

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**S.C. Supreme Court**

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

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

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Randy Thomas,..... Petitioner

v.

State of South Carolina, ..... Respondent.

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APPENDIX  
VOLUME THREE

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1 could do so, correct?

2 A It's possible. It would be referred to the  
3 Solicitor's office.

4 Q But that's possible. There's nothing in our law that  
5 says that can't happen, is there?

6 A Correct.

7 Q But unfortunately for Lauren Byrd there would be no  
8 evidence, would there?

9 A That's correct.

10 Q Because none was collected by the City of Clemson  
11 Police Department; is that correct?

12 A That's correct.

13 MS. GARFIELD: Thank you.

14 THE COURT: Anything further?

15 MS. DURANT: No, your Honor.

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: He's excused.

21 All right, Ms. Durant.

22 MS. DURANT: The defense rests, your Honor.

23 THE COURT: All right. Solicitor, anything in  
24 reply, any rebuttal evidence?

25 MS. COOPER: A brief witness, your Honor,



1 Investigator Brian Godfrey.

2 THE COURT: All right.

3 Sir, you've already been sworn. We will not  
4 re-swear you. You are still under oath. If you'll resume  
5 the stand, please.

6 THE WITNESS: Yes, sir.

7 BRIAN GODFREY, having been previously sworn,  
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MS. COOPER:

11 Q Investigator Godfrey, can you please tell this jury  
12 how many times you called Detective Peppers regarding the  
13 incident report from Clemson from August of 2004?

14 A At the very least four times, maybe five. I've got  
15 it documented, I just didn't bring those, but I know at  
16 least four times.

17 Q Okay. And do you recall who you spoke with when  
18 you'd leave messages for him?

19 A The first three times I spoke with a lady at records.  
20 In fact, I even faxed her a request for the form of the  
21 incident reports, but I spoke with the young lady in  
22 records. And the final time I did speak with Detective  
23 Peppers.

24 Q Okay. Those three times that you spoke with the  
25 lady, did you leave -- did she take your name and number

1 for him to call you back?

2 A Yes, ma'am. Actually, one time she said he was there  
3 and she was going to go put a sticky on his forehead for  
4 him to call me.

5 Q And, in fact, you never left him a voice mail, did  
6 you, on any automatic machine answering system, did you?

7 A No, ma'am, it was always the lady took my name and  
8 number.

9 Q Do you recall coming to the Solicitor's office to  
10 request assistance in obtaining the incident report from  
11 Clemson Police Department?

12 A Yes, ma'am, I do.

13 Q And do you recall approximately what day that was?

14 A January 31st, 2005.

15 Q And what did you request our office to do?

16 A Subpoena those records because I was just getting  
17 zero cooperation in getting them.

18 Q And, in fact, tell this jury what happened the fourth  
19 time you called the Clemson Police Department and actually  
20 made contact with Detective Peppers?

21 A The lady that I had talked to in records actually  
22 went over there and asked him to pick up the phone. He  
23 did talk to me. I gave him my fax number. He said he  
24 would fax me those reports and never did.

25 Q I'm going to show you a document and ask you if you

1 recognize that..

2 A Yes, ma'am.

3 Q What is it?

4 A It's a subpoena for Detective James Peppers to  
5 provide the incident report from August 2004 involving the  
6 victim Lauren Byrd and the defendant Randy Thomas as soon  
7 as possible with the fax number provided and he's also a  
8 witness that they intend to call to testify, a subpoena  
9 for his appearance with those records.

10 Q Investigator Godfrey, explain to this jury what it's  
11 like to be a law enforcement official.

12 MS. DURANT: Your Honor, I think he can only  
13 speak from his own experience.

14 THE COURT: Sustained.

15 BY MS. COOPER:

16 Q Could you please --

17 MS. COOPER: I'm sorry, your Honor, I'll  
18 rephrase it.

19 BY MS. COOPER:

20 Q Could you please explain to this jury and describe  
21 the experiences you have had in your law enforcement  
22 career in dealing with other law enforcement agencies  
23 outside of the Richland County Sheriff's Department?

24 A Every other time, you know, a lot of times you'll  
25 have cases that go into different jurisdictions and

1 they'll have reports that you will want to see if it's  
2 similar cases and you'll call those investigators or the  
3 records departments that have those cases and they'll  
4 provide you with a copy so you can see if they're similar  
5 to the incident, but I've never had any issues with  
6 getting any forms from other agencies.

7 Q Have you ever had to subpoena records from any other  
8 law enforcement agency to assist you in your own  
9 investigation?

10 A No, ma'am. Generally, if anything, you'd have to  
11 just fax them a letter of request.

12 Q And that subpoena you just read to the jury, that  
13 subpoena is also for the person of Detective Peppers?

14 A That's correct.

15 Q Have you ever required the Solicitor's office to  
16 subpoena you to come to court to testify in an  
17 investigation or case?

18 A No, ma'am.

19 MS. COOPER: Thank you. No further questions,  
20 your Honor.

21 THE COURT: Cross-examine.

22 CROSS-EXAMINATION

23 BY MS. DURANT:

24 Q Investigator Godfrey, what dates did you call him?

25 A I didn't -- obviously I didn't know. I have a phone

1 log that I keep. I didn't bring that phone log. I didn't  
2 know that I was going to have to testify about that.

3 Q But, I mean, you knew that you were testifying in  
4 court this week?

5 A Right. I assumed I was going --

6 Q You didn't bring all your records with you?

7 A I brought all of my records pertaining to this case  
8 other than my phone log when I called the detective. I  
9 didn't know I would be testifying about the detective.

10 Q So you can't tell us what dates you called him?

11 A I could tell you, I just can't tell you right this  
12 moment, but I could provide that.

13 Q But you didn't bring it with you to court?

14 A No, ma'am. I didn't know I'd be testifying about  
15 that.

16 Q But you knew you'd be testifying?

17 A I knew I'd already testified and --

18 Q About this case?

19 A Yes, that's correct.

20 Q And about the Clemson incident?

21 A That's correct.

22 Q But you didn't bring all of your records about that?

23 A I did not bring the specific calls with Detective  
24 Peppers.

25 Q And that's a part of your records?

1 A It's part of my phone log, yes, ma'am.

2 MS. DURANT: Beg the Court's indulgence.

3 No further questions, your Honor.

4 THE COURT: Any redirect?

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

6 REDIRECT EXAMINATION

7 BY MS. COOPER:

8 Q Investigator Godfrey, did you know you were going to  
9 have to take the stand and testify about what Detective  
10 Peppers had just said on cross-examination?

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

12 Q And is that why you did not know that it would be  
13 necessary or helpful to show this jury about the specific  
14 times you made calls to that individual?

15 A That's correct.

16 MS. COOPER: No further questions, your Honor.

17 THE COURT: Anything further?

18 RECROSS-EXAMINATION

19 BY MS. DURANT:

20 Q Now, you did know that Detective Peppers was on the  
21 witness list?

22 A Yes, ma'am.

23 Q So you knew that there was a possibility he would be  
24 testifying?

25 A No, ma'am. I figured he'd say that he talked to me.

1 and tell the truth about that.

2 Q But you still didn't bring all of your records  
3 related to Detective Peppers?

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

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

6 THE COURT: All right, sir. You may step down.  
7 Anything further?

8 MS. COOPER: No, your Honor.

9 THE COURT: All right. Mr. Foreman, ladies and  
10 gentlemen, that will be all the testimony and evidence  
11 presented in the case.

12 At this time there are some matters of law that  
13 I need to take up with the attorneys. Once I have done  
14 that, you will come back and hear the closing arguments  
15 and the instructions of law from the Court.

16 It is still inappropriate and would not be  
17 correct for you to discuss the case among yourselves.

18 This may take a few minutes for me to go through  
19 matters of law, but if you'll step back to your jury room,  
20 we'll have you back as soon as we can.

21 Everyone else stay seated while the jury is  
22 excused.

23 (The jury left open court at approximately 10:26  
24 a.m.)

25 THE COURT: All right. Motions from the

1 defense.

2 MS. DURANT: Your Honor, we would move for a  
3 directed verdict at this time based on our previous  
4 objections and our motion on the directed verdict.

5 Once again, there has been no proof that a rape  
6 occurred. There's no semen found on her, there were no  
7 bruises, they cannot say that Randy semen was on the bed  
8 comforter. There's been no evidence that she was sexually  
9 assaulted, your Honor. The defense testified that it was  
10 consensual.

11 We would move for a directed verdict on the  
12 kidnapping of Lauren Byrd. There has been no knife  
13 introduced into evidence. There were no marks on her  
14 indicating that she had been held against her will, and we  
15 would ask -- she stated that she walked out of the  
16 apartment building -- she walked out of her parents' home  
17 with him. We do not feel that they have proved that there  
18 was a kidnapping.

19 We would ask for a directed verdict on the  
20 assault and battery of a high and aggravated nature.  
21 Again, there's been no knife produced, no bruises, no  
22 indication that she was harmed in any way, your Honor.

23 And we would move for a directed verdict on the  
24 kidnapping of the child, Zachariah Byrd. There's no  
25 intent has been shown that Randy intended to kidnap that



1 child. As I stated earlier, in the case of State v  
2 Jefferies, the intent of a crime of kidnapping, he got in  
3 the car, drove one block, turned around with the intent to  
4 bring the child back and he put the child out. So we feel  
5 they have not proven kidnapping, that Randy intended to  
6 kidnap that child, your Honor. So we are moving for a  
7 directed verdict on all the charges.

8 And we renew all of our objections, your Honor,  
9 to the Jackson v Denno, Lyle, the burden shifting, the  
10 chain of custody, the prior conviction coming in, and we'd  
11 renew all of our objections made during the course of the  
12 trial, your Honor.

13 THE COURT: All right. The motions for directed  
14 verdict, of course, the Court looks at the evidence at  
15 this stage in the light most favorable to the State.  
16 That's the standard that is required. And in order to  
17 grant those motions, this Court would have to weigh the  
18 evidence and all of the arguments that have been made  
19 would involve weighing the evidence and disregarding the  
20 State's evidence and believing all the defense evidence on  
21 cross-examination and I'm not permitted to do that. There  
22 is sufficient evidence in the record to support the  
23 charges that are made in these indictments, and for that  
24 reason the motions for directed verdict are denied.

25 The objections, the renewal of objections, the

1 know your lunch orders, you've already filled those out;  
2 is that right? We're trying to time things so that it  
3 gets here about the time you go back. Sometimes we hit  
4 that right on the button, sometimes we don't, but we'll  
5 try to get you some food before it gets too late.

6 Please give both attorneys your full attention  
7 or all of the attorneys as they are making their arguments  
8 to you.

9 All right. Solicitor.

10 MS. COOPER: Thank you, your Honor. May it  
11 please the Court.

12 THE COURT: All right.

13 MS. COOPER: Good morning, ladies and gentlemen.  
14 We have now reached the point in this trial where you are  
15 very close in getting this case, where you'll go back to  
16 that jury room and you'll be allowed to discuss the facts  
17 of this case for the first time. And I'm sure you're very  
18 anxious to do that, because all week you have been  
19 instructed by Judge Johnson not to discuss the facts, not  
20 even with spouses or friends, and so we're going to try to  
21 do this quickly so that you can get back there and begin  
22 your job.

23 I do have a job to do and right now I'm going to  
24 discuss the law that applies to this case. Because I work  
25 with the prosecution's office, I have the burden of proof

1 in this case, and so I have to explain to you what the law  
2 is, and then later on after the defense gives a closing  
3 argument, because I have the burden of proof, I get to  
4 reply to what they say and then I also get to apply the  
5 facts as they apply to the law.

6 You're going to hear a lot of law today, ladies  
7 and gentlemen, and I'm going to go through this briefly,  
8 but I just wanted to outline it so it's kind of clear in  
9 your head on how you can decide what laws were broken in  
10 this case and how to reach a verdict. Okay?

11 We're going to begin with the first offense,  
12 ladies and gentlemen. The defendant has been charged with  
13 four different indictments, okay? We're going to start  
14 with the first indictment: Criminal sexual conduct in the  
15 first degree.

16 The Code of Laws of South Carolina, Section  
17 16-3-652, and if you have any trouble reading it back  
18 there I'm going to read it out for you, okay? A person is  
19 guilty of criminal sexual conduct in the first degree if  
20 the actor, meaning the defendant, Randy Thomas, engages in  
21 sexual battery with the victim and if one or more of the  
22 following circumstances are proven. So it doesn't have to  
23 be both, ladies and gentlemen; one is enough, okay?

24 Number one, that the defendant, Randy Thomas,  
25 used aggravated force to accomplish sexual battery.

1           And then, number two, and it's not and, it's or  
2   number two, the victim submits to sexual battery by the  
3   defendant, Randy Thomas, under circumstances where the  
4   victim is also the victim of forceable confinement,  
5   kidnapping, robbery, extortion, burglary, housebreaking,  
6   or any other similar act or offense.

7           The only things that apply to this case in this  
8   language is the forceable confinement and kidnapping.

9           Ladies and gentlemen, what is sexual battery?  
10   Sexual battery is any penetration with any part of that  
11   man's body to that woman's body, however slight, partial  
12   vaginal penetration, oral sex, anal penetration. We're  
13   not alleging that in this case, ladies and gentlemen. The  
14   only penetration that you need to consider, the facts that  
15   apply to this case, are oral penetration when the  
16   defendant forced Lauren Byrd to perform oral sex on his  
17   penis, or number two, the vaginal penetration, however  
18   slight. He could have just touched her vagina with his  
19   penis and inserted it just a little bit for it to  
20   constitute penetration, but you heard testimony that he  
21   went in halfway, partial vaginal penetration.

22           Now, what is aggravated force? Aggravated force  
23   has been defined as physical force or physical violence of  
24   a high and aggravated nature to overcome the victim, or it  
25   also can include the threat of the use of a deadly weapon.

1 Well, we're not claiming that the defendant was  
2 armed with that knife during the actual sexual assault,  
3 but what we are alleging, and I think we have proven it  
4 through the testimony in this case, is that the victim  
5 said, he threatened to kill me, he threatened to kill my  
6 son, my three-year-old helpless, innocent child if I  
7 didn't succumb to his wishes.

8 She also testified, ladies and gentlemen, that  
9 he used physical force to overpower her. If you recall  
10 the testimony when he forces her by the head to perform  
11 oral sex, pushing her head to his crotch. Not like he  
12 described it where he presented his penis to her. He  
13 forced her head to his crotch. That's physical force,  
14 ladies and gentlemen. Or when he throws her on her back  
15 on the bed and she's got her legs intertwined and he  
16 forces her legs open. Physical force, aggravated force.  
17 Or when she's trying to block her crotch, her vagina with  
18 her hands so that he wouldn't penetrate her and he pushes  
19 her hands out of his way, he grabs her hands and throws  
20 them over her head, physical force, aggravated force.  
21 That's what that means.

22 But you also know, ladies and gentlemen, that  
23 while he was sexually assaulting Lauren Byrd and  
24 committing these different acts of sexual penetration,  
25 that he drug her from downstairs, from this area of the

1 house on the first floor, and that he carried her up these  
2 stairs against her will and she testified how she fought  
3 him off. He even admits that he carried her or kind of  
4 led her was his testimony to the parents' bedroom. But  
5 you heard from Lauren how she was carried like a child and  
6 she fought and was grabbing onto the stairwell and when  
7 she got to the top she grabbed on to the other beam at the  
8 top of the stairs. She was being taken to that bedroom  
9 against her will. She was being forcibly confined. She  
10 was being kidnapped. That's criminal sexual conduct in  
11 the first degree, and that's what the State submits he is  
12 guilty of.

13 However, Judge Johnson, as the judge of the law,  
14 is required to charge you with other lesser degrees of  
15 rape and other lesser degrees of charges. But I want you  
16 all to understand this: We have met our burden of  
17 criminal sexual conduct in the first degree; that you are  
18 going to be charged on lesser degrees, and I'm going to  
19 explain that to you now, what those lesser degrees are.

20 Think of it as a burn, ladies and gentlemen,  
21 criminal sexual conduct. You've got first degree, you've  
22 got second degree, you've got third degree. When you have  
23 a first degree burn, it's the most severe, most severe  
24 injury. Second degree is less severe; third degree, not  
25 as bad as second.

1 Under the books of our laws in this state, when  
2 a person is guilty of criminal sexual conduct in the  
3 second degree, a person is guilty of criminal sexual  
4 conduct in the second degree if the actor uses aggravated  
5 coercion to accomplish a sexual battery.

6 Ladies and gentlemen, what second degree,  
7 criminal sexual conduct second degree is, it's basically  
8 the first degree without the kidnapping and forceable  
9 confinement. So if you believe that Lauren went up to  
10 that bedroom voluntarily, not against her will, you can  
11 still believe that she was forced to have sex with the  
12 defendant against her will. But the facts don't support  
13 that, ladies and gentlemen. It's both. Both exist.  
14 That's second degree.

15 Third degree. You could think that Lauren's not  
16 telling the truth and that he didn't have to use physical  
17 force or aggravated force to get her to accomplish sexual  
18 battery. But that's not what the facts of this case  
19 support. In fact, that's not what the defense claims.  
20 He's claiming consent; that she wanted to have sex with  
21 him; that oral sex was their normal routine.

22 So I ask you to recall, he is charged with the  
23 appropriate offense of criminal sexual conduct first  
24 degree.

25 In addition to the three degrees of rape in our

1 laws, you can also find that the defendant is guilty of  
2 assault and battery of a high and aggravated nature.  
3 That's kind of considered the fourth degree, if you will,  
4 just to kind of keep your minds organized.

5 Assault and battery of a high and aggravated  
6 nature, you could find that he had indecent liberties with  
7 the body of Lauren Byrd, such as touching her breasts  
8 inappropriately but not having sexual intercourse, no  
9 penetration. And so if that's what you believe, then you  
10 would be able to convict him of that, assault and battery  
11 of a high and aggravated nature.

12 So basically when you go back to the jury room  
13 for the indictment of criminal sexual conduct in the first  
14 degree, you're going to have an option of four different  
15 crimes, okay? Like I said, you've got the three degrees  
16 of criminal sexual conduct and then you've got that  
17 assault and battery of a high and aggravated nature. But  
18 it is the State's position that he's appropriately charged  
19 with first degree.

20 Now, what's the next indictment? He's got two  
21 counts of kidnapping, ladies and gentlemen, and that's the  
22 only law you're going to have to consider. You don't have  
23 to consider lesser degrees or anything like that. It's  
24 just kidnapping.

25 What do the books of our state define kidnapping



1 as? Kidnapping: It is unlawful to seize, confine,  
2 inveigle, decoy, kidnap, abduct, or carry away any other  
3 person by any means whatsoever without authority of law.

4 She was, Lauren Byrd was taken up these stairs  
5 against her will, ladies and gentlemen, and led against  
6 her will while she's grabbing on to all of the stair rails  
7 or the beam on the top of the steps and dragged by her  
8 feet to the bedroom where then she was sexually assaulted.  
9 That's kidnapping, ladies and gentlemen. She was taken  
10 away without her consent. She did not go willingly. Her  
11 liberty was confined. Her freedom to move was taken away.

12 But you can also find that when he held the  
13 knife to her neck in the kitchen, she was being held in  
14 the kitchen against her will.

15 I submit to you, ladies and gentlemen, that her  
16 liberty or freedom to move around as she wished was gone  
17 the minute that man walked into her house. And it didn't  
18 end until she saw Katria Weyl and ran for her life. And  
19 we know that that was at least a two-hour period, at least  
20 two hours.

21 And what about Zach? Zachariah Byrd. We know  
22 that when Lauren's trying to keep Randy Thomas away from  
23 her, she puts her child in the corner of this room and  
24 grabs that lamp to fight the defendant away from her, keep  
25 him away, and he asks her, What are you going to do, hit

1 me with that? She was just trying to get out of the  
2 house, ladies and gentlemen.

3 And he grabs her son after the kitchen incident  
4 and he puts the knife to her throat and said, Come on,  
5 we're going for a ride, and puts the knife in his back  
6 pocket and picks up her son and said, Come on, we're  
7 going. The moment he touched her son, picked him up  
8 without her permission and walked out that door and put  
9 that child in the front seat on his lap in the driver's  
10 seat of the car and drove away, kidnapping for Zachariah  
11 Byrd.

12 In addition to just the language that you would  
13 find in the books, kidnapping is also defined as the  
14 unlawful seizure of a person. If you unlawfully confine a  
15 person or limit their ability to move for any period of  
16 time, it's kidnapping. It could be for one second, it  
17 could be for two hours, it could be for a month. One  
18 second is all it takes, ladies and gentlemen, any period  
19 of time.

20 The fourth indictment for which the defendant is  
21 charged is the assault and battery of a high and  
22 aggravated nature when the defendant placed his knife  
23 against her throat in the kitchen. And it's high and  
24 aggravated because he was using a deadly weapon, which is  
25 a knife, and the judge will instruct you that a deadly

1 weapon is a knife.

2 A fist can be a deadly weapon, too, ladies and  
3 gentlemen.

4 The law of assault and battery of a high and  
5 aggravated nature for the fourth charge. So don't confuse  
6 this one with the lesser charge of that rape, the CSC  
7 first charge, okay? This is a separate one, the fourth  
8 charge.

9 Assault and battery of a high and aggravated  
10 nature, it's the unlawful act of violent physical injury  
11 to the person of another accompanied by one or more  
12 aggravating circumstances. The use of a deadly weapon,  
13 ladies and gentlemen, the knife, or the infliction of  
14 serious bodily injury, and you heard testimony about  
15 Lauren's injuries to her wrists, to her legs. And you may  
16 not consider that to be serious, and that's completely  
17 within your discretion, ladies and gentlemen. But that's  
18 not just what you have to rely on. There's more.

19 A great disparity between the ages or the  
20 physical conditions of the parties. You heard from  
21 Lauren, she's 20, he's 27. You've seen them both in the  
22 courtroom, he's significantly taller and bigger than she  
23 is. So that's another thing you consider in finding that  
24 this is aggravating circumstance, to make this assault and  
25 battery aggravated.

1           What else is there? A difference in the sexes.  
2       Judge Johnson is going to tell you, you can't just use the  
3       fact that there's a difference in sexes to make it  
4       aggravated. You have to consider all of the evidence,  
5       ladies and gentlemen. But our main point is this: He put  
6       the knife to her throat, and that is the first time she  
7       stopped crying because her mind-set went into survival  
8       mode and she started telling him as calm as she can, I  
9       love you, I understand what you're doing, anything to get  
10      through to this man so that he would not kill her and so  
11      her parents would not have to find her dead in their  
12      kitchen. And remember, by doing so he let off on the  
13      knife.

14           We are relying on the use of a deadly weapon,  
15      ladies and gentlemen.

16           However, if you don't believe Lauren, that that  
17      incident did not happen in the kitchen with the knife, the  
18      judge is going to instruct you on the lesser charge called  
19      simple assault and battery. Not an aggravated battery, a  
20      simple assault and battery.

21           So what's an assault, ladies and gentlemen?  
22      Well, if I try to swing at you and I'm nowhere near you  
23      and I don't have the ability to actually hit you but I'm  
24      swinging at you to hit you, that's an assault. But if I  
25      take a couple of steps forward and I'm in range to

1 actually strike you when I throw my fist and I hit you,  
2 that's battery. Battery is the unwanted touching.  
3 Unwanted touching. And believe me, Lauren did not want  
4 him touching her with that knife on her neck. She thought  
5 she was going to die.

6 Ladies and gentlemen, because the State of South  
7 Carolina and every state in this country has the burden of  
8 proving someone guilty beyond a reasonable doubt, that's  
9 where the burden should be. And as Ms. Garfield told you  
10 in opening statements, in this case, we gladly accept it.  
11 We have the burden of proving each of those elements  
12 beyond a reasonable doubt.

13 We also have to prove criminal intent. And it's  
14 kind of hard to do that, ladies and gentlemen, because you  
15 can't just dive into the brain of that man to figure out  
16 what he was thinking, but the judge is going to you that  
17 you can consider acts or no acts by the defendant in order  
18 to determine the state of mind, that he was acting with  
19 criminal intent.

20 Criminal intent can be defined as, criminal  
21 intent is a mental state, a conscious wrongdoing.  
22 Remember in the defendant's statement to Investigator  
23 Godfrey, I know what I did was wrong? That is expressed.  
24 I mean, he knows what he did was wrong. It's up to you to  
25 determine what the defendant intended to do based on the

1 circumstances shown to have existed.

2 Criminal intent can arise from an action or a  
3 failure to act. It may arise from negligence,  
4 recklessness, or an indifference to duty or to the  
5 consequences that is considered by the law to be the  
6 equivalent of criminal intent.

7 The State's position is, ladies and gentlemen,  
8 after that Clemson incident, she didn't prosecute; he  
9 thought he could get away with it again. He intended to  
10 do everything that he did.

11 Now, I indicated that the State has the burden  
12 of proof beyond a reasonable doubt. Let me define to you  
13 what reasonable doubt is.

14 It is a legal term, a term of art, and our  
15 books, our cases have actually defined it. Proof beyond a  
16 reasonable doubt is proof that leaves you firmly convinced  
17 of the defendant's guilt, firmly convinced. There are  
18 very few things in this world that we know with absolute  
19 certainty, and in criminal cases, the law does not require  
20 proof that overcomes every possible doubt. If based on  
21 your consideration of the evidence you are firmly  
22 convinced that the defendant is guilty of the crime  
23 charged, you must find him guilty.

24 If on the other hand you think there is a real  
25 possibility, a real possibility, ladies and gentlemen,

1 that he is not guilty, then you must give him the benefit  
2 of the doubt and find him not guilty.

3 That is what reasonable doubt is, ladies and  
4 gentlemen. It's not this unobtainable standard as  
5 described by Ms. VanGinhoven for the defense. It is a  
6 burden or a standard that has been satisfied several times  
7 in this country. People are convicted every day. It is  
8 not some unattainable standard to be accomplished.

9 What's reasonable doubt, another way of thinking  
10 of it? Well, you might wake up one morning and doubt that  
11 the sun is going to rise. Well, that's an unreasonable  
12 doubt. Unreasonable. Just use your reason, use your  
13 common sense.

14 Ladies and gentlemen, as I have discussed the  
15 law and I've discussed how Judge Johnson is the judge of  
16 the law, you, ladies and gentlemen, are the judges of the  
17 facts.

18 And so how do you execute your duties as the  
19 judges of the facts? Well, you judge the credibility or  
20 the believability of every witness for the State, for the  
21 defense that took that witness stand, every single one,  
22 and you judge whether they were telling you the truth or  
23 whether they were telling you a lie.

24 And, ladies and gentlemen, it's true, it  
25 happens. People come into this courtroom, unfortunately,

1 and they place their hand on that Bible and they're sworn  
2 to tell the truth and they get on that witness stand and  
3 they lie. And so use your common sense, your life's  
4 experiences, your work history to determine whether they  
5 were being truthful.

6 There are factors that can be used, to consider,  
7 to figure out whether someone's being truthful, and I'm  
8 just going to go over them briefly.

9 Credibility of witnesses. These are the  
10 factors. The demeanor of the witness on the stand.

11 There is a reason why this witness stand is  
12 right here next to you. It's so that you all have an  
13 opportunity to look at the witness and kind of see their  
14 expressions when they're asked a certain question or what  
15 their body language is like. Those are factors that  
16 you're allowed to consider, ladies and gentlemen, in  
17 trying to decide who's telling the truth and who is not.

18 Then you can also figure out whether the witness  
19 was being hesitant or forthright when asked questions.

20 Was the witness's testimony consistent?

21 Consistency, ladies and gentlemen. I'm going to get to  
22 more of that later on. Just remember that. Was their  
23 testimony consistent with what they told other people?

24 Was the testimony of the witness corroborated,  
25 added to? Did other witnesses get up here and be like,



1 yeah, I remember seeing that bruise two days later, or,  
2 yeah, Dr. Amick, I found the defendant's DNA on that  
3 comforter exactly where Lauren Byrd testified she spit the  
4 semen out. Corroboration, adds to.

5 Lastly, does the witness have a reason to be  
6 biased or prejudiced? Do they have a stake in their case?  
7 Well, obviously the defendant has a stake in the case. He  
8 made that very clear from the witness stand, his life. Of  
9 course he's got a stake in this case and a reason to lie.

10 What reason does Lauren Byrd have to lie? What  
11 could possibly motivate her to subject her to four hours  
12 of testimony, to subject her to a rape protocol kit? What  
13 could possibly motivate someone to go through all of this?  
14 That's what you consider when you go back to that jury  
15 room and determine who's telling the truth in this case.

16 At this time I'm going to sit down and discuss  
17 the law -- actually, there's one more, and I apologize.

18 Evidence of flight is admissible to show guilty  
19 knowledge, intent, and that the defendant sought to avoid  
20 apprehension, another legal matter, evidence of flight.

21 There is testimony by Investigator Godfrey that  
22 on November 1st after he interviewed Lauren Byrd, he had  
23 arrest warrants issued for this defendant's arrest. And  
24 there's also testimony on the record before you that you  
25 can consider that it took 16 days. He was not arrested

1 until -- I'm sorry -- 15 days. He was not arrested until  
2 November 15th from North Carolina. Remember the  
3 extradition paperwork.

4 Evidence of flight is evidence of guilty  
5 knowledge, intent, trying to avoid apprehension. So  
6 that's another factor you can consider.

7 At this point I promise I'm sitting down. I'm  
8 going to talk to you in a little while after the defense  
9 attorneys are done with their closing argument.

10 Thank you very much for your time and attention.

11 THE COURT: All right. Ms. Durant.

12 MS. DURANT: Thank you, your Honor.

13 Ladies and gentlemen, where is the evidence?  
14 Where is evidence? There is no evidence. The only thing  
15 you had in this case is the word of Lauren Byrd.

16 Ladies and gentlemen, look at the evidence.  
17 Look at what has been presented. You didn't have to be  
18 fooled by a pretty face and a few tears. Randy Thomas's  
19 life is at issue here.

20 This case boils down to who do you believe. Who  
21 is the most believable? Please think. I urge you to do  
22 what the Solicitor asked: Look at the demeanor of  
23 witnesses. Randy Thomas took this stand. You heard him.  
24 He said some things that were not good. And he admitted  
25 he had a knife. To hurt himself. If he's telling you the

1 truth about something that's not good, why would he lie  
2 about the rape? He told you it was consensual. If he  
3 were going to lie about the rape, why not lie about the  
4 knife? No one saw it. There's been no witnesses that saw  
5 the knife. So why didn't he just lie about that, too?

6 Lauren Byrd changed her story three times,  
7 according to the investigators. Investigator Gonzales  
8 said there was no sexual intercourse. Investigator  
9 Livingston said there was full vaginal intercourse.  
10 Lauren's statement said there was partial vaginal  
11 intercourse. And what is the truth?

12 How does a man force a woman to have sex with  
13 him? Let's look at the ways. With a weapon? By force?  
14 Or by threats? Just consider this: There was no weapon  
15 involved when Randy Thomas and Lauren Byrd went to the  
16 bedroom. There's been no testimony about any weapon  
17 involved at that time. There's testimony about a knife  
18 later, but nothing related to the sex act.

19 I'm going to ask you this, and I apologize, I'm  
20 going to be pretty graphic about it, okay? I think you're  
21 probably all immune or neutralized to that by now. What  
22 man without a weapon is going to put his penis in the  
23 mouth of a woman who doesn't want him to? And, ladies,  
24 how many times have you thought when you've heard cases  
25 like this, they could put that thing in my mouth, I'll

1 show them. How does a man force a woman without a weapon  
2 to perform oral sex on him? No weapon.

3 What about force? There are no bruises.

4 Let's look at those. This is a long list of  
5 what they don't have.

6 No bruising at all. She goes to the hospital,  
7 and she says she took a beating. She struggled, she  
8 fought, he dragged her on the steps, he dragged her on the  
9 carpet, he grabbed her arms, he bearhugged. Investigator  
10 Gonzales said there aren't any red marks. You heard no  
11 testimony about any red marks. She goes to the hospital,  
12 the doctor checks her. His report clearly states, no  
13 bruising seen. And this happened about 1 o'clock, he sees  
14 her about 9 o'clock. It's very possible, very likely that  
15 some bruises had come out by that time or bumps or  
16 something. There has been no testimony to that.

17 Now, the State's argument is, okay, they didn't  
18 show up for two days. All right. She gives a statement  
19 to Investigator Godfrey two days later. Does he mention  
20 any bruises? No. Does he take pictures of bruises? No.  
21 There is no report of any bruises.

22 Do they bring her parents in to report seeing  
23 bruises? They could have. The only person that says she  
24 saw bruises is her friend Ashley Mishoe. Now Ashley is  
25 the only one that testified for her, and obviously Ashley

1 would do anything for Lauren if Lauren tells her to do it.  
2 If Lauren wanted to prosecute this case, why didn't she  
3 get Investigator Godfrey to take pictures when the bruises  
4 came out two days later? She didn't.

5 And let's look at the photos that they took.  
6 And these are the State's photos. Let me point that out,  
7 please. This is what they took. And I beg you to look at  
8 them very carefully. Look at her legs. Remember, she  
9 grabbed the beam with the legs and held them so tight it  
10 really hurt? There aren't any bruises on her legs. Legs,  
11 arms, arms, look at those.

12 And remember, they dusted for fingerprints on  
13 the stairs. Lauren said she grabbed the stairs, grabbed  
14 the beam. They don't find fingerprints. There's no marks  
15 on her legs and no marks on her neck, no red marks.

16 The third way, a threat. Lauren said he  
17 threatened to hurt her and her son.

18 Now, you heard Lauren testify on the stand from  
19 her statement that while they were in the bedroom after he  
20 had alleged said he was going to hurt her and Zach, what  
21 did she believe? She said, I believe he really  
22 wouldn't -- I really believed he would leave us alone.  
23 She knew Randy loved Zach. He changed his diapers. He  
24 kept him. She left Zach with him all the time.

25 These are photos Randy took when he arrived that

1 day. Look at these very carefully. Does this child look  
2 scared of him? This child is a healthy child. He's glad  
3 to see what he called daddy.

4 This is Randy's Spider-Man costume that Randy  
5 got him.

6 Lauren said they didn't talk between Clemson and  
7 October. Does that make sense that Randy would have  
8 bought him this costume? How did he know he needed one?

9 The other thing I want you to look at in this  
10 picture, you can see Lauren in the background sitting on  
11 the sofa. Now, remember her testimony. She said this man  
12 had raped her in Clemson and she is terrified of him. She  
13 was frightened of this man so that when she saw him at the  
14 door she ran and hid. She's sitting on the sofa watching  
15 television and it's the same shirt she was wearing that  
16 day. Does she look scared? Look at these very carefully.

17 Let me ask you something else, and I'm begging  
18 you to think about it. She says Randy gets there. Again,  
19 this is somebody that raped her, she went to the police  
20 and told them he raped her. He shows up at the door,  
21 she's scared to death. She goes to the bathroom based on  
22 her testimony. Where's Zach? She leaves Zach in the  
23 living room with Randy, the man she's terrified of. Does  
24 that make sense?

25 She goes in the bathroom. Does she call 911?

1 She could have. If she were really afraid of him, why  
2 wouldn't she call 911 and the police would have been  
3 there? She calls a friend who's two hours away.

4 She wasn't afraid of Randy. She wasn't afraid  
5 he was going to hurt Zach.

6 Think about the other testimony. She says when  
7 they're leaving the house and Randy picks up Zach, they're  
8 all walking to the car. Randy is holding Zach at the car.  
9 And those of you who are parents, think about this. This  
10 man had a knife in his pocket, he's holding your  
11 three-year-old son and he's at the car and you know he's  
12 getting ready to go somewhere. Are you going to run off  
13 screaming and leave your child in that man's hands at the  
14 car? Aren't you going to be where that child is? She  
15 knew Randy was not going to hurt Zach. That was not a  
16 threat. Randy was not a threat to Zach.

17 You heard the doctor testify there was no  
18 vaginal trauma and you heard them talk about DNA. Let's  
19 talk about DNA. You know what? The DNA evidence doesn't  
20 really say anything. Randy admitted they had oral sex.  
21 It was consensual. So his DNA's on the comforter. But by  
22 the doctor's own testimony he can't say that it's semen.  
23 They don't know when it got there and the DNA can't tell  
24 you whether it was consensual or not.

25 They identified semen with the black lamp on the

1 floor. It wasn't.

2 I want you to think again, think logically about  
3 this. Let's look at no semen on her panties. Lauren's  
4 testimony is that Randy ejaculated in her mouth. Doesn't  
5 that put semen on his penis? Then he starts to penetrate  
6 her. Wouldn't his semen or some sperm be in her vaginal  
7 area? She puts those green lime panties on, takes them  
8 off at the hospital. She said she had them on in the  
9 bedroom. Now, they find her fluid in the panties, but  
10 they don't find Randy's. Randy's DNA is not in her  
11 panties. And DNA is so sensitive that if he had touched  
12 her vaginal area, when she put those panties on it would  
13 have been there.

14 Now, you say, okay, they didn't find semen in  
15 her vagina either. They didn't find Randy's DNA there.  
16 They didn't find it in her mouth either and they both said  
17 that and she drank a glass of water. There is no  
18 testimony about her taking a shower. None. She said she  
19 put her clothes on right after they had sex.

20 Struggle. I want you to look at all of these  
21 picture. And the investigator's testimony was that they  
22 found evidence of a struggle over by the computer where  
23 the lamp is turned over. I want you to look at that  
24 picture, too. That's the only evidence of a struggle is  
25 the lamp. There is no evidence of a struggle in the



1 kitchen. You find disarray in the den, but that's a  
2 three-year-old child. He spilled a drink, there's  
3 Spider-Man stuff on the floor. Anybody who's been around  
4 three-year-old children know, and I have a three-year-old  
5 grandson and I can tell you, it's a mess. That is  
6 disarray from a child.

7 The kitchen had no disarray. They don't  
8 describe any struggle in the kitchen or the den. There's  
9 no sign of a struggle except that one room.

10 Now, you're probably asking the question, why  
11 would Lauren lie? Let's look at that. Let's look at some  
12 possible reasons for her to lie.

13 Lauren wanted to end the relationship. She  
14 wanted it to end. And by her own testimony she didn't  
15 want to hurt his feelings. She felt sorry for him, she  
16 didn't want to make him feel bad. She didn't want to  
17 confront him and make him feel bad. So do you think she  
18 told him no to sex because she doesn't want to make him  
19 feel bad? So she doesn't want to confront him and make  
20 him feel bad so she gets somebody else to do it for her.  
21 At Clemson she calls a friend to tell her that he forced  
22 sex on her and her friend calls the police and the lying  
23 starts. And once a lie starts, it's hard to stop it. It  
24 just grows.

25 And she tells Investigator Peppers by his

1 testimony that she wanted to keep him away from her. And  
2 accuse a man of rape is one good way to keep him away from  
3 her.

4 Now, they say Randy did the same thing twice.  
5 But think about this: Maybe Lauren made up the same story  
6 twice. You don't have evidence that it happened at  
7 Clemson either. But you know what? It didn't work at  
8 Clemson. The police got involved up there and it didn't  
9 work. And then she'll try again. Maybe when Randy got  
10 the knife, maybe that's when Lauren got scared. Maybe she  
11 was afraid he was going to hurt himself. He said that on  
12 the stand, that she was afraid he might kill himself. So  
13 they walked out the door, and by Lauren's own testimony  
14 she's not screaming when she walked out the door. She  
15 mouths to her neighbor. They're headed to the car and  
16 that's when she starts screaming because Randy had the  
17 knife in his pocket.

18 And the interesting thing is, she's not yelling  
19 rape at that point. There's nothing on the 911 tapes  
20 about rape. The rape comes in later when Gonzales gets  
21 there and she starts telling him her story with her  
22 neighbors there. She starts telling the story to end  
23 their relationship. This is a way to end the relationship  
24 and she couldn't do it basically. And it was. It's  
25 accomplished her purpose.

1           Now, ladies and gentlemen, the Solicitor talked  
2 about intent. Randy Thomas never intended to kidnap Zach.  
3 He loved the child. He's like a son to him. You heard  
4 James Aakhus talk about he kept him all the time when they  
5 lived together. He bought him his Spider-Man costume.  
6 Zach called him daddy. And think about this: He gets in  
7 the car, he goes a block down the street, maybe a block  
8 and a half, he realizes he has Zach with him, he turns the  
9 car around. He turns the car around and heads back  
10 towards Lauren and he puts the child out.

11           Now, think about this. Picture this. Randy --  
12 Lauren has told him she loves him in the kitchen. He  
13 thinks they're all walking to the car. He remains calm  
14 because the mother's coming along. All of a sudden Lauren  
15 starts screaming and runs away. Randy panics. She runs  
16 away and then he panics. He's got the child in his arms  
17 and his thought is just to get away. He's got the child  
18 in his arms and he gets in the car and he stomps the brake  
19 and then he realizes, I don't want to take this child, he  
20 needs his mother, so he his intent was to bring the child  
21 back.

22           Ladies and gentlemen, beyond a reasonable doubt.  
23 Ms. VanGinhoven told you in opening that if you think  
24 Randy probably did any of this, that is not enough. You  
25 must find him not guilty if you think he probably did

1 this.

2 Randy Thomas is not guilty, ladies and  
3 gentlemen. You heard him, he coached basketball. He  
4 wanted to be a basketball coach. He loved children. He  
5 loves Zach, he loves Lauren.

6 I ask you when you go to that room, deliberate  
7 this case, I ask you to find Randy Thomas not guilty.  
8 Some people have drama in their lives, some people will do  
9 anything for attention. Just remember that when you  
10 deliberate the case.

11 Thank you.

12 THE COURT: All right. Solicitor.

13 MS. COOPER: Thank you, your Honor.

14 Lauren Byrd is about to graduate from Clemson  
15 University next spring. She managed to continue with her  
16 path in life despite the fact she was a teenage mother.  
17 The first year of her son's birth she went to Midlands  
18 Tech to get all her prerequisites so she could transfer to  
19 another university. She got into Clemson University,  
20 lived with her son, worked on getting her degree. She had  
21 goals.

22 Randy Thomas was a freeloader. He admitted on  
23 the witness stand that when he lived with her he didn't  
24 pay a single bill, he didn't have a job. Oh, yeah, he  
25 worked for maybe a week at the apartment complex. He

1 admits he had no direction whatsoever and that's why  
2 Lauren wanted to end this relationship. What was best for  
3 her and her son, she chose to end the relationship.

4 Randy Thomas was so possessive, obsessed with  
5 her, couldn't let her go. Clingy according to Ashley. He  
6 just could not let her go. And on August 9th of 2004,  
7 when Lauren Byrd told him it's over and this time I really  
8 mean it, I'm sorry I have to hurt your feelings but this  
9 is it, move out, give me my key back, he couldn't handle  
10 it. He kept her key, he was not living there. We'll get  
11 to how we can show that to you through the evidence. He  
12 couldn't stand it that Lauren was moving on with her life  
13 with better people, with school teacher, Mike Anderson.

14 When he found out about Mike Anderson, he became  
15 outraged and showed up at her apartment unannounced, used  
16 the key that she had been asking him to return to get in  
17 where he finds her on that sofa in her den. He  
18 immediately is angry and starts asking her, Who have you  
19 been with, who are you seeing? When she said, I'm not  
20 telling you that, it's none of your business, I'm moving  
21 on with my life, he threatens her, threatens to kill her  
22 and he begins touching her by groping her breasts. He  
23 fondled her breasts. He used the word "fondle." Sex  
24 offenders fondle. Lovers, consenting adult caress.

25 He then takes her, and admits to this, and picks

1 her up like a child and takes her upstairs to her bedroom  
2 where he throws her on the bed, removes her clothes and  
3 begins to have vaginal penetration sex with her against  
4 her will. And in the meantime as he's raping her, she  
5 tells him, What you're doing to me is rape. Those words  
6 rang in his head and he realized, she's right, I'm raping  
7 her. And he gets off of her and she runs to the bathroom  
8 where she immediately starts taking baths because she's  
9 disgusted, as most victims of rape cases are. She locks  
10 the door to the bathroom and takes bath after bath after  
11 bath and he leaves.

12 The first person she tells about it is her  
13 friend Cat. She's got to compose herself to go pick up  
14 her son Zach. When she returns from picking Zach up she  
15 calls Ashley and tells Ashley what had happened.  
16 According to the defense, Ashley would do anything Lauren  
17 tells her to do. Well, really? Then why did Lauren call  
18 the police -- I'm sorry, why did Ashley call the police  
19 against Lauren's wishes? Remember Ashley's testimony,  
20 Lauren didn't want to call the police. Remember the web  
21 site for the Clemson Police Department on the computer  
22 that Ms. Garfield went over? Victims are reluctant, they  
23 rely on a friend. Usually they're encouraged by a friend  
24 to make contact with the police.

25 Then all of a sudden all of her friends start

1 showing up, like Mike, Cat, Carrie, and they know what  
2 Randy Thomas did. And Randy Thomas knows what he did.  
3 Because remember, ladies and gentlemen, when he testified,  
4 he was in the process of moving out. He was still living  
5 with her. They were broken up but still living together.  
6 He was going to move downstairs to that Aaron guy's  
7 apartment on the bottom floor, which, by the way,  
8 Detective Peppers couldn't tell you which floor he went to  
9 visit, what apartment he went to visit when he went to go  
10 make contact with Lauren Byrd.

11 But remember, ladies and gentlemen, Randy Thomas  
12 testified, I was in the process of moving out. And he  
13 also testified that Lauren wouldn't talk to me. Lauren  
14 would not talk to me. And when I found out she accused me  
15 falsely of raping her and told all of her friends, well, I  
16 just loaded up my stuff and went over to Amber's in  
17 Columbia.

18 Well, if you didn't rape this girl and you were  
19 still living with her, how did you get all your stuff?  
20 Because she didn't let him in the apartment. How did he  
21 get all his stuff? He was in the process of moving out.  
22 There's no testimony that anything belonging to him was  
23 left behind in her apartment.

24 And if he didn't do anything wrong, why not just  
25 live with his friend Aaron on the bottom floor? Why move

1 all the way to Columbia to live with Amber?

2 He claims that the following weekend after  
3 Lauren had supposedly falsely accused him of rape that he  
4 goes with James Aakhus, and I'm sorry if I mispronounce  
5 his name, and that they go by Lauren's parents' house  
6 unannounced and happen to find her father in the driveway  
7 and her father said, hey, yeah, I know you're the  
8 gentleman that my daughter dated for a year and broke up  
9 with on August 9th, 2004, sure, go on in, talk to my  
10 daughter, she's on the couch. In fact, I won't even tell  
11 my daughter you're coming in, I'm going to stay outside.

12 Ladies and gentlemen, that incident that James  
13 testified happened in June or July when they were still  
14 dating. What father's going to allow an ex-boyfriend to  
15 just come into their home without at least going to tell  
16 Lauren, hey, by the way, Randy's here, you want to talk to  
17 him? I know you guys broke up.

18 And she testified that it wasn't the best of  
19 breakups. She had to ask him to move out and give her the  
20 key back and he wouldn't give the key back.

21 Does that appeal to your common sense? What  
22 father would allow that to happen.

23 That visit that they're making such a big deal  
24 about was in June or July while they were still dating.

25 Then two months passed to October 30th, 2004.



1 And remember when I asked Mr. Thomas, we have to take your  
2 word for it, don't we, when he claims oh, yeah, we  
3 e-mailed and talked on the phone that whole two-month  
4 period. Well, we have to take his word for it, though.  
5 There's nothing else. Lauren told you there was no  
6 communication whatsoever, that he shows up at her front  
7 door, knocks on the door, she goes to see who it is, it's  
8 around noon and she thinks she can hide in the house, she  
9 thinks he didn't see her, didn't know the door was  
10 unlocked, and he just walks in.

