with that in 2000.

19 MS. COOPER: No further questions, your Honor.

20 THE COURT: Any redirect?

21 MS. DURANT: Yes, sir.

22 REDIRECT EXAMINATION

23 BY MS. DURANT:

24 Q Randy, you did not provide any of the information on
25 the trespass notice?

1 A No, ma'am.

2 Q I think you testified that you and Lauren broke up
3 the first part of August, but she had agreed for you all
4 to continue living together to give you time to move out?

5 A Yes, ma'am.

6 Q You had visited Lauren, you knew Lauren's family?

7 A Very well.

8 Q You had visited in their home several times?

9 A Yes.

10 Q On November 15th when you talked to Investigator
11 Godfrey that Ms. Cooper's referring to, you did not have a
12 copy of discovery at that point?

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

14 Q You hadn't seen anyone's statements?

15 A No, ma'am.

16 Q And I think on that day, that's when you said you did
17 not hold a knife to anybody's neck, to anyone?

18 A Yes, ma'am, that's correct.

19 Q And you said you did not have vaginal intercourse?

20 A Yes, ma'am, that's correct.

21 Q And you hadn't seen any of the discovery at that
22 point?

23 A Yes, ma'am.

24 Q And you panicked when you were walking out because
25 Lauren started screaming?

1 A Yes, ma'am, that's correct.

2 MS. DURANT: No, sir. I'll call our next
3 witness tomorrow morning.

4 THE COURT: All right. Any recross?

5 MS. COOPER: No, your Honor.

6 THE COURT: You may step down, sir.

7 All right. Mr. Foreman, ladies and gentlemen,
8 we will hear from the next witness tomorrow morning and we
9 will start at 9:15..

10 Please don't discuss the case or read or watch
11 anything about the case. We should be concluding the case
12 sometime tomorrow, but again, please don't discuss it with
13 anyone.

14 Have a good night and be in your jury room at
15 9:15 in the morning, please.

16 Everyone else stay seated. The jury is excused.

17 (The jury left open court at approximately 5:07
18 p.m.)

19 THE COURT: Other than that investigator, will
20 that conclude the defense?

21 MS. DURANT: Yes, sir.

22 THE COURT: Does the State at this time
23 anticipate any rebuttal, any reply?

24 MS. COOPER: Not at this time, your Honor.

25 THE COURT: If you all can have any charge

1 stand and state your full name for the record.

2 THE WITNESS: Detective James Peppers.

3 DIRECT EXAMINATION

4 BY MS. DURANT:

5 Q Detective Peppers, where do you work?

6 A Clemson City Police Department.

7 Q And what do you do there?

8 A Investigations.

9 Q Can you tell the Court a little bit about your
10 training?

11 A I went through the South Carolina Criminal Justice
12 Academy as a trooper, did that for 15, 16 years. I have
13 been at Clemson City for four. I also went through an
14 investigative class as far as being a detective.

15 Q Have you ever had training in sexual assault victims?

16 A No specific training in sexual assault other than
17 this detective school, but nothing specifically as a
18 sexual assault.

19 Q Have you ever handled sexual assault or rape cases?

20 A Yes, I have.

21 Q How many would you say you've handled?

22 A Probably 30 or more.

23 Q Thirty or more, so you're familiar with those kinds
24 of cases?

25 A Yes, ma'am.

1 Q How do you get cases?

2 A They're -- actually the road officer will usually do
3 the initial report. As an investigator, if I'm on call,
4 if it's my turn to be on call, I'm then called in and then
5 the case is actually assigned by my captain.

6 Q So someone calls and then you get a report that's
7 forwarded to you?

8 A That's correct.

9 Q On August 22nd, did you get a case, a report on
10 Lauren Byrd?

11 A Yes, ma'am, I did.

12 Q Can you tell the Court about that?

13 A Initially the call came in to Officer Byers from a
14 girl by the name of Ashley. She called and stated that
15 her friend had been sexually assaulted.

16 Officer Byers attempted to try to get the
17 information of the friend; Ashley would not provide it.

18 He in turn gave it to his sergeant, his shift
19 supervisor, which is Sergeant Nate Herd. Sergeant Herd
20 made contact with Ashley and attempted to get the
21 information; could not. At that point I was the
22 investigator on call for that night and he called me to
23 inform me what was going on.

24 Q So it's your testimony that Ashley Mishoe called but
25 did not give the name of her friend who she said had been.

1 assaulted?

2 A Correct. I think she might have provided maybe a
3 first name but not the last name or a contact number or
4 address or anything like that..

5 Q So tell the Court what happened after that.

6 A After that, of course, still didn't have anything
7 much to go on.

8 The next day Ashley came in actually to report
9 or reference an eBay fraud which was actually what she
10 came by the police department to report.

11 When she came in, of course, there was another
12 female with her. And I was in there talking to her about
13 that case, and when she told me her name, I remembered
14 seeing it in the report in reference to the sexual
15 assault. So I left her and the other female in the
16 interview room, went back to my office and retrieved that
17 report, and that's when I learned that it was actually
18 Lauren Byrd who was the victim in the other case.

19 Q So it's your understanding that Ashley came to the
20 police department about a totally different case of hers?

21 A That is correct.

22 Q And that Lauren happened to be with her?

23 A That is correct.

24 Q So at that point you started to interview Lauren?

25 A That's correct.

1 Q I think you testified at an earlier hearing that you
2 didn't have or you don't remember taking a statement from
3 Lauren?

4 A That's correct.

5 Q But the truth is you did take a statement from her?

6 A Yes, ma'am.

7 Q All right. What was the reason you didn't have that
8 statement?

9 A Whenever I pulled -- whenever I was subpoenaed to
10 come down, I pulled the case file out of the records, and
11 all the cases go to a records clerk in 2000. For some
12 reason it wasn't in the case jacket, that report.

