

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

RECEIVED

MAR 31 2014

S.C. Supreme Court

WILLIE GILMORE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002383

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF RICHLAND

CIRCUIT COURT
2006-GS-40-2809

3
4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 WILLIE ALBERT GILMORE,
7 Defendant.

8
9
10
11 Heard on Monday, June 16, 2008
12 Columbia, South Carolina

13 BEFORE:

14 THE HONORABLE J. MICHELLE CHILDS

15 APPEARANCES:

16 Counsel on Behalf of the State:

17 Margaret Fent, Esq.

18 Richard Cathcart, Esq.

19 Counsel on Behalf of the Defendant:

20 Megan Lee, Esq.

21 Mary LaFave, Esq.

22
23 Cheri L. Young, RPR
24 Circuit Court Reporter
25 P O Box 1154
Aiken, SC 29802-1154

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PRETRIAL MOTIONS

1 ON MONDAY, JUNE 16, 2008 AT 12:01 P.M.:

2 THE COURT: Y'all mentioned just one pretrial
3 issue. Do you have others?

4 MS. LEE: There's just three character issues
5 which have cropped up, just as a result of the witnesses
6 that are on the State's potential witness list.

7 THE COURT: Okay.

8 MS. LEE: Other than that, it's my understanding
9 there's no verbal admissions they'll be seeking to get
10 into. There's no Denno, no Biggers. That should be it,
11 Your Honor.

12 THE COURT: Okay. Well, maybe let's deal with
13 the pretrial. We have the jurors back at 2:30. The
14 reason I say that is I have a two o'clock motion to
15 reconsider.

16 THE CLERK: Okay.

17 MS. LEE: Judge, I'm sorry. You said you wanted
18 to do pretrial now?

19 THE COURT: Let's go ahead and discuss those
20 issues.

21 MS. LEE: Judge, this relates to the first
22 character issue we would have pretrial.

23 THE COURT: If y'all would introduce yourself on
24 the record. We have a different court reporter.

25 MS. LEE: Your Honor, should we wait for

PRETRIAL MOTIONS

1 Mr. Gilmore?

2 THE COURT: I'm sorry.

3 MS. LEE: No problems.

4 THE COURT: Yes. I apologize.

5 MS. FENT: Technicalities.

6 THE COURT: Sometimes I forget to look up.

7 (Pause. Defendant enters courtroom.)

8 THE COURT: If the State could call the case and
9 indicate who's representing whom.

10 MS. FENT: The State calls 2006-GS-40-2089 (sic),
11 the State versus Willie Gilmore. Margaret Fent
12 representing the State along with Richard Cathcart.

13 MS. LEE: Representing Willie Gilmore, my name is
14 Megan Lee. This is my co-counsel, Mary LaFave.

15 THE COURT: All right. we'll proceed with any
16 pretrial motions at this time.

17 MS. LEE: Thank you, Your Honor. Your Honor,
18 just as a preliminary matter, for the record we would
19 renew Rule Five. I don't believe there's any outstanding
20 discovery at this time, but we would just put that on the
21 record.

22 THE COURT: Hold on just one moment. The record,
23 it's 2809?

24 MS. LEE: Yes, ma'am.

25 THE COURT: Is there any outstanding Rule Five?

PRETRIAL MOTIONS

1 MS. FENT: No, Your Honor.

2 THE COURT: Okay.

3 MS. LEE: Essentially, Your Honor, we would just
4 ask the State to provide the criminal records of any and
5 all witnesses who are going to testify who are not working
6 from a law enforcement background. We have received the
7 record of Bruce Gene Hunter. He does have quite a few
8 drug convictions, but none of them appear to be within the
9 ten-year period.

10 I have not received a new printout for Ms. Rosa
11 McCullough or her son, Brian.

12 MS. FENT: I showed Ms. Lee last week, we sat
13 down and showed her Ms. McCullough's printout. She has no
14 priors. And I'm waiting on Brian McCullough's printout.