11 He knew she was home alone, ladies and  
12 gentlemen. He saw her car out there and he totally  
13 admitted on the witness stand that he didn't just drive by  
14 her house by happenstance. He said, yeah, I admit that I  
15 went by there on purpose to see if she's there.

16 I mean, why would he think after two months of  
17 not dating that he has the right to walk in to this  
18 residence of his ex-girlfriend unannounced? And I asked  
19 him, Weren't you concerned you might startle her? She's  
20 home alone with her son and you just walk in? No, no,  
21 it's just normal routine, habit. Yeah, when you are  
22 dating. You have been broken up for two month by now.

23 And Lauren tells you that she's sitting on the  
24 couch and he's in that chair and he starts apologizing for  
25 what happened in Clemson. Well, if nothing wrong happened

1 at Clemson, why are you apologizing?

2 And she tells you that at first she's not scared  
3 of him because she truly felt he was remorseful, that he  
4 really sincerely was sorry for what he did to her. This  
5 is someone she had known for a year and trusted. She's a  
6 forgiving person, feels sorry for him, didn't want to hurt  
7 his feelings.

8 And according to Ms. Durant, she didn't want to  
9 hurt his feelings and she's going to falsely accuse him of  
10 rape? That's a big stretch, ladies and gentlemen.

11 And, ladies and gentlemen, she tells you that  
12 while she's on the sofa he's hanging out with Zach, and  
13 these are the pictures the defendant took, and that  
14 corroborates her. And I just beg you to look at Lauren in  
15 the background. Especially Defense Exhibit No. 2. That  
16 looks like someone really happy to see Randy Thomas in her  
17 home. Look at her body language, ladies and gentlemen.  
18 Does that appeal to your common sense that she's happy  
19 that he is there?

20 Zach is a three-year-old child. He sees a  
21 familiar face, someone he did call daddy. He has no  
22 reason to fear him at this point. Because at this point  
23 that man has not touched his mother yet. At this point  
24 Zach hasn't seen his mother crying, he's seen no violence  
25 yet.

1           And you know what's interesting, ladies and  
2 gentlemen? The defendant had access to the statement of  
3 the victim. And I asked him, It sounds like you've  
4 memorized the statement and you have an explanation for  
5 everything. And he even conceded that he had memorized it  
6 because it's his life on the line.

7           You know what he forgot, ladies and gentlemen?  
8 The time that she goes and whispers in the bathroom, she  
9 first text messages at 12:01 Ashley Mishoe saying, help,  
10 call me. And Ashley calls back and she's in the phone  
11 whispering, he's here, whispering he's here. And Ashley  
12 tells her to stay on the phone with me, stay on the phone  
13 with me. And then all of a sudden Lauren testifies that  
14 she heard the door shut and she said, okay, I'm fine, he's  
15 gone. And then Ashley advised her, go lock the door. And  
16 then when she went to go lock the door he came walking in.

17           Up until that point, ladies and gentlemen,  
18 nothing violent had happened yet. Not in her wildest  
19 dreams did Lauren Byrd know what was about to take place.  
20 And you heard that when she was caught in the hallway by  
21 the defendant coming back in she went to this living room  
22 and grabbed Zach and sat on the couch and that the  
23 defendant was across the room over here and starts again  
24 apologizing about Clemson. And when she keeps cutting him  
25 off, offending him, telling him just leave, just leave, he

1 gets angry because he realizes he's not getting through to  
2 her. He's realized he's lost her forever. She doesn't  
3 want to have anything to do with him. She didn't want to  
4 have anything to do with him back in August of 2004  
5 either.

6 Ladies and gentlemen, she testified that at that  
7 point he gets up, walks over to where she's seated on the  
8 couch, kneels in front of her, telling her, I'm just  
9 trying to get through to you, I'm just trying to tell you,  
10 tell you, tell you this is how I'm showing my love for you  
11 what happened at Clemson, that's how I show my love. And  
12 then he grabbed her or touched her knee and that she  
13 flinches back when he touched her and that offended him  
14 even more and angered him even more. That's when he  
15 grabbed Zach, put Zach on the floor, changes the channel  
16 from the Clemson game. And by all means check it out,  
17 ladies and gentlemen, the Clemson game is on. Once that  
18 channel changes to the cartoons, it's a whole different  
19 ball game. And there are photographs when law enforcement  
20 gets there later on of cartoons still on the TV, and I ask  
21 you to look at that. It shows Lauren's telling you the  
22 truth. You can't make up facts like that.

23 And that is when the defendant starts pulling at  
24 her by her wrists trying to get her to the staircase.  
25 She's resisting him. There's a struggle first on the

1 couch where he picks her up like a child and she  
2 straightens up to get out of his grasp and she falls back  
3 down on the couch and he sits down and her legs were  
4 draped over his.

5 Ladies and gentlemen, I'm going to show you a  
6 photograph, and bear with me because I can't remember  
7 where it is. There it is. State's 36. That is signs of  
8 disarray, but it's also signs of a struggle. And how do  
9 we know that this struggle involved Lauren Byrd? Look at  
10 the Gatorade bottle. And then when you look at the  
11 Gatorade bottle, look at the bottom of Lauren's pants. It  
12 looks like Gatorade, orange.

13 She says that then as they struggle and she's  
14 fighting him the whole time, that's when he starts picking  
15 her up like a child again and she's grabbing on to the  
16 railings and the staircase and that's consistent. And the  
17 fact that there's no fingerprints lifted, they're not  
18 there to find Lauren's fingerprint, ladies and gentlemen,  
19 they're there to find his. Lauren lives there, of course  
20 her prints are going to be there. And I submit to you  
21 that if they had developed a fingerprint on the staircase,  
22 Ms. Durant would tell you the exact same thing when she  
23 refers to the DNA evidence: That you can't tell us when  
24 that was put there. It could have happened three months  
25 ago. That fingerprint was put there anytime. She grew up

1 in this house. They will explain anything away. It  
2 doesn't matter that the fingerprints aren't on there. And  
3 that just shows proof that the fact this woman lives here,  
4 has gone up and down the stairs, the fact that her  
5 fingerprint isn't found on the railing doesn't mean she's  
6 never been there. That's ludicrous. That's her home, her  
7 parents' home. She's been up and down those stairs  
8 thousands of times. And the police didn't find her  
9 fingerprint on it. That doesn't mean she didn't grab onto  
10 those railings for dear life.

11 And he takes her up to the second floor, and,  
12 ladies and gentlemen, this is critical: If Lauren Byrd  
13 wanted to have sex with Randy Thomas consensually, you  
14 heard her testify, she respects her parents. I asked her,  
15 How do you regard your parents? I love my parents very  
16 much. I don't want them hurt. I don't want them  
17 concerned or worried for me.

18 In fact, Lauren's mother is outside of this  
19 courthouse, courtroom right now, because Lauren doesn't  
20 want her mother to hear what she went through. That's how  
21 much Lauren loves her mother.

22 If Lauren wanted attention so badly, wouldn't  
23 she have her mother here? I mean, what are we all going  
24 to do for Lauren? Her mother could spoil her rotten with  
25 clothes and cars if that's what she wanted is attention.

1           Lauren respects her parents. They have been so  
2 understanding with her when she had a child as a teenager,  
3 they've helped her with that baby, she respects them. And  
4 when I flat out asked her, you were all there, you saw her  
5 reaction, I would never have sex on my parents' bed.

6           Ladies and gentlemen, you heard from Lauren, her  
7 parents' bedroom is the first door on the left as you get  
8 up to this area on the second floor, the first door on the  
9 left. The defendant chose that room for a reason. She  
10 was putting up such a fight, he got her to the first bed  
11 that was available so he could rape her. That's how they  
12 ended up in that bedroom. She's grabbing on to this pole  
13 with her hands and he drags her so hard she loses grip,  
14 takes her to the floor right in this area, kneels down and  
15 says calm down, calm down. You love Zach don't you? You  
16 love Zach don't you? Then calm down. Take your shirt  
17 off. Take your shirt off. And she said, I believed that  
18 he would leave us alone if I did what he said. I believed  
19 he would leave us alone if I did what he said. If I did  
20 what he said means if he was allowed to have sex with her  
21 against her will.

22           She still couldn't take her shirt off. Knowing  
23 he would probably end up leaving her alone and her son  
24 alone, she couldn't do it, ladies and gentlemen, because  
25 she did not want to have sex with that man.

1           She takes -- he takes her shirt off, puts her on  
2     the bed. At one point he's trying to take his pants off  
3     and Lauren runs for the door. He grabs her and that's  
4     when he grabs her by the back of her neck and takes her to  
5     the bed where he then forces her onto the bed on her side  
6     and starts forcing her head to his crotch to force her to  
7     perform oral sex on him. He's trying to tell us this is  
8     consensual, this is how we had foreplay every time we have  
9     sex? Well, he forgot to mention oral sex in the Clemson  
10    incident, sir.

11           He makes her perform oral sex and he ejaculates  
12    in her mouth and Lauren testifies that when he did that  
13    she spit it out and that that angered him even more which  
14    is why he throws her on her back. And you heard from  
15    Deputy Gonzales, when he went in there he could see the  
16    leg marks in the comforter, the cushioned comforter, you  
17    could see leg marks in the shape of a V.

18           And I'm not going to pull that comforter out,  
19    but just remember, ladies and gentlemen, that the tag in  
20    the photograph is on the bottom left.

21           Gray Amick looks on the other side of this  
22    comforter first and he doesn't find either one of their  
23    DNA. Well, that's no wonder, it's not her bed, it's her  
24    parents' bed.

25           And then he flips it over so that the tag is



1 just like the photograph, and low and behold, ladies and  
2 gentlemen, defendant's DNA, the defendant's DNA on the bed  
3 comforter right by the nightstand. One in 19 quadrillion.

4 And Ms. Garfield asked, How many people are  
5 there? Six billion. Is that significantly less than one  
6 in 19 quadrillion? Yes. Six billion is all the human  
7 beings on earth. One in 19 quadrillion.

8 See, because without this evidence, ladies and  
9 gentlemen, if nothing was gathered that belonged to the  
10 defendant on this bed comforter, the defense would then  
11 say no sex happened, you can't prove his DNA's on that  
12 comforter.

13 They had to shift gears when Dr. Amick found  
14 that evidence and say, okay, well, now we can claim  
15 consent. We've got to claim consent. How are we going to  
16 explain his DNA on that bed comforter? How are we going  
17 to explain it on her pants?

18 And, ladies and gentlemen, when a person puts  
19 pants on, sometimes their body touches the top of the  
20 pants and you have to pull them up, it's all over the  
21 place, ladies and gentlemen. A, B, and C is Randy Thomas  
22 only.

23 And what's very interesting to me, ladies and  
24 gentlemen, is that in this general vicinity and it's on  
25 the comforter and it's 1A.4, a mixture of Lauren and the

1 defendant, but it's approximately in this general vicinity  
2 right where he had her pulled up to the edge of the bed  
3 and started to penetrate her vagina partially, halfway.  
4 And when he pulls out, I submit to you that's when his DNA  
5 gets there, mixed with her DNA. How else would it be  
6 there?

7 This corroborates Lauren Byrd, ladies and  
8 gentlemen. The exact precise location of where she said  
9 she spit the DNA or his semen up is right there.

10 And don't forget, ladies and gentlemen, the  
11 defendant admits to all of this. Yet on the witness stand  
12 because he heard his lawyer said you can't date DNA, he  
13 goes, oh, we've had sex on there before. Well, which one  
14 is it? Did you have consensual sex on that day, is that  
15 how your DNA got there, or are you lying and just you had  
16 sex there before? Why would you contest when it was  
17 deposited? Why?

18 Remember when I was going over the credibility  
19 factors and I said I would get back to a couple of them?  
20 Well, I want to talk about corroboration since I just  
21 touched on the DNA.

22 Forensic evidence, ladies and gentlemen. DNA is  
23 forensic evidence, physical evidence. Because Ms. Lanelle  
24 Durant asked you all in the beginning of her closing  
25 argument, where's the evidence, where's the evidence? And

1 then she asked you to look at the evidence and I'm like,  
2 wait, she just said there was no evidence, so what are  
3 they going to look at if there's no evidence?

4 This is physical forensic evidence. It does not  
5 lie. It is incapable.

6 Corroboration, what someone else said adds to  
7 your story, okay? You're going to hear from Judge Johnson  
8 that the testimony of a victim in a criminal sexual  
9 conduct case need not to be corroborated. We don't have  
10 to put up corroborating evidence for Lauren Byrd. You  
11 know why? Because the law recognizes that rapes happen in  
12 seclusion. They happen when the victim is normally alone  
13 with the defendant. The law recognizes that typically  
14 it's just going to be the victim's word against the  
15 defendant. That's why we have this law.

16 Ladies and gentlemen, the forensic evidence  
17 corroborates that. The exact precise location of where  
18 she said she spit up the semen is where it was found.  
19 However, you heard from Lauren. She has been consistent  
20 from the get-go. She has told at least seven people her  
21 story, and then she told you all.

22 Excuse me one second.

23 She told, first of all, her friend Ashley. And  
24 don't forget, ladies and gentlemen, you have got the  
25 little cassette where she calls her friend on the way to

1 the hospital saying he came back. Isn't that consistent  
2 with what Ashley testified to, that she told me he was  
3 gone, that she's whispering, I'm okay, he's gone? No, she  
4 didn't call 911 but she thought he was leaving, that he  
5 would leave her alone.

6 But, ladies and gentlemen, let's not forget, at  
7 13:55, 1:55 p.m., she called 911 and Investigator Godfrey  
8 saw it on her logged calls on her cell phone. And Randy  
9 forgot to mention anything about that. He forgot to  
10 memorize that one, I guess, or it wasn't in quotes.

11 But Ashley Mishoe, play that tape when you go  
12 back there: He came back. Doesn't that sound like a  
13 continuation of, okay, I'm fine, he's gone. It matches.  
14 He raped me, he held a knife to me, he threatened to kill  
15 me and Zach, he took Zach. That's what Ashley testified,  
16 and that she got that message and calls her back and  
17 talked to her in more detail en route, while she's en  
18 route to the hospital, and that she gets out of that I  
19 Dream of Jeannie costume and bolts to the hospital to meet  
20 up with her friend.

21 Then, ladies and gentlemen, not only has her  
22 story been the same from when she told Ashley, she tells  
23 Deputy Gonzales oral sex happened, not clear on the  
24 vaginal penetration. He said she said not fully. He put  
25 in his report, victim states there was no -- victim states

1 there was partial or something to the effect of no vaginal  
2 penetration completely. That's what he said, he forgot to  
3 put in the word "completely."

4 But you know what? When I asked him, you didn't  
5 put anything in your report about oral sex or vaginal sex,  
6 and what happened? And he explained to you that he was  
7 the first responding officer, he had a lot of duties, he  
8 had to secure the crime scene, he had to get names of the  
9 witnesses, Sena Long, Katria Weyl, Zach Bregozzi, Kevin  
10 Powers, the little boy that lived across the street, the  
11 other -- I think his name is -- well, I can't remember,  
12 but there were six boys out there and he had to get all  
13 their information. He had already talked to the victim  
14 with Katria Weyl there and then he had to go back and  
15 write his report.

16 And you know what, ladies and gentlemen? He  
17 admits he made a mistake. He admits it, unlike Detective  
18 Peppers.

19 Who else does she tell? Katria Weyl, the very  
20 first person that Lauren sees. And remember, Katria said,  
21 She was reluctant to tell me about the rape.

22 Ladies and gentlemen, they didn't know each  
23 other that well. She told her, he tried to kill me, he  
24 had a knife, he took my son. It's difficult to discuss  
25 such things with strangers. And I can't fathom how

1 difficult it was for Lauren to testify about it in front  
2 of this whole courtroom. She had enough trouble telling  
3 Katria Weyl, the woman who saved her.

4 One thing I just wanted to touch on that  
5 Ms. Durant said in her closing argument was why would you  
6 run off while this man's got your kid and run off and  
7 leave your kid behind and go to a neighbor? How could you  
8 leave your child? What woman or mother would do that?

9 Thank God that Lauren Byrd did that. Thank God  
10 she did that. Because Katria Weyl acted immediately. She  
11 went and got her cell phone or her regular land line,  
12 cordless phone and was out there running side by side with  
13 Lauren, recording everything she could. And you all have  
14 the 911 tape and I beg you to listen to it when you go  
15 back there. Because in that 911 tape you'll hear Lauren  
16 Byrd. You will hear how she is petrified.

17 And if you think that's acting? Find him not  
18 guilty and give her an Academy Award and let's call it a  
19 day.

20 You cannot make up the screams. Sena Long  
21 described those screams. She described them as, Something  
22 I've never heard in my life and something I will never  
23 forget.

24 And she tells Katria Weyl before the police even  
25 arrived she had been raped and that he had threatened to

1 kill her and her son if she didn't succumb to his sexual  
2 wishes and that he had a knife.

3 And remember Mr. Weyl saying, no, no, no one's  
4 going to kill anybody. Listen to that portion of the  
5 tape. Because she screamed, He's going to kill us, he's  
6 going to kill us, and he says, No, no, no, calm down. No  
7 one's going to kill anyone. Listen to the tape, ladies  
8 and gentlemen.

9 Dr. John Stewart. He doesn't know the victim or  
10 the defendant. And he reported that when he met with the  
11 victim at the emergency room, Ms. Lauren Byrd, he said it  
12 was a 19-year-old assaulted by an ex-boyfriend at her  
13 parents' house; no one there except three-year-old son.  
14 Partial vaginal penetration. She does not feel he  
15 ejaculated. Forced oral sex when he did ejaculate.

16 Another person she has consistently told, and I  
17 forgot to mention Katria Weyl told you, I was there when  
18 the victim tells Deputy Gonzales about the rapes, the oral  
19 and vaginal.

20 Was any coercion used? Checkmark, verbal  
21 threats. He threatened to kill her and her son.

22 Emotional assessment: She's crying.

23 He notes there is no bruising. He said it takes  
24 time to develop. He punched, he then gives that example  
25 when he was punched by a patient and it took him a day to

1 actually bruise. Remember that example?

2 Ashley Mishoe stays with her friend for a few  
3 days and she testifies, I saw bruises on her wrists,  
4 bruises on her right bicep, and some on her legs.

5 And just so you all know, Ashley was not in this  
6 courtroom when Lauren Byrd testified. There's been a  
7 witness sequestration order in place for this entire  
8 trial. Ashley had no idea what Lauren testified to, where  
9 he grabbed her by the right bicep and led her back  
10 downstairs after the rape.

11 She remembers the victim telling her about him  
12 pulling her by her wrists, but she told you she saw with  
13 her own two eyes bruising on both wrists, her right bicep,  
14 and on her legs from when later on in the incident Lauren  
15 grabbed on to that banister with her leg and he pulls her  
16 leg and he takes her to the kitchen where he gets the  
17 knife and puts it to her throat.

18 Then he puts in his report that there's no  
19 vaginal or no trauma noted.

20 Ladies and gentlemen, the defendant put his  
21 penis in the victim's vagina halfway and then he pulled it  
22 right out. He didn't have to cause bruising, lacerations,  
23 contusions. The act of sticking your penis in another  
24 woman's vagina, partially, fully, that alone is rape in  
25 the first degree, criminal sexual conduct first degree.



1 And Dr. Stewart told you all: Trauma does not exist in  
2 all rapes. And Lauren is one of those cases, ladies and  
3 gentlemen.

4 At the hospital, then, she told her story  
5 consistently also to Jhoana Pineda-Kim, the nurse who  
6 assisted Dr. Stewart.

7 She also tells Investigator Roy Livingston and  
8 he had a two-page report of everything she had told him.  
9 And thank God for Investigator Roy Livingston, ladies and  
10 gentlemen: He did his job by the book. And I wish that  
11 Detective Peppers would have been here in this courtroom  
12 to hear Investigator Livingston testify so he could learn  
13 how you are to properly investigate a criminal sexual  
14 conduct case.

15 Detective Livingston arrives at the scene,  
16 immediately makes contact with Lauren Byrd, immediately  
17 starts taking notes of what she's telling him.

18 He then is making contact with Investigator  
19 Brown, the crime scene investigator, who then along with  
20 the victim is being led to where different things are  
21 occurring, there's signs of struggles in this room, signs  
22 of struggle in that room, goes to the top, does a black  
23 light, victim's telling them where I spit it out. Sure  
24 enough, black light, there it is. It's florescent right  
25 there, I'm going to collect it, I'm going to bag it up,

1 wrap it up, tape it up.

2 Investigator Livingston says then, You need to  
3 come with me to the hospital. Not, are you up for it, do  
4 you feel like going, I'm just going to leave this all up  
5 to you?

6 Ladies and gentlemen, it's the State of South  
7 Carolina versus Randy Thomas, not Lauren Byrd versus Randy  
8 Thomas.

9 Investigator Livingston accompanies the victim  
10 to the hospital where she then undergoes an extremely long  
11 enduring afternoon until approximately 10 o'clock at night  
12 being poked and prodded, her pubic hair plucked, her hair  
13 plucked or actually combed, just intrusive. She's just  
14 been raped and she's got to go through an extensive  
15 physical exam by people she doesn't know. She doesn't  
16 know Dr. Stewart or Jhoana, the nurse.

17 But Investigator Livingston said, You need to  
18 go. And if it weren't for him, Investigator Brown would  
19 have not picked up the clothes at the hospital. That's  
20 how an investigation in this type of case should begin.  
21 Evidence is critical at the first stages, within the first  
22 48 to 72 hours.

23 Detective Peppers doesn't recognize that what he  
24 did was a huge disservice to not only Lauren Byrd but any  
25 other female victim of rape in Clemson, and it's startling

1 that there's a detective there near a campus where these  
2 types of cases happen a lot. It's frightening. It's  
3 frightening.

4 Then who else does she tell, ladies and  
5 gentlemen? The next day she gives a very detailed  
6 six-page statement to Investigator Brian Godfrey. Six  
7 pages. And so, ladies and gentlemen, one, two, three,  
8 four, five, six, seven, eight. The eighth time. And all  
9 the defense has for her is three plucky little short  
10 sentences out of each page saying, he grabbed me by my  
11 wrists. All right, page three, he grabbed me by my wrist.  
12 Page five, he grabbed me by the wrist. That's all they  
13 have for us? That's all they could do?

14 And it was completely out of context. I had to  
15 go back on redirect and say, Would you please read the  
16 next sentence? He grabbed me by the wrist and dragged me  
17 up the stairs and I was fighting for my life. You know,  
18 read it in context. Don't try to pull the wool over the  
19 jury, their eyes. When you take anything out of context  
20 it's not going to sound right. But that's all they had.  
21 That's all they could do to show anything.

22 Eight times. Consistency. And you know what?  
23 When you're telling the truth, you don't forget. You  
24 don't forget where you are in your story. You don't  
25 forget.

1           When you're lying, oh, yeah, let me backtrack, I  
2 forgot to tell you about how the struggle happened in the  
3 living room by the front door. Yeah, I got to backtrack,  
4 I forgot to mention something about that. That's when you  
5 lie.

6           The reason why the judge allowed us to talk to  
7 you all about what happened at Clemson is for a specific  
8 limited purpose, and it's to show you three things:  
9 Common scheme or plan. Common scheme or plan, ladies and  
10 gentlemen. The facts that happened in Clemson are  
11 virtually identical to what happens to her at her parents'  
12 house in Irmo. That's what they call in Latin modus  
13 operandi. We call it MO, same MO. Carries her up the  
14 stairs to the bed as a child, puts her hands over her head  
15 as he vaginally rapes her. Then when she tells him to  
16 stop, he freaks out on her, oh, my gosh, I'm raping you,  
17 and threatens to kill himself, kill others, kill her, her  
18 son. He apologizes and cries. It's the same exact act,  
19 ladies and gentlemen, by the same sexual predator. That's  
20 why you were allowed to hear about Clemson, to show the  
21 common scheme and plan.

22           And you were also allowed to hear about Clemson  
23 to show motive. Motive. Why did he come to her house on  
24 that day when she's home alone with her child? You know  
25 why? He didn't appreciate her telling her friends and her

1 new boyfriend what he had done. He didn't appreciate it.  
2 And he was going to show her. He also realized he  
3 couldn't have her and he was going to try to get her back.  
4 That's why he lies to her and says what I did to you in  
5 Clemson is my way of showing you I love you. Motive for  
6 why he went back to Lauren on that specific day.

7 But the State doesn't have to prove motive,  
8 ladies and gentlemen. We have absolutely no obligation to  
9 explain why a person like him would do something so  
10 horrific. We have no burden to show that. But we did.  
11 We explained it.

12 Intent. Remember I discussed criminal intent  
13 when I discussed the law? He knew when he raped her in  
14 Clemson, when he was vaginally penetrating her against her  
15 will and she said, you know what you're doing to me is  
16 rape? He stopped and he cries and apologizes and  
17 threatens to kill himself, threatens to call the police on  
18 himself. He knew what he did to her at Clemson was rape,  
19 ladies and gentlemen. And yet he did the exact same thing  
20 to her again. That is criminal intent. That is a  
21 conscious wrongdoing. That is why you were allowed to  
22 hear about that.

23 Now I am about to wrap this up, ladies and  
24 gentlemen. I just want you to understand why we had to  
25 bore you to tears with all this evidence custodian sitting

1 on the stand, I got it on such and such day from so and so  
2 and it was seal and was not tampered with.

3 We have to prove to you that this DNA evidence,  
4 you can bank on it. It's never been touched, tampered in  
5 any way, form, fashion. And you never heard Ms. Durant  
6 challenge it in any way, about the integrity of this  
7 evidence in her closing argument.

8 I'm not going to bore you with the details. I  
9 just wanted to point it out to you. It's intact. It's  
10 intact. It's intact. This is the date of testing,  
11 testing, testing. There is an explanation for where this  
12 evidence has been from day one until the day it was  
13 tested. And as the State of South Carolina we have the  
14 burden of proof and we have to make sure that the evidence  
15 that you rely on in making the decision of someone's  
16 guilt, that the integrity is of the highest standard, that  
17 you can depend on it and bank on it.

18 Defense strategies. And I want to begin by  
19 saying that I have the utmost respect for Ms. Durant and  
20 Ms. VanGinhoven. They are fine attorneys and good people.  
21 But they have a job to do. They have taken an oath when  
22 they became lawyers to zealously represent their client,  
23 and they have done so in this case.

24 But I have a job, too, ladies and gentlemen, and  
25 I don't want you to think that I'm being rude, but I have

1 an obligation bring to your attention what they're trying  
2 to do, how they're representing their client. So I wanted  
3 to bring to you these factors.

4 Their defense strategy -- in typical rape cases  
5 you either say, I didn't do it, unh-unh, wasn't me,  
6 because there is no DNA, prove it; or if there's DNA  
7 proof, oh, well, yeah, I did it but she consented.

8 So in this case, ladies and gentlemen, they  
9 first started off by challenging the DNA evidence with Dr.  
10 Gray Amick on the witness stand and that, you know, semen  
11 versus other bodily fluid, you can't date when the  
12 defendant's DNA got there, and so they're challenging it  
13 by trying to come up with some explanation to explain that  
14 no sex took place. I didn't do it.

15 Well, when that doesn't work, typically in rape  
16 cases you then go, the victim consented. That's how my  
17 DNA got there, that's how it happened, she consented,  
18 though. We had sex, but she said she wanted it.

19 When that doesn't work, ladies and gentlemen,  
20 then you attack the victim's credibility. Oh, my God,  
21 Lauren, in your six-page statement, you're lying, you  
22 didn't write down that Zach was crying. She didn't write  
23 down he was wearing the Spider-Man outfit. Does that make  
24 her a liar? Weak attempt to show that she's lying.

25 Number four, if that doesn't work, claim that

1 the victim is promiscuous. And that's exactly what Randy  
2 Thomas was doing on the witness stand, coming up with this  
3 ridiculous scenario that she's trying to bash his  
4 feelings. If the defense lawyers want you to think that  
5 she would do anything not to hurt his feelings, including  
6 making up the fact he raped her, yet he gets on the  
7 witness stand and says she's bashing my feelings, bashing  
8 my feelings and just tearing them apart and telling me  
9 she's sleeping with everybody, cheating on me. That's  
10 what they do if that doesn't work."

11 Then if that doesn't work you've got to use  
12 smoke and mirrors to divert your attention, the jury's  
13 attention. And that's when it went on with Lauren's  
14 cross-examination when little sentences, three-word  
15 sentences from her six-page statement was pulled out of  
16 context. It's nit-picked out of total context to divert  
17 your attention from the facts. You know why? Because the  
18 facts hurt Randy Thomas. The truth hurts Randy Thomas.

19 Next if that doesn't work, apologize in your  
20 opening statement to the jury for language used in the  
21 case.

22 It's a rape trial, ladies and gentlemen. This  
23 is the real world. You think Lauren enjoyed talking about  
24 this in front of you all, in front of everyone? Did you  
25 notice her demeanor when she had to first say the word



1 "penis in her vagina?" Did she look like she enjoyed  
2 discussing that? It's a rape trial, this is a real case.

3 If that doesn't work, then claim, oh, the  
4 defendant, I didn't want to take Zach from his mom.  
5 Ladies and gentlemen, that is not a defense. There is a  
6 defense called duress, but we've heard no evidence of it.  
7 That's when someone puts a gun up to your head and says,  
8 you're going to rob this bank with me and if you don't I'm  
9 going kill you, and you rob the bank with them. Well,  
10 you're not guilty because you're under duress, someone had  
11 a gun to your head. Where in this entire transcript of  
12 this trial have you heard that Randy Thomas acted against  
13 his will when he raped Lauren Byrd, kidnapped her son,  
14 held a knife up to her throat? Nowhere.

15 If that doesn't work: I didn't mean to do it.  
16 I mean, I realized I had the child in my lap in the  
17 driver's seat, not even in a restraint, but I turned  
18 around a block and a half away later and I love that  
19 child, I would never do anything to hurt that child, that  
20 child used to call me daddy. Well, ladies and gentlemen,  
21 you loved that child so much? No, you loved your own neck  
22 so much. He put that child out in the middle of the road,  
23 ladies and gentlemen. And Katria Weyl had the best  
24 vantage point. Sena Long was turning her car around in  
25 that cul-de-sac. Katria Weyl told you that he dropped

1 that child off in the middle of the road, a busy street,  
2 and that he pulled a U-turn right around that child and  
3 almost hit that baby.

4 Randy Thomas doesn't care about anyone but  
5 himself.

6 Demeanor. Remember his demeanor, ladies and  
7 gentlemen, on that witness stand. And I don't know if  
8 anyone noticed it, but I certainly did. When he's  
9 testifying about this supposed consensual sex in Clemson,  
10 Lauren had to leave the courtroom crying. And his  
11 demeanor changed. He started smiling.

12 In his statement to Investigator Godfrey, who  
13 writes everything good and bad for the State. He writes  
14 how emotional and upset he was. Not angry, upset and  
15 emotional. When did you see any remorse in that man on  
16 the witness stand? Not even for Zachary. Or Zachariah,  
17 I'm sorry. Not even for what he did to Zach. When did  
18 you see him once do that?

19 Randy Thomas in his statement to Godfrey, I know  
20 I did something wrong but not this wrong. Well, that's  
21 not a defense. Never denies oral penetration after he's  
22 specifically told by Investigator Godfrey, you're being  
23 accused by Lauren Byrd of forcing her to give you oral sex  
24 and forcing your penis inside of her vagina. What's he  
25 say? There was no vaginal penetration.

1           What about when I asked him, what about say  
2   there was no force, she consented, she's lying? No, there  
3   was no vaginal penetration.

4           Question: Everything that happened outside  
5   true? Randy Thomas answered and it's in quotes, yes. But  
6   then he gets on the witness stand and says that what  
7   Katria Weyl testified to isn't true.

8           He knew she was home alone in Irmo. Initially  
9   he tells the investigator different things: I don't  
10   remember how I knew she was at home, and then he comes up  
11   with the idea of oh, I happened to be driving by the  
12   neighborhood going to see a friend. But then on the  
13   witness stand he says, Oh, yeah, I went by her house to  
14   see if she was home by chance. Which one is it? Now  
15   that's inconsistent, ladies and gentlemen.

16          He admits that she did not call him over. He  
17   admits that he had a knife. And the fact that he admits  
18   he had a knife, that doesn't make him guilty of raping  
19   her?

20          Ladies and gentlemen, he has memorized this  
21   victim's statement inside and out. He has to come up with  
22   an explanation why he would take off with the baby if  
23   they're all leaving as one big happy family. He thought  
24   this through, ladies and gentlemen. I had a knife on me,  
25   that's why I had to take off. Well, how did Katria Weyl

1 know you had a knife in your back pocket, you know, inside  
2 a car driving away? How did she know that? I panicked.  
3 He said, I didn't want to take Zach away from his mom.  
4 But he did. Saying, I didn't mean to punch you; oops, I  
5 punched you, sorry, didn't mean it. You committed a  
6 crime. Show some remorse.

7 Ladies and gentlemen, this has been a long week  
8 and I'm sure you cannot wait to go into the jury room and  
9 begin your deliberations. I am asking you to consider all  
10 of the evidence, weigh the credibility of every witness,  
11 and return a verdict of guilty of criminal sexual conduct  
12 first degree, guilty of kidnapping Zachariah Byrd, guilty  
13 of kidnapping Lauren Byrd, guilty of assault and battery  
14 of a high and aggravated nature for holding that knife to  
15 her throat.

16 Verdict is Latin for speaks the truth, verdicto.  
17 Bring us a verdict that speaks the truth and that's  
18 finding him guilty of everything as charged.

19 Thank you.

20 Nothing further, your Honor.

21 THE COURT: We're going to take a very brief  
22 break, about five minutes at the most. I'm not going to  
23 go back to my office.

24 We've been going about two hours now. I'm going  
25 to give you a chance to use the restroom before you hear

1 from the Court, the instructions on the law.

2 Don't begin deliberating and don't start eating  
3 your lunch. I want to charge you before we do that. If  
4 you'll step back into the jury room.

5 Everyone else stay seated while the jury leaves  
6 the courtroom. Stay seated, ma'am.

7 Thank you. We'll take five minutes.

8 (The jury left open court at approximately 1:08  
9 p.m.)

10 THE COURT: Let's go ahead and bring the jury  
11 in.

12 (The jury came into open court at approximately  
13 1:18 p.m.)

14 THE BAILIFF: The jury is all present, your  
15 Honor.

16 THE COURT: Thank you.

17 Mr. Foreman, ladies and gentlemen, at this time  
18 it does become the duty of the Court under the  
19 constitution of this state to charge you, and that simply  
20 means instruct you in the law that applies in this case.

21 Now, I need to tell you before I get into the  
22 charge, that in some states the judge's charge on the law  
23 is reduced to writing and the jury is given a copy of it.  
24 That is not the procedure in South Carolina. So you're  
25 not going to have a written copy of what I'm about to go

1 over with you, so you simply need to listen closely, and  
2 when you begin deliberating, if you have questions about  
3 the law, which is what I can talk to you about, I'll be  
4 glad to respond or answer those questions if I'm permitted  
5 to do so, but I just want to be sure and point out to you,  
6 don't think you're going to be getting a copy of what I'm  
7 about to go over with you.

8 And I think sometimes when I have not told the  
9 jury that, they think they're going to get a copy, they  
10 get in the jury room, the copy doesn't come back there and  
11 all of a sudden they want to hear it all again. So just  
12 listen closely, please.

13 It is your duty as jurors to accept and apply  
14 the law as I'm now going to explain it to you, and as  
15 jurors, it is your exclusive duty to decide all the issues  
16 of fact in this case, and for that purpose, to determine  
17 the effect, the value, the weight of the truth of the  
18 evidence that has been presented during the trial, for  
19 both the State of South Carolina and the defendant, Mr.  
20 Thomas, have a right to expect that you will individually  
21 and collectively, that you will conscientiously consider  
22 and evaluate the evidence in this case and apply the law  
23 of the case to that evidence, to the end that both the  
24 State and the defendant will receive and obtain a fair and  
25 impartial trial in this case.

1 I'm going to go over and review with you in just  
2 a minute the charges that are made in the indictments in  
3 this case. Again, I will instruct you that the  
4 indictments in the case contain the charges or the  
5 allegations and they are not and cannot be considered by  
6 you as evidence of the charges that they contain.

7 As I've indicated, there are four separate  
8 indictments in the case. The first one that I will go  
9 over is 05-10296. These are all entitled The State versus  
10 Randy Thomas.

11 The charge that is made in this indictment is  
12 the charge of criminal sexual conduct first degree. It is  
13 alleged in the indictment that Randy Thomas did in  
14 Richland County on or about October 30, 2004, engage in  
15 sexual battery, to wit, sexual intercourse upon and with  
16 the body of Lauren Byrd without her consent. Such sexual  
17 battery was accomplished by the use of force of a high and  
18 aggravated nature and/or the victim submitted to such  
19 battery while being kidnapped and/or forcibly confined,  
20 all in violation of South Carolina Code of Laws Section  
21 16-3-652.

22 The next indictment is 05-10297. Again, The  
23 State versus Randy Thomas. The charge that is made in  
24 this indictment is that of assault and battery of a high  
25 and aggravated nature. It is alleged in this indictment

1 that Randy Thomas did in Richland County on or about  
2 October 30, 2004, commit an assault and battery upon the  
3 victim, Lauren Byrd, constituting an unlawful act or  
4 violent injury to the person of the said victim,  
5 accompanied by circumstances of aggravation, to wit,  
6 serious bodily injury and/or use of a deadly weapon, all  
7 in violation of the common law of the state of South  
8 Carolina.

9 The next indictment is 05-10298, State versus  
10 Randy Thomas. The charge in this indictment is that of  
11 kidnapping. It is alleged in this indictment that Randy  
12 Thomas did in Richland County on or about October 30th,  
13 2004, unlawfully seize, confine, inveigle, decoy, kidnap,  
14 abduct, or carry away the victim, Lauren Byrd, by any  
15 means whatsoever without the authority of law, in  
16 violation of Section 16-3-910 of the South Carolina Code  
17 of Laws.

18 And the last indictment, 05-10299, State versus  
19 Randy Thomas. It is alleged in the indictment that Randy  
20 Thomas did in Richland County on or about October 30th,  
21 2004, unlawfully seize, confine, inveigle, decoy, kidnap,  
22 abduct or carry away the victim, Zachariah Byrd, by any  
23 means whatsoever, without the authority of law, in  
24 violation of Section 16-3-910 of the South Carolina Code  
25 of Laws.



1           Those are the charges that have been made in the  
2 indictments in this case.

3           Of course, throughout these instructions when I  
4 refer to the defendant, I am referring to Randy Thomas.

5           To the charges that have been made in these  
6 indictments, the defendant has entered a plea of not  
7 guilty.

8           This plea of not guilty by the defendant places  
9 the burden of proof on the State to prove the guilt of the  
10 defendant beyond a reasonable doubt before you, the jury,  
11 can find the defendant guilty.

12           The defendant is presumed under the law innocent  
13 of the charges that are made in these indictments. It is  
14 a cardinal and a fundamental rule of the law of evidence  
15 in this state that a defendant, regardless of the charge  
16 or charges against him or her, will always be presumed  
17 innocent of the crimes for which he has been indicted  
18 unless or until the guilt of the defendant has been proven  
19 by evidence that satisfies you, the jury, of his guilt  
20 beyond a reasonable doubt.

21           This presumption of innocence is not just a mere  
22 legal theory or a mere legal phrase. The presumption of  
23 innocence is a substantial right to which every defendant,  
24 including Mr. Thomas, is entitled.

25           The Supreme Court of this state has stated and

1 declared that the presumption of innocence is like a robe  
2 of righteousness placed about the shoulders of a defendant  
3 and it remains with the defendant and assigns the  
4 defendant to that class, the innocent, until that  
5 presumptive robe of righteousness has been stripped from  
6 the defendant's person by evidence that satisfies you, the  
7 jury, of the guilt of the defendant beyond a reasonable  
8 doubt.

9 The presumption of innocence accompanies this  
10 defendant from the time of his arraignment, from the time  
11 of his appearance in court and throughout every stage of  
12 the trial and continues with this defendant even after you  
13 retire into the jury room to consider your verdict in this  
14 case.

15 The presumption of innocence continues to exist  
16 to the benefit of the defendant until you, the jury, reach  
17 the conclusion the State has proven the guilt of the  
18 defendant beyond a reasonable doubt.

19 The State is not required to prove the guilt of  
20 the defendant beyond all doubt or beyond every doubt but  
21 beyond a reasonable doubt. And when we say that proof  
22 must be established beyond a reasonable doubt, those words  
23 should be given their plain and ordinary meaning.

24 A reasonable doubt is the kind of doubt that  
25 would cause a reasonable person to hesitate to act.

1           A reasonable doubt can arise from the evidence  
2 presented in the case or the lack of evidence in the case.

3           To think that a defendant is probably guilty or  
4 that the circumstances are suspicious is not enough.  
5 Proof beyond a reasonable doubt is proof that leaves you  
6 firmly convinced of the defendant's guilt.

7           There are few things in this world that we know  
8 with absolute certainty, and in criminal case the law does  
9 not require proof that overcomes every possible doubt. If  
10 based on your consideration of the evidence you are firmly  
11 convinced that the defendant is guilty of the crime or  
12 crimes charged, you must find him guilty.

13           If, on the other hand, you think there is a real  
14 possibility that he is not guilty, you must give him the  
15 benefit of the doubt and find him not guilty.

16           You alone must make the determination of whether  
17 or not reasonable doubt exists as to the guilt of this  
18 defendant.

19           I would instruct you that the defendant is  
20 entitled to every reasonable doubt arising in the whole  
21 case. So upon any issue of fact that is essential to a  
22 conviction and the verdict of guilty, if you have a  
23 reasonable doubt as to how that issue should be resolved,  
24 it would be your duty to resolve that reasonable doubt in  
25 favor of the defendant.

1           A defendant, Mr. Foreman and ladies and  
2 gentlemen, is not required to prove his innocence but the  
3 State is required under the law to prove every essential  
4 element of the offenses charged against him by evidence  
5 that satisfies you, the jury, of the guilt of the  
6 defendant beyond a reasonable doubt before you can convict  
7 the defendant and find him guilty.

8           If and upon the whole case you have a reasonable  
9 doubt as to the guilt or the innocence of the defendant,  
10 he is entitled to that reasonable doubt and would be  
11 entitled to an acquittal and a verdict of not guilty.

12           But, on the other hand, if upon the whole case  
13 you find that the State has proven by evidence which  
14 satisfies you of the guilt of this defendant beyond a  
15 reasonable doubt, then in that circumstance it would  
16 equally be your duty to convict the defendant and find him  
17 guilty.

18           If you find the defendant guilty but you have a  
19 reasonable doubt as to whether the defendant is guilty of  
20 a greater crime charged or a lesser crime charged, then  
21 you would resolve that reasonable doubt in favor of the  
22 defendant and write a verdict of guilty only as to the  
23 lesser charge, but of course you do not write a verdict to  
24 any charge unless as to that particular charge you find  
25 that all the elements of the charge have been proven by

1 the State beyond a reasonable doubt.

2 I would instruct you again that the indictments  
3 in this case are not evidence in the case and cannot be  
4 considered by you as evidence in this case.

5 Again, the indictments are simply the formal  
6 written instruments that contain the charge or the charges  
7 that are made against a defendant and they serve as the  
8 formal document by which this case has been processed or  
9 brought into this court.

10 Now during the trial, Mr. Foreman and ladies and  
11 gentlemen, you and I have certain duties that we are to  
12 perform.

13 As the trial judge, it is my responsibility to  
14 preside over the trial of the case. I also have the duty  
15 to rule upon or pass upon the admissibility of the  
16 evidence that was offered during the trial.

17 You are to consider only the competent evidence  
18 before you and you are to disregard and disabuse from your  
19 mind any testimony that was ordered stricken from the  
20 record in this case during the progress of the trial, if  
21 there was any, and you are to consider only the testimony  
22 that has been presented from this witness stand together  
23 with any exhibits that have been made a part of the record  
24 in this case.

25 I do have the additional duty to charge you the

1 law that applies in this case, and as the presiding judge,  
2 I am the sole judge of the law of the case, and it is your  
3 duty as jurors to accept and apply the law as I've now  
4 explained it to you.

5 If you have some preconceived idea as to what  
6 you thought the law was or what the law ought to be, and  
7 what I'm about to go over with you does not agree with  
8 that, then you are obligated under the oath that you took  
9 when this case began to abandon that preconception,  
10 because you have agreed to accept and apply the law as the  
11 Court is now going to explain to you.

12 In every case that is tried in this court before  
13 a jury, the jury does become the sole and the exclusive  
14 judge of the facts in a case, and you, the jury, are the  
15 judge of the facts in this case. Again, the Court is the  
16 judge of the law in the case.

17 The constitution of this state has declared that  
18 a trial judge shall not intimate, state, comment upon, or  
19 make any statement to a trial jury about the facts in a  
20 case.

21 Since you are the sole judge of the facts in  
22 this case, you are not infer from anything that I said  
23 during the progress of the trial in ruling upon the  
24 admissibility of evidence or otherwise or anything that I  
25 say during the course of these instructions to you that I

1 have any opinion about the facts of this case. The law  
2 does not permit me to have an opinion about the facts of  
3 this case and I do not have an opinion as to the facts of  
4 the case. This is a matter solely for you, the jury, to  
5 determine.

6 As jurors, then, it is your duty as I've  
7 instructed you to determine the effect, the value, the  
8 weight, and the truth of the evidence that has been  
9 presented during the trial.

10 By necessity, you must assess the credibility of  
11 the witnesses who have testified in this case.

12 Credibility is simply a legalistic term that  
13 means believability.

14 It becomes your duty as jurors to analyze and to  
15 evaluate the evidence and determine that evidence which  
16 convinces you it's true.

17 I would instruct you that in determining the  
18 question of the credibility or the believability of  
19 witnesses who have testified in the case, you may believe  
20 one witness as against several witnesses or several  
21 witnesses as against one.

22 You may believe a part of the testimony of a  
23 witness and reject the remaining part of the testimony of  
24 that same witness. You may believe the testimony of a  
25 witness in its entirety or reject the testimony of a

1 witness in its entirety.

2 You may consider whether any witness has  
3 exhibited to you any interest, any motive, any bias, or  
4 any prejudice in the case.

5 You may consider that the demeanor of a witness,  
6 that is the appearance of a witness from the witness  
7 stand. And you may, of course, consider the opportunity  
8 for knowledge concerning those things about which a  
9 witness has testified.

10 You're objective, Mr. Foreman and ladies and  
11 gentlemen, is to determine the truth regardless of its  
12 source and in doing so in exercising your mental processes  
13 and in determining what you consider to be true.

14 The law simply requires that you exercise your  
15 good judgment and your common sense, your sense of logic  
16 and reason, and your experiences in life, and you then  
17 apply these attributes of ability to the evidence and  
18 determine what you, the jury, consider to be the truthful  
19 evidence and to this state of facts as determined by you,  
20 the jury, you then take and apply the law as the Court is  
21 now stating it to you and thus arrive at a true verdict in  
22 the case.

23 There are two types of evidence that are  
24 generally presented during a trial: Direct evidence and  
25 circumstantial evidence.



1 Direct evidence is the testimony of a person who  
2 asserts or claims to have actual knowledge of a fact, such  
3 as an eye witness.

4 Circumstantial evidence is proof of a chain of  
5 facts and circumstances indicating the existence of a  
6 fact.

7 The law makes absolutely no distinction between  
8 the weight or the value to be given to either direct or  
9 circumstantial evidence, nor is a greater degree of  
10 certainty required of circumstantial evidence than of  
11 direct evidence.