13 Q So from human error you didn't have that report, that
14 statement with you?

15 A That's correct.

16 Q Do you have a copy of that statement now?

17 A Yes, ma'am, I do.

18 Q And if you will look at that. Who signed that
19 statement?

20 A Lauren Byrd and myself.

21 Q So you did take a statement from her. And what was
22 that date?

23 A August the 23rd, 2004.

24 Q After talking -- and there was an incident reported
25 on this date also?

1 A Yes, ma'am.

2 Q I don't think you have a copy of that.

3 MS. DURANT: May I approach the witness, your
4 Honor?

5 THE COURT: Sure.

6 BY MS. DURANT:

7 Q Detective Peppers, and the date on that incident
8 report is?

9 A August the 22nd, 2004.

10 Q And the complainant is?

11 A The complainant is Ashley Mishoe.

12 Q And is the victim's name there?

13 A The victim name is there. It was not on the original
14 report. It was added in by myself after I learned who my
15 victim was.

16 Q And what -- how do you explain that? What was the
17 reason for that?

18 A What was the reason for adding it back in? Because
19 initially it was listed just as unknown.

20 Q Is that normal procedure for your office?

21 A Yes, ma'am. And we do a victim the same way or if it
22 was a suspect, we go back and add them in on the initial
23 report.

24 Q Even though it's dated August 22nd, at that time
25 the victim's name is not known on that day?

1 A That's correct.

2 Q And you went back and added it because that's the
3 normal procedure for your office?

4 A That's correct.

5 Q When you talked with Lauren Byrd on the 23rd, what
6 was your belief about how she wanted to handle the case?

7 A She spoke that, she was saying that the biggest thing
8 that she wanted was for Randy just to stay away from her,
9 that she didn't want to pursue any type of charges against
10 him or anything, just basically for him to stay away from
11 her.

12 She mentioned a restraining order, but actually
13 what we done was what we call a trespass notice, which
14 prohibits a person from being, you know, at that address
15 where she was actually living at that time.

16 Q Did you -- so you issued a trespass notice which was
17 just to keep him away from that apartment?

18 A That's correct.

19 Q As stated on that trespass notice?

20 A That's correct.

21 Q Did you all talk about a restraining order?

22 A We did.

23 Q And what was -- how was that handled?

24 A I told her, you know, basically I think it was her
25 understanding that she could just walk in and say, hey, I

1 want a restraining order, but she was just mainly saying
2 that she just wanted to keep him away and the trespass
3 notice is the quickest way for us to actually get that
4 done.

5 Q Did you tell her how to get a restraining order?

6 A I did, yes, ma'am.

7 Q And what is that? What is the procedure?

8 A Typically once we do all the paperwork, we give it to
9 what we call a victim's advocate, we petition Family Court
10 and you have a hearing to do it.

11 Q So you explained all of that to her?

12 A Yes, ma'am.

13 Q Do you know if she followed through with that?

14 A Did not, not that I know of.

15 Q So in talking with Lauren Byrd, it's your
16 understanding that she didn't want to file criminal
17 charges against Randy Thomas but she just wanted to keep
18 him away from her?

19 A That's correct.

20 Q When you took the statement from her, what did she
21 tell you happened?

22 A She said that he came into the apartment, which they
23 apparently had been living together because he had a key,
24 wanted to know who was the guy that she had been seeing.
25 At that point he took her upstairs, I think threw her on

1 the bed.

2 Q So she was basically telling you about a sexual
3 assault?

4 A Yes, ma'am.

5 Q Did she go to the hospital?

6 A Not to my knowledge.

7 Q Did you try to contact her after that?

8 A I did.

9 Q What did you do?

10 A Several times I called and actually went by the
11 apartment and never got a response back by phone or
12 anything.

13 Q So you never got a response from her?

14 A That's correct.

15 Q Was the trespass notice ever served on Randy Thomas?

16 A No, ma'am, it was not because we were never able to
17 locate him.

18 Q If it was never served on him, he had no knowledge of
19 it as far as you know?

20 A That's correct.

21 MS. DURANT: Beg the Court's indulgence.

22 THE COURT: All right.

23 BY MS. DURANT:

24 Q Detective Peppers, at any point in time did you
25 advise Lauren Byrd not to prosecute this case?

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

2 Q You wouldn't do that?

3 A No, ma'am.

4 Q But if she had wanted to prosecute, what would you
5 have done?

6 A I would have proceeded probably with charges.

7 Q You've done that in other cases?

8 A That is correct.

9 MS. DURANT: No further questions, your Honor.
10 Please answer any questions the State may have.

11 THE COURT: All right. Cross-examine.

12 MS. GARFIELD: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MS. GARFIELD:

15 Q Good morning, Detective Peppers.

16 A Good morning.

17 Q We met in a previous hearing; is that correct?

18 A That's correct.

19 Q You say you've been with Clemson Police Department
20 for four years?

21 A Yes, ma'am.

22 Q But you've never had any sexual assault training; is
23 that correct?

24 A That's correct.

25 Q So you've never been to any national training level?

1 A No, ma'am.

2 Q You've never been to any sort of state-wide
3 conference for sexual assault training?

4 A No, ma'am.

5 Q Have you ever been to any sexual assault training at
6 the criminal justice academy?

7 A No, ma'am.

8 Q In fact, you primarily went to the criminal justice
9 academy for traffic investigations; is that correct?

10 A I was initially certified through the highway patrol,
11 yes.

12 Q Because you're a former highway patrolman; is that
13 correct?

14 A That's correct.

15 Q Have you ever had any sort of sexual assault training
16 in Pickens County like multi-law enforcement training?

17 A No, I have not.

18 Q Have you ever had any training inside the City of
19 Clemson Police Department?

20 A No, I have not.

21 Q The only thing you've done is you've worked on about
22 30 sexual assault cases?

23 A That's correct.

24 Q But you never had any training in that area?

25 A None other than just a supervisor or somebody like

1 that, but no formal --

2 Q And you would agree with me -- and I'm sorry, I
3 didn't mean to cut you off -- but you would agree with me
4 that sexual assault investigation is a specialized form of
5 investigation; is that correct?