15 THE COURT: Would you agree with her with respect
16 to -- what was the name of the witness you indicated,
17 Ms. Lee?

18 MS. LEE: Bruce Gene Hunter.

19 THE COURT: -- Bruce Gene Hunter, that all of the
20 prior record is over ten years old?

21 MS. FENT: Yes.

22 THE COURT: Do you intend to do a probative value
23 versus prejudicial analysis on that or just not use it?

24 MS. FENT: It's our witness. We're not using it.

25 THE COURT: I apologize. I'm sorry.

PRETRIAL MOTIONS

1 MS. LEE: Judge, his last conviction appears to
2 be 1991, so we would not be seeking to --

3 THE COURT: Okay.

4 MS. LEE: -- do that analysis.

5 THE COURT: Okay.

6 MS. LEE: I would ask that -- let's see. An
7 Alberta Goins.

8 MS. FENT: As soon as I get her information I'll
9 do a printout for her.

10 MS. LEE: Okay. As to our motions in limine,
11 Your Honor, the first motion in limine was going to be a
12 response to the State calling Ronald Manly who would have
13 testified about a different Willie Gilmore, which is why I
14 provided that information to you. I'm now told he will
15 not be called.

16 THE COURT: Okay.

17 MS. LEE: So we do not have to discuss that.

18 But the second motion in limine regarding
19 improper character evidence is what I believe Mr. Hunter's
20 testimony will be. It's my understanding that he plans on
21 testifying that Mr. Gilmore would sometimes carry a
22 knife.

23 Judge, we would object to this under Rule 404
24 that the defense has not already put the Defendant's
25 character at issue. While the prosecution may certainly

PRETRIAL MOTIONS

1 rebut any character evidence we put up, they may not do so
2 in our case in chief, and we do not intend on putting up
3 any character evidence of our client.

4 THE COURT: Okay.

5 MS. FENT: Your Honor, the witness specifically
6 describes -- the victim specifically describes a yellow-
7 handled knife. The witness can specifically describe that
8 he knew Mr. Gilmore would carry around a yellow-handled
9 knife. He saw it all the time. The knife wasn't
10 recovered.

11 It's not a crime to carry the knife. It's merely
12 that he owns a knife that matches the description and --
13 that the victim gives.

14 If this had been a case where the Defendant was
15 driving around in a blue car and everybody knew him to
16 drive a blue car, if the crime happened in a blue car but
17 we didn't recover the blue car, we could put a witness up
18 to say I know the Defendant drives a blue car. It's not a
19 crime. It specifically goes to the weapon that he has
20 been seen with this weapon that was used in the case.

21 THE COURT: Okay. That's a little different than
22 what you were stating earlier.

23 MS. LEE: And that was my understanding what the
24 testimony was going to be. It was going to be, I always
25 knew Willie to carry a wife.

PRETRIAL MOTIONS

1 THE COURT: Not just generic.

2 MS. LEE: Yes, ma'am.

3 THE COURT: That is very different than from the
4 specific object we're referring to in this crime.

5 MS. FENT: Right.

6 MS. LEE: And with that proffer, as long as it's
7 not a habit and routine practice kind of thing --

8 MS. FENT: Well, he does say that he saw the
9 Defendant with them a lot, you know, but I know him to
10 carry this knife. I know that he has a yellow-handled
11 knife.

12 THE COURT: Again, I'm asking that it be narrowed
13 specifically to that description, not knives.

14 MS. FENT: Correct. Correct.

15 THE COURT: Okay.

16 MS. LEE: Judge, I would say that it's one thing
17 for him to say, I have seen Mr. Gilmore with a yellow-
18 colored knife. It is quite another to say, I know him to
19 always carry that knife.

20 That's what we would object to. That is
21 character evidence. It's not evidence of someone having
22 the opportunity to have that weapon. It's propensity
23 evidence that the jury will be led to believe, oh, well,
24 if he usually always had it, he probably had it that
25 night. That's character evidence.

PRETRIAL MOTIONS

1 And as long as he is limited to the statement, I
2 have seen him with that yellow knife, then we have no
3 objection to that.

4 THE COURT: Any reason the State needs to go
5 beyond that characterization?

6 MS. FENT: Well, the truth of his testimony is
7 that he saw him with it a lot, that he knows him to carry
8 a yellow-handled knife, saw him with it frequently. Now
9 whether or not he says -- and I can ask him, did he see
10 him with it every single time he saw Willie Gilmore, you
11 know, is one thing, because habit, routine practice is not
12 the same as character.