12 You should weigh all the evidence in the case,  
13 and after weighing all the evidence in the case, if you  
14 are not convinced of the guilt of the defendant beyond a  
15 reasonable doubt, then you must find the defendant not  
16 guilty.

17 I would further charge you that while the Court  
18 determines the admissibility of evidence, you, the jury,  
19 must determine the existence, the voluntariness, and the  
20 weight of any alleged statement made by the defendant.  
21 You must make the ultimate determination of whether or not  
22 the defendant, in fact, made the alleged statement.

23 If you determine that the defendant made the  
24 statement, then you must determine whether the statement  
25 was made voluntarily.

1           Finally, you will decide what weight, if any,  
2           should be given to any alleged statement.

3           You must determine whether the alleged statement  
4           was the product of an essentially free and unconstrained  
5           choice by its maker.

6           The State must prove the voluntariness of a  
7           statement beyond a reasonable doubt. If you determine  
8           beyond a reasonable doubt that a statement was given and  
9           it was freely, and given freely and voluntarily, then you  
10          may give the statement such further consideration as you  
11          deem proper.

12          If you determine that the alleged statement was  
13          not the free and voluntarily willed expression of the  
14          defendant, then you should not consider the statement as  
15          evidence.

16          In determining whether a defendant's will was  
17          overcome in obtaining a statement, the law requires you to  
18          consider what is known as the totality of the  
19          circumstances. You should consider both the  
20          characteristics of the defendant and the circumstances  
21          surrounding any questioning or interrogation.

22          Some of the factors that the law says that you  
23          may consider are the age of the defendant, the defendant's  
24          educational background, the defendant's mental ability or  
25          capacity, and the defendant's background along with all

1 the other facts and circumstances surround the making of  
2 the alleged statement.

3 In determining the voluntariness of any alleged  
4 statement, you should consider whether the defendant was  
5 advised of and understood his constitutional rights. The  
6 law does require that before any interrogation or  
7 questioning of a person in custody may begin, that law  
8 enforcement must advise the accused of his Miranda rights.

9 This means that the authorities must advise the  
10 accused that he has a right to remain silent, that any  
11 statement can be used against the accused in a court of  
12 law, that the accused has the right to have a lawyer  
13 present, and if the accused cannot afford a lawyer, that a  
14 lawyer will be appointed to represent that person without  
15 any cost, and that the accused can stop making a statement  
16 at any time.

17 Other factors to consider are the place and the  
18 length of any detention and the nature of the questioning.

19 You should scrutinize all the surrounding  
20 circumstances before you give any weight to an alleged  
21 statement.

22 You must be satisfied beyond a reasonable doubt  
23 that the statement was made by the defendant uninfluenced  
24 by promise of reward or threat of harm.

25 If you find beyond a reasonable doubt that any

1 alleged statement was given voluntarily, then you must  
2 decide what weight, if any, should be given the statement.

3 If you find that the statement was not  
4 voluntarily, then in that event you must not consider the  
5 statement as evidence for any purpose.

6 I would further charge you, Mr. Foreman and  
7 ladies and gentlemen, that during the trial of this case  
8 we've had what we call expert testimony.

9 In that connection I will tell you again as I  
10 did during the trial that ordinarily witnesses cannot  
11 testify as to their opinions of particular matters. An  
12 exception to that rule is where a witness has been  
13 qualified as an expert. In that event, such a witness is  
14 entitled to voice his or her opinion.

15 Now, as far as opinion evidence is concerned,  
16 that is to say the effect of any expert that is a matter  
17 of opinion, you are not to place any opinions as above the  
18 idea of your own opinions on that subject, but you are to  
19 consider these opinions along with the other evidence in  
20 the case in forming your own conclusions.

21 I would also instruct you, Mr. Foreman and  
22 ladies and gentlemen, that with references to evidence of  
23 an alleged prior record of the defendant of another crime,  
24 this evidence was admitted for a limited purpose. I would  
25 instruct you now that you must not consider such evidence

1 for any purpose except the purpose for which it was  
2 admitted.

3 This evidence was admitted and may be considered  
4 by you, the jury, if you conclude it true, only for the  
5 purpose of evaluating the credibility or the believability  
6 of the testimony presented by the defendant himself and  
7 for no other purpose.

8 You cannot and you must not consider a prior  
9 record, if any, of a defendant as any evidence of his  
10 guilt of the charge or charges for which he is now being  
11 tried.

12 You may give to this evidence such weight and  
13 such value, if any, to which you find it is entitled on  
14 the sole issue of the credibility or the believability of  
15 the testimony offered by the defendant but not as any  
16 evidence of his guilt of the crime for which he is now  
17 being tried.

18 I would further charge you as I did during the  
19 course of these instructions that there was admitted into  
20 the record in this case evidence of an incident at  
21 Clemson.

22 Evidence of other crimes or wrongs is not  
23 admissible to prove the character of the person in order  
24 to show an act in conformity therewith. It may be  
25 evidence, if you believe it would be true, to show motive,

1 or identity, or the existence of a common scheme or plan.

2 If you believe such evidence, the weight to be  
3 given such evidence, if you believe it to be true, is a  
4 matter solely for you, the jury, to determine, so it will  
5 be up to you to determine what, if any, weight to give  
6 such evidence if you determine that it is true.

7 Mr. Foreman, ladies and gentlemen, as I have  
8 explained to you, there are four separate indictments in  
9 this case. Each indictment does contain a separate and a  
10 distinct offense and you must decide the charge in each  
11 indictment separately on the evidence and the law that  
12 applies to that charge uninfluenced by your decision as to  
13 the charge in any other indictment.

14 The defendant may be convicted or acquitted on  
15 any or all of the offenses charged. You are going to be  
16 asked to write to a separate verdict as to each of the  
17 charges, and I will go over with you the verdict forms in  
18 just a moment.

19 As to each charge, each of the four charges,  
20 criminal intent is a necessary element of each crime that  
21 must be proven by the State beyond a reasonable doubt.

22 Criminal intent is always a matter that must be  
23 determined by the jury from the circumstances surrounding  
24 the situation. There is no way to prove intent to a  
25 mathematical certainty. There is no way that medical

1 science can dissect a person's brain and determine what  
2 that person had in mind. So the law says that criminal  
3 intent may be inferred from the circumstances that are  
4 shown to have existed at the time. This is how the jury  
5 makes the determination of whether or not the element  
6 requiring criminal intent was present.

7 Criminal intent is a state of mind which  
8 operated jointly with an act in the commission of a crime.  
9 Criminal intent is a mental state, a conscious wrongdoing,  
10 so it is up to you, the jury, to determine what the  
11 defendant intended to do based on the circumstances that  
12 are shown to have existed.

13 I will again tell you that the State must prove  
14 criminal intent beyond a reasonable doubt, just as the  
15 State must prove every element beyond a reasonable doubt  
16 as I've previously explained that to you. And again,  
17 criminal intent is a necessary element of each of the  
18 offenses that the defendant has been charged with.

19 I'm going to go over the charges at this time  
20 that are made in the indictment.

21 I'm going to start with the indictment charging  
22 or alleging criminal sexual conduct first degree. That  
23 offense is found in Section 16-3-652.

24 Before I go over that statute with you, I need  
25 to give you some definitions that are applicable to the

1 law in this indictment. These definitions are found in  
2 Section 16-3-351 which is entitled criminal sexual conduct  
3 definitions.

4 Actor means a person accused of criminal sexual  
5 conduct. Aggravated coercion. Aggravated coercion means  
6 that the actor threatens to use force or violence of a  
7 high and aggravated nature to overcome the victim or  
8 another person, if the victim reasonably believes that the  
9 actor has a present ability to carry out the threat, or  
10 threatens to retaliate in the future by the infliction of  
11 physical harm, kidnapping, or extortion, under  
12 circumstances of aggravation, against the victim or any  
13 other person.

14 Aggravated force. Aggravated force is defined  
15 as meaning that the actor uses physical force or physical  
16 violence of a high and aggravated nature to overcome the  
17 victim or includes the threat of the use of a deadly  
18 weapon.

19 Other definitions. Sexual battery. Sexual  
20 battery means sexual intercourse, cunnilingus, fellatio,  
21 anal intercourse, or any intrusion, however slight, of any  
22 part of a person's body or any object into the genital or  
23 anal openings of another person's body, except when such  
24 intrusion is accomplished for medically recognized  
25 treatment or diagnostic purposes.



1 And victim is defined as being the person  
2 alleging to have been subjected to criminal sexual  
3 conduct.

4 Those are definitions that apply to the law in  
5 the charge of criminal sexual conduct in the first degree.

6 That particular offense is found in Section  
7 16-3-652 of the Code of Laws of South Carolina. That  
8 section reads in part as follows: A person is guilty of  
9 criminal sexual conduct in the first degree if the actor  
10 engages in sexual battery with the victim and if any one  
11 or more of the following circumstances are proven, (a) the  
12 actor uses aggravated force to accomplish sexual battery,  
13 or the victim submits to sexual battery by the actor under  
14 circumstances where the victim is also the victim of  
15 forceable confinement, kidnapping, robbery, extortion,  
16 burglary, housebreaking, or any other similar offense.

17 Now, under a premise in our law, the law of the  
18 state of South Carolina, that a greater crime charged  
19 automatically includes any lesser offenses, under the  
20 charge of criminal sexual conduct in the first degree,  
21 there are several lesser offenses that are automatically  
22 included in that charge.

23 One of the lesser offenses is criminal sexual  
24 conduct in the second degree. That offense is found in  
25 16-3-653 of the South Carolina Code of Laws. And it reads

1 in part as follows: A person is guilty of criminal sexual  
2 conduct in the second degree if the actor uses aggravated  
3 coercion to accomplish sexual battery.

4 Another lesser included offense in criminal  
5 sexual conduct in the first degree is criminal sexual  
6 conduct in the third degree. And that offense is found in  
7 Section 16-3-654 of the Code of Laws and it reads in part  
8 as follows: A person is guilty of criminal sexual conduct  
9 in the third degree if the actor engages in sexual battery  
10 with the victim and if one of the following circumstances  
11 are proven: The actor uses force or coercion to  
12 accomplish the sexual battery in the absence of  
13 aggravating circumstances.

14 And the final lesser included offense of  
15 criminal sexual conduct in the first degree is assault and  
16 battery of a high and aggravated nature which I will  
17 define for you in just a moment.

18 Again, in this case the State has charged the  
19 defendant in this indictment with criminal sexual conduct  
20 in the first degree.

21 The first element that the State must prove in  
22 this charge and prove beyond a reasonable doubt is that  
23 the defendant engaged in a sexual battery with the victim.  
24 I read that definition to you. I will go over it with you  
25 again.

1           What is a sexual battery? A sexual battery is  
2 defined as sexual intercourse, cunnilingus, fellatio, anal  
3 intercourse, or any intrusion, however slight, of any part  
4 of a person's body or any object into the genital or anal  
5 openings of another person's body, except when that  
6 intrusion is accomplished for medically recognized  
7 treatment or diagnostic purposes.

8           I will charge you that if the State has not  
9 shown beyond a reasonable doubt that a sexual battery  
10 occurred, your deliberations would end at that time on  
11 this indictment unless you consider or you would still  
12 consider the charge, the lesser charge of assault and  
13 battery of a high and aggravated nature as a lesser  
14 included offense of criminal sexual conduct in the first  
15 degree.

16           If you should find, however, that a sexual  
17 battery had occurred, it would then become your duty to  
18 determine the degree of criminal sexual conduct which the  
19 defendant had committed against his victim.

20           Again, under a principle recognized in South  
21 Carolina that a greater crime may include a lesser crime,  
22 I will charge you the elements that are necessary to  
23 convict a person of criminal sexual conduct in the first,  
24 second, and third degrees.

25           Criminal sexual conduct in the first degree is

1 the most serious of the three offenses that I'm about to  
2 go over.

3 A person is guilty of criminal sexual conduct in  
4 the first degree if that person engages in a sexual  
5 battery with the victim and if the State has proven beyond  
6 a reasonable doubt any one or more of the following  
7 circumstances: First, the person charged with the crime  
8 used aggravated force to accomplish the sexual battery.  
9 Aggravated force is defined by the Code to mean that the  
10 actor, who is a person accused of criminal sexual conduct,  
11 that the actor used physical force or physical violence of  
12 a high and aggravated nature to overcome the victim. This  
13 definition includes the threat of the use of a deadly  
14 weapon.

15 A second element which would either by itself or  
16 in conjunction with the first element permit you to find  
17 the defendant guilty of criminal sexual conduct is the  
18 finding by you that the victim submitted to sexual battery  
19 while that person was also the victim of forceable  
20 confinement, kidnapping, robbery, or any similar type of  
21 offense.

22 You need not find that both of these elements,  
23 that is the aggravated force and a concurrent serious  
24 crime were present at the time of the sexual battery. You  
25 need only determine that one element was present in order

1 to convict the defendant of criminal sexual conduct in the  
2 first degree. But, of course, you must determine that the  
3 State has proven that element beyond a reasonable doubt.

4 I'm now going to instruct you the offense of  
5 criminal sexual conduct in the second degree.

6 A person is guilty of criminal sexual conduct in  
7 the second degree if that person uses aggravated coercion  
8 to accomplish the sexual battery. And what is aggravated  
9 coercion? The Code defines this term, aggravated  
10 coercion, to mean that the actor threatened to use force  
11 or violence of a high and aggravated nature to overcome  
12 the victim or another person, and further, that the victim  
13 reasonably believed that the actor had the present ability  
14 to carry out the threat.

15 Aggravated coercion may also exist in instances  
16 where an actor threatens to retaliate in the future by the  
17 infliction of physical harm, kidnapping, or extortion are  
18 the circumstances of aggravation against the victim or  
19 another person.

20 And I will now explain to you the charge of  
21 criminal sexual conduct in the third degree.

22 A person is guilty of criminal sexual conduct in  
23 the third degree if that person engages in sexual battery  
24 with the victim and that the State proves beyond a  
25 reasonable doubt any one or more of the following

1 circumstances: First, the actor used force or coercion to  
2 accomplish the sexual battery. This is in the absence of  
3 the other aggravating circumstances about which I had  
4 previously charged you. You need determine that -- you  
5 need only determine that one of these elements was present  
6 at the time of the sexual battery to find the defendant  
7 guilty of criminal sexual conduct in the third degree, but  
8 again, this must be done or proven beyond a reasonable  
9 doubt.

10 And then the final lesser included offense of  
11 criminal sexual conduct in the first degree is assault and  
12 battery of a high and aggravated nature. Let me define  
13 that for you at this time.

14 This is defined as the unlawful and the  
15 intentional infliction of a violent injury on the person  
16 of another accompanied by circumstances of aggravation,  
17 such as the use of a deadly weapon, the infliction of  
18 serious bodily injury, the intent to commit a felony, or a  
19 great disparity between the ages or the physical condition  
20 of the parties or a difference of the sexes. This is an  
21 assault accompanied by circumstances of aggravation.

22 Neither serious bodily harm or the use of a  
23 deadly weapon is an essential element of assault and  
24 battery of a high and aggravated nature, but they may be  
25 considered as circumstances of aggravation.

1 I would further charge you in connection with  
2 this offense as it is charged as a lesser included offense  
3 that every assault and battery, however slight, upon a  
4 member of the opposite sex does not become assault and  
5 battery of a high and aggravated nature because of the  
6 very fact that the attack was one upon the opposite sex.  
7 A difference in gender is a factor to be considered  
8 together with the other circumstances of the attack to  
9 determine the gravity of the assault and battery upon the  
10 victim.

11 Again, if you determine on this indictment that  
12 the defendant is guilty but you have a reasonable doubt as  
13 to whether the defendant is guilty of the greater crime  
14 charged, criminal sexual conduct in the first degree or  
15 one of the lesser crimes charged, it would be your duty to  
16 resolve that reasonable doubt in favor of the defendant  
17 and return a verdict of guilty only as to the lesser  
18 charge. But again as to any charge, the jury would have  
19 to determine the State had proven all of the elements of  
20 that offense beyond a reasonable doubt.

21 In the next indictment the charge is that of  
22 kidnapping. This offense -- well, let me back up.  
23 There's one other code section that I need to charge you  
24 with in connection with the criminal sexual conduct in the  
25 first degree. That is Section 16-3-657. It states as

1 follows: The testimony of the victim need not be  
2 corroborated in prosecutions under the statutes dealing  
3 with criminal sexual conduct in the first, second, or  
4 third degrees.

5 Now let me talk with you for a moment about  
6 kidnapping. That offense is found in the Code of Laws,  
7 Section 16-3-910. That section reads in part as follows:  
8 Whoever shall unlawfully seize, confine, inveigle, decoy,  
9 kidnap, abduct, or carry away any other person by any  
10 means whatsoever without the authority of law is guilty of  
11 this offense.

12 In order to prove this charge, the State must  
13 convince you beyond a reasonable doubt that the victim was  
14 unlawfully seized or confined or kidnapped, abducted or  
15 carried away by the defendant by some means without the  
16 authority of law before you could return a verdict of  
17 guilty as to the events contained in this indictment.

18 Should the State fail in its proof, that is, not  
19 satisfy you beyond a reasonable doubt that the defendant  
20 committed the offense in this indictment or these  
21 indictments, the kidnapping, the defendant would be found  
22 not guilty or you must acquit him and find him not guilty  
23 if not established by proof that satisfies you beyond a  
24 reasonable doubt of this offense.

25 The offense of kidnapping, like any other



1 criminal offense, has certain elements that constitute or  
2 make up this offense. Each of these elements must be  
3 proven by the State beyond a reasonable doubt before a  
4 verdict of guilty can be returned.

5 The elements of the offense of kidnapping that  
6 must be proven in order to establish that offense are as  
7 follows: First, that a person was seized or confined or  
8 kidnapped or abducted or carried away.

9 Secondly, that such seizure or confinement or  
10 kidnapping or abducting or carrying away was done by some  
11 means, and third, that it was done without the authority  
12 of law.

13 I'm going to define a number of the words that  
14 are included in this charge.

15 The word seize of course means to take hold of  
16 suddenly or forcibly. The word confine means to limit or  
17 restrict or enclose within bounds. It may also mean to  
18 imprison or shut or keep in.

19 The word kidnap means to remove or steal a  
20 person against his or her will by unlawful force. If  
21 something is done unlawfully, it is done contrary to the  
22 law.

23 The word abduction means to carry off  
24 surreptitiously or by force for an illegal purpose, and to  
25 carry away, as you might suspect, does mean to remove.

1           In regard to the first element, it is not  
2           necessary that the State prove that a seizure,  
3           confinement, inveiglement, decoy, kidnapping, abduction,  
4           and the carrying away all occurred. It is sufficient to  
5           establish the first element of this offense if the State  
6           proves beyond a reasonable doubt that only one of those  
7           acts, in fact, did occur.

8           So that the State need only prove beyond a  
9           reasonable doubt on the first element of kidnapping either  
10          that a seizure or confinement or kidnapping or abducting  
11          or carrying away occurred in order to establish this  
12          element of this offense.

13          As to the second element the State is required  
14          to prove, it must be shown that the person who was seized  
15          or confined or kidnapped or abducted or carried away was  
16          done so, that this was done by some means. The word means  
17          denotes a person or thing through or by which something is  
18          done or an end is affected. In other words, a means is an  
19          agency, an instrument, instrumentality, or method used to  
20          attain an end. The State must prove, then, that this  
21          person who was allegedly seized or kidnapped or carried  
22          away was -- that this was done by some method or some  
23          method was used to accomplish that end; that is to say  
24          that the State must prove that a method or an agency was  
25          employed to accomplish or bring about the seizure or

1 confinement or abduction or kidnapping, and this must be  
2 proven beyond a reasonable doubt.

3 And the final element on this charge that the  
4 State must prove beyond a reasonable doubt is that the  
5 seizure or confinement or kidnapping or abducting or  
6 carrying away was done without the authority of law, and  
7 this means to do something that the law does not sanction  
8 or permit or allow or provide justification for.

9 And again, each of these elements must be proven  
10 by the State beyond a reasonable doubt before the  
11 defendant can be convicted of the charge of kidnapping.

12 I would further instruct you that the kidnapping  
13 need not be done for any personal or pecuniary gain or for  
14 any illegal purpose but may be done for any reason  
15 whatsoever. Stated another way, it is not necessary that  
16 a kidnapping be for some random or for another purpose.

17 Again, the burden of proof is on the State to  
18 prove each of these essential elements beyond a reasonable  
19 doubt before the defendant could be convicted of that  
20 offense.

21 The final offense that I need to go over with  
22 you, although I've already defined it for you, is the  
23 indictment for assault and battery of a high and  
24 aggravated nature.

25 I have gone over that charge with you as it was

1 a lesser included offense of the charge of criminal sexual  
2 conduct in the first degree, but I will explain it to you  
3 once again.

4 Assault and battery of a high and aggravated  
5 nature is defined as the unlawful and the intentional  
6 infliction of a violent injury on the person of another  
7 accompanied by circumstances of aggravation, such as the  
8 use of a deadly weapon or the infliction of serious bodily  
9 injury or the intent to commit a felony or a great  
10 disparity between the ages or physical conditions of the  
11 parties or a difference of the sexes. This is an assault  
12 accompanied by circumstances of aggravation.

13 Neither serious bodily harm or the use of a  
14 deadly weapon is an essential element of assault and  
15 battery of a high and aggravated nature, but they are  
16 circumstances of aggravation.

17 A lesser included offense of assault and battery  
18 of a high and aggravated nature is simply assault and  
19 battery. Simple assault and battery is defined as an  
20 assault and battery unaccompanied by any circumstances of  
21 aggravation.

22 And again I would point out to you, Mr. Foreman  
23 and ladies and gentlemen, as to this charge, every assault  
24 and battery, however slight, upon a member of the opposite  
25 sex does not become assault and battery of a high and

1 aggravated nature because of the very fact that the attack  
2 was upon one of the opposite sex. The difference in  
3 gender is a factor to be considered together with all the  
4 circumstances of the attack to determine the gravity of  
5 the assault and battery upon the person. Again, simple  
6 assault battery is a lesser included offense of assault  
7 and battery of a high and aggravated nature.

8           Whatever the verdict is in this case, Mr.  
9 Foreman and ladies and gentlemen of the jury, it must be  
10 unanimous, which simply means that all of you must agree  
11 on the verdict.

12           There are different verdict forms for each of  
13 the indictments in this case, and I'm going to go over  
14 these with you in just a moment.

15           I will start with criminal sexual conduct in the  
16 first degree.

17           Don't attach any significance to the order that  
18 I give you the possible verdicts. I've got to give them  
19 to you in some order.

20           On this particular charge, there are five  
21 possible verdicts. The possible verdicts are as follows:  
22 Guilty of criminal sexual conduct first degree, guilty of  
23 criminal sexual conduct second degree, guilty of criminal  
24 sexual conduct third degree, guilty of assault and battery  
25 of a high and aggravated nature, or not guilty. Those are

1 the possible verdicts.

2 On the charge of assault and battery of a high  
3 and aggravated nature there are three possible verdicts:  
4 Guilty of assault and battery of a high and aggravated  
5 nature, guilty of simple assault and battery, or not  
6 guilty.

7 And on the two indictments charging kidnapping  
8 there are two possible verdicts: One is guilty of  
9 kidnapping; the other is not guilty.

10 On the kidnapping charges, I have designated at  
11 the top of the form which of the alleged victims that form  
12 pertains to, one pertaining to Zachariah Byrd, the other  
13 to Lauren Byrd.

14 After the jury has deliberated and reached a  
15 unanimous verdict, Mr. Foreman, what you do, under each  
16 possible verdict on each form there's a line for you to  
17 sign your name. You simply sign your name under whatever  
18 the verdict is that the jury has reached.

19 And once you have reached a verdict, then you do  
20 not tell the bailiff what the verdict is, you simply tell  
21 the bailiff you've reached a verdict and we'll bring you  
22 back in the courtroom and take your verdict at that time.

23 In some places the jury foreman reads the  
24 verdicts. We don't do that in South Carolina, so don't  
25 anticipate doing that. You'll simply hand it to the

1   bailiff and they'll hand it to the Court and we'll go from  
2   there.

3           Let me also instruct you that punishment  
4   provided by law to the offenses charged in case is a  
5   matter that's exclusively within the province of the Court  
6   and should never be considered by the jury in any way  
7   whatsoever in arriving at a fair and impartial verdict as  
8   to the guilt or the innocence of the defendant.

9           I'm getting ready to send you to your jury room.  
10   I would ask you at this time to please not begin  
11   deliberating. I need to go over with the attorneys the  
12   instructions that I've given you. If I have left anything  
13   out or I need to explain something in more detail, we will  
14   do that immediately. But if that's not necessary, when  
15   the bailiff brings you exhibits along with the verdict  
16   forms, that's your signal to begin deliberating.

17           Again, I told you what to do once you've reached  
18   a verdict, to notify the bailiff and we'll take your  
19   verdict here in the courtroom.

20           Let me mention one other thing to you. In many  
21   cases, if not most cases, we don't have questions from the  
22   jury. But if you have questions, and in some cases the  
23   jury does questions, number one, write your question out  
24   on a piece of paper and hand it to the bailiff and he'll  
25   bring it to me, he or she will bring it to me.

1 I will remind you, I cannot respond to any  
2 questions about facts. You have to make that  
3 determination. If you have a question about the law, in  
4 some instances I can respond to it; in other instances I  
5 can't for a number of different reasons. If I can  
6 respond, in some instances I may write out an answer and  
7 send it back to you. In some instances I may bring you  
8 back in the courtroom and respond to your question in that  
9 fashion.

10 One other thing that I need to mention to you,  
11 there are a number of exhibits in this case. We will  
12 ensure that every exhibit that has been admitted into  
13 evidence is with you in the jury room.

14 Every now and then I will get a request from the  
15 jury to send us such and such. Sometimes charts are used  
16 by the attorneys in making arguments and whatnot that may  
17 not be exhibits that are in evidence, and I cannot send  
18 those items back to you. We will ensure that all of the  
19 exhibits are sent back to you in the jury room.

20 One other thing, we do have some tape  
21 recordings. I'm not going to send a player with you back  
22 in the jury room. If you want to listen to one of the  
23 tapes, send us word and we'll bring you back in here and  
24 do that.

25 I've read in some cases where that was done and



1 the jury inadvertently erased the tape back in the jury  
2 room and it created a problem. That's why we'll take care  
3 of that in the courtroom if it becomes necessary.

4 If you'll step back to your jury room. Don't  
5 begin deliberating until these items are brought to you,  
6 please.

7 Everyone else stay seated.

8 And if my two alternate jurors, if you folks  
9 will stay with me here in the courtroom, please.

10 The rest of you are excused to the jury room.

11 (The jury left open court at approximately 2:05  
12 p.m.)

13 THE COURT: You folks have been prompt and you  
14 have been here every day but you're not going to be able  
15 to help make the decision in this case. The reason, of  
16 course, that we had you is so that if someone became ill  
17 or could not come back, you would have participated in  
18 making the decision. But since the original 12 members of  
19 the jury are here, they'll be making the decision in this  
20 case.

21 We're going to get you lunch, I know we've got  
22 that, and we'll find a place for you to eat it. If you  
23 want to take it and leave, you can do that. If you'd like  
24 to stay here and eat your lunch, we'll find accommodations  
25 for you to do that. And I appreciate you being here, and

1 we will excuse you two folks at this time. Thank you very  
2 much.

3 If you'll take them out in the hall, please.

4 (The alternate jurors were excused at  
5 approximately 2:06 p.m.)

6 THE COURT: All right. Exceptions or additions  
7 from the State?

8 MS. GARFIELD: Your Honor, in reference to the  
9 instruction on the Lyle evidence, we believe that you said  
10 identity instead of intent. And in reference to the  
11 aggravating factors to the charges of ABHAN, we don't  
12 believe you mentioned the factor of indecent liberties  
13 with a female.

14 THE COURT: All right. From the defense.

15 MS. VANGINHOVEN: Your Honor, we do appreciate  
16 you chose State versus White. We still would have liked  
17 to have charged the inference from the State attorney to  
18 call a witness. We would like to have not had CSC second  
19 charged, and we would have like to have had a false  
20 imprisonment as a lesser included charge, but we discussed  
21 that earlier.

22 THE COURT: And I will make all of those  
23 requests a Court exhibit.

24 MS. VANGINHOVEN: That would be it, your Honor.

25 THE COURT: All right. In looking over my notes

1 I did fail in my assault and battery of a high and  
2 aggravated nature, I did fail to mention indecent  
3 liberties with a female accomplished by force simply  
4 because I used this charge before and it stopped right  
5 before I got to that.

6 Also, in the limiting or in the Lyle limiting  
7 instruction, I may well have said identity rather than in  
8 7 and 10.

9 MS. VANGINHOVEN: I did write down that you said  
10 identity instead of 10 and 12.

11 But in the ABHAN charge, the charge that you  
12 gave for the ABHAN that was allegedly committed with a  
13 knife, I really don't know that indecent liberties would  
14 apply in any event on that charge, because the whole  
15 argument was that that ABHAN was committed after the rape.

16 THE COURT: The only place it would be pertinent  
17 if it's pertinent would be as a lesser included offense of  
18 the CSC first.

19 MS. GARFIELD: That's fine.

20 MS. VANGINHOVEN: Yes, your Honor.

21 THE COURT: Bring the jury right back in,  
22 please.

23 (The jury came into open court at approximately  
24 2:09 p.m.)

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

1 Honor.

2 THE COURT: Ladies and gentlemen, this won't  
3 take but a second.

4 In reviewing with the attorney the instructions  
5 I've give you, I either misspoke or omitted just a couple  
6 of matters of law that I do need to explain to you.

7 I gave you what we call a limiting instruction  
8 when I talked about evidence of any other crimes or bad  
9 conduct referring to the incident that's been described as  
10 having occurred at Clemson. Let me go back over that  
11 instruction to you.

12 Evidence of other crimes or wrongs or acts again  
13 is not admissible to prove the character of a person in  
14 order to show action and conformity therewith, but it may  
15 be evidence, if you believe it to be true, to show motive,  
16 the existence of a common scheme or plan, or intent. The  
17 weight to be given such evidence, if you believe it to be  
18 true, is a matter solely for the you, the jury, to  
19 determine.

20 And then I also need to point out to you that in  
21 going over the lesser included offenses of criminal sexual  
22 conduct in the first degree, that I explained to you one  
23 of the possible lesser included offenses is assault and  
24 battery of a high and aggravated nature.

25 As it pertains to that charge and a lesser

1 included offense of that charge, I need to go back and  
2 again explain to you that this charge of assault and  
3 battery of a high and aggravated nature is defined as the  
4 unlawful and intentional infliction of a violent injury on  
5 the person of another accompanied by circumstances of  
6 aggravation, such as the use of a deadly weapon, the  
7 infliction of serious body injury, the intent to commit a  
8 felony, a great disparity between the ages or the physical  
9 condition of the parties, a difference of the sexes, or  
10 indecent liberties or familiarities with a female  
11 accomplished by force. Those are circumstances of  
12 aggravation.

13 Again, I had omitted a part of those. And in  
14 bringing you back in here and explaining that to you, I'm  
15 not trying to emphasize anything over anything else, but  
16 it was simply a portion of those charges had been omitted.

17 In just a moment we will have taken to you the  
18 exhibits and the verdict forms and you can begin  
19 deliberating.

20 Whether you folks want to deliberate while you  
21 eat or go ahead and eat and then start deliberating, that  
22 will be totally up to you.

23 I do know that we have a couple of folks who  
24 need to take a smoke. If you do that, the rest of the  
25 jury cannot deliberate while those two people are not in.

1 the jury room. I'll leave that up to you folks.

2 If you'll step back to your jury room, we'll  
3 have those items to you in just a minute.

4 Everyone else stay seated, please.

5 (The jury left open court at approximately 2:13  
6 p.m.)

7 THE COURT: Any exceptions or additions to what  
8 I have just done?

9 MS. GARFIELD: None from the State, your Honor.

10 THE COURT: Anything in addition to what you've  
11 already stated?

12 MS. DURANT: Nothing, your Honor.

13 THE COURT: All right. We'll stand in recess  
14 until we hear from the jury.

15 You all take a look at the verdict forms and  
16 make sure don't have any problems with them.

17 And I will make a Court exhibit out of the  
18 requests that the defense made that I did not charge,  
19 we'll make that a Court exhibit.

20 (WHEREUPON, The Court's Exhibit No. 3 was marked  
21 for purposes of the record.)

22 (WHEREUPON, the jury began deliberations at  
23 approximately 2:15 p.m.)

24 (WHEREUPON, the jury adjourned deliberations at  
25 approximately 3:05 p.m.)

1 THE COURT: I have shared with Counsel the note  
2 that I received from the jury: The definitions of  
3 differences between first, second, third degree criminal  
4 sexual conduct charges.

5 I'm going to attempt to respond to that  
6 particular question.

7 After I have done that, you all can take  
8 exception if you feel that the Court omits anything or  
9 doesn't go far enough.

10 I'm going to try to respond specifically to the  
11 question that they have asked, and I will remind them that  
12 on the particular charge of CSC first, another lesser  
13 included is the assault and battery of a high and  
14 aggravated nature, and the only reason I'm not redefining  
15 that for them is that they have not asked for it.

16 Get the jury in, please.

17 (The jury came into open court at approximately  
18 3:06 p.m.)

19 THE BAILIFF: The jury's all present, your  
20 Honor.

21 THE COURT: All right. The question has been  
22 asked whether the jury can take notes. I will provide you  
23 or have the Clerk provide you with something to take notes  
24 on, but I will caution you, notes are your personal notes,  
25 not to be shared with anyone else. They're only for your

1 personal use in the jury room.

2 If we can get some pads. Do we have them up  
3 here?

4 THE CLERK: I have to go downstairs.

5 THE COURT: Then I've got to wait. No sense my  
6 doing that without the notes. We'll just sit here for  
7 just a minute.

8 While the Clerk is gone to get that,  
9 Mr. Foreman, ladies and gentlemen, let me explain to you  
10 that under our procedure in this state, sometimes I wish  
11 that they would allow me to just sit and have discussion  
12 with you, but the law doesn't permit that. So when I get  
13 a question, all I can do is answer the specific question  
14 that is handed out. And sometimes, I don't think in this  
15 case, but in some cases I sort of have to read between the  
16 lines to try to determine exactly what it is that the  
17 jury's asking.

18 But what I'm going to go back over in response  
19 to your question, we need definitions or the differences  
20 between first, second, and third degree criminal sexual  
21 conduct charges, I'm going to attempt to respond  
22 specifically to that question, but I won't do that until  
23 she gets back up here with something so that if you want  
24 to take notes you have permission to do that.

25 It used to be that I don't think any judges in



1 this state permitted note taking and most of us now do  
2 permit it, but again, under the law it's still limited to  
3 your own personal use, not to shared with anyone else.

4 We'll wait until she gets back up here.

5 All right. Mr. Foreman, ladies and gentlemen,  
6 I'm going to attempt to respond to the questions you have  
7 asked, and in doing so, let me just go ahead and at the  
8 beginning you've asked for the definitions or the  
9 differences between first, second, and third degree  
10 criminal sexual conduct.

11 I will again remind you that another possible  
12 lesser included offense on that charge, the criminal  
13 sexual conduct first degree, is assault and battery of a  
14 high and aggravated nature. As I have explained that to  
15 you, it's on the verdict form.

16 Since you have not asked for a definition of  
17 that, I'm not going to go back over that particular  
18 offense, but in not defining it, I did not want you to  
19 think that I have ignored it or it was not included as a  
20 lesser-included offense on this charge.

21 I will only be talking to you what you  
22 requested, which is the definitions or differences in  
23 first, second, third degree criminal sexual conduct.

24 The first element that the State must prove on  
25 each of these charges, criminal sexual conduct first,

1 second, or third degree, and prove beyond a reasonable  
2 doubt is that the defendant engaged in sexual battery with  
3 the victim.

4 Sexual battery is defined as sexual intercourse,  
5 cunnilingus, fellatio, anal intercourse, or any intrusion,  
6 however slight, of any part of a person's body or any  
7 object into the genital or anal openings of another  
8 person's body, except when such intrusion is accomplished  
9 for medically recognized treatment or diagnostic purposes.

10 The State must prove sexual battery beyond a  
11 reasonable doubt in order to -- as the element of each one  
12 of the offenses of criminal sex conduct first, second, or  
13 third degree, and again that is the requirement, that the  
14 State prove that beyond a reasonable doubt.

15 If you do find that a sexual battery has  
16 occurred, then it does become your duty to determine the  
17 degree of criminal sexual conduct which the defendant has  
18 committed against his victim, and again I will go over  
19 these with you again.

20 Starting with criminal sexual conduct in the  
21 first degree, it is the most serious of the three crimes  
22 that I'm about to explain to you. A person is guilty of  
23 criminal sexual conduct in the first degree if that person  
24 engages in sexual battery with the victim and the State  
25 proves beyond a reasonable doubt either that the person

1 present at the time of the sexual battery in order to  
2 convict the defendant of criminal sexual conduct in the  
3 first degree. But, of course, you must determine that the  
4 State has proven each of those elements beyond a  
5 reasonable doubt.

6 Now that's the law that pertains to criminal  
7 sexual conduct in the first degree. There must be a  
8 sexual battery and either it must be accomplished with the  
9 use of aggravating force or it must be accomplished --  
10 excuse me -- with a concurrent serious crime as those have  
11 been defined for you in my instructions to you.

12 Now, criminal sexual conduct in the second  
13 degree. A person is guilty of criminal sexual conduct in  
14 the second degree if that person uses aggravated coercion  
15 to accomplish the sexual battery.

16 Remember I defined aggravating force as it  
17 pertained to criminal sexual conduct first degree.  
18 Criminal sexual conduct second degree requires aggravated  
19 coercion.

20 Aggravated coercion is defined in the law to  
21 mean that the actor threatened to use force or violence of  
22 a high and aggravated nature to overcome the victim or  
23 another person, and further, that the victim reasonably  
24 believed that the actor had the present ability to carry  
25 out the threat.

1 charged with the crime used what's called under the law  
2 aggravated force, and I'm going to define for you  
3 aggravated force, to accomplish the sexual battery.  
4 Aggravated force defined by the Code of Laws to mean that  
5 the actor, the person accused of the criminal sexual  
6 conduct, that the actor used physical force or physical  
7 violence of a high and aggravated nature to overcome the  
8 victim. This definition also includes the threat or the  
9 use of a deadly weapon.

10 So the State must prove a sexual battery and  
11 either that the sexual battery was accomplished through  
12 the use of aggravating force or it must be proven beyond a  
13 reasonable doubt that the defendant -- excuse me. Let me  
14 read this to you.

15 Another element, either by itself in conjunction  
16 with the first element that would permit you to find the  
17 defendant guilty of criminal sexual conduct in the first  
18 degree is a finding by you that the victim submitted to  
19 sexual battery while that person was also the victim of  
20 forcible confinement, kidnapping, robbery, or any other  
21 similar act or offense.

22 So you do not need to find both of these  
23 elements, that is aggravated force and a concurrent  
24 serious crime were present at the time of the sexual  
25 battery. You need only determine that one of those was

1           Aggravated coercion may also exist in instances  
2 where the actor threatened to retaliate in the future by  
3 the infliction of physical harm, kidnapping, or extortion  
4 under circumstances of aggravation against the victim or  
5 any other person. Those are the elements of the offense  
6 of criminal sexual conduct in the second degree.

7           And then finally you've asked about criminal  
8 sexual conduct in the third degree. The elements of the  
9 offense that must be proven by the State beyond a  
10 reasonable doubt to establish criminal in the third degree  
11 are as follows: A person is guilty of criminal sexual  
12 conduct in the third degree if that person engages in  
13 sexual battery with the victim -- so again sexual battery  
14 must be proven -- and that the State proves beyond a  
15 reasonable doubt that the actor used force or coercion to  
16 accomplish the sexual battery. This is in absense of the  
17 other aggravating circumstances about which I had  
18 previously charged you.

19           Okay. If you'll go back to CSC, and when I say  
20 CSC I'm talking criminal sexual conduct, CSC first degree  
21 requires proof of a sexual battery and either aggravated  
22 force as I have defined that term to you or it was done in  
23 conjunction with or concurrently with serious crimes such  
24 as the victim of a forcible confinement, kidnapping,  
25 robbery, or any other similar act or offense.

1 Criminal sexual conduct second degree requires  
2 proof of a sexual battery and the use of aggravated  
3 coercion as I have explained that to you and the way it is  
4 defined under the law.

5 And then criminal sexual conduct or CSC third  
6 degree requires the proof of a sexual battery  
7 unaccompanied by any of the aggravating circumstances  
8 about which I have previously charged you.

9 I've tried to respond to your question and  
10 that's all I'm permitted to do at this point. I would ask  
11 you to please step back and continue deliberating and  
12 notify the bailiff once you've reached a verdict.

13 You're excused.

14 Everyone else stay seated, please.

15 (WHEREUPON, the jury resumed deliberations at  
16 approximately 3:19 p.m.)

17 THE COURT: Exceptions or additions from the  
18 State?

19 MS. GARFIELD: Nothing from the State, your  
20 Honor.

21 MS. DURANT: Nothing from the defendant.

22 THE COURT: We'll stand at ease until we hear  
23 from the jury.

24 I will make their request a Court exhibit.  
25

1 (WHEREUPON, The Court's Exhibit No. 4 was marked  
2 for purposes of the record.)

3 (A recess was taken.)

4 THE COURT: We have had communication from the  
5 jury and I have explained to Counsel how I intend to  
6 respond, and I will do that. If there's any exceptions  
7 we'll talk about it after I respond to the jury.

8 Bring the jury in, please, sir.

9 (The jury came into open court at approximately  
10 5:57 p.m.)

11 THE BAILIFF: The jury's all present, your  
12 Honor.

13 THE COURT: Mr. Foreman, ladies and gentlemen,  
14 I've gotten the last note that was sent out that I need to  
15 read into the record. Is the statement still coming or is  
16 it not available? If not, what is available that contains  
17 Lauren's police statement or actual testimony of what  
18 happened in her parents' bedroom, signed by the foreman.

19 You need to understand, I think sometimes  
20 there's a misimpression by jurors that the court reporter  
21 over here can take everything down and push a button and  
22 it all gets printed out. It doesn't work that way. We  
23 don't have that technology. We may have at some point in  
24 time, but she can print it out but it's after she's typed  
25 it up and usually weeks or months afterwards for different

1 purposes.

2 All the testimony has been preserved and it's  
3 been taken down by the court reporter. It can be played  
4 back to you.

5 Now, when I get the message that you sent out  
6 talking about the statement, I started to send you a note  
7 back that says, the statement that you're talking about,  
8 what's been referred to in the testimony as a six-page  
9 statement that was given by the victim to the police, the  
10 physical statement itself, the printed version of it is  
11 not an exhibit and that's why you don't have it. That  
12 doesn't mean that the contents of that statement are not  
13 in evidence. The contents of the statement are in  
14 evidence through testimony. But I can't give you the  
15 statement because -- I mean, I can't give you the written  
16 statement because it is not marked as an exhibit.

17 Now, what was testified to about that statement  
18 is in the record and it is in evidence.

19 What I have done to simply respond to you, that  
20 we can playback Ms. Byrd's testimony if that's what you  
21 want, and if we playback her testimony, you talked about  
22 what actually occurred in the parents' bedroom, according  
23 to the notes that I have gone over with Counsel, that  
24 testimony beginning with the date of October 30th of  
25 2004, until the end of the testimony, and I would have to



1 have it all played back to you, because in an effort to be  
2 fair to the State and the defense there would be direct  
3 testimony about it, there would be cross-examination about  
4 it and I would need to play it all back to you, and  
5 according to my notes, that's going to be about two hours  
6 and 27 minutes of testimony, which if the jury wants to  
7 hear that, we will play that for you. But I needed to  
8 explain that to you. I couldn't put all that in writing  
9 and explain it to you.

10 So I'm going to send you back to your jury room.  
11 If you would like to hear that testimony, send me a note  
12 out and we'll make arrangements to have that played back  
13 for you. I just wanted to explain that to you.

14 If you'll step back to your jury room and either  
15 let me know or continue deliberating, whichever.

16 Step back to your jury room, please.

17 (The jury left open court at approximately 6:02  
18 p.m.)

19 (WHEREUPON, the jury resumed deliberations at  
20 approximately 6:02 p.m.)

21 THE COURT: Any exceptions from the State?

22 MS. COOPER: No, your Honor.

23 THE COURT: From defense?

24 MS. DURANT: No, your Honor.

25 THE COURT: We'll make this note a Court

1 exhibit.

2 We'll stand in recess until we hear from the  
3 jury.

4 (WHEREUPON, The Court's Exhibit No. 5 was marked  
5 for purposes of the record.)

6 (A recess was taken.)

7 THE COURT: I have been notified by the jury  
8 that -- well, they've sent out a note that says, we are  
9 ready, all verdicts have been reached, signed by the  
10 Foreman.

11 I do need to announce to the those in the  
12 courtroom that any time a verdict is rendered in any case,  
13 of course, I don't have any idea what the verdict might  
14 be. Everyone does need to be aware that the Court cannot  
15 and will not permit any kind of emotional outburst. One  
16 of the saddest things any judges has to do sometimes is  
17 whether it's the victim's family or the defendant's  
18 family, if someone screams out or acts inappropriately in  
19 the courtroom and ends up having to go to jail themselves,  
20 and we certainly don't want that to happen. But if you're  
21 not going to be able to control your emotions you do need  
22 to excuse yourself from the courtroom at this time.

23 All right. Let's get the jury in, please.

24 (The jury came into open court at approximately  
25 6:50 p.m.)

1 THE BAILIFF: The jurors are all present, your  
2 Honor.

3 THE COURT: All right. Thank you.

4 Mr. Foreman, I have been advised that the jury  
5 has reached a verdict in the case; is that correct?

6 THE FOREMAN: Yes, your Honor.

7 THE COURT: Is it unanimous?

8 THE FOREMAN: Yes, your Honor.

9 THE COURT: If you will hand it to the bailiff,  
10 please, sir.

11 (Whereupon the verdict of the jury is published  
12 as follows:)

13 VERDICT

14 THE COURT: All right. In Case No.  
15 05-GS40-10296, State versus Randy Thomas, the indictment  
16 for criminal sexual conduct first degree, the verdict:  
17 We, the jury, find the defendant guilty of criminal sexual  
18 conduct first degree, signed by the foreman.

19 On Indictment 05-GS40-10297, State versus Randy  
20 Thomas, the charge of assault and battery of a high and  
21 aggravated nature: We, the jury, find the defendant  
22 guilty of assault and battery of a high and aggravated  
23 nature, signed by the foreman.

24 On Indictment 05-GS40-10299, the charge of  
25 kidnapping Zachariah Byrd, the verdict: We, the jury,

1 find the defendant guilty of kidnapping, signed by the  
2 foreman.

3 And on the other Indictment 05-GS40-10298, the  
4 charge of kidnapping Lauren Byrd: We, the jury, find the  
5 defendant guilty of kidnapping, signed by the foreman.

6 Mr. Foreman, ladies and gentlemen, if this is  
7 your verdict on these charges, would you please indicate  
8 by raising your right hand.

9 (All jurors raised their hands.)

10 THE COURT: All jurors have responded.  
11 Counsel, do you want the jury polled?

12 MS. DURANT: Yes, your Honor, please.

13 THE COURT: All right.

14 Mr. Foreman, ladies and gentlemen, the jury will  
15 be polled. That simply means that the Clerk of Court is  
16 going to ask you two questions: She's going to ask  
17 whether this was your verdict and whether it is still your  
18 verdict, and she will ask you that individually. If you  
19 will answer those questions, please, as the Clerk calls  
20 your name.