6 A I don't know if I would say specialized, but it takes
7 attention.

8 Q Thank you, Detective Peppers.

9 Okay. Let's talk a little bit about this
10 incident report.

11 You say initially someone named Ashley called
12 the City of Clemson Police Department?

13 A That's correct.

14 Q And just for clarification, this is the city of
15 Clemson, not the university police?

16 A That's correct.

17 Q And Bryan Byers filled out this incident report,
18 correct?

19 A That's correct.

20 Q Do you have a copy of this?

21 A No, ma'am, I do not.

22 Q Why don't you have your copy with you today?

23 A Actually I do.

24 Q Oh, good. Thank you.

25 And who is listed as the complainant's name?

1 A Ashley.

2 Q Ashley what?

3 A Mishoe.

4 Q And who is listed as the victim's name?

5 A Lauren Byrd.

6 Q And who is listed as the suspect's name?

7 A Randy Thomas.

8 Q And you're saying that you went back and altered this
9 report after it was taken?

10 A Actually it's not actually altering it. The only
11 thing that I went back in and put in your victims and your
12 suspect's name.

13 Q But initially it was just unknown would have been put
14 in the entries?

15 A That's correct.

16 Q This is a typed report, correct?

17 A That is correct.

18 Q And this is a report that was compiled by Bryan
19 Byers?

20 A That is correct.

21 Q So you went back and altered what Bryan Byers did?

22 A Actually I went back in the computer system and put
23 in the victim and the suspect as we do on about every case
24 that we've got an unknown victim or suspect.

25 Q This is a public document, correct?

1 A That's correct.

2 Q So if someone were to go and get this document, it
3 would appear that on August 22nd the City of Clemson
4 Police Department had all the relevant information to all
5 the parties?

6 A You could interpret it that way, but that's actually
7 not the way it was done.

8 Q That's the way you could interpret it, correct?

9 A Sure.

10 Q So this incident report, this initial incident report
11 is misleading?

12 A If you don't get the supplementals to go with it,
13 sure.

14 Q But there's nowhere in your supplemental report that
15 you write, I went back and changed the first report just
16 so anyone would know?

17 A It does not, but it says that on August 23rd I
18 spoke with Lauren Byrd.

19 Q And, Detective Peppers, this is improper procedure;
20 isn't that correct?

21 A Not for my department.

22 Q Not for the City of Clemson?

23 A That's correct.

24 Q Okay. I want you to look at that last line starting
25 with Herd. Can you just read that, please?

1 A Starting with hers?

2 Q Or actually you can go above it. Start with Herd,
3 Sergeant Herd contacted Ms. Mishoe.

4 A Herd contacted Mishoe. Do you want me to read it?

5 Q Please, sir.

6 A Back at the time, which she advised Herd that she and
7 Lauren would come by or were coming in on August the
8 23rd, 2004 at 12 p.m. to speak with an officer.

9 Q So on August 22nd, 2004, according to this report,
10 there was a meeting scheduled with the City of Clemson
11 Police Department with Ashley Mishoe and Lauren Byrd?

12 A That's correct. Well, according to what I was told
13 by -- that was in the report by Sergeant Herd.

14 Q So you knew that when you came in on August 23rd, you
15 would be meeting with a rape victim that afternoon?

16 A I knew that I was expecting a rape victim to come in.

17 Q Did a rape victim come in?

18 A She did, but I can't tell you what time she came in.

19 Q That's fair enough. But you just testified that
20 actually Ashley Mishoe came in about a whole other crime
21 and you happened to overhear the name and that's when you
22 approached them?

23 A I think I testified to that Ashley came in about a
24 fraud on her eBay account. Lauren actually was with her,
25 and when Ashley mentioned her name, I had remembered her

1 name in the initial report saying that she had called
2 about a sexual assault, and that's how I put her name with
3 the sexual assault case.

4 Q And that was on August 23rd?

5 A That's correct.

6 Q And you remember testifying in a prior hearing that
7 Ashley came in in reference to another report and you just
8 happened to hear the name?

9 A I remembered the name whenever I was taking the
10 report on her eBay fraud and she said her name was Ashley
11 Mishoe and I remember reading the initial report on the
12 Lauren case here is how I put the two cases together.

13 Q Isn't it true, Detective Peppers, that Ashley Mishoe
14 went to the City of Clemson Police Department to report a
15 fraud case days after this incident?

16 A Whenever I spoke with her it was the 23rd.

17 Q But you spoke with her on the 23rd because they
18 were coming to the police department to meet with an
19 officer about her friend who had been raped and they had
20 an appointment with someone at the City of Clemson Police
21 Department?

22 A According to the report she was supposed to come in
23 at 12, but I can't tell you she came in at 12.

24 Q Because you didn't make any notation of what time?

25 A Not on the time, no, ma'am, I did not.

1 Q Did you fill out a supplemental report?

2 A I did.

3 Q And basically what all is important in writing down
4 in a supplemental report?

5 A What all's in the report, you mean writing down?

6 Q That's correct.

7 A I'm not sure I understand what you mean.

8 Q Did you write down what the victim told you?

9 A Yes, I believe I did.

10 Q Do you have a copy of page one of your supplemental
11 report?

12 A I do.

13 Q Can you go up and start from the bottom? It's
14 easier. Just go up four lines to "she stated," and just
15 read that, please.

16 A She stated that he was screaming and telling her to
17 get -- telling him to get off her.

18 Q Keep going.

19 A Okay. She stated that he then forced his penis
20 inside her. You want me to keep going?

21 Q That's good for right now, Detective Peppers.

22 And if I recall in the previous hearing you
23 testified, you testified, I can't remember if she said he
24 assaulted her. Do you remember testifying to that?