13 THE COURT: Right.

14 MS. FENT: You know, and this is not a crime. It
15 is not a crime to carry a yellow-handled knife. So it's
16 not bad character. He could carry it every single day of
17 his life and that doesn't make it bad character. It
18 doesn't makes it 404-B., because it's not a crime to carry
19 a knife.

20 MS. LEE: But, Your Honor --

21 MS. FENT: Routine practice is admissible, is
22 admissible evidence.

23 MS. LEE: Your Honor, having a routine practice
24 still must fall under the other constraints of character
25 as set out by the rules of evidence and that would include

PRETRIAL MOTIONS

1 putting the Defendants character at issue.

2 More than that, American Juris Prudence says that
3 if the State is attempting to prove habit and routine
4 practice, it must be sufficiently numerous and regular,
5 semiautomatic and variably regular, more than a mere
6 tendency, Your Honor. And that is a complete difference.

7 I understand that maybe Mr. Hunter may feel that
8 he has seen him with that knife a lot. But there's
9 nothing that would keep the State from simply asking him,
10 have you seen him with a yellow-handled knife before.

11 If she just asks that question, that would easily
12 fall within the constraints of 404 and Rule 608, Your
13 Honor.

14 THE COURT: Ms. Fent, when you've asked him
15 about, he says he's seen it a lot, why do you need to go
16 beyond that he's seen him on this occasion? I need to
17 know more of the story, I guess.

18 MS. FENT: Well, he doesn't see him specifically
19 on this occasion.

20 THE COURT: Not specifically this occasion. I
21 mean, on an occasion. He's seen him with a knife before.
22 How often has he indicated to you that he has --

23 MS. FENT: I guess it would go to the credibility
24 of the jury of does he really remember -- if he's only
25 seen it once, how does he know, you know, that it was

PRETRIAL MOTIONS

1 yellow handled. How does he, you know -- that he's seen
2 it more than once, he can say, yeah, I have seen Willie
3 Gilmore with a yellow-handled knife. I've seen it enough
4 that I would be able to identify, you know, and
5 immediately say, it's a yellow-handled knife.

6 THE COURT: And how so has he seen this?

7 MS. FENT: He sees Willie Gilmore all the time.
8 He's said he's seen him out with it, like carrying it on
9 his person and also at the home. I mean, he just said, I
10 would see it all the time.

11 THE COURT: Okay.

12 MS. FENT: Many times he saw this yellow-handled
13 knife. So he can clearly say, I know him to carry a
14 yellow-handled knife.

15 MS. LEE: And, Your Honor, I would just say if
16 his credibility is challenged on cross-examination and he
17 is asked, how can you be so sure you've only seen it
18 once. Certainly that would be appropriate rebuttal
19 evidence but in this case the reason why I think Ms. Fent
20 talks about it being credible to the jury is what she's
21 doing is establishing a pattern of behavior that the knife
22 was always on him so it must have been on him that night.

23 That is the inevitable conclusion that a jury
24 would reach and, Judge, that is character evidence.
25 That's not evidence of having access to something which is

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1 what they do by just asking the witness, have you ever
2 seen him with a yellow-handled knife.

3 MS. FENT: Ms. Lee could not ask a single
4 question of the witness. She could say, I have no
5 questions of this witness and that jury can still go back
6 in the jury room and say, you know, if he only saw it once
7 how does he know that Willie carries a yellow-handled
8 knife.

9 Unless she wants to stand up and say, we
10 stipulate to his credibility, then they can go -- they go
11 back and they say, did this guy really see, you know, and
12 know Willie to handle --

13 THE COURT: You're trying to get it around any
14 other crimes, wrongs or acts by showing that the
15 identification --

16 MS. FENT: I don't think it is other crime, wrong
17 or act. It's not a crime to --

18 THE COURT: Not a crime but he's saying wrongs or
19 acts.

20 MS. FENT: It's not a wrong.

21 THE COURT: Okay.

22 MS. LEE: It is an act, Your Honor. It is an
23 act. I'm sorry?

24 MR. CATHCART: I hear that every day.

25 MS. LEE: Okay. It is an act, Your Honor. It is

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1 an act of carrying a knife. And what rule 404-B. is
2 concerned with is this idea of, you did it once or you did
3 it many times, you probably did it this time. The rule
4 specifically mentions propensity because that's exactly
5 what the character rules are about.