21 Madam Clerk.

22 THE CLERK: Donald Byrnes, is this your verdict?

23 THE FOREMAN: Yes, it was.

24 THE CLERK: Is it still your verdict?

25 THE FOREMAN: Yes, it is.

1           The charges that Mr. Thomas has been convicted  
2 of, the kidnapping each carry a possible 30-year sentence,  
3 the criminal sexual conduct first degree, a possible  
4 30-year sentence, and the assault and battery of a high  
5 and aggravated nature a ten-year sentence, meaning the  
6 exposure on these charge is 100 years.

7           In some cases with these charges that would be  
8 an appropriate sentence. I don't think it's appropriate  
9 in this case, but that's the kind of conduct that's been  
10 talked about and the defendant has been convicted of.

11           But I have tried to take all the factors into  
12 consideration and make a determination as to what I feel  
13 is fair and just under the circumstances.

14                               SENTENCING

15           THE COURT: It will be the sentence of this  
16 Court that Mr. Thomas on the charge of criminal sexual  
17 conduct in the first degree and the two kidnapping charges  
18 be confined to the Department of Corrections for a period  
19 of 22 years.

20           On the assault and battery of a high and  
21 aggravated nature the sentence is ten years.

22           These will run concurrently and he will receive  
23 credit for the time that he has been in jail, which I  
24 understand is back to November sometime in 2004. Those  
25 will run concurrent.

823

WITNESSES

(S) BRIAN GODFREY - RCSD

DOCKET NO. 2005-GS-40-10296

The State of South Carolina

County of Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

91

FEBRUARY TERM 2005

H712683

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

RANDY THOMAS

*For Me Clad*  
Foreperson of Grand Jury  
Date: FEB 16 2005

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT  
1<sup>ST</sup> DEGREE

SC Code: 16-3-652  
CDR Code: 0160  
Class FEL(A)(V)

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

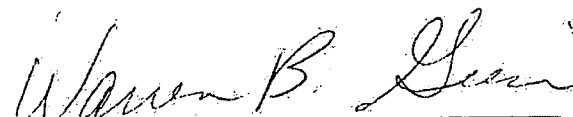
## INDICTMENT

At a Court of General Sessions, convened on February 16, 2005, the Grand Jurors of Richland County present upon their oath:

**CRIMINAL SEXUAL CONDUCT 1<sup>ST</sup> DEGREE**

That Randy Thomas did in Richland County on or about October 30, 2004, engage in sexual battery, to wit: sexual intercourse upon and with the body of Lauren Byrd without her consent. Such sexual battery was accomplished by the use of force of a high and aggravated nature and/or the victim submitted to such battery while being kidnapped and/or forcibly confined. All in violation of SC Code of Laws § 16-3-652.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
Warren B. Giese, SOLICITOR

825

WITNESSES

(S) BRIAN GODFREY - RCS

DOCKET NO. 2005-GS-40-10297

The State of South Carolina  
County of Richland

COURT OF GENERAL SESSIONS

91  
FEBRUARY TERM 2005

ARREST WARRANT NUMBER

H712684

THE STATE  
vs.

RANDY THOMAS

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: FEB 16 2005

VERDICT

Indictment for

ASSAULT AND BATTERY  
OF A HIGH AND  
AGGRAVATED NATURE  
SC Code: 17-25-30 CL  
CDR Code: 0013  
Class MIS/UNC

Foreperson of Petit Jury  
Date:

After being fully advised as to my  
legal rights, I hereby waive presentment  
to the Grand Jury.

Defendant

I  
hereby appear in my own proper person and plead  
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.



STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

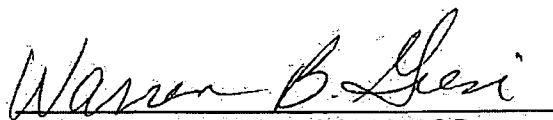
## INDICTMENT

At a Court of General Sessions, convened on February 16, 2005, the Grand Jurors of Richland County present upon their oath:

**ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE**

That Randy Thomas did in Richland County on or about October 30, 2004, commit an assault and battery upon the victim(s), Lauren Byrd constituting an unlawful act of violent injury to the person of the said victim, accompanied by circumstances of aggravation, to wit: serious bodily injury and/or use of a deadly weapon. All in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
WARREN B. GIESE, SOLICITOR

827

WITNESSES

(S) BRIAN GODFREY - RCSD

DOCKET NO. 2005-GS-40-10298

The State of South Carolina

County of Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

H712685

91  
FEBRUARY TERM 2005

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

*Mr. McClard*  
Foreperson of Grand Jury  
Date: FEB 16 2005

VERDICT

Indictment for  
KIDNAPPING

SC Code: 16-3-910  
CDR Code: 0095  
Class FEL/A(V)

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

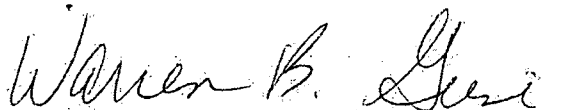
## INDICTMENT

At a Court of General Sessions, convened on February 16, 2005, the Grand Jurors of Richland County present upon their oath:

**KIDNAPPING**

That Randy Thomas did in Richland County on or about October 30, 2004, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Lauren Byrd, by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
Warren B. Giese, SOLICITOR

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WITNESSES

(S) BRIAN GODFREY - RCSD

DOCKET NO. 2005-GS-40-10299

The State of South Carolina

County of Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

1712686

91

FEBRUARY TERM 2005

ACTION OF GRAND JURY

TRUE BILL

*De. McCloud*

Foreperson of Grand Jury  
ate: FEB 16 2005

VERDICT

THE STATE

VS.

RANDY THOMAS

Defendant

Witness:

C.C.C. PLS. AND G.S.

Indictment for

KIDNAPPING

SC Code: 16-3-910  
CDR Code: 0095  
Class FEL/A(V)

Foreperson of Petit Jury  
ate:

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

## INDICTMENT

At a Court of General Sessions, convened on February 16, 2005, the Grand Jurors of Richland County present upon their oath:

**KIDNAPPING**

That Randy Thomas did in Richland County on or about October 30, 2004, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Zachariah Byrd, by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided:

  
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland

STATE VS.

Randy Thomas

AKA:

Race: WSex: M

Age: \_\_\_\_\_

DOB: \_\_\_\_\_

SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip \_\_\_\_\_

DL# \_\_\_\_\_

SID# \_\_\_\_\_

INDICTMENT/CASE#:

A/W#: 05GS- 4010296Date of Offense: October 30, 2004S.C. Code §: 16-3-652CDR Code #: 0 1 1 6 1 0☐ CASE RESTORED

SENTENCE

☐ PLEA☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Criminal Sexual Conduct 1stin violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 6 1 0☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-10-06☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ set by SCDPPPS

Recipient: \_\_\_\_\_

\*Fine: \_\_\_\_\_

\$14-1-206 (Assessments 107.5%) \_\_\_\_\_

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ \_\_\_\_\_

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

\$56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

\$35.13 (Public Def/Prob) \$500 \$ \_\_\_\_\_

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ \_\_\_\_\_

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

\$50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

PTUP

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, \$35.13 TP  
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 210 15 15Sentence Date: 2-10-06Barbara A. Scott / PF

Clerk of Court/ Deputy Clerk

Court Reporter: C. Thruene

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Richland

STATE

VS.

Randy Thomas

AKA:

Race:

W

Sex:

M

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#

05

GS-

40

10297

AW#:

H712684

Date of Offense:

October 30, 2004

S.C. Code §:

17-25-30 C/L

CDR Code #:

0 1 0 1 1 3

☐ CASE RESTORED

SENTENCE

☐ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: ABTHAN

in violation of § 17-25-30 C/L of the S.C. Code of Laws, bearing CDR Code # 0 1 0 1 1 3

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Barbara A. Scott

Solicitor

Defendant

J. P. P. P.

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-10-06☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ set by SCDPPPS

Recipient:

\*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott

Clerk of Court/ Deputy Clerk

Court Reporter: C. Thorne

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning

\$ \_\_\_\_\_ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP  
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE:

Judge Code:

Sentence Date:

2-10-06

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Richland

STATE

VS.

Bandy Thomas

AKA:

Race:

W

Sex:

M

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

05 - GS - 40 - 10298

H712685

October 30, 2004

16-3910

0 / 0 / 9 / 5

☐ CASE RESTORED

SENTENCE

☐ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Kidnapping

In violation of §16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 9 / 5

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted ☐ Lesser Included Offense; ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$\_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$\_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-10-06☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$\_\_\_\_\_ plus 20% fee: \$\_\_\_\_\_

Payment Terms:

☐ set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |    |
|----------------------------------------|---------|----|
| \$14-1-206 (Assessments 107.5%)        |         | \$ |
| \$14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ |
| \$14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$ |
| \$56-5-2995 (DUI Assessment)           | \$12    | \$ |
| \$ 35.13 (Public Def/Prob)             | \$500   | \$ |
| \$73.3, 1B TP (Law Enforce. Funding)   | \$25    | \$ |
| \$33.7, 1B TP (Drug Court Surcharge)   | \$100   | \$ |
| \$50-21-114(BUI Breath Test Fee)       | \$50    | \$ |
| \$56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$ |
| 3% to County (if paid in installments) |         | \$ |
| TOTAL                                  |         | \$ |

PTUP

days/hours Public Service Employment

Obtain GED

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Substance Abuse Counseling

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Fine may be pd. in equal, consecutive weekly/monthly

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Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP  
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2-10-06

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE VS.

Randy Thomas

AKA:

Race: W Sex: M Age: \_\_\_\_\_

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip \_\_\_\_\_

DL# \_\_\_\_\_ SID# \_\_\_\_\_

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

A/W#: 05 -GS- 40 - 10299  
October 30, 2004Date of Offense: H712686S.C. Code §: 16-3-910CDR Code #: 0101915☐ CASE RESTORED

SENTENCE

☐ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Kidnappingin violation of H712686 of the S.C. Code of Laws, bearing CDR Code # 0101915☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-10-06  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ set by SCDPPPS

Recipient:

\*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

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§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott / PF

Clerk of Court/ Deputy Clerk

Court Reporter: Chiueme

PTUP

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

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Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, §35.13 TP  
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 210Sentence Date: 2-10-06

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

ORIGINAL

RECEIVED

STATE OF SOUTH CAROLINA

OCT 27 2008

IN THE COURT OF APPEALS

SC Court of Appeals

Appeal from Richland County

James W. Johnson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDY B. THOMAS,

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK

Deputy Chief Appellate Defender for Capital Appeals

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, S. C. 29211-1589

(803) 734-1343

ATTORNEY FOR APPELLANT.

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### 1.

The court erred by admitting evidence of an August 22, 2004 sexual encounter between appellant and his former lived-in girlfriend at her apartment in Clemson, which the girlfriend claimed was not consensual. Appellant was on trial for a October 30, 2004 incident in Irmo, South Carolina involving his former girlfriend and her young child. The court erred by finding this evidence was admissible under *State v. Lyle*, since this evidence did not show an “MO” as the solicitor claimed, and the incidents were not sufficiently similar to be admissible under *State v. Lyle*. Further, the state did not prove the Clemson incident by clear and convincing evidence, and the probative value of this evidence was substantially outweighed by its unduly prejudicial effect .....3

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2.

Investigator Brown was a key link in the chain of custody. The judge denied appellant his right to confrontation by admitting hearsay portions of Brown's report where appellant could not cross-examine Brown. Further, Brown's absence, particularly where the state made no showing that it attempted to procure Brown's presence showed the chain of custody was fatally defective, and the judge erred by admitting the physical evidence results of the evidence Brown handled from October 30<sup>th</sup> through November 2<sup>nd</sup>. (Issues 2-3).....23

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## STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by ruling an alleged sexual encounter between appellant and his former lived-in girlfriend at their apartment in Clemson in August of 2004 was admissible under State v. Lyle to show common scheme or plan, motive or intent where appellant was on trial for an October 30, 2004 incident at appellant's former girlfriend's house in Irmo which led to charges of criminal sexual conduct, two counts of kidnapping and ABHAN, since the incidents were not sufficiently similar, the Clemson incident was not proved by clear and convincing evidence, and the probative value of the evidence was substantially outweighed by its unduly prejudicial effect?

2.

Whether appellant was denied his right to confrontation under the United States Constitution where the state failed to produce Investigator Deidra Brown, a key link in the chain of custody from the time of the seizure of the evidence on October 20, 2004 until November 2, 2004, since Brown's report contained highly prejudicial subjective observations that appellant was left with no way to cross-examine, and the state also utterly failed to prove it made any reasonable efforts to procure Brown's presence at trial?

3.

Whether the court erred by ruling the state proved the chain of custody as far as practicable since Investigator Brown was a key missing link in the chain, and the state further failed to prove it made reasonable efforts to procure Brown's presence at trial?

### STATEMENT OF THE CASE

Appellant was indicted at the February 16, 2005 term of the Richland County grand jury for two counts of kidnapping, assault and battery of a high and aggravated nature and criminal sexual conduct in the first degree. Each of the alleged crimes occurred on October 30, 2004 at the home of appellant's former girlfriend in Irmo, South Carolina. One kidnapping count pertained to appellant's former girlfriend, and the other to her son Zach. R. 825 - 831. The criminal sexual conduct in the first degree count, and the ABHAN count concerned appellant's former girlfriend alone. R. 823 - 824.

Appellant's case came on for trial on February 6, 2006 before the Honorable James W. Johnson, and a jury. Lanelle Durant and Jeanette Vanginhoven represented appellant. Vanessa O. Cooper and Dolly Justice Garfield represented the state. R. 1.

On February 10, 2006 at 5:57 p.m., the jury returned wanting to hear "what is available that contains Lauren's [the former girlfriend's] police statement or actual testimony of what happened in her parent's bedroom." The judge told the jurors that the alleged victim's testimony would take two hours and twenty minutes to be replayed. The judge then sent the jury back to the jury room asking if it still wanted to hear that testimony. The jury sent out a note stating that it had reached a verdict instead. At 6:50 p.m. the court announced the jury's verdict of guilty on each count. R. 816, l. 9 - 821, l. 5.

Judge Johnson then sentenced appellant to concurrent twenty-two year terms of imprisonment for criminal sexual conduct in the first degree, and the two counts of kidnapping. The judge also imposed a concurrent ten year prison term on the ABHAN count. This appeal follows.



## ARGUMENT

1.

The court erred by admitting evidence of an August 22, 2004 sexual encounter between appellant and his former lived-in girlfriend at her apartment in Clemson, which the girlfriend claimed was not consensual. Appellant was on trial for a October 30, 2004 incident in Irmo, South Carolina involving his former girlfriend and her young child. The court erred by finding this evidence was admissible under *State v. Lyle*, since this evidence did not show an “MO” as the solicitor claimed, and the incidents were not sufficiently similar to be admissible under *State v. Lyle*. Further, the state did not prove the Clemson incident by clear and convincing evidence, and the probative value of this evidence was substantially outweighed by its unduly prejudicial effect.

### **Relevant Facts**

After jury selection, a hearing was held on whether evidence of a past alleged incident between appellant and his former lived-in girlfriend in Clemson, South Carolina should be admissible under *State v. Lyle*. R. 2 63, ll. 8-11.

### **Clemson, South Carolina – August, 22, 2004**

Lauren Byrd testified she was presently a senior at Clemson University. R. 3, ll. 5 – 13. In her sophomore year at Clemson Byrd lived with appellant in an apartment there. R.3, ll. 19 – 24. Byrd said she dated appellant for approximately one year, and she maintained the relationship ended at “the end of July.” R. 3, l. 16 – 4, l. 19.

Byrd had a three-year-old son, Zach, by another man. Zach also lived with Byrd and appellant in her Clemson apartment and her parents in Irmo, South Carolina also helped to take care of Zach.<sup>1</sup> R. 5, l. 3 – 6, l. 21.

Byrd said the end of her relationship with appellant was “a long breakup . . . he didn’t want to breakup, . . . and I actually had started dating someone else then and we had broken up and I think he moved to Charlotte.” R. 5, l. 20 – 6, l. 4.

Appellant still had a key to their apartment after he moved. Byrd testified on the night of August 22, 2004 she spent the night with her new boyfriend, Michael Anderson, at his house. R. 6, ll. 16 – 24.

Byrd said she got home to her apartment the next morning at sometime before noon and she did not feel that well. Byrd stated she laid down on the couch, and she remembered: “Randy had entered the apartment with a key and just immediately started asking me questions, very direct questions, asking me where I was staying or who I’ve been seeing . . .” R. 7, l. 12 – 8, l. 10.

Byrd said appellant had not called her and told her he was coming over. “He walked over to the couch and he sat down. R. 8, ll. 11 – 20.

Byrd said they got in an argument when appellant accused her of being with another man. Byrd said appellant touched her inappropriately “on my breast,” and she stated that she told appellant “to stop.” R. 9, ll. 8 – 21.

---

<sup>1</sup> At times his name is listed as “Zack” in the transcript. For ease of reference it is referred to herein as “Zach.”

Byrd testified that appellant then carried her upstairs and “threw me on the bed and then hovered over me. He removed my clothing . . . and he started to have sex. I told him no, I didn’t want to.” Byrd said: “I told him this is rape.” R. 9, l. 20 – 11, l. 13.

Byrd testified: “After I explained it or had said that, he immediately stopped and started crying. He lost it.” R. 11, ll. 9 – 17. Byrd claimed appellant said he was sorry and that he was going to “call the police on himself.” Byrd said appellant repeatedly said “that he hated himself, he’s sorry, and [he] just freaked out.” R. 11, l. 9 – 12, l. 12.

Byrd then went into the bathroom and locked the door. She listened to appellant tell her how sorry he was through the door. Byrd continued to take a bath until she heard appellant leave, and then “I ran downstairs and locked the dead bolt.” R. 12, ll. 8 – 22. Byrd recalled appellant stayed outside the bathroom door “probably about five minutes. Not long” before he left. R. 12, ll. 23 – 25.

Byrd testified that after her bath she telephoned her friend “Cat and told her what had happened.” Byrd then went over to Cat’s house, and Cat “gave me numbers for like a locksmith. He changed the locks, and then I had leave like right after that to go pick up Zach for a soccer game in Greenville.” R. 13, ll. 3- 12.

Byrd said she next spoke with her friend Ashley Mishoe. R. 13, ll. 23 – 25. Byrd recalled that Ashley telephoned the police that day, and the police told her that Byrd should come in that day. Byrd claimed she was too scared, and she stated her bottom line: “I just wanted him to kind of be out of my life, kind of leave, and so I didn’t go to the police that night.” R. 14, ll. 1 – 10.

The circumstances under which appellant went to the Clemson police station with her friend Ashley the next day would be highly disputed by Detective Peppers of the Clemson Police Department. R. 14, ll. 1 – 21.

Byrd maintained when she went to the Clemson Police Station the next day and that Detective Peppers told her it would be “pointless to pursue the matter because she had taken a bath,” and waited until the next day. R. 14, l. 22 – 15, l. 6. Byrd said she agreed to sign a “trespass notice” to keep appellant away from the apartment. R. 15, ll. 1 – 6.

Conversely, Clemson Detective James Peppers testified that Ashley had telephoned the police station and said that a friend of hers had been assaulted. However, Ashley “didn’t give the name or anything at the time of the initial report.” R.57, ll. 11 – 23.

Detective Peppers remembered Ashley came in “a day or so later” in “reference to another report. . . and not involving this incident.” Detective Peppers said he recognized Ashley’s name from the other report and started asking who her friend was who had been assaulted. “That’s when I found out it was Lauren.” R. 57, l. 24 – 58, l. 10.

Detective Peppers remembered he then talked to Byrd, and Byrd told him that appellant had come into the apartment using his key, and started questioning her about some other man. Byrd said appellant carried her upstairs, and “I can’t remember if she said he assaulted her, but I think she did.” Peppers said he recalled Byrd telling him she told appellant “what he was doing was wrong. He immediately stopped and left.” Detective Peppers said that Byrd wanted a restraining order, and he told her that a trespass notice was actually the proper legal document to keep appellant away from her apartment. R. 58, l. 3 – 60, l. 24.

Detective Peppers said he was never able locate appellant to serve the trespass notice. However, Peppers steadfastly maintained that Byrd did not want to file criminal charges against appellant whom she referred "as an ex-boyfriend." R. 60, ll. 2 – 25.

Byrd said she returned to her apartment about a week after this incident and she said appellant "called me from different telephone numbers. Byrd said appellant also sent her emails listing "everything that we had done together and he basically was trying to get me back." R. 16, ll. 7 – 25.

**Irmo, South Carolina - October 30, 2004**

Byrd testified on Saturday, October 30, 2004 that she was at her parent's home in Irmo. There was a Clemson football game that day, and her father and little brother went to Clemson to see the game. R. 17, l. 4 – 18, l. 7. Byrd's mother and younger sister went to a soccer tournament in Georgia. R. 18, ll. 8 – 14.

Byrd was therefore at the house that day with Zach. She said as they were watching the football game on television when appellant knocked at the door. R. 18, l. 19 – 19, l. 1. Byrd said the door was unlocked. and appellant walked into the house. "We started talking. He was talking to Zach." R. 18, l. 25 – 19, l. 2.

Byrd said appellant sat in a chair while she sat on the couch. Byrd claimed appellant "started apologizing for the Clemson incident. Byrd recalled that she left the living room and went to the bathroom "because it got heated." Byrd stated when she got to the bathroom she text messaged Ashley on her phone -- "saying help me." R. 19, ll. 2 – 15.

Byrd said she left Zach downstairs with appellant because she did not see any danger to Zach. When Byrd heard the door downstairs close she assumed appellant had left. Byrd stated she therefore she hung up the phone, and she went downstairs to lock the door.

However, she testified appellant was coming back towards the house, and appellant opened the door "before I got a chance to and then it was all down hill from there." R. 19, l. 16 – 20, l. 15.

Byrd recalled that appellant came back in and sat on the couch. I picked up Zach and I sat down on the coach. I told him to leave, but he did not leave." R. 19, l. 16 – 20, l. 15.

Byrd maintained she felt uneasy because appellant "wasn't supposed to be there." Byrd said: "[A]nd he was basically just trying in a weird way to console me" about the Clemson incident. "[T]hat was his way of showing me he loved me." R. 20, ll. 13 – 22.

Byrd maintained that appellant touched her knee, and she "jerked away" from him. Byrd said appellant became offended by her actions. Byrd testified that "Zach already had left and was on the ground or in the floor and then [appellant] had hovered over me." R. 21, ll. 1- 14.

Byrd testified that appellant then "picked me up as a child." She said appellant also touched her breast. Byrd stated that she told appellant that her parents would be coming home soon in the hope that appellant would "leave so he wouldn't do something stupid." R. 21, l. 15 – 22, l. 11.

Byrd claimed she struggled with appellant, and appellant asked her, "Do you love Zack?" Byrd responded, "Yes, I loved Zack." "He was like 'are you going to do or willing to do anything?'" R. 23, ll. 1 – 11. Byrd maintained appellant told her "I won't hurt Zach," and Byrd testified Zach was downstairs watching cartoons at the time. R. 23, ll. 12 – 20.

Byrd said that she continued to struggle with appellant, and that he took her into her parent's bedroom. Appellant, according to Byrd, told her to "calm down." Appellant "told

me to take off my shirt. He told me and I couldn't do it, so he did . . . he kept asking me in between, do you love Zach?" R. 23, l. 18 – 24, l. 23.

Byrd testified appellant took off her clothes and placed her on her parent's bed. Byrd maintained appellant told her to "perform oral sex on him," and she said she did perform oral sex. R. 25, l. 9 – 26, l. 5.

Byrd said appellant ejaculated, and she spit "it out." Byrd stated appellant was upset by her reaction. Byrd testified appellant then attempted to "penetrate me" vaginally, and she told him to stop. Byrd said she started crying, and "I told him that he was raping me again, and he stopped in the middle of it. . . he freaked out." R. 27, l. 22 – 28, l. 8.

Byrd testified that she told appellant she would not tell anyone what happened. Byrd said she did so because appellant threatened to kill himself, he told her he hated himself, and that he was real upset with himself "like last time." R. 27, l. 22 – 29, l. 12.

Byrd also maintained appellant pretended to be calling 911 on himself. Byrd stated that appellant also told her to calm down because she did not want "Zach to see you like this." Byrd said her face was red, and that she did try to compose herself. Byrd "dialed 911 and left an open line." R. 29, l. 11 – 30, l. 16.

Byrd testified that she then sat down on the couch with Zach, and that appellant followed her. She claimed she struggled once again with appellant. Byrd maintained that she picked up a lamp, and that appellant asked her if she was going to hit him with it. Byrd said she told appellant: "No, I just wanted him to leave, and he grabbed it and pulled it." Byrd said she fell over a stool, and the lamp must have been thrown to the side. Byrd maintained appellant told her before the lamp incident that he wanted to take Zach with him." R. 31, ll. 1 – 20.

Byrd further claimed at some point appellant put a knife to her neck, and that she was terrified. She said she calmed down and told appellant she didn't want her mother "to see me like this." Byrd said appellant then responded: "Let's go for a ride." Byrd said she was attempting to tell appellant anything he wanted to hear including "that I loved him, that I understood what he was doing . . . he was crying. He was upset." Byrd said she then saw appellant put the knife in his pocket, he picked Zach up and told her "don't do anything stupid" as they went outside. R. 33, l. 15 – 34, l. 25.

Byrd testified that once outside she saw her neighbor mowing the lawn, and she attempted to mouth to her neighbor -- "Help me." Byrd said as she walked towards her neighbor's house she saw Zach sitting on appellant's lap inside the car. She heard the car door slam and she ran after the car as appellant drove it down the street. R. 35, l. 10 – 36, l. 3.

Byrd said she was barefoot as she chased the car and she said she saw tears in Zach's eyes as she chased the car. Byrd said appellant stopped the car and dropped Zach off "in the middle of the road." This would later be disputed by other evidence that appellant turned the car around, and brought Zach back in the direction of her parent's house. R. 35, l. 10 – 36, l. 22.

Ashley Mishoe then testified that she and Byrd were good friends, and that she knew appellant because appellant had dated Byrd. Mishoe testified that on August 22, 2004 that Byrd telephoned her, and told her that appellant had come over to her apartment and that they had been "fighting about a guy." Mishoe said Byrd stated that appellant "took her upstairs and raped her." Mishoe maintained that Byrd was scared, and that was why Byrd did not follow her advice to go to the police. R. 43, 17 – 46, l. 6.



Mishoe testified she went with appellant the next day to the police station in Clemson to get a restraining order. "She filled out a report and talked to Detective Peppers." R. 46, ll. 2 – 22.

Mishoe then testified on October 30, 2004 she was at the football game when she got a text message from Byrd saying "help, call me." Mishoe said she left the football game and called Byrd who was whispering to her about appellant being there. R. 47, l. 9 – 49, l. 2. Mishoe stated she stayed on the phone with Byrd until Byrd told her appellant had left the house. Mishoe said she next heard from Byrd when she checked her voice messages, and she then heard Byrd crying and stating that appellant had come back and raped her. The message also said that appellant "had a knife and he took Zach and she was on her way to the hospital. R. 49, l. 1 – 51, l. 13.

#### **Arguments of counsel**

At the conclusion of the testimony on February 6, 2006 the solicitor argued the Clemson incident was admissible under State v. Lyle because it proved a common scheme or plan. R. 76, l. 10 – 86, l. 3. The state cited State v. McClellan, 283 S.C. 389, 392, 323 S.E.2d 772, 774 (1984) in support of its argument.

Defense counsel Durant argued this evidence did not prove a common scheme or plan:

Your Honor, drawing to further differences in this case: First, it happened in a different town; it happened in an apartment where they had lived together; he had a key to the apartment; she gave that address to the officers as the address for Randy. The child was not there.

She said that it was vaginal intercourse; in Columbia it happened at her parents' home and oral intercourse was involved.

She also said in the Clemson incident he did not ejaculate. In Columbia there is ejaculation.

On the Clemson incident she did not go to the hospital. She did do to the hospital in Columbia.

And I also would like to add, your Honor, to say that he went to Columbia. The connection is he went to Columbia to apologize for the Clemson incident. Well, again, that's only the word of the victim. You can't get inside the mind of Randy Thomas, and I don't know that she could.

It's only her word.

R. 88, ll. 7 – 25.

Counsel argued there was “nothing so similar between these two,” and that the evidence did not prove a method of operation. Counsel further told the judge the state had failed to prove the Clemson incident by clear and convincing evidence. Counsel noted that it was Byrd's word alone, and the police witness, Detective Peppers, said Byrd did not want to file criminal charges. No charges were filed, and appellant was not arrested. There was no hospital evidence of any sexual assault or injuries. There was simply no corroboration of Byrd's claims. R. 86, l. 6 – 89, l. 20

Counsel also argued and that the probative value of this evidence was outweighed its prejudicial effect. R. 88, l. 7 – 89, l. 14. Defense counsel said this was in reality the type of propensity evidence that Lyle prohibited. R. 89, ll. 17 – 20.

### **Ruling**

The judge noted that the Lyle evidence the state successfully introduced into cases probably led to “more reversals” than anything else. The judge stated there was no

question that this evidence was prejudicial, and he stated he would not make his ruling until the next morning. R. 91, l. 22 – 92, l. 12.

The following morning on February 7, 2006 the judge ruled he would allow the Clemson evidence as an exception to State v. Lyle --“both as the common scheme or plan as well as motive and/or intent.” R. 98, ll. 3 – 13.

**Byrd then testifies before the jury as to both Clemson and Irmo**

After the judge ruled, the jury heard his opening charge on the law, the opening statements of counsel and it then immediately heard the testimony of Lauren Byrd on the Lyle issue the judge had just ruled on in their absence R. 106, 10 – 122, l. 9. Byrd said that Zach was born when she was sixteen-years-old, and that she went to Midlands Technical College after high school. She then transferred to Clemson University. R. 124, ll. 10 – 25.

She took her son Zach with her to Clemson in 2003 as a sophomore. R. 125, ll. 2 – 13. Byrd testified that appellant was living with her and Zach, that he had a key to her apartment even after they broke off their relationship. R. 128, l. 9 – 130, l. 16.

Byrd then described the August 22, 2004 events to the jury. Byrd testified on that day appellant let himself into the Clemson apartment with his key while she was resting on the couch. R. 132, l. 24 – 134, l. 21.

Byrd said appellant asked her about whom she was seeing, and “I wouldn’t give him a name.” Byrd described how appellant touched her, and she said she told him “to stop and not touch me.” Byrd stated, “he picked me up and carried me upstairs.” R. 134, l. 7 – 136, l. 13. Byrd said once they were upstairs that appellant “was beginning to have

sex” when she told him “this is rape.” Byrd stated that appellant started “freaking out” and apologizing. R. 135, l. 5 – 137, l. 6.

Byrd said she locked herself inside the bathroom, and that appellant was threatening “to call the police on himself and threatening to kill himself.” R. 137, ll. 14 – 22.

Byrd said she called her friend Cat, and then went over to Cat’s house where they discussed having the locks changed. R. 139, l. 16 – 140, l. 1. Byrd stated she then went to pick up Zach in Greenville, and then her “whole family” went to watch her sister’s soccer game. R. 139, l. 16 – 140, l. 19.

Byrd testified that she went to the Clemson police station the next day and talked to Detective Peppers. She “told him what happened. She stated that she received a trespass notice against appellant.” R.140, l. 23 – 145, l. 6.

Byrd denied she ever told Detective Peppers she did not want to pursue criminal charges. She maintained that Detective Peppers told her that because she had taken a bath it would be difficult to make a case. R. 145, ll. 4 – 20.

Byrd’s testimony then turned to the October 30, 2004 event at her parent’s house in Irmo, South Carolina. R. 148, ll. 8 – 13. Byrd again described, in very similar fashion, how she was watching the football game with Zach when appellant came to her door. Byrd said she told appellant to leave, and appellant told her he wanted to talk to her about the earlier incident. R. 139, ll. 1 – 23. The remainder of Byrd’s testimony was the same. R. 158, l. 14 – 178, l. 9.

Byrd said she called 911 after the sexual encounter in her parent’s bedroom and she said appellant told her he wanted to take Zach with him. Byrd stated that appellant

was crying after he put a knife to her neck. R. 163, l. 7 – 191, l. 3. Byrd said appellant took Zach without her permission, drove up the street with him, and then dropped him off in the middle of the road. R. 191, l. 14 – 193, l. 3.

On cross-examination Byrd admitted that in her statement to the police on November 1, 2004 she said she was really not scared of appellant when he came to her house in Irmo. R. 230, ll. 4 – 12. Byrd also acknowledged there was nothing in her statement about Zach crying as he was sitting in the driver's seat in appellant's lap as appellant drove down the street with him. R. 235, l. 18 – 236, l. 1. Byrd further admitted at the top of the hospital document the diagnosis was listed as "sexual assault without evidence of trauma." R. 238, ll. 1 – 3.

#### **Other evidence**

Dr. John Stewart worked in the emergency room at Baptist Richland Hospital on October 30, 2004. He testified that Byrd was crying at the hospital. R. 332, ll. 6 – 9.

Dr. Stewart could not find any trauma to Byrd's body. R. 333, ll. 17 – 24. Dr. Stewart testified that Byrd told him there was a struggle, and appellant "tried to penetrate her vaginally, but she does not think he was capable of doing so and he did not ejaculate vaginally but that he forced her to perform oral sex . . ." R. 336, l. 12 – 337, l. 5. Dr. Stewart told the jurors that he could not say whether or not Byrd was raped or whether or not the sex was consensual. R. 343, ll. 20 – 24.

#### **Appellant testifies**

Appellant testified in his own defense. Appellant said that Byrd wanted him to go to Clemson with him, and that he ultimately agreed. R. 601, l. 18 – 603, l. 3. Appellant said he became very attached to Zach in the process. James Aakhus was a neighbor to

the couple while they shared the apartment in Clemson. He testified: "Randy was very loving to Zach, and appellant was also often alone with him." He further testified that Zach often called appellant, "Daddy." R. 589, l. 18 – 590, l. 12.

He further testified that he had talked with appellant about the incident with Byrd and appellant "didn't understand it. He wanted some reasoning behind it. I guess he felt like he was cornered by somebody who was trying to take his life away from him." R. 596, ll. 18 – 23.

Appellant confirmed that when he picked Zack up from daycare the workers would say "Daddy's here to pick you up, or, tell Daddy bye." R. 603, ll. 4 – 19.

Appellant testified he went out to dinner with Byrd one night in August of 2004 to discuss their breakup. Appellant started sleeping on the couch inside the apartment after they agreed to breakup, and until he actually moved. R. 605, l. 6 – 606, l. 9.

Appellant said Byrd would at times "ask me to come up to go to bed with her." Appellant said he got a job in the interim, which pleased Byrd, and he then discussed the events of August 22, 2004. R. 605, l. 21 – 607, l. 23.

Zach was not with Byrd that day, and appellant testified they had consensual sex until Byrd suddenly said: "Stop, stop . . . we're not suppose to do this. You shouldn't have done that. And I was kind of bewildered." R. 606, l. 24 – 607, l. 21.

Appellant said he was upset by Byrd's reaction, and he left the apartment. Appellant recalled that Byrd's new boyfriend, Mike, later confronted him and said that "Lauren's saying that you raped her." Appellant said he argued with Mike about that accusation. R. 606, l. 22 – 610, l. 12.

Appellant testified that on October 30, 2004 he happened to be in the area of the house Byrd's parent's owned in Irmo, and he was surprised to see her car there. R. 613, l. 9 – 615, l. 14. Appellant said he stopped at the house, and went inside and took pictures of Zach in his Halloween costume. Appellant then sat on the couch with Byrd. Appellant said he told Byrd he missed her, and she told appellant, "she missed me, too." R. 615, l. 20 – 616, l. 4. Appellant stated that he went upstairs with Byrd just so they could have some privacy. R. 617, ll. 2 – 4.

Appellant testified they had consensual oral sex upstairs which was normal for them, and he then started having intercourse with Byrd but she told him to stop. "I don't want to do this. I said okay, and I was upset." Appellant said Byrd told him she had cheated on me with one of my supposed good friends . . . so at this point I was very upset and I said, what are you trying to do? Do you want me to kill myself? She said, Randy, you love yourself too much to kill yourself." R. 617, l. 23 – 619, l. 18.

Appellant recalled it was in this context that he grabbed a knife, and appellant said Byrd responded, "Randy, you're scaring me and he put the knife down on the TV entertainment center." Appellant testified that he went outside with Zach and Byrd. He panicked when Byrd ran towards her neighbor's house, and he drove away with Zach in the car. Appellant said he quickly realized what he was doing, and he made a U-turn and brought Zach back. Appellant said he had no intention of kidnapping Zach. R. 619, l. 19 – 621, l. 22.

### **Closing argument**

The solicitor told the jury the Clemson incident and the other incident established appellant's "modus operandi. We call it MO, same MO." The solicitor argued the evidence established appellant's common scheme or plan, his motive, and his intent. R. 757, l. 6 - 758, l. 22.

### **Discussion**

Evidence is only admissible under State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1983) if the prior bad act establishes: (1) motive, (2) intent, (3) the absence of mistake or accident, (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish proof of the other, or (5) the identity of the person charged with the crime.

Defense counsel correctly argued the evidence of the August 22, 2004 incident in Clemson did not have sufficient similarities to establish a modus operandi, or MO, as the solicitor argued in closing. As seen, the solicitor told the jury that the evidence of the Clemson incident showed appellant's "modus operandi." R. 757, l. 6 – 758, l. 22.

The dissimilarities between this crime and a true Lyle sexual similarity case are highlighted by the Supreme Court's opinion in State v. McClellan. In McClellan, all three of the daughters testified concerning a pattern of sexual attacks. Appellant would enter their bedrooms late at night – starting at around their twelfth birthday -- and wake the girls. He would then take one of them to his bedroom. He would tell them a Biblical verse that children are to "honor thy father." He indicated he was teaching them how to be with their husbands. The method of attack was common to all three daughters.



In McClellan the Court *citing* State v. Whitner, 228 S.C. 244, 89 S.E.2d 701 (1955), stated that the common scheme exception to Lyle is generally applied in sexual crimes cases where it tends to show continued illicit intercourse between the same parties. The court noted that when weighing the probative value of the prior bad acts against its prejudicial effect, the evidence is inadmissible unless there is a close similarity between the charged offenses such that the probative value of the evidence overrules – or outweighs -- the prejudicial effect of the evidence. State v. Rivers, 273 S.C. 75, 254 S.E.2d 299 (1979).

Appellant understands that McClellan involved three children. However, defense counsel properly argued the similarities between the Clemson and Irmo acts were far from sufficient to make them admissible for purposes of Lyle. Here, the August Clemson incident occurred when appellant and Byrd were alone. Byrd said that appellant carried her upstairs and had sex with her. Byrd said that she told appellant to stop and that it was rape. Appellant was very upset with Byrd's accusations that he had just committed a crime. Byrd did not call the police, and her version of what occurred at the police station was heavily disputed by the Detective Peppers. Detective Peppers stated Byrd never expressed a desire to prosecute, and was satisfied with the trespass form.

Conversely, the October 30, 2004 incident occurred at home of Byrd's parents. The evidence from Byrd's point of view was that she was home with Zach when appellant entered and began talking to her. Byrd said appellant carried her upstairs and forced her to have oral sex. She said appellant was unable to have sexual intercourse with her and that they physically struggled, and struggled several times, and that appellant introduced a knife into the struggle and he held it to her neck. Appellant then

kidnapped Zack and drove away. Respectfully, these incidents are not alike, and they do not establish a common scheme or plan or intent or motive.

Further, given that Detective Peppers of the Clemson Police Department strongly took issue with Byrd's testimony it cannot be said that the prior bad Clemson act here was established by clearing and convincing evidence. State v. Wallace, 364 S.C. 130, 611 S.E.2d 332 (2005)<sup>2</sup> citing State v. Tutton, 354 S.C. 315, 325 S.E.2d 186, 189 (2003). While the failure to prosecute is indeed not dispositive, Detective Peppers's testimony casts great doubt on the stories of Byrd and Mishoe. Peppers said Mishoe would not even reveal the name of her friend the prior day, that she came to the police station on another matter, and it essentially was a fluke that Peppers was even able to place Byrd as the alleged victim she referred to the prior day.

This Court in State v. Wallace, stressed, while reviewing the history of State v. Lyle cases, that a common scheme or plan essentially shows the "MO" of the defendant pertaining to his crime of choice. Wallace argued that the trial judge erred by broadening the State v. Lyle exception to include cases that were only "similar." This Court, citing State v. Hubner, 362 S.C. 572, 608 S.E.2d 463 (Ct. Apps. 2003) noted that the separate acts must not be merely similar, that rather "there must be such a concurrence of common features that the various acts are commonly to be explained as caused by a general plan" in which there are individual situations. This Court in State v. Wallace, held that the trial judge erred in his expansive view of the State v. Lyle exception. The same is true here, and the juxtaposition with McClellan makes that point.

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<sup>2</sup> Certiorari granted November 14, 2006.

Further, identity here obviously was not an issue, and the Clemson and Irmo incidents were far too dissimilar to show any kind of motive or intent. The state here failed to prove the Clemson alleged incident was admissible under a State v. Lyle exception. South Carolina Law precludes evidence of a defendant prior crimes or bad acts to prove the defendant's guilt for the present crime charged, and that is exactly what the solicitor argued as shown above. State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct. App. 2004); State v. Beck, 342 S.C. 129, 436 S.E.2d 679 (2000).

Moreover, in State v. Mathis, 359 S.C. 250, 597 S.E.2d 72 (Ct. App. 2004) this Court noted the Court must first determine whether the prior bad act is proven by clear and convincing evidence, and appellant strongly argues above it was not. Then, even if it is proved by clear and convincing evidence, the court must find that the probative value of the prior bad acts substantial outweighs its prejudicial effect.

In State v. Mathis, the court dealt with three prior assaults upon the same victim in the same manner, and under the similar circumstances. On each occasion, Mathis approached the victim while she was alone at a family gathering. He touched her in the same inappropriate manner, and he would attempt to entice her to have sex with him. He would also back his advances with offers of gifts.

Unlike, State v. Mathis, such similarities do not exist in this case. The Clemson incident was not sufficiently similar to be admissible under Lyle, and the solicitor erroneously argued that it had established appellant's "MO"

This evidence was explosively prejudicial because it had the tendency to have the jury assume that given the two incidents appellant should not be given the benefit of the doubt. That an incident allegedly happened at Clemson did not justify the admission of

all of the state's proffered evidence under Lyle. It was extraordinarily prejudicial, and any probative value it had was substantially outweighed by its unduly prejudicial effect. See, Rule 403, SCRE. This evidence, in short, denied appellant a fair trial, and appellant should be granted a new trial.

Investigator Brown was a key link in the chain of custody. The judge denied appellant his right to confrontation by admitting hearsay portions of Brown's report where appellant could not cross-examine Brown. Further, Brown's absence, particularly where the state made no showing that it attempted to procure Brown's presence showed the chain of custody was fatally defective, and the judge erred by admitting the physical evidence results of the evidence Brown handled from October 30<sup>th</sup> through November 2<sup>nd</sup>. (Issues 2-3).

#### **Relevant Facts**

A major dispute became what happened with the evidence, including the comforter, pants, shirt, and panties, taken from Byrd's Irmo home between October 30, 2004 and November 2, 2004.

At an in camera hearing it was noted that Brown was the investigator who retrieved these items on October 30, 2004, and the evidence custodian could only say they were received on November 2, 2004, which was three days later. The state could not establish what happened with this evidence, and Brown was not in court to explain what happened with this evidence. The defense objected to the admission of this evidence because the state was only able to establish what Brown should have done with the evidence after she retrieved it. The state could not establish *what in fact Brown did with the evidence* at that critical time. R. 392, l. 4 – 420, l. 3.

The defense argued that with this defective chain of custody the state should not later be allowed to try and tie appellant's DNA to the evidence.

The state conversely argued that Investigator Brown was presently in Kosovo, and that the state did not know if “she’s alive or dead.” The solicitor claimed the state had done everything as far as practicable to have a chain of custody complete. R. 392, l. 4 – 420, l. 3.

The judge then asked how the state could account for the evidence from October 30, 2004 until November 2, 2004. The solicitor responded that the procedures called for Brown to turn in the evidence on October 30, 2004, and the fact that it was not taken by the evidence custodian until November 2, 2004 was irrelevant. All of this occurred when the state tried to back door Brown’s testimony before the jury by introducing the contents of her report, without her testimony. The defense strongly objected that this evidence was inadmissible hearsay and that this procedure denied appellant his right to confrontation. R. 392, l. 4 – 420, l. 3.

Defense counsel argued the defense objected “to all the testimony and the fact that we can’t confront Ms. Deidra Brown. That would be a violation of Mr. Thomas’ state and federal constitutional rights.” R. 419, l. 17 – 420, l. 8.

The judge then ruled he would allow the state to use Brown’s report over the defense hearsay and confrontation cause objections. R. 420, l. 22 – 421, l. 5.

#### **How the issue initially arose**

Again, the issue arose when Zane Padgett explained to the jury as the supervisor of the Richland County Sheriff’s Department Crime Scenes Investigator how investigators handled a crime scene, did a walk through of the scene, photographed the scene, and how they followed their written protocol. R. 386, l. 16 – 391, l. 4.

Padgett then told the jury that Brown was a black female about five foot two, with short hair. This was meant to establish that Brown was indeed the one who collected the evidence for the state. Padgett said he had not heard from Brown since she had been in Kosovo but that she was supposed to contact him. R. 391, l. 2 – 392, l. 1.

Padgett said Brown filled out her crime scene analysis report as she was supposed to on October 30, 2004. It was at this point that the defense made its hearsay, and later its confrontation clause objection to the chain of custody and Brown's report being used in her absence. R. 393, l. 2 – 394, l. 12; R. 420, ll. 4 – 8.

Over the defense objection, Padgett then testified that Brown resigned from the Sheriff's Department and took a job in Kosovo. Padgett said he had Brown's report of the October 30, 2004 criminal sexual conduct report in her absence. Padgett said Brown made notes as to what she did at the crime scene. R. 424, l. 15 – 426, l. 14.

Padgett said Brown photographed the entire crime scene, and "she observed things out of place, *a lamp overturned, and area where a struggle may have took place* and some items in disarray. She also listed items that she collected at the scene and at the hospital." R. 426, l. 8 – 427, l. 2. (emphasis added).

Brown also collected the confronter from the bed, "a multi-colored shirt, one pair of white pants, and one lime colored underwear that was collected at the Richland Memorial Hospital." R. 427, ll. 5 – 24. All of this became DNA evidence, and its integrity was crucial.

Investigator Roy Livingston of the Richland County Sheriff's Department testified that he responded to Byrd's Irmo home on October 30, 2004. He stated that

Investigator Deirdre Brown, who was a five foot seven black female, "collected the evidence in the house and photographed the house as well." R. 355, l. 11 - 356, l. 21.

Byrd was then taken to the hospital for the administration of the rape kit. R. 358, ll. 17 - 23.

On cross-examination Livingston said he saw Brown collect the comforter from the bed and put it in her Jeep. Livingston stated he later saw Brown with the evidence at the police station. R. 363, l. 18 - 364 l. 22. The following occurred on cross-examination of Investigator Livingston:

Q. Okay. And let me ask you one more question. You just said that when you were in, just to be clear, Deirdre Brown takes the comforter from the house, puts it in her Jeep?