25 A I do not remember testifying to that.

1 Q You also just testified that Ms. Byrd said she did
2 not want to prosecute?

3 A That's correct.

4 Q She came in there and she said what, I just want to
5 fill out a report or what?

6 A She stated that her big concern was she wanted,
7 mainly wanted him to stay away from her.

8 Q Look at your supplemental report and the second line
9 starting with "Ms. Byrd," could you please read that?

10 A On the same page?

11 Q Yes, sir.

12 A Where it says Ms. Byrd stated?

13 Q Wasn't sure.

14 A Okay. Let me find it.

15 Q Second line.

16 A Okay.

17 Q Second line from the bottom.

18 A From the bottom?

19 Q Yes, sir.

20 A Okay. Ms. Byrd wasn't sure if she wanted to
21 proceed -- wanted to have him prosecuted but did want a
22 trespass notice issued on him from her apartment.

23 Q So that doesn't say Ms. Byrd does not want him
24 prosecuted, does it?

25 A No, basically no, it doesn't, but it's that she

1 wasn't sure.

2 Q She wasn't sure?

3 A Sure.

4 Q She hadn't decided?

5 A Sure.

6 Q She had just been raped 24 hours before she claims;
7 is that correct?

8 A That's correct.

9 Q And in your experience with these 30 sexual assault
10 cases you've worked on, isn't it common for a victim of
11 rape to be quite uneasy?

12 A Yes.

13 Q And initially knowing all the turmoil they may have
14 to go through, they may not want to prosecute initially;
15 isn't that correct?

16 A That's correct. That's why I tried to follow up with
17 the other phone calls.

18 Q But on that day at no time in your report do you
19 indicate that Lauren Byrd said she did not want to
20 prosecute Randy Thomas?

21 A That's correct.

22 Q That's different from your testimony earlier,
23 however, correct?

24 A Actually I was basing my testimony on when I closed
25 my case out on September the 8th after talking to her

1 and trying to reach her and not being able to get her.

2 Q When Ms. Durant was asking you, you said that she did
3 not want to prosecute.

4 A She did basically say that she didn't want to
5 prosecute.

6 Q But you didn't write that in your report, did you?

7 A Correct.

8 Q You wrote that she wasn't sure?

9 A Sure.

10 Q Thank you.

11 All right. Let's go to page two of your
12 supplemental report. You testified that you tried to get
13 in touch with her several times, correct?

14 A That's correct.

15 Q What days did you call her?

16 A I don't have those listed on my supplemental report.

17 Q You didn't make any notation in your notes?

18 A I'm sure it's probably on somewhere, that I've got it
19 somewhere, but I did try to reach her.

20 Q You've been subpoenaed to testify in a case where you
21 were the investigator on it --

22 A Correct.

23 Q And you didn't bring all your case file?

24 A I brought everything that was in the case file at
25 records, so if it's not listed in here, then I don't have

1 it.

2 Q So you didn't make any notations, did you, of when
3 you tried to call her?

4 A No, ma'am.

5 Q What day -- you said you went by her apartment. What
6 day was that?

7 A I can't tell you what day it was. I didn't make any
8 notes.

9 Q You didn't make any notes as to what day?

10 A Correct.

11 Q Isn't it proper for law enforcement to document
12 everything they do on a case?

13 A Sure.

14 Q So that when they come testify in court they can
15 report as to what they did on the case?

16 A Sure.

17 Q But you failed to do that?

18 A I failed to make note of the date on the file.

19 Q Thank you.

20 Okay. You also testified in an earlier hearing
21 that Lauren Byrd did not provide a statement to you?

22 A That's correct.

23 Q When did it come to your attention that she had
24 indeed filed a statement?

25 A Actually when I got here this morning.

1 Q And how did you become aware of it?

2 A From the defense team.

3 Q You said you had a copy of that statement. May I see
4 that copy?

5 A Sure.

6 Q That's a photocopy, correct?

7 A That's correct.

8 Q That's not the original report?

9 A That's correct.

10 Q When people come to the police department to give
11 reports, do they get copies?

12 A Yes.

13 Q What color is that copy?

14 A Typically usually -- it depends on how hard they
15 write. They may get a yellow copy or they may get a pink
16 copy.

17 Q I'm going to hand you what's been marked as State's
18 exhibit for identification No. 61. Do you recognize this?

19 A Yes.

20 Q And what is it, Detective Peppers?

21 A This is Lauren Byrd's statement, written statement.

22 Q So there is a copy, the yellow copy that you just
23 testified to?

24 A That's correct.

25 Q Let's just go through that statement starting with

1 the first line. What did she first report to you about
2 Randy Thomas?

3 A The very first line?

4 Q Yes, sir.

5 A I had been dating Randy for approximately -- for one
6 year and one month.

7 Q Keep going. What's the next sentence?

8 A Our relationship ended on the 9th of August of 2004.

9 Q So at this time you've established in your
10 investigation that Lauren Byrd and Randy Thomas had
11 formerly dated?

12 A That's correct.

13 Q Okay. Now I'm going to jump down kind of right below
14 halfway to "he grabbed my arms." Would you like me to
15 point it out to you?

16 A Yeah. I'm trying to find it here. Okay, I've got
17 it. It's towards the end.

18 Q If you'll just start with "he grabbed my arms" and
19 continue reading until I stop you.

20 A Okay. He grabbed my arms and put them over my head
21 and lifted my shirt with his free hand. I managed to get
22 away and ran into the -- ran to the door to leave. He
23 came after me and wrapped his arms around me and carried
24 me upstairs. Keep going?

25 Q Keep going.

1 A Okay. We hit the wall going up. I was kicking and
2 trying to get away. At that point I was actually scared
3 he was going to hit me.

4 Q Keep going.

5 A He threw me on the bed. He grabbed my arms over my
6 head with both hands. He sat on my stomach. I kept
7 trying to get away. He then made it so that my hands were
8 against the bed and he was able to hold them with one of
9 his hands. He pulled my shirt up but not all the way off.
10 At this point I started crying.