6 THE COURT: But she's also got a point about
7 being able to have that witness be credible enough to have
8 identified, such that he has not seen it on just one
9 occasion but he's seen it on more than one.

10 And that's really where she's going with it, to
11 show that he had the ability, especially to say he had a
12 yellow -- what did you call it?

13 MS. FENT: Yellow-handled knife.

14 THE COURT: Yellow-handled knife, to be able to
15 describe it with such particularity.

16 MS. LEE: Yes, Your Honor. And I would not seek
17 to restrict Ms. Fent to her question being, had you only
18 once seen this knife. If she's just asking the question,
19 have you ever seen him with a yellow-handled knife, we're
20 not limiting him to amount of time. But when we get into
21 specifics, when we get into a pattern of behavior, that is
22 putting the Defendant's character at issue before the
23 defense has done so.

24 And the State can only do rebuttal character
25 evidence. That's what the rules of evidence tell us.

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1 They're not rebutting character. They're bringing it up
2 first. And our rules say that they're not allowed to do
3 that. They're not allowed to put a Defendant's character
4 at issue before we do.

5 MS. FENT: And it's not character evidence.
6 404-B. specifically -- it doesn't eliminate all acts.
7 It's bad acts. So in doing the comparison to, I've always
8 seen the Defendant drive a blue car many, many times, I've
9 always seen him in this blue car. It's an act. It's not
10 eliminated by 404-B. It has to be a bad act. And
11 carrying a knife is not. You can legally, lawfully carry
12 a knife.

13 MS. LEE: Judge, I know as lawyers we talk about
14 it as bad acts but 404-B. says other crimes, wrongs or
15 acts. Acts.

16 THE COURT: Uh-huh.

17 MS. LEE: There's no bad there, Your Honor. And
18 this is an act they are bringing out to show his
19 propensity for having a knife so that the jury will reach
20 the inevitable conclusion that he had a knife every time
21 Mr. Hunter saw him, then he probably had one that night.
22 And that is exactly what 404-B. and 404 are about
23 prohibiting.

24 THE COURT: Well, you're also challenging that
25 with his ability to, his own credibility as he testifies

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1 to know specifically a description of that knife. And
2 that's really where we're going.

3 MS. LEE: Yes, Your Honor.

4 THE COURT: Let me think about that on and let's
5 move on to the next.

6 MS. LEE: Yes, Your Honor.

7 The next is a statement that we discussed briefly
8 in chambers with you which at that time I told you I
9 believed would be the only pretrial issue. And that again
10 is his, where I think we just need to clarify. I think
11 that the statement that was talked about in chambers was,
12 I killed somebody before and I'll do it again.

13 Now in Ms. McCullough's statement, it's not
14 phrased that way at all. It's phrased if I was the way I
15 used to be, and then I don't know what the qualifier is
16 after that, but there's nothing about, I killed before.
17 And, obviously, we would have a very big character
18 objection to the statement, I have killed before.

19 I think, again, we're getting into 404-B.
20 territory. But if the statement remains consistent with
21 what Ms. McCullough told Columbia Police and the statement
22 is just, if I was the way I was before, then that's a
23 different matter.

24 So I don't know if we need a proffer or what,
25 Your Honor, to clear this issue up.

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1 MS. FENT: I talked to Ms. McCullough and actually
2 both things are said. He says to her, I've killed before,
3 I'll kill again. He says to her, if I was like I used to
4 be you would be a dead bitch.

5 And all of these things are said to her while
6 he's holding this knife and threatening her. Just because
7 it's not in her written statement that -- I've killed
8 before, I'll kill again is not in her written statement,
9 doesn't mean it wasn't said. And to eliminate it because
10 it's not in a written statement is to say that she's now
11 today not telling the truth about something that just
12 didn't get in the written statement.

13 She says that other statement was also told to
14 her that, I killed before, I'll kill again, and if I was
15 like I used to be you would be a dead bitch.

16 THE COURT: Okay. And you're indicating that it
17 gets around hearsay how?

18 MS. FENT: Well, it is the threat itself. I
19 mean, it is the substance of the CSC and holding this
20 knife and her believing, you know, whether or not she
21 knows him to actually have killed before, you know, you
22 can be a complete stranger and get in my taxicab and
23 say, you know, I've killed before, I'll kill you. I could
24 know nothing about you, but you're trying to make me
25 believe that you will do it, you will kill me. I had

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1 better comply with your demands or I am going to die.