A. Right.

Q. You all follow the victim, who is driving the car, to the hospital?

A. Yes.

Q. And you leave and Deirdre Brown is left at the hospital; is that right?

A. Yes.

Q. Okay. Then you get - - at some later point you're back at the Sheriff's Department and you peak your head in and you see the comforter?

A. Yes.

Q. And the comforter only?

A. There's some more stuff in the office.

Q. You saw other brown bags but you couldn't tell what was in those bags?



A. No.

Q. Okay. *The only item that you saw that was wrapping or unwrapping was the comforter that's in this box?*

A. *That's correct.*

Q. *Nothing else?*

A. *Nothing else. As I said, I stuck my head in to tell her I was leaving and that was it.*

R. 369, l. 21 – 370, l. 21. (emphasis added).

The defense would later object to Dr. Amick's DNA opinion coming before the jury with the defect in the chain of custody because of Brown's absence, and the fact that Brown had the evidence in her custody from October 30 – November 2, 2004. The defense argued under these circumstances -- with the handling of the evidence and the absence of Brown -- that Dr. Amick's DNA opinions should not be allowed. R. 474, l. 8 – 483, l. 4.

When the solicitor began questioning Dr. Amick about the specific testing of the evidence in this case the defense renewed their objections, and the judge overruled the objections. R. 492, ll. 4 – 20.

Dr. Amick testified that appellant's DNA was found on Byrd's pants. R. 560, ll. 6 – 21. Only Bryd's DNA was found on her panties. R. 507, ll. 4 – 13.

Dr. Amick further said that appellant had two matches of his DNA on the comforter found in the bedroom of the parent's home in Irmo. R. 512, l. 4 – 518, l. 22. Dr. Amick acknowledged he could not say appellant's DNA being found on the comforter meant that that DNA came from his semen. R. 537, l. 7 – 539, l. 16.

## Discussion

In State v. Joseph, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997), this Court held that the state's failure to produce a chemist who retrieved marijuana and crack cocaine from the drop box, and retained it, made the state's chain of custody fatally deficient, and consequently, the evidence was inadmissible.

This Court in State v. Joseph also rejected the state's argument that the chemist having move to Michigan made her unavailable, and that it was impracticable for the state to establish the chain of custody. This court noted: "Joseph's right to cross-examine Kilmer (the chemist) cannot be abridged simply because she no longer lived in South Carolina." This Court therefore concluded that the state's evidence of the chain of custody was fatally deficient, and the trial court therefore erred by admitting the drug evidence.

The same is true here. Brown collected the comforter, the pants, the shirts, and the panties and placed them in her Jeep outside the house in Irmo. She apparently then drove to the hospital, and there was evidence Livingston saw her with the evidence at the police station, but his memory or observations were vague. Further, the vagueness of the packing of the evidence also does not inspire confidence.

Given that the intermingling of evidence can make finding regarding DNA and serology incorrect, the failure to establish the chain from October 30 through November 2, 2004 through the testimony of Investigator Brown made the chain of custody fatally defective, and the judge should not allowed the DNA opinions on this evidence.

### **Hearsay and confrontation**

Further, defense counsel correctly argued that the use of the hearsay report merely because Brown was in Kosovo violated appellant's right to confrontation. The mere fact that the state alleged it requested that Brown keep the state apprised of her whereabouts after she left the Richland County Sheriff's Department did not establish that the state made *any good faith or even practical efforts to assure Brown's presence at trial* so appellant could confront and cross-examine her.

In all criminal prosecutions, the accused has a Sixth Amendment right to be confronted with the witnesses against him. Pointer v. Texas, 380 U.S. 400 (1965). While hearsay and confrontation are different principles and objections, they serve the same purpose of mandating that the defendant has the opportunity to cross-examine the witnesses against him. See State v. Holmes, 342 S.C. 113, 536 S.E.2d 671 (2000).

In State v. Alexander, 303 S.C. 409, 401 S.E.2d 167 (1991) the Court held that the admission of an affidavit containing hearsay evidence was error and deprived a defendant of his right to cross-examination and confrontation. See, also, State v. Latham, 275 S.C. 550, 273 S.E.2d 772 (1981).

As stated, Brown's "notes" in her report contained alleged corroborating evidence of Byrd's story. Brown's notes allegedly stated that there appeared to have been a struggle inside the house, and that a lamp was knocked over. The police report such as the one here contains subjective findings that appellant had the right to confront Brown about, and to cross-examine her about the reasons for those statements in her report.

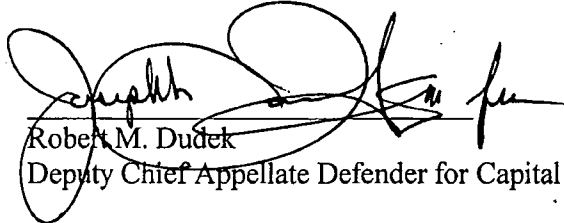
Further, appellant had the right to know what occurred at the crime scene, including any discussions Brown had, or considered that others had, with Byrd.

The use of Zane Padgett to establish the chain of custody with Brown as the missing link, and the admission of hearsay evidence through the use of Brown's report denied appellant his right to confrontation. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed and this case remanded to the Richland Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert M. Dudek', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Robert M. Dudek  
Deputy Chief Appellate Defender for Capital Appeals

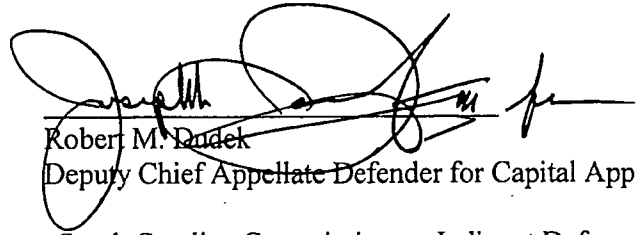
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October 27, 2008

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 27, 2008

A handwritten signature in black ink, appearing to read "Robert M. Dudek", is written over a horizontal line.

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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

OCT 27 2008

SC Court of Appeals

Appeal from Richland County  
James W. Johnson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

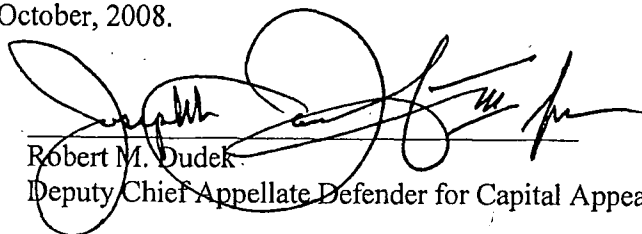
V.

RANDY B. THOMAS,

APPELLANT

CERTIFICATE OF SERVICE

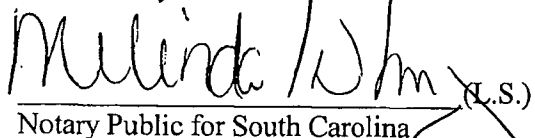
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blitch, Jr., Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 27th day of October, 2008.



Robert M. Dudek  
Deputy Chief Appellate Defender for Capital Appeals

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 27th day of October, 2008.



(L.S.)  
Notary Public for South Carolina

My Commission Expires: November 16, 2008









STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA

FROM THE CIRCUIT COURT OF THE 1ST JUDICIAL CIRCUIT

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal From Richland County  
Hon. James W. Johnson, Jr., Circuit Court Judge

---

The State,

Respondent,

v.

Randy B. Thomas,

Appellant.

---

**FINAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in allowing the victim to describe the August 2004 assault in Clemson as part of a common scheme or plan, nor did the evidence unduly prejudice Appellant. In the alternative, the testimony regarding the Clemson assault was properly admitted as part of the res gestae of the Irmo assault.
- II. The trial court did not err in finding the State proved the chain of custody as far as practicable prior to allowing testimony of DNA results from articles recovered by Investigator Deirdre Brown. Additionally, Appellant cannot demonstrate how he was prejudiced by the admission of the DNA evidence.
- III. The trial court did not err in allowing Investigator Deirdre Brown's report into evidence as a business record. Additionally, the specific issue raised by Appellant is not preserved for review and Appellant cannot demonstrate how he was prejudiced by the report.

## STATEMENT OF THE CASE

Appellant was indicted by the Richland County Grand Jury for criminal sexual conduct in the first degree, assault and battery of a high and aggravated nature, and two counts of kidnaping. The case was tried before the Honorable James W. Johnson and a jury from February 6-10, 2006. Appellant was convicted on all counts. (T.916-917; R. 820-821). Judge Johnson sentenced Appellant to concurrent terms of twenty-two years for each count of kidnaping and for criminal sexual conduct in the first degree. Appellant also was sentenced to ten years, concurrent, on the ABHAN count. (T.936; R. 822). This appeal follows.



## ARGUMENT

- I. The trial court did not err in allowing the victim to describe the August 2004 assault in Clemson as part of a common scheme or plan, nor did the evidence unduly prejudice Appellant. In the alternative, the testimony regarding the Clemson assault was properly admitted as part of the res gestae of the Irmo assault.**

After the jury was selected, the court held a hearing pursuant to State v. Lyle<sup>1</sup>, to determine whether or not to admit the victim's testimony regarding a prior sexual assault. The victim testified Appellant frequently stayed in her apartment in Clemson, South Carolina, while they dated from 2003-2004. The victim had a young son that also lived with them. The victim and Appellant broke up around July 2004, but Appellant retained a key to the victim's Clemson apartment.

On August 22, 2004, the victim was home on the couch when Appellant entered the apartment using his key. Her son was staying with her parents in Irmo, South Carolina. The victim testified he began asking her "very direct questions, asking me where I was staying or who I had been seeing." (T.69; R. 8). He moved to the couch and began touching the victim on her breasts. (T.70; R. 9).

Appellant then carried the victim upstairs and placed her on her bed. He removed her clothing, held her hands above her head, and began to have sex with the victim. (T.71-72; R. 10-11). She testified she told Appellant to stop, told him no, told him to leave, and told him that "what he was doing was rape." (T.72; R. 11). She said he stopped, started crying,

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<sup>1</sup>State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

and "lost it." (T.72-73; R. 11-12). She testified that he repeatedly said he was sorry, that he hated himself and that he "freaked out." (T.73; R. 12).

The victim called several friends after the assault including one that recommended she go to the police. The next day, the victim and her friend went to the police, reported the incident, and she signed a trespass notice against him. (T.74-76; R. 13-15). The victim stated she had the locks changed and stayed with her current boyfriend for about a week. (T.76-77; R. 15-16). She stated she just wanted Appellant to stay away from her. (T.76; R. 15).

The victim then described the sexual assault that took place in October 2004 for which Appellant was charged. The victim and her son were staying at her parents' house in Irmo. She stated she heard a knock on the door and could see through the window it was Appellant. She said the door was unlocked and he just walked into her parents' house. (T.78-80; R. 17-19). Appellant began apologizing for the Clemson assault in August. She testified the discussion became heated so she retreated to the bathroom to call her friend. (T.80-81; R. 19-20). She believed he left, so she exited the bathroom to lock the front door. Before she could get it locked, however, he reentered the house and would not leave when asked by the victim. (T.81; R. 20).

The victim testified Appellant moved over to the couch where she was sitting, began hovering over her, and then touched her breasts with one hand while holding her hands above her head with the other. (T.82-83; R. 21-22). Appellant then picked up the victim, carried her upstairs to her parents room, and placed her on their bed. (T.84-85; R. 23-24). Once upstairs, Appellant asked the victim to remove her shirt and repeatedly asked "Do you love

[her son]?” (T.85; R. 24). After removing the victim’s clothes, Appellant forced her to perform oral sex. He ejaculated into her mouth, but she spit it out. (T.86-87; R. 25-26).

Appellant then held the victim’s hands above her head and penetrated her with his penis about halfway into her vagina. She cried and told Appellant “he was raping me again, and he stopped in the middle of it.” (T.88-89; R. 27-28). The victim stated Appellant “freaked out,” said he was going to kill himself, and said he hated himself. (T.89; R. 28).

They both return downstairs and a struggle ensued in which the victim grabbed a lamp. Appellant threw the lamp to the side and dragged the victim to the kitchen. (T.92-93; R. 31-32). Appellant grabbed a steak knife from a kitchen drawer, held the knife to the victim’s neck, and told her to “go for a ride.” (T.94-95; R.3-34). Appellant put the knife in his pocket and picked up the victim’s son. Once outside, the victim yelled for a neighbor to call 911 and Appellant took off in the car with the victim’s son. (T.96; R. 35). Appellant eventually left the child in the road and sped away. (T.97; R. 36).

The State sought to admit the testimony regarding the Clemson assault pursuant to the common scheme and plan exception of State v. Lyle. The State maintained the facts of the Clemson assault were necessary to explain the actions of Appellant during the Irmo assault only a few months later. The State argued the two assaults are very similar in what took place, including the actual assault and Appellant’s reaction afterwards. The State contended the proof of the first assault tends to prove the second assault and the probative value, to explain Appellant’s actions both before and after the Irmo assault, greatly outweighed the prejudicial impact. (T.137-145; R. 76-84).

Defense counsel maintained the evidence was prejudicial to Appellant because it only proved propensity to act. She argued there was no evidence of a common scheme or plan. She asserted the crimes were dissimilar and the Clemson assault does not tend to prove the occurrence of the Irmo assault for which Appellant was charged. Finally, defense counsel maintained there was not clear and convincing evidence of the first assault to allow its admission. (T.147-150; R. 86-89).

The court ruled the testimony regarding the Clemson assault was admissible as evidence of a common scheme or plan as well as under the exception to State v. Lyle, showing motive or intent. (T.159; R. 98). The court also ruled the evidence was not unduly prejudicial to Appellant under Rule 403, SCRE. (T.163; R. 102).

The victim was the first witness to testify after opening arguments. She testified regarding the Clemson assault in front of the jury consistent with her testimony *in limine*. (T.195-208; R. 134-147). The victim then turned to the events of the Irmo assault. Specifically, she testified the Irmo assault took place after Appellant entered her parents' house seeking to apologize for the Clemson assault. She stated it "was his way of sort of wanting to show me that he loved me." (T.220; R. 159). She stated Appellant was trying to explain the Clemson assault and she kept "cutting him off." The victim testified Appellant became angry and the events escalated. (T.225-226; R. 164-165). Her testimony in front of the jury regarding the Irmo assault was consistent with her testimony during the hearing *in limine*. (T.219-261; R. 158-200).

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). This Court is bound by the trial court's factual

findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000) (citing State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993) (appellate courts are bound by the trial court's fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law)). This same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases. Wilson, 345 S.C. at 6, 545 S.E.2d at 829.

The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error, which results in prejudice to the defendant. State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

**A. Rule 404(b) or Lyle**

Evidence of prior crimes or misconduct is inadmissible to prove the specific crime charged unless the evidence tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the proof of the other; or (5) the identity of the person charged with the present crime. Rule 404(b), SCRE; State v. McClellan, 283 S.C. 389, 323 S.E.2d 772, 773-74 (1984); Lyle, 118 S.E. at 807. To be admissible, a prior bad act must first be established by clear and convincing evidence. State

v. Gillian, 373 S.C. 601, 646 S.E.2d 872, 877 (2007); State v. Weaverling, 337 S.C. 460, 468, 523 S.E.2d 787, 791 (Ct. App. 1999).

**i. Clear and Convincing Evidence**

In the instant case, there is clear and convincing evidence to establish the first act. The victim testified in detail regarding the Clemson assault that occurred in August 2004. She testified about going to the police station the next day to get a restraining order. Finally, she testified in detail about the Irmo assault that occurred in October 2004.

The victim's friend testified she received a phone call from the victim indicating Appellant "took her upstairs and he raped her." (T.106; R. 45). Additionally, the victim's friend testified they went the next day to the City of Clemson Police Department so the victim could obtain a restraining order against Appellant. Her friend then testified she received a text message on October 30, 2004 asking for help, and subsequently called the victim who was hiding in the bathroom from Appellant. (T.108-109; R. 47-48). Finally, the victim's friend testified she received a voice mail message from the victim where the victim was "screaming," and "very upset." The message relayed some of the details of the Irmo assault. (T.110; R. 49).

Finally, Appellant offered Detective James Peppers as a witness, and he testified the victim's friend filed a report on August 22, 2004, indicating "her friend had been assaulted but didn't give the name or anything." He testified the victim and her friend arrived at the police station to discuss a separate report filed by the victim's friend and also for the victim to obtain a restraining order against Appellant. (T.118-119; R. 57-58). The victim provided

Detective Peppers with a statement regarding the Clemson assault and signed a trespass notice against Appellant. (T.120; R. 59).

There was ample evidence provided by the testimony of the victim, the victim's friend, and Detective Peppers for the trial court to find the existence of the Clemson assault by clear and convincing evidence.

**ii. Common Scheme or Plan**

Evidence of a prior bad act is admissible when it tends to establish "a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others." State v. Lyle, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923). "The record must support a logical relevance between the prior bad act and the crime for which the defendant is accused." State v. King, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999). "A close degree of similarity or connection between the prior bad act and the crime for which the defendant is on trial is required to support admissibility under the common scheme or plan exception." State v. Cheeseboro, 346 S.C. 526, 546, 552 S.E.2d 300, 311 (2001). "The connection between the prior bad act and the crime must be more than just a general similarity." State v. Fletcher, 363 S.C. 221, 243, 609 S.E.2d 572, 583 (Ct. App. 2005) (citing State v. Timmons, 327 S.C. 48, 488 S.E.2d 323 (1997); State v. Mathis, 359 S.C. 450, 597 S.E.2d 872 (Ct. App. 2004)). "A common scheme or plan concerns more than the commission of two similar crimes; some connection between the crimes is necessary." Timmons, 327 S.C. at 52, 488 S.E.2d at 325.

In the instant appeal, a clear common scheme or plan can be derived from the evidence of the two assaults. The Clemson assault set the stage for the events of the Irmo

assault. The “prior bad act” of the Clemson assault had a very similar progression of events when juxtaposed to the Irmo assault. Both began with the victim and the Appellant arguing and Appellant attempting to explain how much he loved the victim. In both instances, when Appellant’s love and affection was not returned, he became very angry and carried the victim to a bedroom. Once in the bedroom, he assaulted the victim until she told him he was raping her. At that point, he “lost it” or “freaked out” in both assaults. The common scheme or plan shown through the testimony includes Appellant’s attempts to win the affection of the victim, and then assaulting her when he finds she is not responsive to his attempts.

Furthermore, the Clemson assault has a logical connection or relevance to the Irmo assault for which Appellant is charged. The Irmo assault occurred after Appellant became angry because the victim would not accept his apologies or explanations for the Clemson assault. The Irmo assault ended when the victim reminded the Appellant he was doing the same thing to her that he did in Clemson. A common thread clearly survives from the Clemson assault through to the Irmo assault.

**B. Res Gestae**

As an additional sustaining ground, the evidence of the Clemson assault was also properly offered as part of the res gestae of the charges against Appellant arising from the Irmo assault and kidnappings. Evidence of prior bad acts is admissible when it furnishes part of the context of the crime or is necessary to a full presentation of the case. State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996); State v. Fletcher, 363 S.C. 221, 246, 609 S.E.2d 572, 585 (Ct. App. 2005). “The res gestae theory recognizes that evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid



the fact finder in understanding the context in which the crime occurred.” Fletcher, 363 S.C. at 246, 609 S.E.2d at 585 (citing State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001); State v. Wood, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004)).

This evidence of other crimes is admissible:

when such evidence “furnishes part of the context of the crime” or is necessary to a “full presentation” of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘res gestae’ ” or the “uncharged offense is ‘so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ... [and is thus] part of the res gestae of the crime charged.’ And where evidence is admissible to provide this ‘full presentation’ of the offense,” [t]here is no reason to fragmentize the event under inquiry” by suppressing parts of the “res gestae.”

State v. Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir.1980) (citations omitted)). Under this theory, it is important that the temporal proximity of the prior bad act be closely related to the charged crime. State v. Owens, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001).

The Clemson assault, which took place only two months prior, was so “inextricably interwoven” into the fabric of the charges resulting from the Irmo assault as to require admission of the first to explain the context of the events of the latter. See State v. Preslar, 364 S.C. 466, 475, 613 S.E.2d 381, 386 (Ct. App. 2005). Evidence of the Clemson assault was critical to the jury’s understanding of the Irmo assault. Testimony regarding the Clemson assault provided the context and a complete picture for why Appellant was at the victim’s parents’ home in Irmo, why he became upset when she refused to listen to his

apologies or explanations, and why he reacted the way he did after assaulting the victim. The evidence of the prior Clemson assault was necessary to show the complete, whole, unfragmented story related to the charges for CSC, kidnaping, and ABHAN that arose from the Irmo assault.

The trial court correctly allowed the victim to testify and the State to present evidence of the Clemson assault because it was evidence of a common scheme or plan under Rule 404(b), or in the alternative, it formed part of the *res gestae* of the Irmo assault and was necessary to provide the jury with the complete, unfragmented story.

**C. Probative Value**

Appellant also argues the evidence of the Clemson assault was unduly prejudicial. Based on its clear similarity to the charged Irmo assault and common scheme or plan shown by the evidence, the testimony regarding the Clemson assault was clearly relevant and probative. The probative value in allowing the jury to see Appellant's attempt to win the victim's affection, only to assault her when he cannot convince her of the affection, clearly outweighs the prejudicial impact of the admission of the Clemson assault. Finally, because the evidence of the Clemson assault is necessary for a complete, unfragmented story explaining the environment and context of the Irmo assault, it is certainly more probative than prejudicial in this case. As a result, the ruling by the trial court should be affirmed.

**II. The trial court did not err in finding the State proved the chain of custody as far as practicable prior to allowing testimony of DNA results from articles recovered by Investigator Brown. Additionally, Appellant cannot demonstrate how he was prejudiced by the admission of the DNA evidence.**

Appellant asserts the State failed to prove the chain of custody as far as practicable because it did not demonstrate every effort was exhausted in attempting to locate Investigator Deirdre Brown and procure her presence for trial. The State did make a reasonable effort under the circumstances and did prove the chain of custody as far as practicable. Further, the individual items were properly admitted as non-fungible items because they were identified by the victim. Finally, the admission of the DNA evidence, even if in error, was harmless because Appellant testified he had consensual oral sex and attempted vaginal intercourse with the victim.

**A. Chain of Custody**

Investigator Brown was not called as a witness to testify in establishing the chain of custody of the DNA evidence. Sometime after she collected the evidence in this case, she quit the Richland County Sheriff's Department and went to work for a private firm in Kosovo. Testimony indicated she was supposed to keep the Sheriff's Department informed of her contact information, but no one had heard from her. The State asserted no one knew whether she was "alive or dead." As a result, the State had no means to locate her to obtain her testimony in the case.

In order to admit the DNA evidence:

[A] party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable. Where an analyzed substance that has passed through several hands, the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture. Accordingly, if the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive.

State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205-206 (2007) (citing Benton v. Pellum, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957); State v. Taylor, 360 S.C. 18, 25, 598 S.E.2d 735, 738 (Ct. App. 2004)).

Testimony from each custodian is not a prerequisite to establishing a chain of custody sufficient for admissibility of the fungible evidence. Taylor, 360 S.C. at 27, 598 S.E.2d at 739. "Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." Sweet, 374 S.C. at 7, 647 S.E.2d at 206 (citing State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989) (upholding the admissibility of a blood test even though a nurse who drew the blood from the defendant did not testify at trial; hospital forms completed by the absent nurse and testimony from the other evidence custodians sufficiently established a chain of custody)).

In the instant case, the testimony at trial clearly identified Investigator Deirdre Brown as the person that collected the comforter, shirt, pants, and panties. Detective Livingston testified Investigator Brown removed the comforter from the victim's parent's home. (T.423-424; R. 355-356). Further, he testified Investigator Brown traveled to the hospital to

interview the victim at the same time he went to the hospital. (T.427-428; R. 359-360). The victim described Investigator Brown, with the description nearly matching that given by a co-worker, as the individual that collected her pants, panties, and shirt while she was at the hospital. (T.275-276; 278-279; R. 214-215; 217-218). Finally, Detective Livingston testified he later saw Investigator Brown in her office and she had the comforter and several other items in her possession. (T.425-426; 431-432; 435-436; R. 357-358; 363-364; 367-368).

With the identification of Investigator Brown as the initial link in the chain of custody clearly established, the State needed to "reasonably demonstrate the manner of handling of the evidence." In addition to Investigator Brown's report which the trial court properly admitted as a business record, as discussed below, several witnesses testified regarding her handling of the items from which DNA samples were taken.

Lieutenant Padgett, as supervisor of the Richland County Sheriff's Department Crime Scene Investigators, testified about Brown's training in the policies and procedures used in handling the items. He described how the items should be wrapped, the proper handling of the items, and identified the paper used to wrap the items. (T.499-500; 501-509; R. 429-430; 431-439). Finally, he identified Investigator Brown's initials on the packaging which contained the comforter, panties, pants, and shirt. (T.500-501; R. 430-431)

Detective Livingston testified that in addition to seeing Brown collect the comforter from the home, he later saw her in her office. He testified he saw her wrapping the comforter to be placed into evidence and that she had several other items already wrapped up in brown bags. (T.425-426; 431-432; 435-436; R. 357-358; 363-364; 367-368).

Leonard A. Jones, an evidence clerk with the Richland County Sheriff's Department, testified he retrieved the package. He testified it was wrapped properly according to procedure and completely sealed. (T.445; R. 377). He testified that if it appeared anything was not in proper condition then he would have contacted the investigator to have any error corrected.

Finally, the report by Investigator Brown indicated she collected the comforter, panties, pants, and shirt from the scene or the victim. The report further indicates the investigating officer, in this case Investigator Brown, "placed all collected items into evidence." (T.499; R.429).

The State, therefore, made the requisite showing of a chain of custody as far as was reasonably practicable. The decision of the trial judge to admit the evidence should be affirmed.

**B. Non-Fungible Items**

The comforter, shirt, panties, and pants themselves were non-fungible items and, therefore, a chain of custody need not be established before they may be admitted. See State v. Rogers, 361 S.C. 178, 187, 603 S.E.2d 910, 914 (Ct. App. 2004) (citing State v. Glenn, 328 S.C. 300, 305, 492 S.E.2d 393, 395 (Ct. App. 1997) ("[W]here the issue is the admissibility of non-fungible evidence-that is, evidence that is unique and identifiable-the establishment of a strict chain of custody is not required...."). The items were properly admitted on a showing of relevance and identification. See Glenn, 328 S.C. at 306, 492 S.E.2d at 396.

The items were all readily identifiable and were not substances that could easily be tampered with such as blood or drugs. Further, the victim identified the items as belonging to her. (T.217, 235-236; R. 156, 174-175). Additionally, as found by the trial judge, the State did not seek to introduce the individual items in regards to the DNA testing that was performed. (T.236; 240-241; R. 175; 179-180). Accordingly, the trial judge properly admitted the items into evidence as non-fungible items without the need for the State to provide a strict chain of custody.

**C. Harmless Error**

Even if the DNA evidence or the non-fungible items were improperly admitted into evidence, the admission would be harmless. For the error to be harmless, the appellate court must determine “beyond a reasonable doubt the error complained of did not contribute to the verdict obtained.” Taylor v. State, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993) (citing Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)).

Appellant testified at trial that he had consensual sex with the victim on the comforter used to obtain his DNA. He testified that he ejaculated and that he began vaginal intercourse prior to her telling him to stop. (T.704-705; R. 617-618). Further, Investigator Godfrey testified that while he and Appellant went through the arrest warrants, Appellant never denied having oral sex with the victim, he only denied actually penetrating her. (T.639-640; R. 563-564). As a result, the admission of the DNA evidence was merely cumulative to Appellant’s own testimony and it is not possible for him to have been prejudiced by its admission. See State v. Haselden, 353 S.C. 190, 197, 577 S.E.2d 445, 448-49 (2003) (stating the admission of improper evidence is harmless where the evidence is merely cumulative to

other unobjected-to evidence); State v. Kirby, 325 S.C. 390, 396-97, 481 S.E.2d 150, 153 (Ct. App. 1996) (finding even if officer's testimony regarding information radioed by the police dispatcher constituted hearsay, its admission was harmless given it was cumulative to similar testimony that was admitted without objection).

Accordingly, the decision of the trial court to admit the DNA evidence and the individual items should be affirmed.



**III. The trial court did not err in allowing Investigator Deirdre Brown's report into evidence as a business record. Additionally, the specific issue raised by Appellant is not preserved for review and Appellant cannot demonstrate how he was prejudiced by the report.**

Appellant maintains the trial court erred in admitting Investigator Deirdre Brown's report into evidence. Appellant first contends admission of the report violated the confrontation clause and was improperly admitted because it contained hearsay and subjective findings. The specific arguments raised by counsel regarding the report were not raised to the trial court and, therefore, are not properly preserved for review on appeal. As far as the issue relates to the chain of custody as was discussed at trial, the record was properly admitted into evidence as a business record. Finally, the admission of the report was entirely harmless.

**A. Preservation**

Appellant maintains the report contained subjective findings and, therefore, was inadmissible as hearsay. This specific issue was never raised to the trial court for consideration. Appellant did argue the report should not have been admissible to aid in completing the chain of custody. However, the specific issue that the report should not have been admitted as a business record because it contained subjective findings of Investigator Brown was never raised to the court. Accordingly, the issue is not properly preserved for review on appeal. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) (providing that in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court).

Additionally, the issue of a violation of the confrontation clause as it relates to anything other than the chain of custody is not preserved. To the extent Appellant now argues the admission of the report indicating a struggle occurred or the living room was in disarray violates the confrontation clause, that issue was never raised to the trial court. The only confrontation issue raised to the court related to the ability to question Investigator Brown regarding the report and the chain of custody for the DNA evidence. Accordingly, this issue, to the extent it is raised in the brief, is also not preserved for review on appeal. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693.

**B. Business Record**

The trial court properly admitted Investigator Brown's report as a business record under section 19-5-510 of the South Carolina Code (1985) and Rule 803(6), SCRE. Section 19-5-510 provides:

The term "business" shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

A record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

Further, Rule 803(6) states:

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that

business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness; provided, however, that subjective opinions and judgments found in business records are not admissible. The term "business" as used in this subsection includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

It is clear Investigator Brown's report qualified for admission into evidence under Rule 803(6) and section 19-5-510. Lieutenant Padgett, supervisor of the Richland county Sheriff's Department Crime Scene Investigators, testified the report was one that was prepared during the regular course of their business and was prepared by Investigator Brown, who was unavailable because she had relocated to Kosovo. Lieutenant Padgett as supervisor would certainly qualify as a competent and qualified witness under section 19-5-510 to testify regarding the record, its preparation, and its content as a business record. The report was clearly made "in the regular course of business, at or near the time of the act." The trial court did not abuse his discretion in allowing the report into evidence as a business record.

**C. Harmless Error**

Even if the report was improperly admitted into evidence, its admission did not prejudice Appellant and was harmless error. The report was used by the State to satisfy the chain of custody to admit the DNA evidence. As discussed above, Appellant's own testimony, as well as the testimony by Investigator Godfrey, is clearly cumulative to the DNA evidence and, therefore, any error in admission to establish the chain of custody would be harmless. See State v. Haselden, 353 S.C. 190, 197, 577 S.E.2d 445, 448-49 (2003) (stating

the admission of improper evidence is harmless where the evidence is merely cumulative to other unobjected-to evidence).

In addition, the admission of Investigator Brown's description of the living room would be harmless because they were also cumulative to the victim and Appellant's testimony, as well as the photographic exhibits entered into evidence by the State without objection.

The report stated the living room area was "in disarray. There appeared to be a struggle. One portion of the lamp stand on the sofa and the bottom portion on the floor area." (T.499; R. 429). Appellant testified the victim picked up a lamp and put it down over on the sofa. (T.707; R. 620). Additionally, the State entered several pictures into evidence showing the "disarray" of the living room including the turned-over lamp and the separated lamp shade. (State's Exhibits 6-14; photographs). Accordingly, this portion of the report was cumulative to other testimony and evidence in the record. As a result, the decision of the trial court to allow the report to be used by Lieutenant Padgett in describing Investigator Brown's actions should be affirmed.

## CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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Attorney General

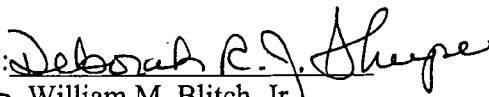
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October 22, 2008

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OCT 22 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

SC Court of Appeals

Appeal From Richland County  
Hon. James W. Johnson, Jr., Circuit Court Judge

The State,

Respondent,

v.

Randy B. Thomas,

Appellant.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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October 22, 2008

STATE OF SOUTH CAROLINA

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Appeal From Richland County  
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The State,

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Randy B. Thomas,

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\_\_\_\_\_  
PROOF OF SERVICE  
\_\_\_\_\_

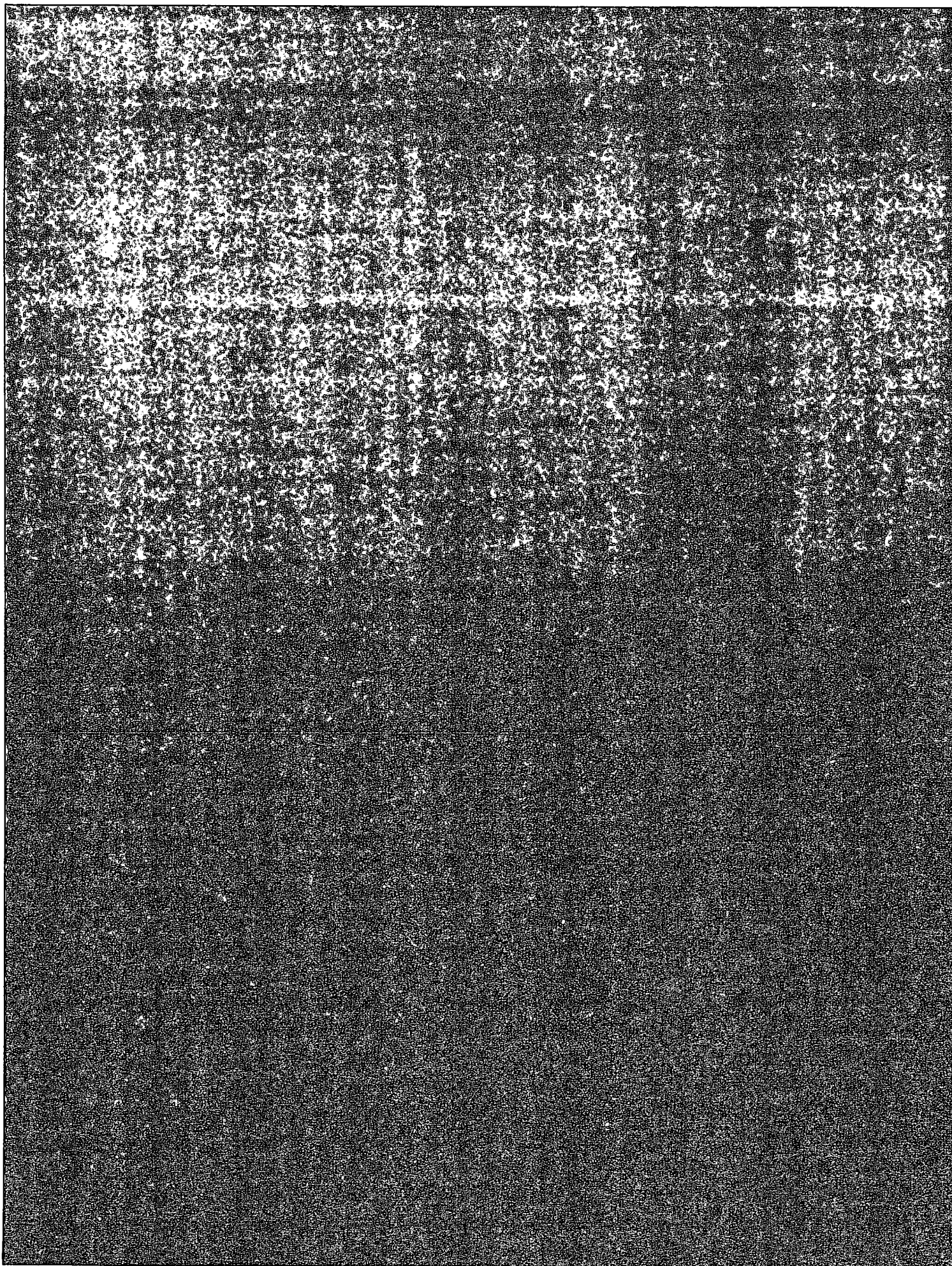
I, ELLEN DuBOIS, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.  
This 22<sup>nd</sup> day of October, 2008.

  
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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS  
05-GS-40-10296, 10297,  
10298, 10299

STATE OF SOUTH CAROLINA

-vs-

RANDY THOMAS

:  
:  
: TRANSCRIPT OF RECORD  
:  
:

THURSDAY, FEBRUARY 2, 2006  
COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE JAMES JOHNSON, JUDGE.

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

VANESSA COOPER, ASSISTANT SOLICITOR  
DOLLY JUSTICE GARFIELD  
ATTORNEYS FOR THE STATE

LANELLE DURANT, ESQUIRE  
JEANETTE VANGINHOVEN, ESQUIRE  
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE  
CIRCUIT COURT REPORTER

I N D E X

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|---|-------------------------------|-------------------------------|--|
| 1 |                               |                               |  |
| 2 | WITNESS                       | DIRECT CROSS REDIRECT RECROSS |  |
| 3 | BRYAN GODFREY                 |                               |  |
| 4 | MS. COOPER                    | 9                             |  |
| 5 | MS. DURANT                    | 24                            |  |
| 6 | CERTIFICATE OF COURT REPORTER | 34                            |  |

E X H I B I T S

|    |     |                             |       |
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| 10 |     |                             |       |
| 11 | NO. | ID.                         | IN EV |
| 12 | S-1 | ADVICE OF RIGHTS FORM ..... | 13    |

STATE V. RANDY THOMAS

1 THE COURT: ALL RIGHT. THESE ARE PRETRIAL MOTIONS FOR  
2 NEXT WEEK'S TRIAL; IS THAT CORRECT?

3 MS. COOPER: THAT'S CORRECT, YOUR HONOR.

4 THE COURT: AND YESTERDAY I WAS TOLD WE HAVE AT LEAST  
5 A JACKSON V. DENNO WHEN WE WERE SCHEDULING THINGS, AND I  
6 DON'T KNOW WHAT ELSE WE HAVE TO HEAR THIS AFTERNOON.

7 MS. DURANT: YOUR HONOR, IF I MAY APPROACH.

8 (PAUSE.)

9 MS. COOPER: YOUR HONOR, JUST FOR THE RECORD, WE'RE  
10 HERE FOR THE STATE VERSUS RANDY THOMAS. THE INDICTMENT  
11 NUMBERS ARE 2005-GS-40-10296, 97, 98, AND 99. THE CHARGES  
12 ARE CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, KIDNAPING  
13 TWO COUNTS, AND ONE COUNT OF ASSAULT AND BATTERY OF A HIGH  
14 AND AGGRAVATED NATURE.

15 THE COURT: ALL RIGHT. LET'S JUST START WITH THE  
16 MOTION TO RENEW DISCOVERY. ANYTHING IN PARTICULAR THERE,  
17 MS. DURANT?

18 MS. DURANT: NO, SIR, THAT'S JUST ROUTINE PROCEDURE WE  
19 HAVE.

20 THE COURT: ANY ADDITIONAL DISCOVERY, ANYTHING,  
21 COUNSEL, THAT YOU ARE AWARE OF THAT THE DEFENSE IS ENTITLED  
22 TO UNDER THE MOTIONS THAT HAVE ALREADY BEEN FILED?

23 MS. COOPER: THERE IS NOTHING ADDITIONAL TO MY  
24 KNOWLEDGE, YOUR HONOR.

25 THE COURT: IF IT BECOMES AVAILABLE, YOU NEED TO MAKE

STATE V. RANDY THOMAS

1 IT, OF COURSE, IMMEDIATELY AVAILABLE TO THE DEFENSE, AND  
2 WE'LL DEAL WITH WHATEVER ISSUES MIGHT COME UP IN REGARD TO  
3 THAT.

4 MS. COOPER: OKAY.

5 MS. DURANT: THANK YOU.

6 MS. COOPER: AND I DID WANT TO PUT ON THE RECORD, YOUR  
7 HONOR, THAT THIS PAST WEEK I DID TURN OVER SUPPLEMENTAL DNA  
8 DISCOVERY REQUESTED BY MS. DURANT, AND SHE HAS RECEIVED  
9 THAT.

10 THE COURT: ALL RIGHT.

11 MS. DURANT: YOUR HONOR, WE DID SHARE WITH THEM SOME  
12 PHOTOS THAT WE -- IF WE PUT UP A CASE THAT WE MAY INTRODUCE  
13 INTO EVIDENCE.

14 THE COURT: ALL RIGHT. THE MOTION TO SETTLE THE  
15 RECORDS PROBABLY IS BEST LEFT UNTIL TRIAL. I DON'T KNOW  
16 THAT THERE'S ANY THAT WE NEED TO TAKE CARE OF TODAY.

17 MS. COOPER: THE ONLY RECORD, YOUR HONOR -- I'VE NOT  
18 PULLED RAP SHEETS ON MY VICTIM OR THE LAY WITNESSES. I  
19 WOULD BE GLAD TO DO THAT AND TURN THAT OVER ON MONDAY. I  
20 DON'T BELIEVE THEY HAVE A PRIOR RECORD TO MY KNOWLEDGE. I  
21 DO HAVE A CHILD VICTIM -- A CHILD WITNESS THAT WILL  
22 TESTIFY. AND I DON'T BELIEVE HE HAS A RECORD.

23 LAUREN BYRD, TO MY KNOWLEDGE, DOES NOT HAVE A PRIOR  
24 CRIMINAL HISTORY.

25 THE DEFENDANT'S RECORD, YOUR HONOR, IS A CRIMINAL

STATE V. RANDY THOMAS

1 CONSPIRACY CONVICTION. I BEG THE COURT'S INDULGENCE.

2 THE COURT: WELL, I DON'T KNOW THAT WE NEED TO GO OVER  
3 THAT AT THIS POINT IN TIME.

4 MS. COOPER: OKAY.

5 THE COURT: I MEAN, BEFORE HE MAKES A FINAL DECISION  
6 ON WHETHER TO PRESENT A DEFENSE OR TAKE THE STAND, OF  
7 COURSE, HE'S ENTITLED TO KNOW WHAT THE STATE WOULD SEEK TO  
8 IMPEACH HIM WITH.

9 MS. COOPER: OKAY.

10 THE COURT: BUT AT THIS STAGE I DON'T KNOW THAT WE'RE  
11 SAVING A WHOLE LOT OF TIME BY GOING THROUGH THAT.

12 MS. COOPER: YES, SIR.

13 THE COURT: BUT ANY WITNESS -- AND ANY THAT YOU DO  
14 HAVE, FIRST THING MONDAY IF YOU WILL PROVIDE THEM TO MS.  
15 DURANT OR IN PLENTY OF TIME FOR THEM TO REVIEW PRIOR TO  
16 THEIR CROSS EXAMINING THESE WITNESSES.

17 MS. COOPER: YES, SIR, YOUR HONOR. IN FACT, I CAN GET  
18 THAT DONE TOMORROW. I'LL HAVE IT DONE TOMORROW.

19 THE COURT: ALL RIGHT. THE NEXT MOTION LISTED -- ANY  
20 PRIOR INCIDENTS UNDER LYLE. IS THE STATE INTENDING AT THIS  
21 TIME TO INTRODUCE ANY LYLE EVIDENCE?

22 MS. COOPER: YES, SIR, YOUR HONOR. THE VICTIM IN THIS  
23 CASE, HER NAME IS LAUREN BYRD. SHE ALLEGES THAT IN AUGUST  
24 OF 2004 -- BY THE WAY, THIS CRIME HAPPENED IN OCTOBER 2004  
25 -- THAT THE DEFENDANT CAME INTO HER APARTMENT WHERE SHE

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1 LIVED IN CLEMSON. SHE ATTENDS CLEMSON UNIVERSITY. AND  
2 THAT A SEXUAL ASSAULT TOOK PLACE IN THAT APARTMENT.

3 WE DO NOT INTEND ON GOING FORWARD WITH THAT LYLE  
4 MOTION TODAY, YOUR HONOR. I BELIEVE WE'LL HAVE TO WAIT  
5 UNTIL MONDAY SO THAT MY VICTIM CAN BE PRESENT TO TESTIFY  
6 ABOUT THAT. WE WILL HAVE A CORROBORATING WITNESS TO  
7 TESTIFY ALONG WITH THAT, AS WELL AS AN INVESTIGATOR WITH  
8 THE CLEMSON POLICE DEPARTMENT BY THE NAME OF OFFICER JAMES  
9 PEPPERS.

10 THE COURT: ARE THERE CHARGES PENDING IN THAT MATTER?

11 MS. COOPER: NO, SIR. CHARGES WERE NOT FILED IN THAT  
12 MATTER.

13 THE COURT: ALL RIGHT. WE WILL HAVE A FULL LYLE  
14 HEARING BEFORE THE COURT MAKES A DETERMINATION. IS THAT  
15 THE ONLY PRIOR INCIDENT THAT YOU WOULD BE TENDERING UNDER  
16 LYLE?

17 MS. COOPER: YES, SIR, YOUR HONOR.

18 THE COURT: ALL RIGHT. WE'LL HAVE A FULL HEARING  
19 PRIOR TO THE COURT MAKING A DETERMINATION OF WHETHER OR NOT  
20 THAT WOULD BE APPROPRIATE. BUT YOU AT LEAST KNOW WHICH  
21 INCIDENT.

22 MS. DURANT: YES, SIR. THANK YOU.

23 THE COURT: ALL RIGHT. SEQUESTER WITNESSES. WE WILL  
24 DEAL WITH.

25 JACKSON V. DENNO, WE WILL TAKE IN JUST A MOMENT.

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1           AND THEN A MOTION TO SUPPRESS ANY REFERENCE TO THE  
2   DEFENDANT'S HOSPITALIZATION. I DON'T KNOW WHAT ---

3           MS. COOPER: YOUR HONOR, IF I MAY. THE DEFENDANT --  
4   THE INCIDENT IN THIS CASE OCCURRED ON OCTOBER 30TH OF 2004.  
5   THE DEFENDANT WAS NOT ARRESTED IN THIS MATTER UNTIL  
6   NOVEMBER 15TH OF 2004. I BELIEVE THAT'S THE CORRECT DATE.

7           YOUR HONOR, IN THE MEANTIME HE HAD CHECKED HIMSELF IN  
8   TO A MENTAL INSTITUTION UP IN NORTH CAROLINA. AND I  
9   BELIEVE THE DEFENSE WILL BE ABLE TO ARTICULATE WHY THEY  
10   DON'T WANT TO GO IN TO IT. BUT WE HAVE NO PROBLEM STAYING  
11   AWAY FROM THAT ISSUE AS LONG AS THE DEFENSE DOES NOT  
12   INSINUATE THROUGH ANY WAY -- IN ANY WAY THAT THE OFFICERS  
13   IN THIS CASE WERE DERELICT IN THEIR DUTIES TO ARREST THE  
14   DEFENDANT.