11 Q Keep going.

12 A I had been the whole time screaming and telling him
13 to get off of me.

14 Q Keep going. You're almost finished.

15 A Okay. Every second this was going on I was saying,
16 no, get off me, off me, stop, this hurts. I said, I know
17 what you're thinking. Let's see. I know what you think
18 I'm doing and I'm not doing that. I tried to think of
19 something. He pulled my pants down. He then forced his
20 penis inside me hard. I screamed and then told him that
21 what he was doing was rape.

22 Q That's enough. Thank you, Detective Peppers.

23 So at this time you had heard from a victim of a
24 rape case that an alleged assault had occurred?

25 A That's correct.

1 Q You're aware there is a potential rape case for
2 investigation?

3 A That's correct.

4 Q Okay. So at that time when did you send any crime
5 scene investigator to Lauren Byrd's home?

6 A Did not.

7 Q When did you send anyone to Lauren Byrd's home to
8 collect evidence such as the clothing that she had been
9 wearing at this time?

10 A Did not.

11 Q When did you send anyone to Lauren Byrd's home to
12 take any photographs?

13 A Did not.

14 Q When or are you the one that escorted Lauren Byrd to
15 the hospital for a rape protocol?

16 A No, ma'am.

17 Q Who did?

18 A No one did.

19 Q Why?

20 A Because she stated at the same time she did this
21 statement that she did not want to proceed with charges.

22 Q Where is that written in your report?

23 A It's not. It's actually not written in there.

24 Q What is actually written is that she was not sure?

25 A Correct.

1 Q Detective Peppers, does the City of Clemson Police
2 Department have a web site?

3 A They do.

4 Q And you're familiar with that web site?

5 A I'm not going to say I'm familiar with it.

6 Q But you're aware that it exists?

7 A Sure.

8 MS. GARFIELD: Beg the Court's indulgence.

9 Can I have this marked for identification only?

10 (WHEREUPON, State's Exhibit No. 74 was marked
11 for identification only.)

12 BY MS. GARFIELD:

13 Q Detective Peppers, I'm going to hand you what's been
14 marked as State's Exhibit No. 74 for identification
15 purposes only. Do you recognize that?

16 A No, it's the first time I've seen it.

17 Q What is at the top of that form?

18 A City of Clemson, South Carolina.

19 Q And below it do you see police department?

20 A I do.

21 Q And below that, what is the title of this entry on
22 this web site?

23 A How to report a sexual assault.

24 Q And can you just please read the very first sentence
25 as it's instructed in this web site?

1 A When a woman is sexually assaulted, she rarely
2 chooses to go to the police and report --

3 Q I believe that's crime.

4 A Crime. That's what it is.

5 Q And just please read the next sentence for the jury.

6 A If she does decide to go to the police, many times it
7 is with the encouragement and support of a friend.

8 Q Encouragement and support of what?

9 A I'm sure it's probably a friend.

10 Q A friend. So this case is almost just like the web
11 site, isn't it?

12 A Yes. From that standpoint, yes.

13 Q Lauren Byrd went to the police department at the
14 encouragement of her friend Ashley?

15 A I'm assuming, yes.

16 Q When you go down below about halfway, do you see the
17 list of dos and don'ts to assist in sexual assault?

18 A I do.

19 Q Just read number one.

20 A Don't hesitate to call a friend or family member and
21 tell them what happened to you.

22 Q In fact, Detective Peppers, Lauren called friends
23 about the sexual assault; isn't that true?

24 A I'm assuming she called Ashley. That's the only one
25 that I know of.

1 Q Have you ever heard of her friend Cat?

2 A No.

3 Q Have you ever heard of her friend Carrie?

4 A No.

5 Q Have you ever heard of her friend Mike?

6 A No.

7 Q Did you attempt to ask her to interview any of these

8 witnesses?

9 A Those names were never brought up to me.

10 Q Did you ever ask her, hey, Lauren, have you told

11 anybody about the case?

12 A No.

13 Q You didn't ask her that?

14 A No.

15 Q Going down to number two, read that to the Court.

16 A In that same section?

17 Q No, I'm sorry, the next section.

18 A Do bring your friend or family member with you for

19 moral support.

20 Q And that's exactly what Lauren did, isn't it?

21 A Correct.

22 Q Next I want to go to number three on the next page.

23 If you will just begin to read that until I stop you.

24 A Okay. Do be prepared for the sexual assault

25 examination process. When you call or come to the police,

1 come to the police department, a uniformed police officer
2 will ask you some very fundamental questions (who, what,
3 when and where, how) and then call an investigator and
4 victim advocate to respond to your location.

5 Q Keep going.

6 A The investigator will ask you some more questions
7 and -- I'm not sure what that word is.

8 Q I believe it should be "the."

9 A Okay. The victim's advocate will drive you or your
10 friend and family member to a hospital for sexual assault
11 examination.

12 Q Just read the next sentence and then stop.

13 A Okay. While en route to the hospital, the victim
14 advocate will explain in more -- I'm assuming that's going
15 to be depth -- what to expect on examination.

16 Q Who was the victim advocate assigned to Lauren Byrd?

17 A No victim advocate was assigned to Lauren Byrd.

18 Q Why?

19 A As I said again, she was with the mindset that she
20 didn't want to prosecute.

21 Q She was in the mindset that she wasn't sure; isn't
22 that correct?

23 A Well, that's not the mindset that I took from her.

24 Q Isn't that what you wrote in your report?

25 A It is, but she also stated that all she wanted him to

1 do was stay away from her.

2 Q All right. Staying away is a separate issue.

3 A Okay.

4 Q Didn't she write she was not sure if she wanted to
5 prosecute?

6 A Yes.

7 Q Detective Peppers, isn't that one of the main reasons
8 why we have victim advocates with police agencies?

9 A Yes.

10 Q But Lauren Byrd never got a victim advocate?

11 A That's correct.

12 Q And you say she never went to the hospital?

13 A No, ma'am, not to my knowledge.

14 Q Did you ever encourage her to go to the hospital?

15 A No, ma'am.

16 Q Did you offer to drive her to the hospital?

17 A No, ma'am.

18 Q Did you point out to her friend Ashley and say, hey,
19 Ashley, come on, you're her friend, help me out here, we
20 need to get Lauren to the hospital?