2 MR. CATHCART: (Inaudible.)

3 MS. FENT: Well, it's an admission of the
4 Defendant. So it's a statement of the Defendant.

5 THE COURT: Statement against the Defendant's
6 interest.

7 MS. LEE: Your Honor, exactly. Our objection is
8 not the hearsay here. Our objection is to character.
9 This is again attempting to use propensity evidence. As
10 the State is well aware, the basis of this being a life
11 without parole trial is a 1969 conviction for
12 manslaughter.

13 THE COURT: Okay. Let's just distinguish when
14 you say propensity. They're not bringing in something
15 that happened so to speak sometime ago. They're talking
16 about the impending events that are going on and a knife
17 held and then also a statement that goes along with it to
18 set the scene, so to speak.

19 MS. LEE: Your Honor, my argument would be that
20 it is referencing -- the alleged statement references a
21 past event and that past event is being used by the
22 prosecution to inflame the jury.

23 THE COURT: Okay. But let me ask you. The
24 prosecution doesn't intend -- let me ask you that. You're
25 not intending to follow up on what that past event was --

PRETRIAL MOTIONS

1 MS. FENT: Correct.

2 THE COURT: -- in terms of bringing a voluntary
3 manslaughter charge or anything else he's done?

4 MS. FENT: Correct.

5 THE COURT: You're just letting it stand alone in
6 terms of what happened on that day?

7 MS. FENT: Correct. And I think in reality is if
8 Ms. McCullough knows that he has killed before she
9 certainly, it makes her want to comply even more if she
10 does know he has this prior, but we're not seeking to
11 admit the prior. It's the threat. It's the threat that
12 makes her comply to the sexual assault.

13 THE COURT: Okay. I don't see that as a
14 character issue without -- if they're not going to proceed
15 on to what he potentially meant by that by bringing in
16 what the prior crime is, then that's just going to the
17 event that's occurring right then and there. She's
18 describing what had happened to her.

19 MS. LEE: Judge, I would say that is a direct
20 reference to his criminal record which is more prejudicial
21 than probative.

22 I would also like to clarify, since we brought
23 this up, whether or not Ms. McCullough intends on
24 testifying that she was aware of his prior conviction. We
25 would have a strong objection to that, Your Honor.

PRETRIAL MOTIONS

1 THE COURT: Well, then, that's a different
2 matter.

3 MS. FENT: Correct. And she would be, you know,
4 admonished and told she cannot mention that prior as any
5 other witness is aware, that they cannot mention that.

6 THE COURT: Are you aware that she even knows?

7 MS. FENT: I'll clear it with her. She may, but,
8 I mean, we're not going to be admitting -- we're going to
9 be asking her and telling her it's not admissible.

10 THE COURT: Okay. I would say that that comes in
11 as a statement against his interest. And that it is just
12 setting up the event as to what has occurred there, but
13 I'm going to strictly state that the State must rely on
14 what they informed the Court, cannot bring in any evidence
15 to back up this statement through any of the witnesses,
16 and through perhaps his prior record and then also no
17 references to what he meant by that because somebody can
18 just tell you that I killed before and I'll kill again and
19 it might not even have any truth that they have actually
20 killed before.

21 So it's just going to the limited events of that
22 day, but not necessarily offered for the truth that he has
23 killed but it's the fact that it's her fear and her
24 reaction.

25 MS. LEE: That concludes our pretrial matters,

PRETRIAL MOTIONS

1 Your Honor.

2 THE COURT: Okay. And then I'll look at the
3 yellow knife.

4 MS. LEE: Yes, ma'am.

5 THE COURT: Anything from the State?

6 MR. CATHCART: Anything from us, Your Honor?

7 THE COURT: Yes. In terms of pretrial motions.

8 MR. CATHCART: No, Your Honor. Wait. Wait. I'm
9 sorry, Your Honor.

10 Just that he has been served with notice of
11 intent to seek life without parole. Notice was given to
12 him ten days prior to this trial.