15          THE COURT: MS. DURANT.

16          MS. DURANT: YOUR HONOR, WE ARE NOT CONTESTING THE WAY  
17   HE WAS ARRESTED OR ANYTHING TO DO WITH THE OFFICERS. AND  
18   MS. COOPER AND I ---

19          THE COURT: OR THE TIME PERIOD BETWEEN THE ALLEGED  
20   INCIDENT DATE AND THE DATE OF THE ARREST?

21          MS. DURANT: NO, SIR.

22          THE COURT: OKAY.

23          MS. DURANT: WE JUST FEEL THAT ANY MENTION OF THE  
24   STATE MENTAL FACILITY WOULD BE PREJUDICIAL TO HIM.

25          THE COURT: IF THAT IS NOT AN ISSUE, AS I UNDERSTAND

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1 WHAT THE STATE HAS JUST INDICATED, THEY ARE NOT GOING IN TO  
2 THAT. IF IT BECOMES AN ISSUE, THEN BRING IT TO THE COURT'S  
3 ATTENTION BEFORE IT BECOMING AN ISSUE. WE'LL GET THE JURY  
4 OUT AND WE WILL DEAL WITH IT. BUT IT SOUNDS TO ME LIKE  
5 YOU'RE BOTH TALKING ABOUT THE SAME THING.

6 MS. COOPER: YES, SIR.

7 THE COURT: YOU'RE NOT GOING TO MAKE IT AN ISSUE.

8 MS. DURANT: NO, SIR.

9 THE COURT: AND IF THEY DON'T MAKE IT AN ISSUE, THE  
10 STATE'S NOT GOING TO INTRODUCE ANYTHING ABOUT IT.

11 MS. COOPER: RIGHT.

12 THE COURT: THAT'S WHERE WE ARE RIGHT NOW.

13 MS. DURANT: YES, SIR, THAT'S FINE WITH US.

14 THE COURT: ALL RIGHT.

15 MS. DURANT: THANK YOU.

16 THE COURT: SEQUESTER WITNESSES WE'LL DEAL WITH ON  
17 MONDAY. BUT UNLESS THERE'S SOME STRONG REASON NOT TO DO  
18 THAT, I NORMALLY WILL DO THAT. AND WE'LL PUT THE  
19 EXCEPTIONS, OF COURSE, VICTIM AND CHIEF INVESTIGATING  
20 OFFICER CAN STAY IN.

21 BUT ANYWAY, WE'LL DO ALL OF THAT, AGAIN, MONDAY  
22 MORNING FOR THE BENEFIT OF THE WITNESSES WHO MAY BE  
23 PRESENT.

24 NOW, WE DO HAVE JACKSON V. DENNO THAT WE'RE GOING TO  
25 DEAL WITH TODAY; IS THAT RIGHT?

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1 MS. COOPER: YES, SIR, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 MS. COOPER: THE STATE IS PREPARED TO START THAT.

4 THE COURT: ALL RIGHT. LET'S MOVE FORWARD ON THAT  
5 PLEASE.

6 MS. COOPER: THANK YOU, YOUR HONOR. AT THIS TIME  
7 INVESTIGATOR GODFREY, BRYAN GODFREY, OF THE RICHLAND COUNTY  
8 SHERIFF'S DEPARTMENT.

9 BRYAN GODFREY, BEING FIRST  
10 DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: PLEASE BE SEATED. SPEAK INTO THAT  
12 MICROPHONE AND STATE YOUR FULL NAME FOR THE RECORD.

13 WITNESS: I'M INVESTIGATOR BRYAN GODFREY.

14 DIRECT EXAMINATION BY MS. COOPER:

15 Q INVESTIGATOR GODFREY, CAN YOU PLEASE RELAY TO THE  
16 COURT WHERE YOU ARE EMPLOYED AND WHAT YOUR TITLE AND DUTIES  
17 ARE?

18 A I'M EMPLOYED WITH THE RICHLAND COUNTY SHERIFF'S  
19 DEPARTMENT. I'M CURRENTLY ASSIGNED AS AN INVESTIGATOR FOR  
20 THE SPECIAL VICTIM'S UNIT.

21 Q AND AS AN INVESTIGATOR WITH THAT UNIT, CAN YOU EXPLAIN  
22 WHAT YOUR DAILY DUTIES ENTAIL?

23 A I'M ASSIGNED CASES THAT INVOLVE CHILD MOLESTATION,  
24 CHILD ABUSE, AND SEXUAL ASSAULTS OF ADULTS AND VULNERABLE  
25 VICTIMS, LIKE ELDERLY ABUSE.

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1 Q ELDER ABUSE. AND JUST TO JUMP ONTO THIS CASE, DO YOU  
2 RECALL WHEN YOU WERE ASSIGNED TO THE CASE AGAINST RANDY  
3 THOMAS?

4 A YES, SIR -- YES, MA'AM, IT WAS A SEXUAL ASSAULT,  
5 KIDNAPING THAT OCCURRED AT 300 WEST ASHFORD WAY. I WAS  
6 ASSIGNED ON NOVEMBER THE 1ST, 2004 TO FOLLOW UP AND  
7 INVESTIGATE THAT.

8 Q AND UPON BECOMING ASSIGNED TO THIS CASE, WHAT WERE  
9 YOUR FIRST -- WHAT DID YOU FIRST DO IN YOUR INVESTIGATION?

10 A I FIRST TALKED WITH THE INVESTIGATOR THAT INITIALLY  
11 RESPONDED OUT THERE. IT OCCURRED ON THE WEEKEND, SO I KIND  
12 OF GOT A BASIS OF FACTS THAT OCCURRED. I MADE CONTACT WITH  
13 THE VICTIM IN THE CASE. SHE CAME IN AND PROVIDED A SWORN  
14 WRITTEN STATEMENT ABOUT WHAT SHE ALLEGES OCCURRED THAT DAY.

15 Q OKAY. AND JUST BEING BRIEF, IF YOU COULD, EXPLAIN TO  
16 THE JUDGE WHAT IT IS THAT LED TO THE DEFENDANT'S ARREST IN  
17 THIS MATTER?

18 A SHE ALLEGES SHE WAS AT HER RESIDENCE. ONE MOMENT.  
19 LET ME FIND -- SHE ALLEGES ON OCTOBER THE 30TH, 2004 AT  
20 APPROXIMATELY 1:00 O'CLOCK IN THE AFTERNOON THAT THE  
21 ASSAILANT, RANDY THOMAS, AS SHE KNOWS IS AN EX-BOY FRIEND,  
22 CAME INTO HER RESIDENCE AND SEXUALLY ASSAULTED HER BY  
23 MAKING HER PERFORM ORAL SEX ON HIM, WHERE HE EJACULATED IN  
24 HER MOUTH, AND VAGINALLY PENETRATING HER. SHE STATES THAT  
25 HE FURTHER PLACED A KNIFE TO HER THROAT, HOLDING HER

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1 AGAINST HER WILL AND PHYSICALLY RESTRAINING HER AFTER  
2 SEVERAL PLEAS TO BE RELEASED.

3 SHE THEN STATED THAT HE DID WITH THE KNIFE STILL IN  
4 HIS BACK POCKET ORDER HER TO LEAVE THE RESIDENCE WHILE  
5 HOLDING HER 3-YEAR-OLD SON. ONCE OUTSIDE SHE SAID SHE  
6 ESCAPED BY RUNNING TO A NEIGHBOR THAT WAS CUTTING THE GRASS  
7 -- WHILE HE DROVE OFF WITH HER SON IN THE VEHICLE.

8 SHE STATED AFTER CHASING THE CAR AND BEING  
9 UNSUCCESSFUL -- AND BEING SUCCESSFUL IN RETRIEVING HER --  
10 UNSUCCESSFUL IN RETRIEVING HER SON, HE STOPPED THE CAR AND  
11 PLACED THE CHILD OUTSIDE THE DRIVER'S SIDE DOOR AND INTO  
12 THE STREET -- WHERE SEVERAL WITNESSES CORROBORATED THAT.

13 Q AND BASED ON YOUR INTERVIEW OF THE VICTIM, WHAT DID  
14 YOU CHARGE -- OR DID YOU OBTAIN ARREST WARRANTS FOR THE  
15 ARREST OF RANDY THOMAS?

16 A YES, MA'AM, I DID.

17 Q AND WHAT WERE THOSE CHARGES?

18 A CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, ASSAULT  
19 AND BATTERY OF A HIGH AND AGGRAVATED NATURE, AND TWO COUNTS  
20 OF KIDNAPING.

21 Q AND WHEN WAS IT THAT YOU WERE ABLE TO MAKE CONTACT  
22 WITH THE DEFENDANT UPON HIS ARREST IN THIS CASE?

23 A I MADE CONTACT WITH THE DEFENDANT ON NOVEMBER THE  
24 15TH, 2004.

25 Q AND CAN YOU PLEASE TELL JUDGE JOHNSON WHERE IT WAS YOU

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1 MADE CONTACT WITH THE DEFENDANT?

2 A AT THE RICHLAND COUNTY DETENTION CENTER.

3 Q AND WHERE EXACTLY IN THE DETENTION CENTER DID YOU MEET  
4 WITH HIM?

5 A IN THE PRE-BOOKING AREA, WHERE YOU FIRST GET PRE-  
6 BOOKED IN, HE WAS STILL THERE WHEN I ARRIVED AT THE  
7 DETENTION CENTER.

8 Q CAN YOU DESCRIBE WHAT THE DEFENDANT WAS WEARING AND  
9 WHETHER OR NOT HE WAS HANDCUFFED?

10 A HE WAS IN HIS -- IN HIS CIVILIAN ATTIRE THAT HE WAS  
11 BROUGHT THERE IN. HE WASN'T DRESSED OUT AT THAT POINT OR  
12 ANYTHING. HE WAS NOT IN HANDCUFFS.

13 Q AND CAN YOU EXPLAIN TO JUDGE JOHNSON EXACTLY WHERE IT  
14 IS THAT YOU TOOK HIM FROM THE WAITING AREA AND WHERE YOU  
15 TOOK HIM TO TO INTERVIEW HIM?

16 A WHEN YOU COME INTO THE JAIL, YOU HAVE A PRE-BOOKING  
17 AREA WHERE THERE'S LIKE 4 OR 5 CHAIRS SITTING THERE, AND  
18 THERE'S A DESK AND THE DETENTION CENTER OFFICER ASKS YOU  
19 QUESTIONS MEDICALLY ABOUT IF YOU HAVE ANY MEDICAL PROBLEMS.  
20 JUST OFF OF THAT ROOM THERE'S AN EXTENSION, LIKE A HALLWAY.  
21 YOU GO THROUGH THAT DOOR AND THERE'S LIKE HOLDING CELLS.  
22 BUT IN THAT HALLWAY, THERE'S ANOTHER DESK, AND WE SAT RIGHT  
23 THERE AT THAT DESK IN THE DETENTION CENTER.

24 Q DID YOU WORK -- WERE YOU WEARING A UNIFORM OR DID YOU  
25 IDENTIFY YOURSELF AS AN INVESTIGATOR WITH THE RICHLAND

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1 COUNTY SHERIFF'S DEPARTMENT?

2 A I IDENTIFIED MYSELF AS AN INVESTIGATOR. I WAS NOT  
3 WEARING A UNIFORM NOR A HANDGUN.

4 Q AND WHERE WAS YOUR HANDGUN?

5 A MY HANDGUN WAS STORED AT MY VEHICLE. WE'RE NOT  
6 ALLOWED TO BRING THEM INTO THE DETENTION CENTER.

7 Q THEY'RE NOT ALLOWED IN THERE. AND DID YOU HAVE A  
8 BADGE ON YOU?

9 A YES, MA'AM, I DID.

10 Q AND HE UNDERSTOOD YOU WERE AN INVESTIGATOR, A POLICE  
11 OFFICER?

12 A YES, MA'AM.

13 Q AND CAN YOU PLEASE BEGIN TO TELL US EXACTLY HOW IT IS  
14 THAT YOU BEGAN YOUR INTERVIEW WITH MR. THOMAS?

15 A I INTRODUCED MYSELF, OBVIOUSLY. AND I INITIALLY  
16 ADVISED HIM OF HIS RIGHTS IN OUR WRITTEN FORM. IT'S A FORM  
17 THAT WE HAVE THAT WE CHECK OFF EACH OF HIS RIGHTS AND  
18 EXPLAIN THEM TO HIM. AND SORT OF LIKE SIGN THE WAIVER  
19 FORM.

20 (ADVICE OF RIGHTS FORM MARKED FOR IDENTIFICATION AS  
21 STATE'S EXHIBIT NO. 1.)

22 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S  
23 EXHIBIT 1 FOR IDENTIFICATION PURPOSES. CAN YOU PLEASE  
24 IDENTIFY THAT DOCUMENT?

25 A THIS IS MY ADVICE OF RIGHTS FORM, I EXPLAINED RANDY

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1 THOMAS' RIGHTS ON IT.

2 Q AND IS THAT THE ORIGINAL?

3 A YES, MA'AM, IT IS.

4 Q COULD YOU PLEASE GO OVER THE FORM AS YOU WOULD HAVE  
5 WITH THE DEFENDANT ON THIS DATE?

6 A I OBVIOUSLY FILLED IN HIS NAME AND THE PLACE, THE  
7 LOCATION WHERE I WAS ADVISING HIM, WHICH IS 201 JOHN MARK  
8 DIAL -- IT'S THE ADDRESS OF THE DETENTION CENTER. I PLACED  
9 MY NAME ON IT AS THE PERSON THAT WAS ADVISING HIM. THE  
10 DATE, THE TIME, WHICH WAS 6:48 IN THE EVENING ON NOVEMBER  
11 THE 15TH, 2004.

12 I WAS -- THERE'S A LITTLE BLOCK NEXT TO EACH OF THE  
13 RIGHTS, AND I CHECKED EACH RIGHT AS I READ IT OFF, AND I  
14 ADVISED HIM. I CAN READ THEM OFF. WOULD YOU LIKE ME TO  
15 READ THEM OFF?

16 Q YES, EXACTLY -- DO EXACTLY WHAT YOU DID WITH MR.  
17 THOMAS ON NOVEMBER 15TH AT 6:48 IN THE EVENING?

18 A I WENT TO THE FIRST RIGHT, WHICH IS: BEFORE WE ASK  
19 YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS. I  
20 CHECKED THAT OFF.

21 YOU HAVE THE RIGHT TO REMAIN SILENT. CHECKED THAT  
22 OFF.

23 ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.  
24 YOU HAVE A RIGHT TO A LAWYER -- YOU HAVE A RIGHT TO TALK TO  
25 A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND

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1 HAVE A LAWYER WITH YOU DURING ANY QUESTIONING. I CHECKED  
2 BOTH OF THOSE OFF.

3 IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED  
4 FOR YOU BEFORE ANY QUESTIONING IF YOU WISH. AND I CHECKED  
5 THAT OFF.

6 AND IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A  
7 LAWYER PRESENT, YOU STILL HAVE THE RIGHT TO STOP ANSWERING  
8 AT ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING AT  
9 ANY TIME UNTIL YOU TALK TO A LAWYER. AND I CHECKED THAT  
10 OFF.

11 I ASKED HIM IF HE UNDERSTOOD THOSE RIGHTS? HE  
12 INDICATED THAT HE DID.

13 I SIGNED MY NAME.

14 HE SIGNED HIS NAME ON THE FORM FOR THAT.

15 Q AND WHEN YOU ASKED HIM TO SIGN HIS NAME, WHAT WAS THAT  
16 SHOWING?

17 A THAT WAS JUST FOR UNDERSTANDING. THAT PORTION IS JUST  
18 THAT HE UNDERSTOOD THE RIGHTS THAT I EXPLAINED TO HIM.

19 Q OKAY. AND CAN YOU PLEASE EXPLAIN WHAT IS AT THE  
20 BOTTOM OF YOUR DOCUMENT?

21 A THERE'S A SECOND PORTION THAT'S A WAIVER OF RIGHTS.  
22 IT'S GOT A LITTLE BOX NEXT TO IT ALSO. AND THAT SAYS:  
23 I'VE READ THIS STATEMENT OF MY RIGHTS AND UNDERSTAND WHAT  
24 MY RIGHTS ARE. I'M WILLING TO TALK AND ANSWER QUESTIONS.  
25 I UNDERSTAND AND KNOW WHAT I'M DOING. NO PROMISES HAVE

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1 BEEN MADE TO ME, NO PRESSURE OR COERCION OF ANY KIND HAS  
2 BEEN USED AGAINST ME. I CHECKED THAT OFF.

3 HE SIGNED THAT ALSO. AND I ALSO SIGNED THAT.

4 Q AND, AGAIN, BY HIM SIGNING THAT WAIVER OF RIGHTS  
5 PARAGRAPH, WHAT DOES THAT INDICATE?

6 A THAT HE'S WILLING TO TALK WITH ME ABOUT THE SITUATION.

7 Q CAN YOU PLEASE TELL JUDGE JOHNSON WHAT TOOK PLACE  
8 AFTER YOU ADVISED THE DEFENDANT OF HIS RIGHTS?

9 A AFTER I ADVISED HIM AND HE SIGNED BOTH, HE INDICATED  
10 TO ME HE'D ONLY TALK ABOUT CERTAIN THINGS. AND AT THAT  
11 TIME I REITERATED TO HIM THAT HE COULD STOP TALKING AT ANY  
12 TIME AND WAS ENTITLED TO AN ATTORNEY.

13 HE KIND OF SAID HE WOULD ONLY TALK ABOUT CERTAIN  
14 THINGS.

15 I SAID HE COULD ANSWER WHAT HE WANTED TO ANSWER,  
16 DIDN'T HAVE TO ANSWER WHAT HE DIDN'T WANT TO ANSWER, BUT HE  
17 COULD STOP IF HE WANTED TO.

18 Q AND AT THAT POINT DID HE INDICATE THAT HE WANTED TO  
19 TALK TO A LAWYER ---

20 A NO, HE DID NOT.

21 Q --- BEFORE TALKING TO YOU?

22 A NO, HE DID NOT.

23 Q OKAY. AND WHAT HAPPENED NEXT?

24 A THE SUSPECT STATED THAT -- I SAY SUSPECT, MR. THOMAS,  
25 SAID THERE WERE A FEW THINGS THAT HE WANTED TO CLARIFY AS

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1 HE READ OVER HIS ARREST WARRANT, AND WE READ OVER THOSE  
2 ARREST WARRANTS TOGETHER.

3 Q AND DO YOU HAVE HIS ARREST WARRANTS WITH YOU?

4 A YES, MA'AM, I HAVE COPIES OF HIS ARREST WARRANTS.

5 Q AND COULD YOU EXPLAIN HOW IT IS THAT YOU REVIEWED  
6 THOSE ARREST WARRANTS WITH THE DEFENDANT?

7 A WE PRETTY MUCH TOOK EACH ONE AND WENT THROUGH IT AND  
8 READ OFF THE DATE THAT INCIDENT ALLEGEDLY OCCURRED. I  
9 PRETTY MUCH WENT THROUGH THE BODY OF THE ARREST WARRANT,  
10 WHERE THE ALLEGATIONS THAT SHE SAYS ON OCTOBER 30 -- LIKE  
11 THE ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE  
12 ONE. THAT HE DID COMMIT THE CRIME OF ASSAULT AND BATTERY  
13 OF A HIGH AND AGGRAVATED NATURE, AND THAT HE DID HOLD A  
14 KITCHEN STEAK KNIFE PRESSED AGAINST LAUREN BYRD'S NECK,  
15 HOLDING HER AGAINST HER WILL, PUTTING HER IN FEAR FOR HER  
16 LIFE, THAT SHE WAS TRANSPORTED TO THE EMERGENCY ROOM, AND  
17 THAT SHE HAD GIVEN A WRITTEN STATEMENT INDICATING THAT THE  
18 DEFENDANT DID COMMIT THESE ACTS.

19 Q OKAY. AND COULD YOU PLEASE TELL JUDGE JOHNSON UPON  
20 READING THE WARRANT FOR ASSAULT AND BATTERY OF A HIGH AND  
21 AGGRAVATED NATURE WHAT WERE HIS COMMENTS TO YOU?

22 A WHILE LOOKING AT THAT PARTICULAR WARRANT, HE STATED  
23 THAT HE NEVER DID -- HE STATED, NEVER DID I HOLD A KNIFE TO  
24 ANYONE'S THROAT OR ANY PART OF ANY BODY. HE STATED, WE GOT  
25 INTO A HEATED DISCUSSION BUT HE NEVER ELABORATED ON THAT.

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1 HE BECAME EMOTIONAL AT THAT POINT. HE STARTED CRYING --  
2 WAS ATTEMPTING TO HOLD BACK TEARS IN HIS EMOTIONS ON  
3 SEVERAL OCCASIONS.

4 HE DID STATE AT ONE POINT, I KNOW I DID SOMETHING  
5 WRONG BUT NOT THIS WRONG. HE STATED, I WOULD NEVER HURT  
6 EITHER ONE OF THEM, MEANING BOTH VICTIMS THAT WERE CHARGED  
7 WITH -- HER AND HER SON.

8 Q AND THEN THE NEXT TIME AFTER YOU REVIEWED THE ASSAULT  
9 AND BATTERY OF A HIGH AND AGGRAVATED NATURE WARRANT, DID  
10 YOU HAVE AN OPPORTUNITY TO REVIEW THE CRIMINAL SEXUAL  
11 CONDUCT IN THE FIRST DEGREE WARRANT WITH HIM?

12 A THAT'S CORRECT.

13 Q COULD YOU PLEASE EXPLAIN TO JUDGE JOHNSON HOW THAT  
14 CONVERSATION TRANSPIRED?

15 A AS WE WENT THROUGH THE CRIMINAL SEXUAL CONDUCT WHERE I  
16 SAID THAT SHE STATES THAT HE DID GRAB HER BY HER HAIR AND  
17 WRIST AND BOTH CARRIED AND DRAGGED HER UP THE STAIRS  
18 AGAINST HER WILL, THE DEFENDANT THEN REMOVED HER CLOTHES  
19 AND FORCIBLY HAD SEXUAL INTERCOURSE WITH HER. THIS WAS  
20 DONE WITH THE INTENT OF AROUSING AND GRATIFYING HIS LUST  
21 AND PASSION.

22 I TALKED ABOUT HER BEING TRANSFERRED TO THE PALMETTO  
23 RICHLAND HOSPITAL, AND THAT SHE HAD GIVEN A STATEMENT  
24 INDICATING HIM AS THE PERSON THAT COMMITTED THIS CRIME.

25 HE ASKED ME TO CLARIFY WHAT SEXUAL INTERCOURSE WAS.

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1 AND I RESPONDED THAT SEXUAL INTERCOURSE INCLUDED ORAL  
2 PENETRATION, VAGINAL PENETRATION, BASICALLY ANY KIND OF  
3 PENETRATION TO INCLUDE ANAL PENETRATION. HOWEVER, I TOLD  
4 HIM THAT SHE'S ALLEGING THAT HE FORCED HER TO HAVE BOTH  
5 ORAL AND VAGINAL PENETRATION.

6 HE STATED AT THAT TIME THAT THERE WAS NO VAGINAL  
7 PENETRATION, NEVER DENYING THE ORAL SEX HAD TAKEN PLACE.  
8 HE PRETTY MUCH -- ONCE I TOLD HIM WHAT PENETRATION -- WHAT  
9 SEXUAL INTERCOURSE -- YOU KNOW, WHAT SHE WAS ALLEGING, THAT  
10 SHE SPECIFICALLY ALLEGED ORAL AND VAGINAL PENETRATION. HE  
11 JUST SAID THAT THERE WAS NO VAGINAL PENETRATION.

12 Q AND AT THAT POINT DID YOU GO OVER THE KIDNAPING  
13 WARRANTS WITH HIM?

14 A THAT'S CORRECT.

15 Q OKAY. AND DID HE APPEAR TO UNDERSTAND THOSE CHARGES?

16 A HE DID. I THINK HE WAS A LITTLE BIT -- I THINK HE  
17 LOOKED AT THE KIDNAPING AS KIND OF MIND BLOWING, BUT HE  
18 UNDERSTOOD WHAT THEY WERE.

19 Q OKAY. AND WHAT ELSE DID THE DEFENDANT SAY CONCERNING  
20 THE RELATIONSHIP HE HAD WITH MS. BYRD?

21 A I ASKED HIM WHY THEY HAD BROKE UP?

22 HE STATED THAT HE THOUGHT THAT SHE DIDN'T THINK HE HAD  
23 ENOUGH DIRECTION IN HIS LIFE, AND CLARIFIED THAT BY STATING  
24 THAT HE MEANT CAREER-WISE, THAT SHE DIDN'T WANT TO BE WITH  
25 HIM -- CAREER ORIENTED.

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1 I ASKED THE SUSPECT HOW HE KNEW THAT THE VICTIM WAS AT  
2 THE RESIDENCE?

3 AND HE STATED THAT HE COULDN'T REMEMBER, THAT HE  
4 DIDN'T THINK THAT SHE WAS IN TOWN BECAUSE CLEMSON HAD A  
5 HOME GAME THAT WEEKEND.

6 I ASKED, DID SHE CALL TO HAVE HIM COME OVER?

7 AND HE STATED THAT SHE DID NOT CALL HIM TO COME OVER.  
8 HE STATED THAT HE WAS IN THE NEIGHBORHOOD POSSIBLY TO VISIT  
9 A FRIEND, AND THAT HE SAW HER CAR OUTSIDE OF HER RESIDENCE.

10 I ASKED HIM -- HE STATED, YES, WHEN I ASKED HIM IF  
11 WHAT SHE SAID HAPPENED OUTSIDE OF THE RESIDENCE WAS TRUE.  
12 HE ACKNOWLEDGED THAT, WHICH WOULD HAVE BEEN MORE OR LESS  
13 THE INCIDENT THAT OCCURRED -- EVERYTHING OUTSIDE OF THE  
14 RESIDENCE.

15 HE FURTHER STATED THAT HE FREAKED OUT WHEN EVERYTHING  
16 WENT ON IN THE YARD. HE DIDN'T WANT TO TAKE ZACK AWAY FROM  
17 HIS MOTHER.

18 Q WHEN YOU'RE INTERVIEWING THE SUSPECT AT THIS TIME, CAN  
19 YOU EXPLAIN TO JUDGE JOHNSON HOW IT IS THAT YOU ARE ABLE TO  
20 -- ARE YOU DOCUMENTING THIS DISCUSSION IN ANY WAY?

21 A I'M TAKING NOTES. AS WE'RE SITTING THERE, I'M JUST  
22 WRITING DOWN HIS ANSWERS TO THESE QUESTIONS AND HIS REMARKS  
23 TO THE ARREST WARRANTS.

24 Q AND DID YOU ASK HIM FOR PERMISSION TO TAKE NOTES?

25 A I DID. I ACTUALLY SHOWED HIM MY NOTES WHEN WE WERE

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1 FINISHED. ASKED HIM IF EVERYTHING WAS CORRECT ON THE NOTES  
2 THAT I TOOK, IF THERE WAS ANYTHING HE WANTED ME TO CHANGE  
3 ON MY NOTES.

4 HE ACKNOWLEDGED THAT THOSE -- THAT THOSE -- THAT I  
5 ACCURATELY WROTE DOWN WHAT HE SAID.

6 Q NEXT, WHAT IS IT IN YOUR PRACTICE ONCE YOU TAKE THESE  
7 WRITTEN NOTES, WHAT DO YOU DO WITH THOSE NOTES?

8 A I GENERALLY -- WE HAVE A COMPUTER DATA BASE SET UP.  
9 AND I GENERALLY -- EVERY DAY I'LL GO AROUND AND CONDUCT  
10 FOLLOW-UPS AND I'LL WRITE THESE NOTES DOWN. AND THEN WHEN  
11 I COME BACK TO MY OFFICE, I'LL TYPE ALL THOSE CASE SPECIFIC  
12 NOTES IN THEIR PARTICULAR CASE THAT THEY BELONG TO. SO  
13 EVERYTHING GOES INTO THE COMPUTER FROM MY HANDWRITTEN  
14 NOTES.

15 Q AND SO YOUR INVESTIGATIVE NOTES -- I GUESS YOU'RE  
16 READING FROM YOUR NOTES IN PAGE NO. 2. ARE THOSE DIRECTLY  
17 FROM YOUR HANDWRITTEN NOTES FROM YOUR INTERVIEW WITH THE  
18 DEFENDANT THAT DAY?

19 A YES, MA'AM.

20 Q AND WHEN DID YOU TYPE THOSE NOTES INTO THE COMPUTER?

21 A AS SOON AS I LEFT THE JAIL, I WENT BACK TO MY OFFICE.  
22 IT WAS LATE IN THE DAY, AND I TYPED THEM IN THEN.

23 Q AND AFTER THIS INTERVIEW WITH THE DEFENDANT, DID YOU  
24 HAVE ANY MORE CONTACT WITH HIM?

25 A OTHER THAN THE DNA SAMPLES THAT I TOOK, NO.

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1 Q AND HE VOLUNTARILY CONSENTED TO SUBMIT A SAMPLE OF HIS  
2 DNA DOWN THE ROAD?

3 A THAT'S CORRECT.

4 Q DID YOU TALK TO HIM ANY MORE ABOUT THE FACTS OF THIS  
5 CASE?

6 A NO, MA'AM, I HAVEN'T TALKED WITH HIM SINCE.

7 Q DURING THIS INTERVIEW, HOW LONG DO YOU THINK IT  
8 LASTED?

9 A 18:45 WAS THAT. AND I WAS AROUND AT THE BOND AREA  
10 ABOUT 19 -- OR SOME TIME BETWEEN 7:00 AND 8:00. SO I'D  
11 GIVE IT MAYBE A HALF HOUR TO 40 MINUTES.

12 Q OKAY. AND DURING THAT TIME DID YOU DEPRIVE THE  
13 DEFENDANT OF ANY REQUEST FOR ACCESS TO THE BATHROOM OR  
14 WATER?

15 A NO, MA'AM.

16 Q DID YOU EVER THREATEN HIM WITH THE USE OF VIOLENCE?

17 A NO, MA'AM.

18 Q DID YOU EVER MAKE ANY OFFERS OR PROMISES OF LENIENCY?

19 A NO, MA'AM.

20 Q DID YOU EVER ASK OR PROMISE TO MAKE HIM ANY PROMISES  
21 TO WAIVE HIS RIGHTS TO HIS MIRANDA RIGHTS?

22 A NO, MA'AM.

23 Q IS THERE ANY QUESTION IN YOUR MIND THAT HE UNDERSTOOD  
24 HIS MIRANDA RIGHTS?

25 A NO, MA'AM, THERE'S NO QUESTION.

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1 Q BEFORE YOU ASKED HIM ABOUT WHETHER OR NOT HE  
2 UNDERSTOOD HIS RIGHTS, DID YOU ASK HIM ABOUT HIS  
3 EDUCATIONAL LEVEL OR DID YOU FEEL THAT HE WAS ARTICULATE  
4 ENOUGH AND INTELLIGENT ENOUGH TO UNDERSTAND WHAT YOU WERE  
5 DISCUSSING WITH HIM?

6 A I DID NOT ASK HIM ABOUT HIS EDUCATIONAL LEVEL, BUT I  
7 DID FEEL HE WAS ARTICULATE ENOUGH TO UNDERSTAND THEM.

8 Q AND THEN LASTLY, AT THE BOTTOM OF YOUR DOCUMENT THERE  
9 IS SOME HANDWRITING ON THERE. WHOSE HANDWRITING IS THAT?

10 A THAT'S MY HANDWRITING.

11 Q WHAT DOES IT SAY?

12 A NO WRITTEN STATEMENT GIVEN.

13 Q OKAY. AND, AGAIN, HE DID NOT WISH TO PUT ANYTHING IN  
14 WRITING, HE JUST WANTED TO TALK TO YOU ORALLY?

15 A THAT'S CORRECT. HE SAID HE WANTED TO CLARIFY CERTAIN  
16 THINGS.

17 MS. COOPER: BEG THE COURT'S INDULGENCE.

18 (PAUSE.)

19 Q AND JUST FOR PURPOSES OF THE RECORD, DO YOU SEE THE  
20 SAME INDIVIDUAL THAT YOU INTERVIEWED ON NOVEMBER 15TH, 2004  
21 IN THE COURTROOM?

22 A YES, MA'AM.

23 Q AND COULD YOU PLEASE IDENTIFY HIM FOR JUDGE JOHNSON?

24 A RANDY THOMAS.

25 MS. COOPER: YOUR HONOR, LET THE RECORD REFLECT HE'S

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1 IDENTIFIED THE DEFENDANT, RANDY THOMAS.

2 THE COURT: ALL RIGHT.

3 MS. COOPER: THANK YOU. NO FURTHER QUESTIONS, YOUR  
4 HONOR.

5 THE COURT: ALL RIGHT. CROSS EXAMINATION.

6 MS. DURANT: THANK YOU, YOUR HONOR.

7 CROSS EXAMINATION BY MS. DURANT:

8 Q INVESTIGATOR GODFREY, HE HAD -- MR. THOMAS HAD JUST  
9 ARRIVED AT THE JAIL JUST PRIOR TO YOUR TALKING TO HIM; IS  
10 THAT CORRECT?

11 A HE ARRIVED THERE -- THE TRANSPORT DIVISION ADVISED ME  
12 BY TELEPHONE THAT HE ARRIVED AT THE -- THAT THEY WERE AT  
13 THE DETENTION CENTER AT APPROXIMATELY 3:30.

14 Q SO HE HAD BEEN THERE, WHAT, A COUPLE HOURS?

15 A THAT'S CORRECT. 3:30. AND I ARRIVED AT 6:45.

16 Q SO 3 HOURS ---

17 A YES, MA'AM.

18 Q --- HE'D BEEN THERE BEFORE YOU TALKED TO HIM. THIS  
19 WAS THE FIRST TIME HE HAD SEEN THE WARRANTS?

20 A I'M NOT SURE THAT THE DEPUTIES DIDN'T SERVE HIM.

21 Q WAS THERE A DATE THAT THEY WERE SERVED?

22 A THEY WOULD HAVE BEEN SERVED THAT DAY.

23 Q THEY WOULD HAVE BEEN SERVED THAT DAY?

24 A THAT'S CORRECT.

25 Q SO THIS WAS THE FIRST TIME -- THAT DAY WAS THE FIRST

STATE V. RANDY THOMAS

1 TIME THAT HE HAD ACTUALLY SEEN THE WARRANTS?

2 A I'M NOT SURE. I'M NOT SURE IF THE TRANSPORTING  
3 OFFICERS THAT DIDN'T BRING HIM FROM WHERE HE WAS AT DIDN'T  
4 SHOW HIM THE WARRANT. I CAN'T TESTIFY. I CAN SAY THAT I  
5 THOROUGHLY WENT OVER THEM WITH HIM, BUT I CAN'T SAY THAT  
6 THOSE WERE THE FIRST. I JUST CAN'T REMEMBER THAT. I'M NOT  
7 SURE.

8 Q HE WAS TRANSPORTED THAT DAY?

9 A YES, MA'AM. SO HE WOULD HAVE SAW THEM FOR THE FIRST  
10 TIME THAT DAY.

11 Q RIGHT.

12 A NO DOUBT ABOUT THAT.

13 Q THAT DAY IS THE FIRST TIME HE HAD ACTUALLY SEEN THE  
14 WARRANT?

15 A YES, MA'AM.

16 Q AND YOU WERE AT THE JAIL FOR THE BOND SETTING. THE  
17 BOND SETTING WAS THAT SAME DAY?

18 A NO, MA'AM. THE PURPOSE OF ME BEING THERE WAS TO  
19 INTERVIEW HIM. I ASKED THEM TO NOTIFY ME WHEN THEY GOT TO  
20 THE DETENTION CENTER, BECAUSE HE WAS COMING FROM ANOTHER  
21 STATE, OBVIOUSLY. AND WHEN HE GOT THERE, I'D LIKE TO GO  
22 TALK WITH HIM.

23 Q BUT YOU KNEW THE BOND SETTING WAS GOING TO BE THAT  
24 DAY?

25 A YES, MA'AM, THAT'S NORMALLY HOW IT GOES WHENEVER YOU

STATE V. RANDY THOMAS

1 GET A DEFENDANT, THEY'LL HAVE SOMETHING THAT DAY UNLESS  
2 LATE IN THE MORNING OR, YOU KNOW.

3 Q IN LOOKING, YOU WERE TALKING ABOUT WHEN YOU HAD TALKED  
4 TO HIM, THAT HE STARTED TO CRY SEVERAL TIMES. I THINK IN  
5 YOUR REPORT YOU SAID THAT HE WAS EXTREMELY UPSET THE ENTIRE  
6 TIME?

7 A HE WAS VISIBLY UPSET.

8 Q I THINK YOU DESCRIBED HIM AS BEING SAD AND EMOTIONAL,  
9 NOT ANGRY?

10 A HE'S NOT ANGRY, THAT'S RIGHT. HE WAS SAD AND  
11 EMOTIONAL A GOOD BIT.

12 Q BUT I THINK YOU SAID HE WAS UPSET THE WHOLE TIME YOU  
13 WERE TALKING TO HIM?

14 A WHEN HE WAS BEING BOOKED IN THE JAIL, HE WAS PROBABLY  
15 UPSET.

16 Q DO YOU HAVE YOUR REPORT WITH YOU?

17 A YES, MA'AM, I DO.

18 Q IF YOU WOULD LOOK, I THINK ABOUT HALFWAY DOWN THE  
19 PAGE. DO YOU WANT ME TO SHOW YOU?

20 A TELL ME WHERE IT STARTS AT.

21 MS. DURANT: MAY I APPROACH, YOUR HONOR?

22 THE COURT: YES.

23 Q RIGHT HERE WHERE YOU SAY THE SUSPECT.

24 A YES, MA'AM.

25 Q WOULD YOU READ THAT?

STATE V. RANDY THOMAS

1 A THE SUSPECT APPEARED TO BE EXTREMELY UPSET, SAD AND  
2 EMOTIONAL, NOT ANGRY THE WHOLE TIME I TALKED WITH HIM, AT  
3 SEVERAL POINTS NEARLY BREAKING DOWN.

4 Q THANK YOU. AND IF YOU GO BACK UP EARLIER, I THINK HE  
5 SAID -- A LITTLE EARLIER IN THERE YOU SAID HE STARTED TO  
6 CRY?

7 A HE WAS ATTEMPTING TO HOLD BACK TEARS AND HIS EMOTIONS  
8 ON SEVERAL OCCASIONS.

9 Q IN THE PRE-BOOKING AREA, WERE THERE OTHER OFFICERS  
10 THERE?

11 A WHERE WE WERE AT, NO. IT WAS JUST ME AND HIM IN THIS  
12 -- IN THE OFF ROOM FROM THE PRE-BOOKING AREA. IN THE PRE-  
13 BOOKING AREA I'M GOING TO SAY THERE'S A DETENTION CENTER  
14 GUY THAT STAYS THERE, THAT SITS AT THAT DESK THAT BOOKS  
15 PEOPLE IN. I CAN'T REMEMBER ANY OF THE OFFICERS THAT MIGHT  
16 HAVE BEEN THERE, BUT THERE WAS NO ONE IN THE ROOM THAT WE  
17 WERE IN.

18 Q IN THAT PARTICULAR ROOM?

19 A THAT'S CORRECT.

20 Q BUT THIS WAS AT THE DETENTION CENTER?

21 A YES, MA'AM.

22 Q THERE ARE LOTS OF OFFICERS THERE AT THE DETENTION  
23 CENTER?

24 A DETENTION CENTER OFFICERS.

25 Q NOW, IT IS YOUR TESTIMONY THAT HE DID NOT GIVE A

STATE V. RANDY THOMAS

- 1 WRITTEN STATEMENT?
- 2 A THAT'S CORRECT.
- 3 Q YOUR WORDS WERE, YOU SAID HE JUST WANTED TO CLARIFY
- 4 SOME THINGS?
- 5 A THAT'S CORRECT.
- 6 Q DID HE ACTUALLY SIGN THE WARRANTS?
- 7 A DOES HE SIGN THE WARRANTS?
- 8 Q RIGHT.
- 9 A NO, HE DOESN'T SIGN WARRANTS.
- 10 Q OKAY.
- 11 A THE DEFENDANT DOESN'T SIGN ANY PART OF THE WARRANT.
- 12 HE GETS A COPY OF IT, BUT HE DOESN'T SIGN WARRANTS.
- 13 MS. DURANT: BEG THE COURT'S INDULGENCE.
- 14 (PAUSE.)
- 15 Q INVESTIGATOR GODFREY ---
- 16 A YES, MA'AM.
- 17 Q --- YOU ACTUALLY ATTENDED THE BOND SETTING LATER THAT
- 18 DAY, CORRECT?
- 19 A I CAN'T REMEMBER IF I ATTENDED IT. I KNOW I TALKED
- 20 WITH THE JUDGE PRIOR TO IT BECAUSE THE BOND HEARING WAS
- 21 GOING TO BE HELD LATER ON THAT EVENING. I DON'T BELIEVE --
- 22 I CAN'T REMEMBER IF I ATTENDED IT OR NOT. I DON'T -- TO MY
- 23 KNOWLEDGE I DON'T REMEMBER ATTENDING. I WANT TO SAY I
- 24 TALKED -- EXPLAINED THE FACTS TO THE JUDGE BEFORE. WE
- 25 THOUGHT IT WAS GOING TO BE AT A CERTAIN TIME, AND IT WAS

STATE V. RANDY THOMAS

1 LATER ON IN THE EVENING.

2 Q YOU JUST SAID YOU MET WITH THE JUDGE. ISN'T IT TRUE  
3 THAT YOU AND THE VICTIM MET WITH THE JUDGE?

4 A YES, MA'AM.

5 Q AND MR. THOMAS WAS NOT AT THAT MEETING?

6 A I AGREE WITH YOU ON THAT.

7 MS. DURANT: NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: ANY REDIRECT?

9 MS. COOPER: NO, SIR, YOUR HONOR.

10 THE COURT: YOU MAY STEP DOWN.

11 (THE WITNESS LEAVES THE WITNESS STAND.)

12 THE COURT: ANYTHING FURTHER FROM THE STATE?

13 MS. COOPER: YOUR HONOR, WE WOULD RESPECTFULLY REQUEST  
14 THE COURT FIND THAT THE DEFENDANT, RANDY THOMAS, DID GIVE A  
15 VOLUNTARY STATEMENT TO INVESTIGATOR GODFREY ON NOVEMBER  
16 15TH OF 2004.

17 THE COURT: ALL RIGHT. WILL THERE BE ANY  
18 PRESENTATION, ANY EVIDENCE FROM THE DEFENSE?

19 MS. DURANT: NO, SIR, WE WOULD NOT PRESENT A CASE. WE  
20 DO HAVE SOME ARGUMENTS, YOUR HONOR.

21 THE COURT: I'LL BE GLAD TO HEAR FROM YOU.

22 MS. DURANT: YOUR HONOR, IT IS OUR POSITION THAT  
23 LOOKING AT THE TOTALITY OF THE CIRCUMSTANCES, THAT THE  
24 DEFENDANT'S STATEMENT WAS NOT GIVEN VOLUNTARILY, KNOWING IT  
25 COULD BE USED AGAINST HIM. IT IS INVESTIGATOR GODFREY'S

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1 TESTIMONY HE WAS VISIBLY UPSET THE ENTIRE TIME. HE WAS  
2 CRYING. HE HAD JUST SEEN THE WARRANTS THAT DAY, THAT WAS  
3 THE FIRST TIME HE KNEW THE DETAILS OF THE ALLEGATIONS, YOUR  
4 HONOR.

5 AND I THINK IT'S SIGNIFICANT THAT HE DID NOT GIVE A  
6 WRITTEN STATEMENT. HE SAID HE JUST WANTED TO CLARIFY. I'M  
7 NOT SURE THAT HE UNDERSTOOD THAT ANYTHING HE WAS SAYING  
8 WOULD COME OUT IN COURT. HE DIDN'T GIVE A WRITTEN  
9 STATEMENT.

10 YOUR HONOR, WE JUST DON'T BELIEVE THAT DUE TO HIS  
11 STATE OF MIND AT THAT TIME THAT HE WAS GIVING THIS  
12 STATEMENT VOLUNTARILY. HE WAS IN THE DETENTION CENTER. IT  
13 WAS JUST PRIOR TO THE BOND HEARING. AND I THINK IT'S NOT  
14 UNUSUAL FOR INVESTIGATORS OR OFFICERS TO ATTEND THE BOND  
15 HEARING. AND I THINK THAT PERHAPS HE FELT WHATEVER HE WAS  
16 SAYING TO THE OFFICER, THAT HE MIGHT GET SOME ASSISTANCE IN  
17 GETTING A BOND.

18 HE WAS AT THE DETENTION CENTER. WE JUST FEEL THAT  
19 LOOKING AT THE TOTALITY OF THE CIRCUMSTANCES THAT HIS  
20 STATEMENT WAS NOT TOTALLY VOLUNTARY, YOUR HONOR. AND WE  
21 WOULD ASK THAT THE COURT -- THAT IT BE SUPPRESSED.

22 THE COURT: ALL RIGHT. SOLICITOR.

23 MS. COOPER: THANK YOU, YOUR HONOR, ITEM NO. 3 THAT  
24 INVESTIGATOR GODFREY SAID THAT HE CHECKED OFF WHEN  
25 REVIEWING THE DEFENDANT'S RIGHTS INDICATES ANYTHING YOU SAY

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1 CAN BE USED AGAINST YOU. AND THE DEFENDANT SIGNED THAT  
2 UNDER YOUR RIGHTS PORTION OF THIS ADVICE OF RIGHTS FORM,  
3 INDICATING TO THE INVESTIGATOR THAT HE UNDERSTOOD THAT.

4 SO THAT WOULD HAVE ADDRESSED MS. DURANT'S ALLEGATION  
5 THAT HE DID NOT UNDERSTAND WHATEVER HE SAID COULD BE USED  
6 AGAINST HIM.

7 ALSO, YOUR HONOR, ON DIRECT EXAMINATION I SPECIFICALLY  
8 ASKED INVESTIGATOR GODFREY IF HE MADE ANY PROMISES TO THIS  
9 DEFENDANT IN ORDER TO GET HIM TO GIVE A STATEMENT. AND HIS  
10 ANSWER WAS, NO.

11 AND I ALSO ASKED HIM IF HE MADE ANY OFFERS OF  
12 LENIENCY, AND THE ANSWER WAS, NO.

13 THEREFORE, ANY ALLEGATION SHE MAKES THAT THE DEFENDANT  
14 WAS TRYING TO GET A BOND HAS BEEN ADDRESSED BY THE WITNESS'  
15 DIRECT TESTIMONY.

16 IN FACT, THE BOND WAS NEVER EVEN DISCUSSED DURING THE  
17 ENTIRE INTERVIEW WITH THE DEFENDANT, AND THAT IS NO WAY  
18 REFLECTED IN INVESTIGATOR GODFREY'S NOTES.

19 THE COURT: ALL RIGHT. MS. DURANT, ANYTHING FURTHER?

20 MS. DURANT: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. OF COURSE, THE LAW REQUIRES ME  
22 TO LOOK AT THE TOTALITY OF THE CIRCUMSTANCES. AND BASED ON  
23 WHAT HAS BEEN PRESENTED TO THIS COURT, I DON'T FIND  
24 ANYTHING OTHER THAN HE SAID HE WAS -- THE OFFICER SAID HE  
25 WAS UPSET AND CRYING, I DON'T THINK THAT THAT RENDERS A

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1 STATEMENT INVOLUNTARY. AND UNDER THE TOTALITY OF THE  
2 CIRCUMSTANCES, HE WAS ADVISED OF HIS RIGHTS. HE UNDERSTOOD  
3 HIS RIGHTS. HE VOLUNTARILY AND INTELLIGENTLY GAVE UP HIS  
4 RIGHTS. AND FOR THAT REASON, THE OFFICER'S TESTIMONY  
5 CONCERNING THE STATEMENTS THAT HE MADE WILL BE ADMITTED.