21 A No, ma'am.

22 Q Read the next sentence below that starting with the
23 South Carolina State Law Enforcement Division.

24 A South Carolina Law Enforcement Division recognizes
25 that a sexual assault exam is done within 72 hours of

1 commission of the crime.

2 Q Keep with it, "even."

3 A Okay. Even if -- even if -- whatever that word is --
4 the victim has showered, bathed, or brushed her teeth.

5 Q This sexual assault was reported to have occurred on
6 August 22nd, correct?

7 A Correct.

8 Q And you don't know what time because you didn't write
9 in your report what time Lauren Byrd came to the police
10 department, but it was on August 23rd?

11 A Correct.

12 Q That is clearly within the 72-hour limit, correct?

13 A That's correct.

14 Q But Lauren Byrd never got a chance to go to the
15 hospital because no one encouraged her to do so, correct?

16 A That's correct, but Lauren Byrd was that she just
17 didn't want to pursue it.

18 Q But you didn't write that, did you, Detective
19 Peppers?

20 A I did not state it in that direction, that's correct.

21 Q And it's very important to write down things like
22 that in police reports, correct?

23 A That's correct.

24 Q For a bunch of reasons; one, so you can testify in
25 court for a criminal proceeding, correct?

1 A Correct.

2 Q And so law enforcement can have themselves covered
3 for a civil proceeding, correct?

4 A Correct.

5 Q But none of those things that are listed on the City
6 of Clemson web site that would be done for sexual assault
7 victims were done for Lauren Byrd, correct?

8 A Yes.

9 Q You said you didn't know anything about any of her
10 friends?

11 A Other than Ashley is the only name.

12 MS. GARFIELD: I beg the Court's indulgence.

13 BY MS. GARFIELD:

14 Q You said that you -- all right. You took this
15 statement from Lauren and she makes reference that she
16 went to her friend Cat's house; isn't that true, Detective
17 Peppers?

18 A Can you tell me in what statement?

19 Q Okay. Just let me find it.

20 I apologize. I can't seem to locate it. We'll
21 move on.

22 Okay. You said that the one thing that we all
23 agree on that's not in dispute in your report is that
24 Lauren Byrd wanted Randy Thomas to stay away from her,
25 correct?

1 A That's correct.

2 Q And she came in and asked for a restraining order?

3 A That's correct.

4 Q And I believe you said in your direct testimony in a
5 prior earlier hearing that y'all don't issue restraining
6 orders?

7 A Not directly at the police department, that's
8 correct.

9 Q Because judges issue restraining orders, correct?

10 A Correct.

11 Q And you said to just put him on trespass notice?

12 A I was going to put him on trespass notice which is
13 the quickest way in order to keep him away from her until.

14 Q But doesn't trespass notices keep him away from where
15 she lives?

16 A That's correct.

17 Q But you went ahead and filled out that form?

18 A That's correct.

19 Q In fact, I'll hand you what's been marked as a
20 State's exhibit for identification No. 59. You're
21 familiar with that form?

22 A I am.

23 Q And who signed that form? Who actually filled it
24 out?

25 A I actually filled it out.

- 1 Q You did?
- 2 A Correct.
- 3 Q And your signature's on that form?
- 4 A No. Typically what happens, once the person who the
5 trespass notice is going to is served, their name, they
6 actually sign it, too, and then the officer who signs it
7 signs it as well. They give -- the victim gets a copy and
8 a copy is filed with the police department and the subject
9 would also get a copy, so there's three copies of it.
- 10 Q Whose signature is on that form?
- 11 A Lauren's.
- 12 Q And did she fill out where she lived?
- 13 A No.
- 14 Q Did she fill out where the defendant could be
15 located?
- 16 A No, she did not.
- 17 Q She gave you the information?
- 18 A That's correct..
- 19 Q Of where she lived?
- 20 A Yes.
- 21 Q She gave you the information of where Randy could be
22 found?
- 23 A No, because as I said, he pretty much stayed -- he
24 just kind of moved around. There was no fixed address per
25 se.

1 Q Isn't there an address on that form?

2 A It is. It's the last place that he had actually
3 stayed was actually at her apartment.

4 Q That address is the address of her apartment?

5 A That's correct.

6 Q Please read that for the Court.

7 A 250 First Street, Apartment 15.

8 Q And isn't there something below it?

9 A Yes.

10 Q What is it?

11 A The bottom far left, that's just where the apartment
12 was located.

13 Q Isn't it true, Detective Peppers, that you'd been to
14 Ashley's (sic) apartment and that the bottom corner left
15 is not her apartment?

16 A I can't remember right off the top of my head.

17 Q Well, when you went to serve that on Randy Thomas,
18 was it the same apartment as Lauren Byrd?

19 A Actually I didn't go to the apartment to serve this
20 on Randy because he was no longer supposedly there after
21 this incident between the two.

22 Q And that's because when you got to the apartment
23 whoever was living there told you Randy wasn't there?

24 A No, ma'am. I never talked to anybody from the
25 apartment.

1 Q You never went to that apartment, did you?

2 A Yes, I actually went out there, but what I'm saying
3 is, Randy was no longer supposed to be at her apartment
4 after this incident occurred.

5 Q Did you go to that bottom far left apartment any,
6 Detective Peppers?

7 A Yes, probably so, if I've got it on here, bottom left
8 apartment.

9 Q And who told you that Randy was no longer there?

10 A No one.

11 Q You just assumed that?

12 A That apartment was supposed to be what was supposed
13 to be Lauren's apartment. Lauren said that he was no
14 longer there. Nobody knew where Randy was staying. He
15 kind of stayed from place to place.

16 Q Is it possible that Randy had moved into another
17 apartment in that complex?

18 A That's possible. I don't know for sure.

19 Q Isn't it true that Ashley and Lauren told you several
20 places where Randy could have possibly been?

21 A I don't think so. Because if I remember, somewhere
22 in her statement she says that he moved around. On the
23 second line of her written statement it says that he has
24 no stable job, moves around.