13 THE COURT: Is that correct?

14 MS. LEE: Yes, Your Honor. That's correct.

15 THE COURT: And you've adequately explained that
16 information to your client?

17 MS. LEE: I have, Your Honor.

18 THE COURT: All right. Anything further then?

19 MR. CATHCART: Yes, Your Honor. As far as being
20 filed in the clerk's office just for the record, if I
21 could make a Court's Exhibit, the notice to seek life
22 without parole.

23 THE COURT: Okay.

24 MR. CATHCART: Your Honor, life without parole
25 notice was listed as Court's Exhibit Number One.

1 THE COURT: Okay.

2 (Thereupon, Court's Exhibit No. 1, Notice to seek
3 life without parole, was marked and received into
4 evidence.)

5 THE COURT: Anything else at this time? Your
6 trial, I've got a two o'clock motion for reconsideration
7 sentencing so we'll expect to pull your jury about 2:30.
8 Thank you all.

9 MR. CATHCART: Thank you, Your Honor.

10 MS. LEE: Thank you, Your Honor.

11 MS. LaFAVE: Thank you.

12 (12:29 p.m. Thereupon the luncheon recess was
13 taken and then other matters were heard by the Court. At
14 2:37 p.m., the trial resumed as follows:)

15 THE COURT: Are the parties ready to proceed with
16 respect to the matter of State versus Willie Gilmore?

17 MS. FENT: State's ready.

18 THE COURT: Okay.

19 MS. LaFAVE: Your Honor, I just have one matter
20 to put on the record.

21 MS. LEE: I understand that Mr. Gilmore is using
22 the restroom.

23 THE COURT: I'm sorry. thank you. I apologize.
24 Please remind me of that.

25 MS. LEE: He's in transit. Excuse me.

1 THE COURT: Okay. We'll wait until he gets here
2 then.

3 (Pause.)

4 (Defendant enters courtroom at 2:41 p.m.)

5 MS. LEE: Thank you, Your Honor.

6 MS. LaFAVE: Your Honor, we had discussed in
7 pretrial the renewal of our Rule Five motion. The State
8 at that time said that there was no other outstanding Rule
9 Five issues.

10 And so that the record is clear and complete,
11 Your Honor, I received the SLED laboratory forensic
12 services request after we had recessed following our
13 pretrial motions.

14 And I just wanted to make the Court and the
15 record aware of that particular situation.

16 THE COURT: Okay. The State can explain what
17 happened.

18 MS. FENT: Yeah. I'll state, number one, in
19 February 8th of 2007, I gave defense counsel the SLED
20 chain of custody which has this information on that chain
21 of custody, this very information that I handed them.

22 Also, last week, I gave them the Columbia Police
23 Department chain of custody that has Walter Rose's
24 signature that just documents this same exact information,
25 when the sexual assault kit was checked out of CPD, and

1 that it was checked into SLED.

2 So the same exact information. So there's no
3 additional, you know, discovery or information handed over
4 in this document.

5 THE COURT: The document itself was not
6 produced. In other words, was it produced more in a
7 summary fashion by giving the chain of custody as opposed
8 to the document itself? What's different, I guess is what
9 I'm asking.

10 MS. FENT: The document itself is a SLED form
11 that they put the same information that's on the SLED
12 chain of custody, the evidence numbers, the date that it
13 was submitted, it has that it relates to the Defendant's
14 case. I mean, it's the same information that's on the
15 SLED chain of custody.

16 THE COURT: What made you realize that you didn't
17 provide that?

18 MS. FENT: I didn't provide it. Right after we
19 talked, Investigator Bullock said it had been left on his
20 Defendant by Betty Rose, by the investigator that filled
21 out this form. He saw it on his desk this morning and
22 then he brought it with him to court.

23 Then as soon as he turned and handed it to me, he
24 gave me two copies and I handed them one. So it wasn't
25 that, you know, I had it here in my trial notebook and

1 wasn't giving it to them.

2 But the same information that's on this form has
3 already been provided to them.

4 THE COURT: Is it fair to say that you didn't
5 know it existed, that document existed, that particular
6 document? Is that what you're saying?

7 MS. FENT: Potentially, it did exist. Yeah,
8 because they filled this out.

9 THE COURT: I'm asking you, did you know?

10 MS. FENT: No.

11 THE COURT: Okay. All right. Ms. LaFave, is
12 there any motion with respect to it?

13 MS. LaFAVE: No, Your Honor. I just wanted to
14 make sure that the record would reflect what happened
15 after we recessed. Thank you.