6 MS. COOPER: THANK YOU, YOUR HONOR.

7 MS. DURANT: YOUR HONOR, IF I MAY CLARIFY ONE THING.  
8 UNDER RULE 106 OF EVIDENCE, WE WOULD JUST WANT TO VERIFY  
9 THAT WE WOULD BE ABLE TO INTRODUCE ANY PARTS OF THIS  
10 STATEMENT FOR COMPLETENESS.

11 THE COURT: THAT'S CLEAR UNDER THE RULE.

12 MS. DURANT: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT. ANYTHING FURTHER PRETRIAL WISE  
14 AT THIS TIME?

15 MS. COOPER: NO, SIR, YOUR HONOR.

16 THE COURT: ALL RIGHT. AND THIS WILL BE THE FIRST  
17 CASE CALLED NEXT WEEK; IS THAT RIGHT?

18 MS. COOPER: YES, YOUR HONOR.

19 THE COURT: I'M NOT ASKING FOR A WITNESS LIST.  
20 APPROXIMATE YOUR TIME THAT YOU THINK IT WILL TAKE THE  
21 STATE?

22 MS. COOPER: THE STATE PLANS ON GOING INTO WEDNESDAY,  
23 POSSIBLY THURSDAY. THE TOTAL NUMBER OF WITNESSES WE HAVE  
24 ARE 18.

25 THE COURT: ALL RIGHT.

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1 MS. COOPER: IT REALLY DEPENDS ON HOW LONG THE  
2 VICTIM'S TESTIMONY TAKES, YOUR HONOR.

3 THE COURT: HAVE ANY SPECIAL VOIR DIRE PREPARED FOR ME  
4 MONDAY MORNING. AS A MATTER OF FACT, IF YOU CAN GET IT  
5 OVER HERE TOMORROW, I'LL TAKE A LOOK AT IT OVER THE  
6 WEEKEND. BUT IF NOT, WE'LL DEAL WITH THAT FIRST THING  
7 MONDAY.

8 ALL RIGHT. THANK YOU ALL.

9 MS. DURANT: THANK YOU, YOUR HONOR.

10 (PAUSE.)

11 THE COURT: THE WAIVER FORM, THE RIGHTS FORM, IT'S A  
12 COURT'S EXHIBIT.

13 MS. COOPER: YES, SIR, STATE'S NO. 1.

14 THE COURT: MS. RUTLEDGE MAY WELL NOT BE WITH ME NEXT  
15 WEEK. SO I NEED TO PUT ON THE RECORD, I'M GOING TO HAVE  
16 HER GIVE IT TO THE CLERK OF COURT AND LET HIM MAINTAIN  
17 CUSTODY UNTIL THE REPORTER NEXT WEEK GETS IT. HE CAN GIVE  
18 IT TO HIM OR HER, AND WE'LL PROCEED AT THAT TIME. I JUST  
19 NEEDED TO GET THAT ON THE RECORD.

20 MS. COOPER: THANK YOU, YOUR HONOR.

21 --- END OF TRANSCRIPT OF RECORD ---

22

23

24

25

STATE V. RANDY THOMAS

1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT  
2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF  
3 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A  
4 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THE RECORD OF THE  
5 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF  
6 THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT  
7 COURT FOR RICHLAND COUNTY, SOUTH CAROLINA ON THE 2ND DAY OF  
8 FEBRUARY 2006.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

11

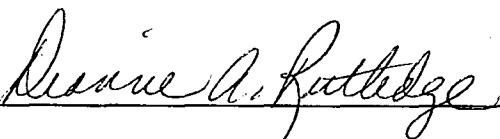
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MARCH 28, 2008

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15

A handwritten signature in cursive script, reading "Dianne A. Rutledge", is written over a horizontal line.

16

COURT REPORTER

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25

STATE V. RANDY THOMAS

1 (WHEREUPON, State's Exhibits Nos. 1-58 were  
2 marked for identification only.)

3 THE COURT: Solicitor, if you'll call the case  
4 for trial, please.

5 MS. COOPER: Thank you, your Honor. May it  
6 please the Court.

7 The State calls the trial against Randy Thomas  
8 for the following offenses: Indictment 2005-GS-40-10296,  
9 criminal sexual conduct in the first degree; Indictment  
10 2005-GS-40-10297, assault and battery of a high and  
11 aggravated nature; Indictment 2005-GS-40-10298, kidnapping  
12 involving Lauren Byrd; and lastly, Indictment  
13 2005-GS-40-10299, kidnapping involving Zachary Byrd or  
14 Zachariah Byrd..

15 THE COURT: All right. The defendant is  
16 present. The public defender's office, Ms. Durant, is  
17 representing the defendant.

18 I know last week I heard some pretrial matters  
19 of Jackson v Denno as well as some other discovery  
20 motions. I think there's still outstanding an issue  
21 concerning Lyle evidence, and then, Ms. Durant, you said  
22 there may possibly be one other issue that the Court needs  
23 to deal with before we get started with the trial.

24 MS. DURANT: Yes, sir. I did have a couple of  
25 photos, pretrial issues that came up over the weekend,

1 your Honor, whenever you want to address those, but the  
2 first one is when we met with Mr. Thomas this morning, he  
3 did tell me that he would like to hire a private attorney. )  
4 And we would ask, your Honor, that you would hear him on  
5 that issue. His mother is present in the courtroom to add  
6 any additional information you may need.

7 THE COURT: I will be glad to hear from  
8 Mr. Thomas. If his mother is here and wants to address  
9 the Court, I'll be glad to hear from her.

10 Yes, sir.

11 MR. THOMAS: Yes, sir, your Honor. My name is  
12 Randy Thomas. I have been detained at the Richland County  
13 jail for the last 14 months, during which time I've  
14 maintained my innocence on these charges.

15 Prior to coming to the courtroom, I have been  
16 legally counseled by these two ladies on each side of me.  
17 They have maintained that they believe that it's in my  
18 best interest to plead guilty to these charges. We have a  
19 fundamental difference of opinion in that matter. They  
20 have in no way led me to believe that I should plead  
21 guilty to anything that I was not guilty of; however, we  
22 just have a difference of opinion.

23 Last night as I was talking with my family, they  
24 made it clear to me that they would like to hire a private  
25 attorney for me.

1 I'm sure Ms. Cooper would argue that she's ready  
2 to proceed with this matter, but I would like to point out  
3 that I have had several court dates starting from  
4 August 29th of last year and I have not caused any delay  
5 in any of these matters. And also, I've not previously  
6 had an opportunity at my disposal to hire a private  
7 attorney, and this is in no way an attempt to manipulate  
8 the Court. It's just a matter to represent myself to the  
9 best of my abilities.

10 Thank you, your Honor.

11 THE COURT: Of course the question that just  
12 jumps out at me is we're on the day of trial. I mean, we  
13 had pretrial motions last week and we're now on the date  
14 of trial when this request is being made, and what I would  
15 like to know is why?

16 MR. THOMAS: Well, basically I think it's being  
17 made because I've never had the opportunity to have paid  
18 legal counsel and also because I believe that my lawyers  
19 and I have a fundamental difference of opinion of what is  
20 best for me at this time.

21 MS. DURANT: Your Honor, I think Ms. Mitchell,  
22 his mother, would like to address the Court.

23 THE COURT: All right. I will hear from her.

24 MS. DURANT: Would you like her to move around  
25 to the mic stand?

1 THE COURT: Probably for the court reporter it  
2 would be best if you did that so we can be sure and take  
3 everything down so that we've got a record.

4 I'll need you to state your name first, please,  
5 ma'am.

6 MS. MITCHELL: Maggie Mitchell, Margaret  
7 Mitchell.

8 THE COURT: All right.

9 MS. MITCHELL: Your Honor, the reason that this  
10 did not come up until over the weekend was because I  
11 received a call from Ms. Durant and her assistant that for  
12 the first time after your preliminary -- what's it called,  
13 preliminary, pretrial motions?

14 THE COURT: Pretrial motions.

15 MS. MITCHELL: Yes, pretrial motions, that was  
16 the first time that I've heard that she spoke with you and  
17 (that there was 17 to 23 years and pleading) and I simply  
18 always stated from day one that I have a problem with  
19 someone pleading guilty to something they're not guilty  
20 of, and I want justice and truth to prevail. And his  
21 grandmother, I have never had the money to do this and  
22 Randy has never had the money to do this, we still don't  
23 have the money to do this, but his grandmother and other  
24 grandfather on the other side do. And when they heard  
25 that this weekend, that's when they said let's see about

1 hiring a private attorney. That's when it came up.

2 MS. DURANT: Your Honor, if I may add for the  
3 record, a private attorney did come and speak with me this  
4 morning and Ms. Mitchell. I have no idea what his  
5 decision would be, but he did come and speak to me about  
6 this case.

7 THE COURT: Without violating any confidences,  
8 can you tell me what the gist of the conversation was?

9 MS. DURANT: Well, after talking with Randy and  
10 he gave me his okay, we basically talked about the case  
11 and the evidence that was involved, and he had some  
12 questions and he did think it was a complicated case and  
13 he thought it might take him a few weeks to get up to date  
14 on it if he took the case.

15 MS. MITCHELL: And, your Honor, he did tell me  
16 that he would.

17 THE COURT: Was that after the conversations  
18 with the public defender's office?

19 MS. MITCHELL: It was before. It was before he  
20 got here, arrived here, and then again afterwards. We  
21 were out there in the hallway. And he's on his way here,  
22 but he's in another courtroom at the moment.

23 THE COURT: Is it a local attorney?

24 MS. MITCHELL: Yes, sir.

25 MS. DURANT: Your Honor, just for the record



1 also, we are prepared to go forward, just to make the  
2 Court aware of that.

3 THE COURT: Let me hear from the State.

4 MS. DURANT: Thank you, your Honor.

5 MS. GARFIELD: Thank you, your Honor. May it  
6 please the Court.

7 First of all, the State is prepared to go to  
8 trial, your Honor. We have a victim and a witness from  
9 Clemson University who are missing classes and exams this  
10 week and they're present and we're ready to go.

11 This case was scheduled for September 19th,  
12 2005. We were second on the trial docket, we were in back  
13 of a murder trial, and if my memory serves me correctly  
14 that murder trial did go the vast majority of the week.

15 I specifically remember that week. Ms. Cooper  
16 and I were both on vacation together and we took the case  
17 file with us on vacation and we were ready to go that  
18 week. However, while the murder trial went, we discovered  
19 that there was a piece of evidence that had not been  
20 tested for DNA, and in the best interest for the State and  
21 for the defense we all felt that that piece of evidence  
22 needed to be tested, needed to get results, so it was  
23 therefore not rolled over to the next week.

24 As soon as we got those DNA results, Ms. Cooper  
25 noticed the defendant approximately three weeks ago that

1 it's been scheduled for trial this week.

2 We went through pretrial motions last week. The  
3 defendant has been incarcerated for almost 15 months. I  
4 know for a fact Ms. Durant's worked all weekend. I know  
5 she was at the jail on Saturday and I know she worked all  
6 day yesterday on her birthday preparing for this trial.

7 Everybody in the courtroom is ready to proceed,  
8 your Honor.

9 And I do have a case where at the last minute a  
10 defendant tried to fire his attorney and the judge made  
11 him go forward pro se.

12 THE COURT: Let me take a look, please.

13 There's another case I'd like to take a look at.  
14 We'll stand in recess for just a moment.

15 (A recess was taken.)

16 THE COURT: Any further argument before the  
17 Court rules?

18 MS. GARFIELD: Your Honor, I just want to  
19 reiterate that I think just because a defense attorney  
20 informs their client what a possible plea range, which  
21 your Honor was so gracious to give us, just because he  
22 doesn't agree with that range and just because he doesn't  
23 agree with the decision to plead guilty does not make a  
24 conflict with this attorney. She's prepared to go forward  
25 and they've been on notice. And also, your Honor, if you

1 recall, we gave him an offer last summer and he rejected  
2 it. So he's been knowing what he's been dealing with.

3 MS. MITCHELL: Your Honor.

4 THE COURT: No, ma'am, you have to sit down.

5 Yes, ma'am.

6 MS. DURANT: Your Honor, if I may just  
7 reiterate, Mr. Thomas has said to me over and over and  
8 during just this afternoon that he really did not have an  
9 (opportunity financially until last night that his family  
10 did not come forward with money until last evening.

11 THE COURT: Well, I am willing to consider any  
12 case that you can find that has been used as a basis for  
13 continuance.

14 The cases that I was able to go over in the  
15 short period that we have had indicates -- well, I'm sure  
16 that there's been cases where that has been done, but I  
17 don't know if there's any case where a case has been  
18 pending where the defendant has been incarcerated for over  
19 15 months and here on the date of trial all of a sudden  
20 the family has come up with the money.

21 And Counsel has indicated that you are prepared  
22 to go forward, and quite frankly, the way I view it, and I  
23 will put on the record that on I guess it was Friday,  
24 Counsel did approach this Court and asked if the Court  
25 would be willing to give some sort of range if a plea was

1 entered in the case, which the Court did reluctantly. And  
2 I can pretty much tell you that will not happen any more  
3 while I'm here in 2006. I'm not giving any more ranges to  
4 anyone for potential pleas. Because all it's done has led  
5 to the problem, and I can alleviate the problem by simply  
6 not doing that.

7 But regardless of that, there has been no other  
8 indication, and I think it is probably not unusual for  
9 defense counsel to recommend to their clients, whether  
10 it's a public defender or a private attorney or anybody  
11 else, that you might want to seriously consider pleading  
12 in this case because here are the possibilities and here's  
13 what the limits are if a plea is entered in the case and  
14 we think you ought to seriously consider it.

15 The defendant has indicated that no one has  
16 tried to get him to plead to something that he has not  
17 done, and based on what has been presented I don't think  
18 there's any conflict other than perhaps the defendant did  
19 not agree with what the range was, that the Court  
20 indicated would probably be the range if a plea was  
21 entered in the case.

22 I find that there's no conflict, there's no good  
23 cause to continue the case.

24 And, Ms. Durant, you and the public defender's  
25 office will continue to represent this defendant unless he

1 wants to represent himself and that hasn't been proposed  
2 and there's not a motion to have you relieved, so we will  
3 continue.

4 (The continuance request is denied) and we will go  
5 ahead with the trial.

6 MS. DURANT: Thank you for considering it, your  
7 Honor.

8 THE COURT: You indicated that there was some  
9 other issues that had come up over the weekend, or not  
10 over the weekend but pretrial matters?

11 MS. DURANT: Yes, sir. You are aware there's a  
12 Lyle issue, I think, that the State is going forward on.

13 Also, your Honor, I don't know that we've  
14 finished the issue of settling the records of everyone.

15 I know the defendant does have a prior  
16 conspiracy. We are asking that that not be used to  
17 impeach him, your Honor, based on the case of State v  
18 Dunlap. He has indicated that that conspiracy charge for  
19 drugs was the basis for that, that there was some  
20 marijuana charges.

21 And in the case of State v Dunlap, which is a  
22 South Carolina Supreme Court case, 2003, and I do have  
23 copies of this, your Honor, if you would like to see it.

24 It says that, We take this -- the Supreme says  
25 that, We take this opportunity to remind the bench and bar

1 that violations of narcotics laws are generally not  
2 probative of truthfulness.

3 So based on that case, your Honor, we would ask  
4 that his prior conviction on conspiracy related to drugs  
5 not be used to impeach him if he testifies.

6 THE COURT: When was that conviction?

7 MS. DURANT: It was actually in 2003, but his  
8 arrest was in 2000, your Honor.

9 THE COURT: Well, the arrest was in 2000 and the  
10 conviction date is 2003?

11 MS. DURANT: Yes, sir, May 20th, 2003. And the  
12 arrest was September 9th, 2000; I mean the date of the  
13 offense.

14 THE COURT: All right. Let me hear from the  
15 State.

16 MS. COOPER: Your Honor, we would seek to  
17 introduce it under prior criminal convictions because it  
18 does carry more than one year. He did not plead guilty  
19 just to a drug offense. He pled guilty to conspiring,  
20 which I would argue to the Court does have a degree of  
21 dishonesty as far as violating the law is concerned.  
22 Under Rule 609, I believe -- hold on one second, your  
23 Honor.

24 Under Rule 609, Subsection A(1) would be the  
25 basis for us to seek that the prior conviction come in to

1 be used as impeachment purposes only, your Honor.

2 THE COURT: Well, if it comes in at all, that  
3 would be the only reason that it could possibly come in.

4 Have you got a copy of that case?

5 MS. DURANT: Yes, sir.

6 THE COURT: I'm not going to give you a final  
7 ruling at this time.

8 In looking at the case, this case was a drug  
9 case and the prior record of this defendant was a drug  
10 case. In that situation, the Supreme Court has indicated  
11 that because of the similarity of prior crimes, that that  
12 increases the potential prejudice thereby making it more  
13 difficult for the probative value to overcome that  
14 potential prejudice.

15 That's not quite the situation we have here, but  
16 I do want to take a look at the Green case that apparently  
17 stands for the premise that in determining whether or not  
18 to permit a criminal defendant to impeachment by a prior  
19 conviction that there are other factors to be considered  
20 in allowing impeachment of prior convictions.

21 The question I've got, and you may be able to  
22 answer without my taking a look at Green is whether when  
23 you have a prior drug conviction the State wants to use  
24 for impeachment purposes and the offense that the  
25 defendant is being tried for at this time is not a drug

1 offense and it clearly falls within the confines of Rule  
2 609, whether even then you need to take a look at  
3 narcotics convictions to see if the probative value is  
4 lessened because of the nature of that prior, and that's  
5 really what you're talking about. I want to take a look  
6 at Green before I make a final ruling on that. And I will  
7 do that in plenty of time for him to make an informed  
8 decision as to whether or not he wants to testify.

9 MS. DURANT: And, your Honor, we just want to  
10 reiterate with the Court it was conspiracy with possession  
11 and intent to distribute marijuana.

12 THE COURT: Okay.

13 MS. DURANT: So that was the basis was our  
14 understanding.

15 THE COURT: And, quite frankly, I will go ahead  
16 and respond to the State's position, that the fact that  
17 it's conspiracy and not the manufacture or sale, I don't  
18 think that makes any difference quite honestly in the  
19 weighing that I have to do as far as whether or not it  
20 would be admissible, and I just don't know. I will take a  
21 look at the Green case before I make a final  
22 determination.

23 MS. DURANT: Thank you, your Honor.

24 THE COURT: Is that the only prior record that  
25 the State will intend to use?



1 MS. COOPER: That's it, your Honor. That's the  
2 only prior conviction.

3 MS. DURANT: His only prior.

4 If I may, the other issue, there is a 911 tape.  
5 We would ask that that be suppressed. We feel it would be  
6 extremely inflammatory for the jury, your Honor. Based on  
7 the fact that the victim is here to testify to what she  
8 said, I think the other witnesses who called 911 and who  
9 spoke to 911 are all on the witness list, so we feel that  
10 they are here to testify to what they said and we do feel  
11 that the tape would be inflammatory to the jury and would  
12 be far more prejudicial than probative for our client,  
13 your Honor.

14 THE COURT: Who made the 911 call?

15 MS. COOPER: Your Honor, the phone call was  
16 recorded by 911 dispatch. There was a call made by one of  
17 the witnesses, Katria Weyl. She will be here to testify  
18 about that. However, in her discussions or talks with the  
19 ( 911 dispatcher, you can hear the victim in the background.)

20 And then there's also another 911 call made by  
21 another eye witness by the name of Sena Long. She will  
22 also be prepared to testify about what she observed and  
23 how she relayed information simultaneously while she was  
24 observing different things at the scene as she was  
25 relaying that to the 911 dispatcher.

1           Your Honor, it's the position that the defense  
2 takes that all 911 calls be suppressed because typically  
3 you have to lay down a foundation to admit a 911 call by  
4 the person who made the 911 call.

5           THE COURT: And the State will have all the  
6 witnesses who made the calls present to testify and be  
7 cross-examined; is that right?

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

9           THE COURT: As well as the 911 dispatcher?

10          MS. COOPER: No, sir, just what the witnesses  
11 had to say on the 911 call, but you can hear the 911  
12 dispatcher responding to their information.

13          THE COURT: All right. If the witnesses who  
14 made the call are present to testify and to identify that  
15 that is in fact the call, I don't see how that is any more  
16 prejudicial than their testimony and it corroborates what  
17 they will testify to that they said to 911 and for that  
18 reason the motion to suppress will be denied.

19          MS. DURANT: Thank you, your Honor.

20          THE COURT: Now, on the Lyle matter, I need to  
21 take that up at some point in time.

22          Quite honestly, I don't know whether it would be  
23 better to go ahead and get a jury, not to swear them and  
24 take that matter up, or to go ahead and take that matter  
25 up first. I think we'll go ahead and select a jury is

1 what I understand.

2 MS. COOPER: Your Honor, our witnesses are going  
3 to be quite lengthy, so I would suggest we go ahead and  
4 pick a jury.

5 THE COURT: Okay. When you say quite lengthy,  
6 give me an idea.

7 MS. COOPER: An hour or so.

8 THE COURT: On the Lyle issue?

9 MS. COOPER: Yes, sir.

10 THE COURT: All right. Let's go ahead and  
11 select the jury. They will not be sworn. And then we can  
12 let them go for the day and finish up any pretrial  
13 matters.

14 MS. DURANT: Thank you, your Honor.

15 THE COURT: All right. Let's go ahead and get  
16 the panel in here.

17 The strikes on this are ten and five.

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

19 THE COURT: You have handed me some proposed  
20 voir dire.

21 MS. DURANT: I did.

22 THE COURT: Have you seen that, Ms. Cooper?

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

24 The only exception, if I may, your Honor, the  
25 only exception the State has is to question six where it

1 asks if any jury member has been employed or related by  
2 blood or marriage to or a friend or acquaintance of anyone  
3 employed presently or at any time as a child care  
4 provider.

5 In this case facts will come out that the  
6 victim, Lauren Byrd, was alone at home with her  
7 two-year-old son. You might as well just ask if anyone is  
8 a parent if that's the case. I just don't see the  
9 relevance of that question, your Honor.

10 THE COURT: All right. Ms. Durant.

11 MS. DURANT: Well, your Honor, we do feel that  
12 because the indictment says the kidnapping of a small  
13 child is involved, we do feel that that would be important  
14 for us to know if people are in the business of caring for  
15 small children on a daily basis because of the emotional  
16 ties involved in that. It would be very helpful to us to  
17 know if that were the case.

18 THE COURT: It's tough for me to make this  
19 judgment call. And I'll ask the question. You're talking  
20 about anyone who has been employed, and I will probably  
21 limit it to any member of the jury panel or member of  
22 their immediate family who either currently or in the past  
23 has been employed as a child care provider, I will get  
24 that information.

25 MS. DURANT: Thank you, your Honor.

1 MS. COOPER: And then also, your Honor, question  
2 number eight, Has any member of the jury panel or their  
3 immediate family been a victim or witness in a case  
4 involving assault or kidnapping. We would like to inject  
5 the words "sexual assault" just to narrow it down because  
6 there is no allegation that this is a rape case, your  
7 Honor, and that leaving it open-ended to assault just  
8 doesn't reflect it.

9 THE COURT: Any problem with that?

10 MS. DURANT: No, your Honor, we'd be okay with  
11 that.

12 THE COURT: Okay. I will say sexual assault.

13 MS. COOPER: And then, your Honor, we would  
14 respectfully request just reciprocal questions to the  
15 questions concerning whether or not persons have been  
16 employed by the Solicitor's office and vice versa. I  
17 think it is addressed in question number four, so anything  
18 reciprocal.

19 THE COURT: Yes, four looks like it's  
20 reciprocal.

21 MS. COOPER: Thank you, your Honor.

22 THE COURT: Did the State have any special voir  
23 dire?

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

25 THE COURT: Okay.

1 (The jury panel came into open court at  
2 approximately 3:28 p.m.)

3 THE BAILIFF: The jurors are all present, your  
4 Honor.

5 THE COURT: Ladies and gentlemen, those of you  
6 on the jury panel, my name is Jim Johnson and I'm from  
7 Laurens County. It's my pleasure to be presiding over  
8 court here in this courtroom this week.

9 In this courtroom, we are trying a term of  
10 General Sessions. Most of you know that as criminal  
11 court. We're about to select a jury for the first case  
12 that will be tried in this courtroom this week.

13 A case is processed through the General Sessions  
14 court through documents that are called indictments. I'm  
15 holding the indictments in this case in my hand at this  
16 time.

17 The indictments have the case number and the  
18 case name, and they have the charge or the charges or the  
19 allegations that are made in this case.

20 You need to understand that the indictments are  
21 not evidence. There are charges that they contain, but  
22 again they are the documents that process the case through  
23 the court system.

24 In this particular case there are four different  
25 indictments. The numbers are 05-GS-40-10296, 10297,

1 10298, and 10299. They are all captioned the State versus  
2 Randy Thomas.

3 In Indictment 10296 the allegation or the charge  
4 is criminal sexual conduct first degree.

5 In Indictment 10297, the charge in the  
6 indictment is assault and battery of a high and aggravated  
7 nature.

8 And then Indictments 10298 and 10299, the charge  
9 in each of those indictments is the charge of kidnapping.

10 It is alleged in the indictments that the victim  
11 of the criminal sexual conduct first degree is one Lauren  
12 Byrd.

13 It is alleged that one Lauren Byrd is also the  
14 victim of the assault and battery of a high and aggravated  
15 nature.

16 And in the two indictments charges kidnapping,  
17 it's alleged that the victim is one Lauren Byrd and one  
18 Zachariah Byrd.

19 Those are the allegations that have been made in  
20 the indictments.

21 It is alleged that these occurred in Richland  
22 County on or about October 30th of 2004.

23 Again, those are the charges that are made.  
24 These indictments are not evidence of those charges and  
25 cannot be considered by the jury as evidence of the

1 charges that they contain.

2           There are a number of potential witnesses in  
3 this case. I'm going to go over this lists, and I would  
4 ask that if these witnesses are present when I read their  
5 name if they'd stand and face you so that you can look at  
6 them and then they can have a seat. And there will be a  
7 number of these witnesses who are not present at this  
8 time, so please, if you would, just pay close attention to  
9 the names as I read them.

10           Potential witnesses in the case are Lauren Byrd;  
11 Brian Godfrey with the Richland County Sheriff's office;  
12 Dr. John Stewart; Dr. Grayson Amick; Deputy R.M. Gonzalez  
13 with the Richland County Sheriff's office; Katria Weyl,  
14 W-E-Y-L; Sena Long, L-O-N-G; Adam Forand, F-O-R-A-N-D,  
15 Zack Bregozi; Bryan Asbury; Kevin Powers; Ashley Mishoe,  
16 M-I-S-H-O-E; Tammi Shirley; William Eric Elsey;  
17 Investigator Roy Livingston with the sheriff's office;  
18 Sergeant Randy Strange also with the sheriff's office;  
19 Investigator David Goff with the Richland County Sheriff's  
20 office; Investigator Terry Downie with the Richland County  
21 Sheriff's office; Tena Goff; Andy Jones; Investigator Zane  
22 Padgett; Beverly Crane, those last four also being with  
23 the Richland County Sheriff's office; Jhoana Pineda-Kim  
24 with Providence Hospital; Detective James Peppers; James  
25 Aakhus, A-A-K-H-U-S; Megan Mitchell, M-I-T-C-H-E-L-L.



1 Thank you. You can have a seat.

2 Those are potential witnesses in the case.

3 Now, I've got a few questions to ask you folks  
4 about this particular case.

5 First of all, is there anyone on the jury panel  
6 who is related by blood or connected by marriage either to  
7 the defendant -- let me back up.

8 Mr. Thomas is present. He is represented by  
9 Ms. Durant and co-counsel.

10 Ms. Durant, I would ask you to introduce  
11 yourself and co-counsel and your client to the panel,  
12 please.

13 MS. DURANT: Thank you, your Honor.

14 Lanelle Durant. This is Mr. Randy Thomas and  
15 Ms. Jeanette VanGinhoven.

16 THE COURT: Thank you.

17 The State in this case will be represented by  
18 Ms. Cooper and co-counsel.

19 If you'll introduce yourself and Ms. Garfield to  
20 the jury panel, please.

21 MS. COOPER: Thank you, your Honor.

22 My name is Vanessa Cooper. I'm an assistant  
23 solicitor with Richland County. And this is Dolly Justice  
24 Garfield. She's also going to be assisting me in this  
25 case and she's with the same office.

1 THE COURT: Thank you.

2 MS. COOPER: Thank you, your Honor.

3 THE COURT: Now, let me ask you the questions  
4 that I'm required to go over.

5 If any member of the jury panel is related by  
6 blood or connected by marriage either to the defendant,  
7 Mr. Thomas, or to any of the potential witnesses in the  
8 case, would you please stand at this time.

9 (No response.)

10 THE COURT: Is there any member of the jury  
11 panel who has any business, personal, or social  
12 relationship either with the defendant, Mr. Thomas, or any  
13 of the potential witnesses in the case?

14 Sometimes I'm asked what do you mean by personal  
15 or social relationship? Any type of relationship, if you  
16 know someone, if you belong to the same civic  
17 organization, the same club, the same church or attend the  
18 same church, any kind of relationship that associates you  
19 with the defendant or any potential witness in the case,  
20 that's what I'm asking about at this time. If so, would  
21 you please stand.

22 (There was no response.)

23 THE COURT: Is there any member of the jury  
24 panel who has read or heard or seen or from any source at  
25 all knows anything about the allegations that are made in

1 this case? If so, would you please stand.

2 (There was no response.)

3 THE COURT: Is there any member of this jury  
4 panel sensitive to or aware of any kind of bias or  
5 prejudice that you might have that would prevent you from  
6 being a fair and impartial juror in this case if you are  
7 selected? If so, would you please stand.

8 Come up here and let me talk to you up here at  
9 the front, please.

10 How are you? What's your name, please, sir?

11 THE JUROR: Joseph Holstron.

12 THE COURT: If you could tell me why you feel  
13 that way, sir.

14 THE JUROR: It's my wife. We just went through  
15 this same thing about two months ago, so I don't think I  
16 can.

17 THE COURT: I will excuse you from the trial of  
18 this case. Don't discuss that with anybody. Just have a  
19 seat in the back of the courtroom, please.

20 Juror No. 84 has been excused by the Court from  
21 the trial of this case.

22 Let me ask if there's any member of this jury  
23 panel who's either presently or in the past been  
24 represented by any of the attorneys involved in the case  
25 or any attorneys in their offices, or if you have any

1 other kind of business, personal, or social relationship  
2 with the attorneys in the case, would you please stand?

3 All right. Let me start with this gentlemen.  
4 Please your name.

5 THE JUROR: John Fling.

6 THE COURT: All right. And, Mr. Fling, which  
7 attorney is it?

8 THE JUROR: Ms. Lanelle.

9 THE COURT: All right. And would that -- is it  
10 something current or in the past?

11 THE JUROR: Current. I worked on her heating  
12 and air conditioning, and the other day was the sheriff,  
13 so we see each other quite a bit.

14 THE COURT: Is the relationship one since you  
15 work on her heating and air conditioning, is that going to  
16 affect your ability to be a fair and impartial juror if  
17 she's participating in this case?

18 THE JUROR: No, it won't.

19 THE COURT: All right, sir. You can have a  
20 seat.

21 That's Mr. Fling, No. 1, or No. 58, excuse me.  
22 Your name, please, ma'am?

23 THE JUROR: Ariail King.

24 THE COURT: And, Ms. King, which attorney?

25 THE JUROR: Dolly Justice Garfield and I went to

1 college together and were members of the same sorority.

2 THE COURT: Would that social relationship  
3 affect your ability to be a fair and impartial juror with  
4 her participating in this case?

5 THE JUROR: No, your Honor.

6 THE COURT: You may have a seat. That's Juror  
7 No. 99.

8 Anyone else?

9 (There was no response.)

10 THE COURT: If any member of the jury panel or  
11 any member of your immediate family is employed by  
12 currently or in the past any law enforcement agency or the  
13 Attorney General's office or the Solicitor's office or the  
14 Richland County Public Defender's office, again you or a  
15 member of your immediate family either presently or in the  
16 past been employed by any of those agencies, would you  
17 please stand.

18 We'll start on this side over here. The lady  
19 with the blue jacket, please. Your name, please?

20 THE JUROR: Sandra Sulton. And I have a brother  
21 that is retired from the Sheriff's Department, Richland  
22 County.

23 THE COURT: All right. And, Ms. Sulton, would  
24 that relationship with that individual affect your ability  
25 to be a fair and impartial juror?

1 THE JUROR: No.

2 THE COURT: Thank you. You may have a seat.  
3 Beside her, your name, please?

4 THE JUROR: Jennifer Ross. My sister and her  
5 husband are both sheriff's deputies with Richland County.

6 THE COURT: And would that relationship affect  
7 your ability to be a fair and impartial juror in this  
8 case?

9 THE JUROR: No.

10 THE COURT: You may have a seat. That's No.  
11 157.

12 Your name, please?

13 THE JUROR: Mauricia Murphy.

14 THE COURT: Let me find you, Ms. Murphy, please.

15 THE JUROR: No. 138.

16 THE COURT: And if you can tell me who and what  
17 agency, please.

18 THE JUROR: The sheriff's office in Roanes,  
19 Virginia, I was a deputy sheriff there for several years

20 THE COURT: How long ago has that been, Ms.  
21 Murphy?

22 THE JUROR: 2001.

23 THE COURT: And would that in any way, that  
24 experience, affect your ability to be fair and impartial?

25 THE JUROR: No, sir.

1 THE COURT: Thank you. You may have a seat.

2 Let me jump way over here. Your name, please,  
3 sir?

4 THE JUROR: Clarence Richards. I think I'm 153.  
5 My son-in-law worked for the Richland County Sheriff's  
6 Department and now he works with SLED.

7 THE COURT: All right. And would the fact that  
8 he worked at those agencies have any effect on your  
9 ability to be a fair and impartial juror?

10 THE JUROR: No, sir.

11 THE COURT: You may have a seat.

12 That's No. 153, Mr. Richards.

13 Your name, please, sir?

14 THE JUROR: James Canteley. I believe I'm 25.

15 THE COURT: Yes, sir.

16 THE JUROR: My daughter is an attorney with the  
17 South Carolina Attorney General's office.

18 THE COURT: All right. And would the fact that  
19 she's employed by that agency in any way affect your  
20 ability to be fair and impartial in this case?

21 THE JUROR: No, it wouldn't.

22 THE COURT: Thank you, sir. You can have a  
23 seat.

24 That's No. 25.

25 Your name?

1 THE JUROR: My name is Travis Kellogg. I'm  
2 Juror No. 215.

3 THE COURT: Yes, sir.

4 THE JUROR: My mother is a paralegal and a  
5 probation officer.

6 THE COURT: And would the fact that she's  
7 employed in that way affect in any way your ability to be  
8 a fair and impartial juror?

9 THE JUROR: No, sir.

10 THE COURT: Thank you, sir. You can have a  
11 seat.

12 Your name, please, sir?

13 THE JUROR: Robert Baxter. I'm Juror No. 13.  
14 I'm a former investigator for the Public Defender's office  
15 in Aiken County.

16 THE COURT: How long ago has that been, Mr.  
17 Baxter?

18 THE JUROR: I left in 1979, 1980.

19 THE COURT: It's been awhile then?

20 THE JUROR: Yes, it has.

21 THE COURT: Would that affect your ability to be  
22 fair and impartial?

23 THE JUROR: No, sir.

24 THE COURT: Thank you, sir. You can have a  
25 seat.



1           Anyone else?

2           (There was no response.)

3           THE COURT: Is there any member of the jury  
4 panel who is a member of or makes contributions to any  
5 group that has as one of its primary concerns either the  
6 promotion of law enforcement or victim's rights? This  
7 would include but not be limited to CAVE, or MADD, SAD,  
8 SisterCare, groups of that nature? If so, would you  
9 please stand.

10           All right. Let me start back down on the front  
11 row, please. Your name again, please?

12           THE JUROR: (Ariail King.)

13           THE COURT: Yes, ma'am, Ms. King.

14           THE JUROR: (SisterCare.)

15           THE COURT: Pardon me?

16           THE JUROR: I donate regularly to SisterCare.

17           THE COURT: All right. And would that  
18 experience affect your ability to be fair and impartial in  
19 this case?

20           THE JUROR: No, your Honor.

21           THE COURT: You may have a seat.

22           That is No. 99.

23           Your name, please, ma'am?

24           THE JUROR: Pat Gilmartin, No. 67.

25           THE COURT: Yes, ma'am.

1 THE JUROR: I donate regularly to the women's  
2 shelter and to SisterCare. \_

3 THE COURT: Would either one of those  
4 experiences affect your ability to be fair and impartial  
5 in this case?

6 THE JUROR: No.

7 THE COURT: Thank you. You may have a seat.  
8 That's No. 67.

9 Is there any member of this jury panel or any  
10 member of your immediate family who has either presently  
11 or in the past been employed as a child care provider? If  
12 you or a member of your immediate family is either  
13 presently or in the past has been employed as a child care  
14 provider would you please stand.

15 Front row. Your name, please, sir?

16 THE JUROR: Jim Fors, No. 60.

17 THE COURT: Yes, sir. And you or a member of  
18 your family?

19 THE JUROR: My wife used to do child care in the  
20 home.

21 THE COURT: All right. And would that in any  
22 way affect your ability in this case to be a fair and  
23 impartial juror, Mr. Fors?

24 THE JUROR: No, your Honor.

25 THE COURT: You may have a seat.

1           That's No. 60.

2           Your name, please, again?

3           THE JUROR: Jennifer Ross, 157.

4           THE COURT: And would it be you or a member of  
5 your family, Ms. Ross?

6           THE JUROR: Both.

7           THE COURT: And currently or in the past?

8           THE JUROR: In the past.

9           THE COURT: In the past. And would that  
10 experience affect your ability to be fair and impartial?

11          THE JUROR: No.

12          THE COURT: You may have a seat.

13          That's No. 157.

14          Your name, please, ma'am.

15          THE JUROR: Amanda Phifer, Juror No. 145.

16          THE COURT: Yes, ma'am.

17          THE JUROR: I am currently a nanny and tutor for  
18 two children.

19          THE COURT: All right. How long have you been  
20 doing that, Ms. Phifer?

21          THE JUROR: About 18 months.

22          THE COURT: And would that experience in any way  
23 affect your ability to be fair and impartial in this case?

24          THE JUROR: No, your Honor.

25          THE COURT: Thank you. You may have a seat.

1 That's Juror 145.

2 Has any member of this jury panel or any member  
3 of your immediate family ever been a victim of or a  
4 witness in a case involving sexual assault or kidnapping?  
5 If you or any member of your immediate family have been a  
6 victim or a witness in a case involving sexual assault or  
7 kidnapping, would you please stand at this time.

8 / (There was no response.)

9 THE COURT: Is there anything about the nature  
10 of the allegations or charges in this case that would  
11 cause any member of the jury panel a particular problem in  
12 sitting as a fair and impartial juror in this case? If  
13 so, would you please stand.

14 (There was no response.)

15 THE COURT: Now, I've asked you a number of  
16 questions. Let me ask you sort of a catchall.  
17 Essentially keep in mind that what we're seeking in  
18 striking a jury is to have 12 people who don't know  
19 anything about the case and who will not be influenced by  
20 any outside influences in this matter.

21 If any member of this jury panel knows of any  
22 reason, whether it is connected to any questions that I  
23 have asked or any other reason, that you could not give  
24 both the State and the defense a fair and impartial trial  
25 if you are selected in this case, would you please stand

1 at this time.

2 (There was no response.)

3 THE COURT: All right. Solicitor, anything  
4 further from the State?

5 MS. COOPER: Nothing from the State, your Honor.

6 THE COURT: From the defense?

7 MS. DURANT: No, your Honor.

8 THE COURT: All right. Now, ladies and  
9 gentlemen, we're going to strike a jury. And the way  
10 that's done in criminal court is your names are going to  
11 be called out individually one at a time. If your name is  
12 called, if you'll bring your personal belongings that you  
13 brought up with you and come down to this microphone down  
14 here in the front of the courtroom, simply turn and face  
15 the attorneys and state your name and where you are  
16 employed. You're not going to be asked any more questions  
17 but just your name and where you're employed.

18 And then the attorneys are going to be asked  
19 whether they would like you to be seated in this case or  
20 whether they would like to excuse you from this particular  
21 case.

22 If both the State and the defense in the case  
23 say they would like you to be seated, then you'll go over  
24 and have a seat in the jury box. If either side asks that  
25 you be excused from the case, simply go to the back of the

1 courtroom and have a seat back there.

2 If your name is called, bring your personal  
3 belongings with you and come down and state your name and  
4 place of employment, please.

5 All right. Strikes will be ten and five.

6 THE CLERK: No. 58, John Fling. (White male.)

7 THE JUROR: My name is John Fling and I work for  
8 Second Wind Heating and Air.

9 THE CLERK: What says the State?

10 THE JUROR: Huh?

11 THE COURT: No, she's asking the lawyers.  
12 You're not going to be asked anything.

13 MS. COOPER: Your Honor, please excuse  
14 Mr. Fling.

15 THE COURT: Mr. Fling, if you'll step back to  
16 the back of the courtroom, please, sir.

17 THE CLERK: No. 175, Sandra Sulton (Black  
18 female.)

19 THE JUROR: My name is Sandra Sulton, and I'm  
20 employed with Blue Cross/Blue Shield.

21 THE CLERK: What says the State?

22 MS. COOPER: Please present Ms. Sulton.

23 THE CLERK: What says the defense?

24 MS. DURANT: Please present the juror.

25 THE CLERK: Please have a seat in the jury box.

1 No. 26, Susan Carney. (White female.)

2 THE JUROR: Susan Carney. I work for Lexington  
3 School District 1.

4 THE CLERK: What says the State?

5 MS. COOPER: Please present Ms. Carney.

6 THE CLERK: What says the defense?

7 MS. DURANT: Please present Ms. Carney.

8 THE CLERK: Have a seat in the jury box.

9 No. 25, James Cantey. (White male.)

10 THE JUROR: I'm James Cantey. I work for  
11 Radius, Incorporated.

12 THE CLERK: What says the State?

13 MS. COOPER: Please present Mr. Cantey.

14 THE CLERK: What says the defense?

15 MS. DURANT: Please present the juror.

16 THE CLERK: Please have a seat in the jury box.

17 No. 177, Ray Swinton. (Black male.)

18 THE JUROR: My name is Ray Swinton. I work for  
19 School District Five in Richland County.

20 THE CLERK: What says the State?

21 MS. COOPER: Please excuse Mr. Swinton.

22 THE CLERK: Please have a seat in the back of  
23 the courtroom.

24 No. 153, Clarence Richards. (White male.)

25 THE JUROR: My name is Clarence Richards. I

1 work at Hood Construction Company. .

2 THE CLERK: What says the State?

3 MS. COOPER: Please present Mr. Richards.

4 THE CLERK: What says the defense?

5 MS. DURANT: Please excuse the juror.

6 THE CLERK: Please have a seat in the back of  
7 the courtroom.

8 No. 183, Dicie Thomas. (Black female.)

9 THE JUROR: My name is Dicie Thomas. I'm a  
10 housewife.

11 THE CLERK: What says the State?

12 MS. COOPER: Please present Ms. Thomas.

13 THE CLERK: What says the defense?

14 MS. DURANT: Please present the juror.

15 THE CLERK: Please have a seat in the jury box.

16 No. 157, Jennifer Ross. (White female.)

17 THE JUROR: Jennifer Ross, Trenholm Road  
18 Methodist Church.

19 THE CLERK: What says the State?

20 MS. COOPER: Please present Ms. Ross.

21 THE CLERK: What says the defense?

22 MS. DURANT: Please excuse the juror.

23 THE CLERK: Please have a seat in the back of  
24 the courtroom.

25 No. 179, Mackey Tarrant. (White female.)



1 THE JUROR: I'm Mackey Tarrant. I'm  
2 self-employed as a consultant in multi-family real estate  
3 development.

4 THE CLERK: What says the State?

5 MS. COOPER: Please present Ms. Tarrant.

6 THE CLERK: What says the defense?

7 MS. DURANT: Please excuse the juror.

8 THE CLERK: Please have a seat in the back of  
9 the courtroom.

10 No. 215, Travis Kellogg. (White male.)

11 THE JUROR: Travis Kellogg. I'm employed by Jim  
12 Moore Cadillac.

13 THE CLERK: What says the State?

14 MS. COOPER: Please excuse Mr. Kellogg.

15 THE CLERK: Please have a seat in the back of  
16 the courtroom.

17 No. 36, Norine Corbin. (Black female.)

18 THE JUROR: I'm Norine Corbin. I'm employed  
19 with HealthSouth Rehabilitation Hospital.

20 THE CLERK: What says the State?

21 MS. COOPER: Please present Ms. Corbin.

22 THE CLERK: What says the defense?

23 MS. DURANT: Please excuse the juror.

24 THE CLERK: Please have a seat in the back of  
25 the courtroom.

1 No. 43, Paul Daniels. (White male.)

2 THE JUROR: Paul Daniels, Spring Valley  
3 Hardware.

4 THE CLERK: What says the State?

5 MS. COOPER: Please present Mr. Daniels.

6 THE CLERK: What says the defense?

7 MS. DURANT: Please present the juror.

8 THE CLERK: Please have a seat in the jury box.

9 No. 209, Danyelle Timmons. (Black female.)

10 THE JUROR: My name is Danyelle Timmons. I'm  
11 employed at White Manor Nursing Home.

12 THE CLERK: What says the State?

13 MS. COOPER: Please present Ms. Timmons.

14 THE CLERK: What says the defense?

15 MS. DURANT: Please present the juror.

16 THE CLERK: Please have a seat in the jury box.

17 No. 101, Patricia Lamont. (White female.)

18 THE JUROR: Patricia Lamont. I work for Indymac  
19 Bank.

20 THE CLERK: What says the State?

21 MS. COOPER: Please present Ms. Lamont.

22 THE CLERK: What says the defense?

23 MS. DURANT: Please present the juror.

24 THE CLERK: Please have a seat in the jury box.

25 No. 105, Steven Lewis. (White male.)

1 THE JUROR: My name is Steven Lewis. I'm the  
2 pastor of the Spring Valley Pentecostal Holiness Church  
3 and also a heating and air conditioning mechanic at Fort  
4 Jackson.