25 Q What did you do to find Randy Thomas?

1 A Nothing much more than that because there's no way to
2 find him..

3 Q You've got a 19-year-old who comes and reports a
4 sexual assault by a man and you don't do anything to find
5 him to keep him away from her, do you?

6 A There's no way to locate him if he has no fixed
7 address, and that's common in Clemson when you have --

8 Q Did you try a criminal history on him to try and find
9 him?

10 A Sure. I'm sure we probably pulled some type of
11 record on him.

12 Q Do you remember testifying in a previous hearing that
13 you did not?

14 A Well, maybe not a criminal history, but I'm sure we
15 ran like a name and date of birth check or something.

16 Q Okay. So we did the trespass notice. You've been
17 doing sexual assault cases. Are you familiar with orders
18 of protection, Detective Peppers?

19 A I've heard of them.

20 Q Was there any time -- at any time did you tell Lauren
21 Byrd how to go about getting an order of protection?

22 A Probably not because she was -- she mentioned a
23 restraining order, so probably did not.

24 Q You're familiar with the law of South Carolina; is
25 that correct?

1 A Yes.

2 Q You work in law enforcement?

3 A That's correct.

4 Q Are you familiar with the statutes, the laws of South
5 Carolina that comes from the code book?

6 A Yes.

7 Q Are you familiar with Title 20-4-40?

8 A Probably not right off the top of my head.

9 Q Would you agree with me that it's the statute
10 outlining how to get a petition for order of protection?

11 A I can't tell off right of the top of my head. I'd
12 like to look at it.

13 Q I'll hand you a copy. Is that what that statute
14 outlines, Detective Peppers?

15 A Yes.

16 Q I just want you to read subsection A to the jury.

17 A Okay. A petition for relief under this section may
18 be made by any household member in need of protection or
19 by any household members on behalf of a minor household
20 member.

21 Q Please read subsection B.

22 A A petition for relief or -- of relief must be -- must
23 allege the existing abuse to a household member. It
24 states, it must state the specific time, place, details of
25 the abuse, and other facts and circumstances upon which

1 relief is sought and must be verified.

2 Q So there is a form that Lauren Byrd could have gotten
3 protection; is that correct?

4 A Sure.

5 Q But you never told her how, did you?

6 A No.

7 Q Isn't that a job of law enforcement?

8 A Sure. Actually this is something to petition the
9 Court, I mean an order of protection, yes.

10 Q In your four years working with these criminal sexual
11 assault cases, have you ever informed a victim how to get
12 an order of protection?

13 A Yes, I have.

14 Q So you're familiar with them?

15 A Yes.

16 Q But in this particular time you didn't think Lauren
17 Byrd needed that, did you?

18 A Well, she -- that was -- no, I didn't, not based on
19 what she was telling me.

20 Q Even though it's been said numerous times by you that
21 the only thing we know for sure Lauren Byrd wanted on
22 August 23rd, 2004, was for that man to stay away from
23 her?

24 A Correct.

25 Q But you didn't show her how, did you?

1 A No, not for the order of protection.

2 Q And now we're here today, isn't that correct, for the
3 same kind of charges?

4 A Sure.

5 Q Did you work with the Richland County Sheriff's
6 Department who investigated this case?

7 A No.

8 Q Did you ever receive any phone calls from any
9 investigators with the Richland County Sheriff's
10 Department?

11 A I can't remember one.

12 Q Do you recall getting approximately four messages
13 from Investigator Brian Godfrey with the Richland County
14 Sheriff's Department concerning this case?

15 A No, ma'am. No, ma'am.

16 Q Do you recall your secretary actually having to come
17 over and tell you, this Investigator Godfrey is on the
18 phone again, please talk to him?

19 A No, ma'am. I don't have a secretary.

20 Q Someone answers your phone for you at the police
21 department, is that correct, takes message?

22 A Not in my office, no, ma'am.

23 Q There is someone at the City of Clemson Police
24 Department who answers the phones?

25 A It would have to be dispatch, if anybody.

1 Q Okay. So you don't recall someone coming in and
2 asking you to please pick up the phone?

3 A That's correct.

4 Q Do you recall Investigator Godfrey asking you for a
5 copy of your incident reports?

6 A No, ma'am.

7 Q And the only way you were able to get copies of the
8 incident report was for the State to subpoena them; isn't
9 that true?

10 A Actually I was subpoenaed by the defense team first.

11 Q Right. And then the State subpoenaed you, correct?

12 A That's correct.

13 Q And the only way we got this incident report, which
14 is a public document, was for the State to subpoena it; is
15 that correct?

16 A Correct, which that means you could have gotten it
17 very well from the records department.

18 Q But he's here in Richland County?

19 A Correct.

20 Q And urine the County of Pickens?

21 A Correct.

22 Q Don't law enforcement agencies around the state often
23 help other law enforcement agencies with investigations?

24 A Sure.

25 Q But you don't help Investigator Godfrey?

1 A I don't really recall him.

2 Q In fact, that's why you're here today?

3 A I'm here today because of the subpoena.

4 Q You were subpoenaed to come here yesterday, weren't
5 you?

6 A I was told on Tuesday I believe when I left here that
7 it would be possible that I may have to come back
8 Thursday, not definitely, but I may have to come back
9 Thursday.

10 Q Do you recall getting a voice mail from defense
11 counsel telling you to be here at 9 a.m. yesterday?

12 A No, ma'am. The first conversation I had was with an
13 investigator or somebody on my cell phone yesterday which
14 was sometime after lunch, I believe.

15 Q Detective, with all due respect, you may want to get
16 someone with your IT department to look at your voice
17 mail.

18 A I can tell you --

19 MS. DURANT: Objection, your Honor.

20 THE COURT: Sustained. That is not a question.

21 Ask questions, Counsel.

22 MS. GARFIELD: Yes, sir.

23 BY MS. GARFIELD:

24 Q Detective, this is a case, I'm sorry, the one in
25 Clemson was a case involving the State making a case

1 against Randy Thomas; isn't that true?