5 THE CLERK: What says the State?

6 MS. COOPER: Please present Mr. Lewis.

7 THE CLERK: What says the defense?

8 MS. DURANT: Please present the juror.

9 THE CLERK: Please have a seat in the jury box.  
10 No. 67, Patricia Gilmartin. (White female.)

11 THE JUROR: I'm Pat Gilmartin. I'm retired from  
12 USC and I now work full time self-employed as an artist.

13 THE CLERK: What says the State?

14 MS. COOPER: Please present Ms. Gilmartin.

15 THE CLERK: What says the defense?

16 MS. DURANT: Please excuse the juror.

17 THE CLERK: Please have a seat in the back of  
18 the courtroom.

19 No. 143, Bonita Peeples. (Black female.)

20 THE JUROR: My name is Bonita Peeples and I work  
21 with the Historic Columbia Foundation.

22 THE CLERK: What says the State?

23 MS. COOPER: Please present Ms. Peeples.

24 THE CLERK: What says the defense?

25 MS. DURANT: Please seat the juror.

1 THE CLERK: Please have a seat in the jury box.

2 No. 99, Ariail King. (White female.)

3 THE JUROR: Ariail King. I'm employed by the  
4 law firm of Lewis and Babcock.

5 MS. COOPER: Please present Ms. King.

6 THE CLERK: What says the defense?

7 MS. DURANT: Please excuse the juror.

8 THE CLERK: Please have a seat in the back of  
9 the courtroom.

10 No. 160, Lance Samuel. (Black male.)

11 THE JUROR: Lance Samuel. I'm employed by  
12 Cracker Barrel.

13 THE CLERK: What says the State?

14 MS. COOPER: Please present Mr. Samuel.

15 THE CLERK: What says the defense?

16 MS. DURANT: Present the juror.

17 THE CLERK: Please have a seat in the jury box.

18 No. 70, first name G-U-L-E-T-T-I-A, last name is  
19 Golden. (Black female.)

20 THE JUROR: My name is Gulettia Golden. I'm  
21 employed with Verizon Wireless.

22 THE CLERK: What says the State?

23 MS. COOPER: Please present Ms. Golden.

24 THE CLERK: What says the defense?

25 MS. DURANT: Please present the juror.

1 THE CLERK: Please have a seat in the jury box.

2 No. 24; Donald Byrnes. (White male.)

3 THE JUROR: Donald Byrnes. I'm employed by  
4 Simplex Grinnell.

5 THE CLERK: What says the State?

6 MS. COOPER: Please present the juror.

7 THE CLERK: What says the defense?

8 MS. DURANT: Please present the juror.

9 THE CLERK: Please have a seat in the jury box.

10 THE COURT: We'll have two alternates. We'll  
11 select the first. The strikes two and one on the  
12 alternate.

13 THE CLERK: No. 97, Marion Kaspareck. (White  
14 female.)

15 THE JUROR: Marion Kaspareck. I'm now the chief  
16 guidance counselor in School District 2.

17 THE CLERK: What says the State?

18 MS. COOPER: Please present the juror.

19 THE CLERK: What says the defense?

20 MS. DURANT: Please excuse the juror.

21 THE CLERK: Please have a seat in the back of  
22 the courtroom.

23 No. 13, Robert Baxter. (White male.)

24 THE JUROR: Robert Baxter, DMV Blythewood.

25 THE CLERK: What says the State?

1 MS. COOPER: Please excuse Mr. Baxter.

2 THE CLERK: Please have a seat in the back of  
3 the courtroom.

4 No. 146, Sandra Priester. (Black female.)

5 THE JUROR: I'm Sandra Priester. I work at  
6 BellSouth in RS-1.

7 THE CLERK: Does the State challenge for cause?

8 MS. COOPER: No, ma'am. Please present  
9 Ms. Priester.

10 THE CLERK: What says the defense?

11 MS. DURANT: Please present the juror.

12 THE CLERK: Please have a seat in the jury box.

13 THE COURT: We'll have another alternate drawn.  
14 Again the strikes are two and one on the next alternate.

15 THE CLERK: No. 41, Dorothy Cunningham. (Black  
16 female.)

17 THE JUROR: My name is Dorothy Cunningham. I'm  
18 a receptionist with Dr. Lonnie Randolph.

19 THE CLERK: What says the State?

20 MS. COOPER: Your Honor, may Counsel approach  
21 the bench?

22 THE COURT: All right.

23 (A bench conference was held with the judge and  
24 attorneys in the presence of the jurors but out of  
25 the hearing of the jurors.)

1 THE CLERK: What says the State?

2 MS. COOPER: Please present Ms. Cunningham.

3 THE CLERK: What says the defense?

4 MS. DURANT: Please present the juror.

5 THE CLERK: Please have a seat in the jury box.

6 (The jury was impaneled at 4:15 p.m.)

7 THE COURT: All right. Are there any motions,

8 any matters of law concerning the striking of the jury?

9 Anything from the State?

10 MS. COOPER: No, your Honor.

11 THE COURT: From the defense?

12 MS. DURANT: Just a moment, your Honor.

13 Nothing further, your Honor.

14 THE COURT: All right. Ladies and gentlemen,  
15 those of you who were not selected in the case, if you'll  
16 return to the assembly room downstairs, please. Everyone  
17 else stay seated while the jury panel is excused.

18 (The jury panel left open court at approximately  
19 4:15 p.m.)

20 THE COURT: All right. Ladies and gentlemen,  
21 those of you who have been selected in this case, the  
22 actual trial of this case is not going to start until  
23 tomorrow morning, but we wanted to go ahead and get the  
24 jury selected this afternoon. I still have some pretrial  
25 matters that I need to take up this afternoon. It's going

1 to take me past the normal ending time, but I did want to  
2 go ahead and get the jury selected so that we could get  
3 started first thing in the morning.

4 There's a couple of things I need to tell you  
5 and then I'm going to excuse you for the afternoon.

6 Number one, I think it's fairly common knowledge  
7 that you should not watch, listen to, read about or  
8 discuss in any way with anybody anything about this case.  
9 I think it's fairly easy to comply about those  
10 instructions when you're up around the courthouse all day.

11 Those of you who have spouses or children or  
12 friends at home, I can almost guarantee you that when you  
13 get home, they're going to ask you, did you get picked on  
14 a jury, what kind of case is it, who's involved, and you  
15 can't answer those questions. And you can blame it on me.  
16 And that's what I would ask you to do. Because we don't  
17 want you to be in any way influenced by something that  
18 somebody might say to you either inadvertently or on  
19 purpose. So please don't discuss the case with anybody.

20 In South Carolina there's two different ways of  
21 having a jury foreman selected: One is for me to simply  
22 pick one of you and appoint that person to serve as the  
23 foreman of the jury; the other is to let the jury decide  
24 who you would like for that person to be. And that's what  
25 I have been doing for about ten years, I let the jury



1 decide who they want their foreman to be.

2       Whoever that person is, their vote is no more  
3 important and does not count any more than any other  
4 member of the jury. But the foreman -- when I say  
5 foreman, it can be male or female, but the foreman  
6 presides in the jury room and will be the spokesman for  
7 the jury here in the courtroom.

8       So before you leave today, I'm going to have the  
9 bailiffs take you back to the jury room and let you  
10 discuss among yourselves who you would like your foreman  
11 to be. And if you'll simply jot that name on a slip of  
12 paper and give it to the bailiff, and once you've done  
13 that then you're excused for the rest of the afternoon.

14       When you are brought back into the courtroom  
15 tomorrow morning, your foreman's going to take this front  
16 seat on the front row and keep that seat throughout the  
17 trial.

18       And then the two jurors on the back row back  
19 there, you are alternate jurors, and you will stay on the  
20 back row if you will, please, throughout the trial. I  
21 need the foreman and my alternates to stay in the same  
22 seats and the rest of you can sit in whatever seats you'd  
23 like to as you come and go from the courtroom.

24       So this afternoon I would ask you to discuss  
25 among yourselves and select a foreman and then I will

1 appoint that person first thing tomorrow and we will start  
2 with the trial.

3 I normally start trials once we get to the jury  
4 trial part of it, I start trials at either 9 or 9:30. We  
5 had a late start this morning for some things that were  
6 uncontrollable by anyone and for that reason I had to  
7 delay some hearings I had scheduled this morning,  
8 something totally unassociated with this case, until  
9 tomorrow morning at 9 o'clock. I should be done with all  
10 of that by 10. So I need for you folks to be in your jury  
11 room at 10 o'clock.

12 And please understand that we cannot start until  
13 all of you are here. I know last week we had one young  
14 fellow who for two or three days he sort of drug in 15  
15 minutes after everybody else was here. We can't start  
16 without everybody here and we do need to start on time.  
17 10 o'clock is sort of a late start time so you should be  
18 able to do whatever you need to do and get up here by 10,  
19 and if you'll do that, please, we will start at 10.

20 Please again don't discuss the case with  
21 anybody.

22 If you'll follow the bailiff to your jury room  
23 and select a foreperson and then you are excused until 10  
24 o'clock tomorrow.

25 You're excused.

1 THE COURT: I'll talk to Counsel in just a  
2 minute about scheduling and things of that nature.

3 Before we break for the afternoon, I need to let  
4 those in the courtroom know that it's been brought to the  
5 Court's attention an allegation that either during or  
6 after a witness's testimony, there was some mouthing of  
7 words or intimidating threats or gestures or something  
8 along those lines. I didn't see it. But I will tell you  
9 if there's any kind of conduct like that or communication  
0 between anyone in the audience or anyone participating in  
11 this trial, that is contempt of court. It can be punished  
12 by prison for six months without a jury trial and I won't  
13 hesitate to do that.

14 All right. We will start at 9 o'clock in the  
15 morning.

16 Let me talk to y'all in the hall just for a  
17 minute about scheduling, please.

18 MS. COOPER: Thank you, your Honor.

19 (The proceedings were concluded for the day to  
20 be reconvened on February 8, 2006.)  
21  
22  
23  
24  
25

1 THE COURT: Before we get started, it's come to  
2 the Court's attention that yesterday, last night after  
3 court had adjourned that there was an incident at the  
4 victim's house where apparently a window was shot out of  
5 the house.

6 This Court has no way of knowing who did that;  
7 however, we do need to put on the record that intimidation  
8 of a witness is a felony in this state punishable by ten  
9 years in the South Carolina Department of Corrections.

10 Law enforcement, as I speak, is conducting an  
11 investigation, devoting all their resources to determine  
12 what happened and who is responsible for it, and I trust  
13 that whoever is responsible will be prosecuted to the  
14 fullness extent of the law.

15 It may be a coincidence and have nothing to do  
16 with this case, but I simply wanted to make that statement  
17 on the record.

18 All right. Is the State ready to proceed?

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

20 THE COURT: Is defense ready?

21 MS. DURANT: Yes, your Honor.

22 THE COURT: Any matters for me to take up before  
23 the jury's brought in?

24 MS. DURANT: No, sir.

25 THE COURT: Does the State have anything?

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

2 THE COURT: All right. Bring the jury in,  
3 please.

4 (The jury came into open court at approximately  
5 9:48 a.m.)

6 THE BAILIFF: The jury's all present, your  
7 Honor.

8 THE COURT: Thank you, sir.

9 Mr. Foreman, ladies and gentlemen, I appreciate  
10 you getting here this morning. I apologize for the delay  
11 in getting started. We had several problems to deal with,  
12 not the least of which was a traffic jam and a parking lot  
13 on I-26 that I sat in for nearly an hour.

14 Anyway, everybody's here and we'll continue with  
15 the case at this time.

16 Solicitor, call your next witness.

17 MS. COOPER: Thank you, your Honor.

18 The State calls Zach Bregozzi to the stand.

19 ZACHARY BREGOZI, after being duly sworn,  
20 testified as follows:

21 THE CLERK: Have a seat in the witness stand and  
22 state your full name for the record.

23 MS. VANGINHOVEN: Your Honor, can we approach  
24 for one minute?

25 THE COURT: Sure.

1 gentlemen, we'll take about a 15-minute break.

2 Don't discuss the case. If you'll step back to  
3 your jury room.

4 Everyone else stay seated while the jury is  
5 excused, please.

6 (The jury left open court at approximately 11:22  
7 a.m.)

8 THE COURT: We'll take about 15 minutes.

9 (A break was taken.)

10 THE COURT: Is the State ready to proceed?

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

12 THE COURT: Is the defense ready?

13 MS. DURANT: Yes, your Honor. We just want to  
14 raise our objection again to anything the defendant told  
15 Investigator Godfrey coming in as we did in our pretrial,  
16 and we will object again.

17 THE COURT: On the (Jackson v Denno matter; is  
18 that right?

19 MS. DURANT: Yes, sir. Your Honor, I think  
20 Investigator Godfrey is the next witness.

21 THE COURT: Seems like a year ago, I guess it  
22 was a week ago we had the Jackson v Denno hearing.

23 MS. COOPER: Your Honor, I did get that from the  
24 court reporter. I've got the one we used for the Jackson  
25 v Denno, it's the original, and it's already marked as

1 THE COURT: I will do that. I'm not required to  
2 do that unless he indicates that he wants to waive that  
3 right, but I will go over it with him at that point in  
4 time. I'm sure you've been counseled and I'm sure you'll  
5 continue to do so.

6 MS. VANGINHOVEN: Yes, sir. Thank you.

7 THE COURT: Let me put on the record also,  
8 yesterday after I had left, a note from a juror was  
9 conveyed to my law clerk asking if she could be excused  
10 today because of a phone call for an employment  
11 possibility out of state, and I simply sent word back and  
12 said no. So the juror's still here and we're still going  
13 forward. I will make it a Court exhibit.

14 MS. VANGINHOVEN: Thank you, your Honor.

15 (WHEREUPON, The Court's Exhibit No. 2 was marked  
16 for purposes of the record.)

17 (A lunch break was taken.)

18 THE COURT: I have gone back and reviewed the  
19 Dunlap case that I believe was handed up by Counsel, and  
20 it's clear that my notes indicate that the defendant's  
21 prior record is a conspiracy charge; is that right?

22 MS. COOPER: Yes, sir, conspiracy to distribute  
23 marijuana.

24 MS. DURANT: Your Honor, if I may, I think the  
25 information we have is just criminal conspiracy.

1 MS. COOPER: Your Honor, I misspoke, it's just  
2 criminal conspiracy.

3 THE COURT: That's what I had in mind from the  
4 other day. It's a five-year offense, right?

5 MS. DURANT: Yes, sir.

6 THE COURT: And the date of the offense, I  
7 believe, was in 2000, 2001, the actual conviction in 2002,  
8 2003, sometime in that period. It squarely falls within  
9 609, impeachment by evidence of conviction of a crime. In  
10 the cases that I've gone over where generally those types  
11 of, or the prior convictions are disallowed as being  
12 unduly prejudicial or such as a drug conviction being used  
13 for impeachment purposes in another drug case, that's what  
14 the Dunlap case I think was. And Green versus the State  
15 is another case that I read where the case was sent back  
16 on post-conviction relief because Counsel did not argue  
17 the prejudicial effect of the prior drug conviction. \

18 I find nothing in the rules or nothing in the  
19 case law that prohibits the State from using a general  
20 criminal conspiracy charge for impeachment purposes in  
21 this case. I've made an analysis of the probative value  
22 of admitting that evidence against any prejudicial effect  
23 and do not feel that it would be unduly prejudicial in  
24 this case.

25 So the bottom line is the Court would permit the



1 use of that record.

2 That's all the record that he has; is that  
3 right? That's the only thing the State is seeking to use  
4 for impeachment purposes; is that right?

5 MS. COOPER: Yes, sir, your Honor. And I'm just  
6 asking for guidance. I have the certified conviction and  
7 it does allege within the body of the indictment of the  
8 certified conviction possession with intent to distribute  
9 marijuana. Should I not go into what he conspired to?

10 THE COURT: The only thing that you can ask to  
11 start with is whether he has a conviction or what the  
12 conviction is.

13 MS. COOPER: Okay.

14 THE COURT: If he admits that conviction, that's  
15 it. If he denies it, then you may be able to put  
16 something else up. That's my understanding of how the law  
17 reads, and, of course, many times Counsel will go ahead  
18 and introduce that in direct and it's still sometimes  
19 brought up in cross-examination, but you're still limited  
20 on what you can ask about. It's essentially what I just  
21 went over. The details of it you don't go into, what the  
22 original charge was you don't go into.

23 MS. GARFIELD: And sentencing?

24 THE COURT: The sentence is immaterial. It's  
25 the conviction. It is the conviction. That is the only

1 reason it's permitted.

2 MS. COOPER: So the fact that he's on probation  
3 is not allowed?

4 THE COURT: That has nothing to do with  
5 anything.

6 Now, I will be glad to talk with him about his  
7 constitutional rights. I know you all have done that. If  
8 you'd like me to do that at this time.

9 MS. DURANT: Yes, sir, and then we have two  
10 matters that we would need to request.

11 THE COURT: Well, let's go ahead and deal with  
12 whatever that is and then I'll do the other.

13 MS. DURANT: One is, we had originally thought  
14 we would call his mother as a witness, but we're not going  
15 to call her. We would ask she be allowed to stay in the  
16 courtroom.

17 THE COURT: If she's not going to be a witness  
18 anybody can be in here.

19 MS. DURANT: The other issue, we had a witness  
20 that we had subpoenaed, Detective Peppers, who testified  
21 in the Lyle incident, your Honor. We subpoenaed him to be  
22 here this week. I told him Monday when he left that we  
23 might still need him today depending on how you ruled on  
24 the Lyle and so he should be prepared to come back today.  
25 After your ruling I did call and leave a message on

1 Tuesday evening and asked him to be here at 9 o'clock,  
2 9:30 today. I called him Wednesday and my paralegal's  
3 been calling this morning and he is not here, your Honor,  
4 and I do have a copy of the subpoena that we issued for  
5 him.

6 Since he is not here, your Honor, we do feel  
7 that his testimony would be crucial and we would ask that  
8 we be allowed to use his testimony at the Lyle hearing on  
9 Monday.

10 THE COURT: All right. Solicitor.

11 MS. COOPER: We would object to his prior  
12 testimony being used. We have no problem since it's  
13 already pretty late in the day, we have got his  
14 supervisor's information and we can call to have him here  
15 tomorrow morning.

16 THE COURT: I'm curious to find out why he is  
17 not here when he was directed to be here when he's under  
18 subpoena.

19 MS. COOPER: I'm curious as well, your Honor.

20 MS. GARFIELD: Your Honor, I provided Ms. Durant  
21 his phone number to the police at the City of Clemson.

22 MS. COOPER: He wasn't very responsive to the  
23 State's requests prior to the trial either, your Honor.

24 THE COURT: Have you spoken directly to the  
25 chief of police up there?

1 MS. COOPER: No, sir. It was just brought to  
2 our attention that he still hasn't shown up and so that's  
3 when we provided her the information of the supervisor.  
4 We obtained that information so that we could write a  
5 letter of complaint to the supervisor.

6 THE COURT: And have you spoken to the  
7 supervisor today or yesterday?

8 MS. DURANT: No, sir, I have not.

9 THE COURT: Well, at this point in time I'm not  
10 going to permit the use of previous testimony unless and  
11 until it's shown that he is unavailable. I will assist in  
12 any way that I can defense counsel to get him here. If  
13 that means having to send somebody to Clemson, or what is  
14 that, Pickens County? We'll send somebody to Pickens  
15 County and have him escorted back down here. And that  
16 probably needs to be communicated to the chief of police  
17 up there.

18 He's still employed by the City of Clemson; is  
19 that right?

20 MS. COOPER: Yes, sir.

21 THE COURT: There's no excuse particularly for a  
22 law enforcement officer not to comply with a subpoena.

23 I'm just not sure what the best way to handle  
24 that is, whether you all want to make a phone call and see  
25 what kind of response we get from that or what you want to

1 do.

2 MS. DURANT: I'll be glad to call, your Honor.  
3 I can have our investigator call right now or whatever you  
4 think is more appropriate.

5 THE COURT: Why don't you have your investigator  
6 call and just see what kind of response you get, and  
7 you've got my authority to -- you can tell your  
8 investigator in a non-threatening way that the Court is  
9 prepared to have someone come up and escort him down here  
10 if he does not agree to voluntarily appear here at  
11 9 o'clock in the morning.

12 MS. DURANT: Yes, sir.

13 THE COURT: You said you had a couple of  
14 matters. What else?

15 MS. DURANT: Ms. VanGinhoven will take care of  
16 that, your Honor. Those are the only matters that we  
17 have.

18 THE COURT: All right. Let me talk to the  
19 defendant for just a minute.

20 You just stay there right where you are. You  
21 don't need to stand.

22 Anytime someone is charged in any criminal case,  
23 there are a number of constitutional rights that you have,  
24 and the one I need to talk with you about in just a  
25 minute, and I know your attorneys have talked to you, is

1 your constitutional right to remain silent. And I will  
2 try to explain that. I know that they've gone over that  
3 with you.

4 Under the constitution of both the United States  
5 and the state of South Carolina, there's a provision that  
6 says anyone charged with any criminal offense cannot be  
7 compelled to testify against himself, which means you have  
8 the right to remain silent. It's an absolute right. Your  
9 silence cannot be held against you or used against you.

10 If a defendant elects not to testify, the jury  
11 is instructed to that effect and also is told they can't  
12 even discuss that back in the jury room. It has no play,  
13 it has no effect.

14 You have the right to remain silent because the  
15 State does have the burden of proving the charges against  
16 you.

17 At this point in the trial I'm required to go  
18 over with you that right to be sure that you understand  
19 that right, and then if you choose to give up that right  
20 and testify, I have to be satisfied that you have done  
21 that of your own freewill, that nobody's forcing you to do  
22 that.

23 The bottom line is that there is no one in the  
24 court, not your lawyer, not the solicitor, not the judge  
25 who can force you to get on the witness stand and testify.

1           If you choose not to testify, again the jury  
2 will be instructed that they cannot hold that against you,  
3 use that against you, or even discuss that back in the  
4 jury room.

5           If you want to give up your right to remain  
6 silent, you'll be permitted to if I am convinced that you  
7 understand it and that you're giving it up freely and  
8 voluntarily.

9           If you do give up your right and take the stand,  
10 of course your lawyers will be questioning you and then  
11 the State will have the right to cross-examine you just as  
12 they would any other witness.

13           Now, at this time do you have any questions  
14 about your right to remain silent, Mr. Thomas?

15           MR. THOMAS: No, sir.

16           THE COURT: All right. You've thoroughly  
17 discussed that with your attorneys; is that right?

18           MR. THOMAS: Yes, sir.

19           THE COURT: And you understand that you cannot  
20 be compelled to testify, and if you give up that right,  
21 that you may testify. Do you understand that?

22           MR. THOMAS: Yes, sir.

23           THE COURT: And while you should make whatever  
24 decision you make after consulting with your attorneys,  
25 the final decision is yours, it's not theirs. Do you

1 understand that?

2 MR. THOMAS: Yes, sir.

3 THE COURT: All right. Ms. Durant, anything  
4 else you would like me to put on the record concerning  
5 that?

6 MS. DURANT: No, sir. Thank you.

7 THE COURT: Has he made his final decision on  
8 whether he intends to testify.

9 MS. DURANT: No. The last information I had is  
10 that he does plan to testify.

11 THE COURT: Is that correct?

12 MR. THOMAS: Yes, sir.

13 THE COURT: Are you doing that of your own  
14 freewill?

15 MR. THOMAS: Yes, sir.

16 THE COURT: All right. Based on my discussion  
17 with the defendant, Mr. Thomas, I find that he has been  
18 fully advised of that right, that he does understand it.  
19 He has indicated to the Court that he wishes to waive that  
20 right and to testify and that he's doing that knowingly  
21 and intelligently.

22 When your lawyer calls you, if you take the  
23 stand, then you will be permitted to. If you change your  
24 mind at any time, that's fine, you do not have to testify.  
25 You understand?



1 MR. THOMAS: Yes, sir.

2 THE COURT: All right. Anything further at this  
3 time?

4 MS. DURANT: No, sir.

5 THE COURT: Anything more from the State at this  
6 point in time?

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

8 THE COURT: Can we proceed without  
9 Ms. VanGinhoven in here?

10 MS. DURANT: Yes, sir.

11 THE COURT: Then we will proceed.

12 Get the jury back, please.

13 (The jury came into open court at approximately  
14 2:59 p.m.)

15 THE BAILIFF: The jury is all present, your  
16 Honor.

17 THE COURT: All right. Mr. Foreman and ladies  
18 and gentlemen, we will continue.

19 Ms. Durant, you may proceed.

20 MS. DURANT: Your Honor, the defense calls James  
21 Aakhus. I think he's right outside.

22 JAMES AAKHUS, after being duly sworn, testified  
23 as follows:

24 THE CLERK: Please have a seat in the witness  
25 stand and state your name for the record.

1 requests available first thing in the morning, and, of  
2 course, we'll go through all that as we go on.

3 Let me talk to you all just in the hallway for  
4 just a second. We'll start at 9:15 in the morning.

5 MS. GARFIELD: Your Honor, I do have one  
6 request.

7 THE COURT: All right.

8 MS. GARFIELD: The statement that Lauren Byrd  
9 gave Detective Peppers has been admitted into evidence.  
10 That's the only copy that anyone has. Is there any way  
11 Madame Clerk can make me a copy in preparation for cross?

12 THE COURT: Is the written statement in  
13 evidence?

14 MS. COOPER: It shouldn't be.

15 MS. GARFIELD: I thought it was.

16 MS. COOPER: It should be only for  
17 identification purposes.

18 THE COURT: It may be identification, but I  
19 don't believe any written statement has been admitted into  
20 evidence. I could be wrong.

21 MS. COOPER: I remember when the victim's on the  
22 witness stand that I went over the statement with her and  
23 I believe I had her identify it, but I don't recall  
24 introducing it into evidence.

25 THE COURT: We will -- even if it's only been --

1 if it's got a court reporter marking on it, it's part of  
2 the record. It won't go to the jury, but it's part of the  
3 record.

4 MS. COOPER: Right.

5 THE COURT: Is there any objection to  
6 substituting a copy if in fact it has been marked? You  
7 all just take a look at it and be sure you're satisfied  
8 there's an accurate copy of it.

9 MS. DURANT: Yes, sir, I did. There's no  
10 objection to the copy, your Honor.

11 THE COURT: All right. We'll stand in recess  
12 until tomorrow morning.

13 (The proceedings were concluded for the day to  
14 be reconvened on February 10, 2006.)  
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16  
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1 THE COURT: Is the defense ready?

2 MS. DURANT: Ready, your Honor.

3 THE COURT: Your witness here?

4 MS. DURANT: Yes, your Honor.

5 THE COURT: All right. The State ready?

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

7 THE COURT: Anything we need to do before we  
8 resume, anything on the record?

9 MS. DURANT: No, your Honor.

10 THE COURT: All right. Let's get the jury in  
11 here, please.

12 THE BAILIFF: Be glad to, your Honor.

13 (The jury came into open court at approximately  
14 9:26 a.m.)

15 THE BAILIFF: The jury's all present, your  
16 Honor.

17 THE COURT: All right. Thank you.

18 Mr. Foreman, ladies and gentlemen, we'll  
19 continue.

20 Ms. Durant, call your next witness, please.

21 MS. DURANT: Your Honor, the defense would call  
22 Investigator James Peppers.

23 JAMES PEPPERS, after being duly sworn, testified  
24 as follows:

25 THE CLERK: Please have a seat in the witness

1 Court's ruling would be the same; that would pertain to  
2 the Jackson v Denno, the Lyle evidence, the opening  
3 argument, the objection made on the basis of burden  
4 shifting, as well as the other matters that have been  
5 brought up. The Court's rulings would remain the same.

6 All right. I know that you all have handed up a  
7 few proposed charges. We'll take a short break and go  
8 over those and then we will go into closing.

9 We'll stand in recess for about 15 minutes.

10 (A recess was taken.)

11 THE COURT: Let the record reflect I have had a  
12 conference with the attorneys concerning proposed charges,  
13 several have been presented. I've indicated to Counsel  
14 how I will be ruling on those charges, they will be made a  
15 part of the record, and I think the appropriate time to  
16 take exception will be after the charge is made.

17 Anything else to put on the record at this time  
18 from the State?

19 MS. COOPER: No, your Honor.

20 THE COURT: For the defense?

21 MS. DURANT: No, your Honor.

22 THE COURT: The State will be opening and  
23 closing; is that right?

24 MS. COOPER: Yes, sir.

25 THE COURT: All right. Get the jury in, please.

1           (The jury came into open court at approximately  
2           11:16 a.m.)

3           THE BAILIFF: The jury's all present, your  
4           Honor.

5           THE COURT: Mr. Foreman, ladies and gentlemen,  
6           we're now going to have the closing arguments from the  
7           attorneys.

8           The closing arguments from the attorneys, let me  
9           remind you, of course, the attorneys do not testify. I am  
10          sure that they are going to go over and review with you  
11          their recollection of what the testimony and other  
12          evidence has been. They have a right to do that. I would  
13          simply point out to you that if your memory differs from  
14          theirs, you rely on your memory. You are the fact finders  
15          in this case.

16          Procedurally, you'll first hear from the  
17          Solicitor and then you'll hear from defense counsel and  
18          then the Solicitor has the right to make the final  
19          argument to you. And once they have concluded their  
20          arguments, then I'm going to instruct you in the law that  
21          applies in this case.

22          I would ask you to please give all of the  
23          attorneys making their arguments your full attention. At  
24          some point in time we'll probably have to take a short  
25          break, but we'll deal with that as it comes up. And I

1 THE CLERK: Sandra Sulton, was this your  
2 verdict?

3 THE JUROR: Yes, it is.

4 THE CLERK: Is it still your verdict?

5 THE JUROR: Yes, it is.

6 THE CLERK: Susan Carney, was this your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: James Cantey, was this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Dicie Thomas, was this your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: It is.

18 THE CLERK: Paul Daniels, was this your verdict?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Is it still your verdict?

21 THE JUROR: Yes, ma'am.

22 THE CLERK: Danyelle Timmons, was this your  
23 verdict?

24 THE JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 THE JUROR: Yes.

2 THE CLERK: Patricia Lamont, was this your  
3 verdict?

4 THE JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Steven Lewis, was this your verdict?

8 THE JUROR: Yes, it is.

9 THE CLERK: Is it still your verdict?

10 THE JUROR: Yes, it is.

11 THE CLERK: Bonita Peeples, was this your  
12 verdict?

13 THE JUROR: Yes.

14 THE CLERK: Is it still your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Lance Samuel, was that your verdict?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Is it still your verdict?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Gulettia Golden, was this your  
21 verdict?

22 THE JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: The jury's been polled, your Honor.



1 THE COURT: Thank you.

2 The jury has been polled with all the answers in  
3 the affirmative.

4 All right. Mr. Foreman, ladies and gentlemen,  
5 that will conclude your service in this case.

6 We will have some further proceedings. There  
7 may be some motions and sentencing in the case. You are  
8 certainly welcome to stay in the courtroom. You've had a  
9 week of your lives invested in the case.

10 You're not required to stay here in the  
11 courtroom. And I always leave it to the jury on whether  
12 you'd like to stay in here or whether you'd like to go  
13 ahead and leave.

14 The Clerk of Court does need to talk with you  
15 just for a minute about administrative matters, and we  
16 also will have a deputy who will escort you to the parking  
17 lot since it's after dark and we'll get you over there  
18 without any problems.

19 If you would like to step back to the jury room,  
20 feel free to do so. If you'd like to stay here in the  
21 courtroom, you may stay also.

22 Thank you very much for your service here in  
23 this case.

24 (The jury was excused at approximately 6:55  
25 p.m.)

1 THE COURT: All right. Any motions at this  
2 time?

3 MS. DURANT: Yes, your Honor.

4 We, of course, would renew all of our objections  
5 as stated in the trial, after the State's case -- the  
6 pretrial, the State's case, the defense case. We'd renew  
7 all of our prior objections, your Honor.

8 We also would make a motion for a new trial at  
9 this time. We just feel that the State did not prove  
10 their case and we are making a motion for a new trial.

11 THE COURT: All right. The Court is going to  
12 deny those motions as far as the objections and other  
13 motions made during the course of the trial, and both in  
14 camera and otherwise, the rulings would remain the same.

15 As far as the motion for the new trial, in the  
16 Court's view the evidence presented to the jury was  
17 sufficient to sustain the verdicts that have been returned  
18 by the jury. I think to a large degree the case came down  
19 to the issue of credibility, and the of the jury, of  
20 course, is the only one who can make that determination.  
21 The motion for the new trial is denied.

22 MS. DURANT: Thank you.

23 THE COURT: All right. Are you prepared to go  
24 forward with sentencing?

25 MS. COOPER: Yes, your Honor.

1 THE COURT: All right. Solicitor.

2 MS. COOPER: Thank you, your Honor.

3 You've heard all the facts in this case and  
4 you've heard the verdict of the jury, and I believe the  
5 verdicts are consistent with one another.

6 I did want to bring to the Court's attention  
7 that the defendant was on probation when he committed this  
8 offense. He was placed on probation on May 20th, 2003.  
9 He received five years suspended to two years probation  
10 for a criminal conspiracy offense.

11 Your Honor, I wanted to bring out a few things  
12 that have disturbed the State throughout this trial.

13 I have been involved with trials involving gang  
14 members. Never have my witnesses been threatened as they  
15 were Tuesday night.

16 I wanted to also bring to the Court's attention  
17 that I've never had a witness be gestured to in an  
18 inappropriate manner as was done in this case by the  
19 defendant's sister.

20 The victim wanted -- I did advise the victim of  
21 her rights as a victim under the victim's rights bill.  
22 She has asked me to talk to the Court on her behalf.

23 She's visibly shaken, your Honor. She's been  
24 through a very long week. But obviously her safety is at  
25 issue after what happened to her home on Tuesday night.

1 Also, she wanted me to relay to the Court how this crime  
2 has affected her.

3 During the case while it was pending she  
4 received a call from the defendant's mother on May 8th of  
5 2004, where the mother explained to the victim that Randy  
6 told her to tell the victim that her story was not going  
7 stand up in court because of all the discrepancies.

8 She felt quite intimidated by that and felt that  
9 she was facing a losing battle. She believed those  
10 statements. And that is one of the reasons Judge Lloyd  
11 ordered the no contact provision as part of the bond  
12 setting.

13 Lauren says that ever since she was raped by the  
14 defendant she has been distracted from her school work.  
15 Her family has been affected and every aspect of every one  
16 of their family members' lives.

17 She has had -- she feels like she will have  
18 emotional issues for the rest of her life as a result of  
19 this.

20 As a student, she lost about an entire semester  
21 with the school due to this incident. As a mother, she  
22 questions that she did the right thing. She has self  
23 doubt. She feels like she blames herself, your Honor.  
24 She should have done something to stay away from people  
25 like Randy Thomas.

1           She's not trusting of people. She's not  
2   trusting of men. She hasn't had a serious relationship  
3   since.

4           Everything that she does, she's overly cautious,  
5   your Honor. She can't walk down the street or go to the  
6   mall without looking over her shoulder, feeling that her  
7   safety's at issue.

8           Her friends have had a major toll as well. Her  
9   mother has been here all week, missed an entire week of  
10   work to be here for her daughter. Her friend, Ashley, has  
11   missed exams and classes all week long and projects being  
12   due to be here for her. Her parents are just always  
13   worried about Lauren, when they didn't worry about her  
14   before.

15           She also says that she's fearful of retaliation  
16   as a result of the verdict that has been rendered by this  
17   jury, especially given the events of Tuesday night when  
18   her house was shot up with a pellet gun.

19           She indicates that she feels he stole her home  
20   from her. She doesn't feel comfortable in her own  
21   parents' home.

22           And that is all she wanted me to relay to the  
23   Court.

24           THE COURT: All right. Counsel.

25           MS. DURANT: Thank you, your Honor.

1 I would like to point out that with Mr. Thomas  
2 today is his mother and sister in the courtroom. Earlier  
3 today his grandfather, two uncles, and his father, and  
4 several other family members and friends, your Honor, were  
5 in the courtroom today to render support to Randy.

6 I would also like to point out, your Honor, that  
7 I have 16 letters of character references that were  
8 brought to me before the trial. One of them is from  
9 Mr. Terry Burnett, who is the CLE director of the South  
10 Carolina Bar, and he is here to stand up with Randy, and I  
11 would like to read a couple of sentences from his letter,  
12 your Honor.

13 Randy was a basketball coach and I think coached  
14 his son, and his son is Knox Burnett. I think Randy  
15 coached his son for several years. Mr. Burnett writes in  
16 here: I believe Randy Thomas is a young man of good  
17 character. I'm personally grateful to Randy for the  
18 hundreds of hours he spent with my son mentoring him in  
19 basketball and life skills.

20 And all of these letters, your Honor, reference  
21 Randy's work with young people and what a positive  
22 influence he was on the lives of many young men.

23 I think Mr. Burnett would like to address the  
24 Court if that would be appropriate, your Honor.

25 THE COURT: All right. I will be glad to hear

1 from you, yes, sir.

2 MR. BURNETT: Thank you, your Honor. I am Terry  
3 Burnett as stated on the record before and I appreciate  
4 very much the opportunity to speak for a couple of minutes  
5 on Randy's behalf.

6 I also want to introduce to you my son, Knox,  
7 who is here with us today.

8 Knox is an honor student at Clemson. We're very  
9 proud of him. He played on the state runner-up basketball  
10 team at Dutch Fork and he was homecoming king at Dutch  
11 Fork and he's a member of the Clemson MCA and is in fact  
12 now serving as a mentor for several Clemson University  
13 football players.

14 He plans to continue his education after his  
15 undergraduate degree at the seminary and he wants to be a  
16 chaplain as a minister for the football program at the  
17 university.

18 Your Honor, I thank God for Randy Thomas. I  
19 thank God that he brought Randy in Knox's life at a young  
20 age about ten years ago. Randy was Knox's basketball  
21 coach for several years and he's had a tremendously  
22 influence on his life and on the lives of many other young  
23 boys and girls, mostly boys in the Irmo/Dutch Fork areas.

24 I've seen Randy coach more than a hundred  
25 basketball games and practices. I've watched him interact

1 with kids and parents and league officials and referees  
2 and opposing players and coaches. He's a brilliant  
3 basketball coach. He's not just a good basketball coach,  
4 he's a brilliant basketball coach. He's made to coach  
5 basketball. And with the circumstances surrounding this  
6 situation, it's just a tragedy in my mind and in my heart.

7 Randy truly cares about kids. He knows how to  
8 motivate them, he knows how teach them.

9 In all the games that I've seen Randy coach, and  
10 it's been a lot of games, I've never seen him lose his  
11 temper. I've never seen him get a technical foul. I've  
12 never seen him yell at a player.

13 I've never seen him yell at a parent, at another  
14 coach, at a referee, and that's in the midst of a lot of  
15 stressful situations, in championship games and when games  
16 were on the line and tempers were flaring.

17 I've never seen him raise his voice to a  
18 referee, a player, a parent, or another coach.

19 I've never heard him utter a curse word in all  
20 the years that I've known him or an epithet of any kind on  
21 or off the basketball court.

22 On the other hand, I've seen him do a lot of  
23 work and things with kids and for kids. He's given  
24 literally thousands of hours of his life for no pay  
25 whatsoever to help kids learn ball or learn some life



1 lessons. I've seen him take kids with behavior problems  
2 and low self-esteem and give them discipline and  
3 encouragement. I've personally benefited from learning  
4 things from him that helped me be a better youth league  
5 couch.

6 I've never seen Randy exhibit violent behavior.  
7 I've seen him act as a calming influence in the lives of a  
8 number of kids, especially in basketball games.

9 Randy's connection with my family, your Honor,  
10 goes back beyond basketball. In fact, for several months  
11 when my son was playing for him he lived at our house. He  
12 was a perfect gentleman the entire time he was there. He  
13 obeyed our rules. He did chores that we asked him to do.  
14 He held down a job at a local grocery store.

15 Neither my wife, who was here earlier, or I ever  
16 had hesitated for one moment to leave either of our kids,  
17 our son and including our ten-year-old daughter at the  
18 time, alone with Randy. I believe that I know him well  
19 enough to say that if he were to be able to come back, we  
20 would take him into our home in a moment. We have that  
21 much love for him.

22 I know of many, many other families in the  
23 Irmo/Dutch Fork area that feel the same way that I do.  
24 Several of the parents of the kids who Randy has coached  
25 and influenced have been here this week and today to show

1 their support, and I can say without a doubt that Randy's  
2 been an influence for good in many lives. And I've never  
3 spoken with a single parent or one of his players who  
4 couldn't say good things about him.

5 I don't believe Randy is a violent or mean  
6 person. In fact, I believe Randy is a very sensitive and  
7 caring and feeling person.

8 I'll never forget the day -- excuse me, your  
9 Honor. I'll never forget the day of Vic Sims' funeral at  
10 Brooklyn Baptist Church. Vic was an All State basketball  
11 player at Dutch Fork and he led Dutch Fork to the state  
12 championship game against Gaffney. My son Knox was a  
13 junior on that team, and virtually every one of those  
14 Dutch Fork players had been coached by Randy. In fact, I  
15 think it's fair to say that without Randy those kids would  
16 have never made it to that championship game. It's  
17 because every one of them when they were kids, he had a  
18 great influence on their lives. He gave them courage and  
19 the skills and the character to get to that game. In a  
20 very real sense that was Randy's team.

21 When Vic Sims died in May of 2003 with an  
22 enlarged heart, it devastated Randy. I sat with him at  
23 Vic's funeral and we embraced and wept together, and all  
24 the members of the Dutch Fork team, including my son,  
25 walked arm in arm down the front of the church. Your

1 Honor, Randy loved those kids. He loved my kids. He does  
2 love them.

3 It is my opinion and experience that he is not a  
4 mean or vengeful person. In fact, I think he's taught  
5 kids a lot of great lessons.

6 Your Honor, Randy is not perfect. No doubt  
7 about it. But he's good. His heart is good.

8 Your Honor, I don't come here lightly and I  
9 don't want to waste the Court's time, but I do want the  
10 Court to know that Randy has had a tremendously positive  
11 effect on my son's life and on those of the other kids.  
12 He was made as I said to coach basketball.

13 I know your Honor's obligation is to follow the  
14 law. It's my sincere opinion that incarcerating Randy  
15 will not make the streets of South Carolina safer. It  
16 will not do Randy any good. I do believe that he would  
17 not intentionally hurt anyone.

18 So respectfully I ask the Court to take these  
19 few comments into consideration and exercise the greatest  
20 amount of leniency permitted by law in sentencing him.

21 Your Honor, I love Randy, and as I said, I thank  
22 God for Randy being in my son's life.

23 Thank you.

24 THE COURT: All right. Thank you, Mr. Burnett.

25 MS. DURANT: Your Honor, I think his son Knox

1 would like to address the Court.

2 THE COURT: All right. Mr. Knox Burnett, is  
3 that right?

4 MR. BURNETT: Yes, sir. I'm a student at  
5 Clemson, sir. I'm a sophomore.

6 Before this semester I was on -- we decided to  
7 move and I was getting some stuff out of my closet and I  
8 came across a letter that Randy had sent me when I was 15.  
9 It was just all about encouragement to be a leader in  
10 sports and just in life.

11 I'm sorry for crying.

12 Randy's done so much in my life and he's cared  
13 for me so much. He would come by just randomly and just  
14 get me things. Like one time he came by and gave me a  
15 book on leadership by Michael Jordan, and his mom I think  
16 had given it to him and he wanted to give it to me to  
17 explain to me what it was to be a leader. But when I was  
18 young he told me the same things.

19 He said he wanted me to graduate from college,  
20 and I think about the times like, I can't remember the  
21 day, but he gave me a green shirt so I wouldn't get  
22 punched at school just randomly.

23 You know, he told me every time he'd see me to  
24 stay away from alcohol and drugs and sex. You know, don't  
25 settle for this girl, for that girl, wait for your wife.

1 I got to visit him earlier this year in jail. I  
2 had no idea what happened, I'd only heard rumors that --  
3 just people that didn't know what they were talking about,  
4 and I went and talked to him and was surprised just  
5 because he kept telling me again and again -- after he  
6 told me what happened, he was like, don't be bitter, don't  
7 be angry at her or anything, just pray for them. He'd  
8 become a Christian, rededicated his life in jail, and he  
9 was like, just pray for them that they would have the  
10 salvation of Christ, and that really affected me and it  
11 was crucial for my life to see that forgiveness, no matter  
12 what happens today.

13 Before I went to jail I had a chance in my  
14 leadership class to write a paper about my mentor, and the  
15 only thing that came about to me was Randy. I wrote like  
16 three or four pages about how he affected my life and how  
17 important he is in my life. But Randy made the most  
18 impression on me when I was messing up and I will never  
19 forget it. It will always -- no matter what happens  
20 today, he's going to be with me for the rest of his life,  
21 just to tell this story to people about how he's helped  
22 me, you know.

23 I'd just like to thank you for letting me speak  
24 and I appreciate him and I love him and I'll never forget  
25 what he's done for me.

1           Thank you.

2           THE COURT: Thank you.

3           MS. DURANT: Your Honor, if I may, I'd like to  
4 hand up these letters of reference if your Honor would  
5 accept these.

6           THE COURT: All right. I've reviewed the  
7 character references that have been handed up on behalf of  
8 the defendant.

9           Ms. Durant.

10          MS. DURANT: Thank you, your Honor.

11          I would like to point out in reference to the  
12 incidents that happened to the victim during this week, we  
13 are very sorry about those incidents, your Honor. I'm  
14 sure they were very traumatic for her and her family.  
15 However, I would like to point out to the Court that  
16 there's no indication at all that those incidents are  
17 related to Randy Thomas. There's been no evidence Randy's  
18 charges related to that. He has been incarcerated for 15  
19 months and he is not responsible for the actions of anyone  
20 outside, whether it's his family or friends or whoever, if  
21 the suspicions lead that way, but at this point that is an  
22 unknown, your Honor.

23          THE COURT: And that event will not have any  
24 impact on what sentence this Court might impose. Of  
25 course the Court is always concerned of an event occurring

1 like that during the course of a trial, but there is no  
2 evidence whatsoever and it will not have any impact at all  
3 on any sentence that the Court hands up.

4 MS. DURANT: Thank you, your Honor.

5 Your Honor, we'd like also to point out that he  
6 had a year and a half in college.

7 His criminal record is only one charge.

8 He's just a very intelligent young man, your  
9 Honor. He is not a criminal as such. From all the  
10 observations I have made over the four years I have been  
11 in this office, in this job, I think he's exhibited  
12 probably more character and integrity than any of the  
13 clients I've ever seen.

14 I think he does want to address the Court if  
15 your Honor would be willing to consider that.

16 THE COURT: I will be glad to consider whatever  
17 Mr. Thomas would like to tell me.

18 MR. THOMAS: Your Honor, I just want to take  
19 this time to say that for those things that I have done  
20 wrong, I'm truly sorry. Some of the people that I hurt,  
21 the people that I've loved more than anyone else, I pray  
22 that one day they can forgive me.

23 I also appreciate Mr. Burnett, Knox, my best  
24 friend Ryan, especially my family for being there for me  
25 when a lot of people weren't. I love you all.

1 Thank you, your Honor.

2 MS. DURANT: Your Honor, we're just asking for  
3 leniency from the Court. I hope that you will take all of  
4 this into consideration in your sentencing. And we just  
5 ask, your Honor, that he have a life beyond all this. We  
6 just ask for leniency. We feel he does have the potential  
7 to be a positive influence as exhibits by Mr. Burnett and  
8 his son and all those letters, and we'd just ask your  
9 Honor that he be given that opportunity again.

10 That's all, your Honor.

11 THE COURT: Solicitor, anything further?

12 MS. COOPER: No, your Honor.

13 THE COURT: I have frequently made the statement  
14 that sentencing is the most difficult thing that a judge  
15 does, and cases like this certainly don't make it any  
16 easier. And I understand that the kind remarks that  
17 people have said on behalf of the defendant, I have no  
18 doubt but that there are positive factors, that he has  
19 made a positive impact on a number of lives. Of course, I  
20 have to take into consideration also the offenses for  
21 which he has been convicted and the conduct during those  
22 offenses and take into consideration the impact that that  
23 conduct has had on the victim in the case and some way or  
24 another come up with what the Court feels is fair and just  
25 in the case.



RICHLAND COUNTY SHERIFF'S DEPARTMENT  
EXTRADITION APPROVAL REQUEST

DATE: 11/01/04

The below defendant has been approved for entry into NCIC and for extradition back to South Carolina by agents or designees of the Richland County Sheriff's Department:

DEFENDANT Randy Thomas

CHARGE CSC 1<sup>st</sup>, ABHAN, Kidnapping (2 counts)

WARRANT NO H-712683, H-712684, H-712685, H-712686

Authorized Approving Officer:

D.C. Wilson / A. Caldwell  
Major David Wilson

STATE'S  
EXHIBIT

72-2-9-06 of