2 A It would have been, yes.

3 Q Not Lauren Byrd versus Randy Thomas?

4 A That's correct.

5 Q All Lauren wanted that day was for Randy Thomas to
6 stay away from her?

7 A That's correct.

8 MS. GARFIELD: Thank you. I have nothing
9 further.

10 THE COURT: All right. Redirect.

11 MS. DURANT: Yes, sir.

12 REDIRECT EXAMINATION

13 BY MS. DURANT:

14 Q Detective Peppers?

15 A Yes, ma'am.

16 Q If Lauren Byrd had told you she wanted to prosecute
17 this case, you would have gotten her a victim advocate?

18 A Yes, ma'am.

19 Q You would have sent someone to the crime scene?

20 A That's correct.

21 Q You would have taken her to the hospital?

22 A Actually what we do is our victim's advocate would
23 have.

24 Q You would have seen that she got to the hospital?

25 A That's correct.

- 1 Q If she had told you she wanted to prosecute the case?
- 2 A Yes, ma'am.
- 3 Q But she didn't tell you that?
- 4 A That's correct.
- 5 Q So it's your understanding from talking with her that
- 6 she did not want to prosecute the case?
- 7 A That's correct.
- 8 Q And you did tell her how to get a restraining order?
- 9 A Yes.
- 10 Q So she had some means available to her?
- 11 A Yes.
- 12 Q And even though you may not have written the dates in
- 13 your supplemental report, do you have a copy of your
- 14 supplemental report there?
- 15 A Yes, I do.
- 16 Q What does it say about your contact with her?
- 17 A You're on page two, I believe. It says, I called Ms.
- 18 Byrd several times that day.
- 19 Q Since that day?
- 20 A Okay, since that day and left her messages to return
- 21 phone calls. Also went by her apartment and left my
- 22 business card on her door.
- 23 Q And then she never contacted you?
- 24 A No, ma'am, she did not.
- 25 Q So based on that you believed she did not want to

1 prosecute the case as well as her telling you?

2 A That's correct.

3 Q When Lauren Byrd and Ashley Mishoe came to the police
4 department, was Lauren asking to talk to you?

5 A No, ma'am.

6 Q So she didn't come in asking to speak to someone
7 about an appointment?

8 A That's correct.

9 Q And even though you're not trained in sexual assault,
10 you've handled a lot of them?

11 A Correct.

12 Q You know how to follow through with the prosecution?

13 A Yes.

14 Q And what was the reason you didn't get my voice mail
15 messages about being here yesterday?

16 A Our phone system at the office, it's kind of a messed
17 up deal. We're actually -- if you need an individual
18 office you're tied in with city hall and we've been having
19 problems for months actually where the phone will ring and
20 you pick it up to answer and there's nobody on the line or
21 if somebody leaves a message and you go to get it and
22 you've just got this dial tone, you don't actually have
23 any voice messages on there.

24 Q So you didn't get my messages?

25 A That's correct.

1 Q So if you had gotten Investigator Godfrey's messages,
2 would you have assisted them in the case?

3 A Yes. Actually how they ended up getting me on my
4 cell phone yesterday, I think they asked if I had a cell
5 phone and of course called me on my cell phone which I
6 answered.

7 MS. DURANT: Beg the Court's indulgence.

8 BY MS. DURANT:

9 Q Detective Peppers, how long have you been in law
10 enforcement?

11 A Total, between 19 years, right at 20.

12 Q So if any of your victims wanted to prosecute a case
13 you would do that?

14 A Yes.

15 Q That's your duty and obligation?

16 A Yes.

17 Q But it was your understanding in this case that
18 Lauren Byrd did not want criminal charges filed, she just
19 wanted Randy to stay away from her?

20 A That's correct.

21 MS. DURANT: No further questions, your Honor.

22 THE COURT: Any recross?

23 MS. GARFIELD: Thank you, your Honor.

24 RE-CROSS-EXAMINATION.

25 BY MS. GARFIELD:

1 Q If she'd had an order of protection he would have
2 been on notice to stay away from her; isn't that true?

3 A Yes.

4 Q And that would have been anywhere Lauren Byrd was he
5 wouldn't have been able to be around her; isn't that
6 correct?

7 A That's correct.

8 Q Even if she was at home with her family in Irmo?

9 A Correct.

10 Q And you stated in your supplemental report that you
11 went by Lauren's apartment?

12 A Yes.

13 Q At _____?

14 A Yes.

15 Q Where is her apartment located in the complex?

16 A Where?

17 Q Yes, sir.

18 A Specific location?

19 Q Yes, sir.

20 A I can't tell you because, I mean, it's a big
21 apartment complex, so I can't tell you exactly which
22 apartment.

23 Q Well, you recall a lot of other things but you can't
24 recall where you went and put your card in a door?

25 A Yes. I went by the address that she gave me, but I

1 can't say go this way and it's, you know, it's on the
2 building. I can't.

3 Q You can't remember?

4 A I can't tell you what the apartment -- I mean, I
5 can't tell you how to go directly to her apartment.

6 Q You also say in this report that you had not received
7 any return calls from Ms. Byrd, correct?

8 A That's correct.

9 Q But you just testified today that your phone system
10 is somewhat screwed up; is that correct?

11 A That's correct. But, you know, as far as no, I've
12 never got any back is what I'm saying.

13 Q You never got any message from Lauren Byrd?

14 A That's correct.

15 Q You never got any messages from Investigator Godfrey?

16 A That's correct.

17 Q And you never got any messages from defense counsel?

18 A Not yesterday, no, ma'am, I did not.

19 Q And in South Carolina, there is actually no statute
20 of limitations as to when you can prosecute someone,
21 correct?

22 A Yes.

23 Q So if Lauren Byrd changed her mind today and came
24 into your police department and said, I want to prosecute
25 Randy Thomas for what he did to me in August 2004, she