16 THE COURT: And then having had a chance to
17 review the information, do you believe that it existed in
18 terms of the substantive information in some form or
19 fashion in the other documents as described by the State?

20 MS. LaFAVE: Yes, Your Honor. This report was
21 clocked in on June 24th, 2005 at the South Carolina Law
22 Enforcement Division. It was a report that they had done
23 for the chain of custody.

24 I'm not making a Rule Five violation motion to
25 suppress this particular information.

1 THE COURT: Okay.

2 MS. LaFAVE: I just wanted the Court and the
3 record to reflect it. That's all.

4 THE COURT: But would you in any way be
5 prejudiced to proceed not having that document?

6 MS. LaFAVE: No, Your Honor.

7 THE COURT: Thank you very much. All right.
8 Anything further at this time?

9 MS. LEE: I believe just that the issue as to --

10 THE COURT: Okay. This is the issue with respect
11 to the yellow-handled knife, that apparently one of the
12 State's witnesses is going to testify that they are aware
13 that Mr. Gilmore has had this knife in his possession
14 because they saw it, and perhaps on more than one
15 occasion.

16 And then I understand the State's argument is
17 saying that this essentially goes to character evidence,
18 and then is not fair to offer it because it will be a
19 pertinent trait of the Defendant's character and/or it
20 could be a 405-B. in terms of other crimes, wrongs, or
21 acts still indicating that Mr. Gilmore had such a
22 character as to show that his conduct was in conformity
23 with it.

24 MS. LEE: 404-B. Yes, Your Honor.

25 THE COURT: Okay. And then when you say conduct

1 in conformity with, to me there's a distinction between in
2 conformity with committing the crime or just in conformity
3 with having had this particular knife on that occasion.

4 MS. LEE: Well, Your Honor, I don't think that
5 the rules specifically state that it has to be the crime
6 itself that you're proving action and conformity
7 therewith.

8 THE COURT: Okay. that's what I'm asking you.
9 What's the action that you're referring to?

10 MS. LEE: Judge, our argument is it's character
11 evidence insomuch as you had this knife several times in
12 the past, you probably had it that night. In that way it
13 is a propensity argument, Your Honor, and character
14 evidence.

15 THE COURT: Okay. Let me ask you this: Is the
16 victim going to testify about this particular knife in
17 terms of description?

18 MS. LEE: She doesn't mention the knife at all as
19 far as seeing it before, but she does mention a yellow-
20 handled knife.

21 THE COURT: On the day?

22 MS. LEE: On the day.

23 THE COURT: Yeah. I'm not worried about before,
24 just the night of the crime she's mentioned --

25 MS. LEE: Yes, ma'am.

1 THE COURT: And so the State wants to put up that
2 witness because this knife was never tendered into
3 evidence?

4 MS. LEE: No, ma'am.

5 THE COURT: Okay. And just to show that this
6 person has had it. All right.

7 After having looked at 404-B. -- first of all,
8 does the State want to respond any further?

9 MS. FENT: No, Your Honor.

10 THE COURT: Looking at evidence of other crimes,
11 wrongs or acts, admissible to prove the character of a
12 person in order to show action and conformity with, it may
13 however be admissible to show motive, identity, existence
14 of a common scheme or plan, the absence of mistake or
15 accident, or intent.

16 And having looked at this, I believe that it is
17 fair for the witness to identify the knife and then as the
18 State has indicated to show credibility on the witness how
19 can you identify the witness giving some testimony about
20 how, how many times he's had it, is not the same as
21 showing that this is a wrongful act or crime of something
22 that shows he's acting in conformity with because I don't
23 think that that language goes to the situation we're
24 talking about because as the State has indicated, it's not
25 illegal to have a knife on you. It's not illegal to have

1 this in your possession.

2 You're just having a witness testify, I'm aware
3 that this exists and it's connected up to the Defendant.
4 So I don't think that this is, in my opinion, what this
5 rule is intended for.

6 So respectfully overruled on that. Anything
7 further?

8 MS. LEE: Judge, could I just make my position
9 clear?

10 THE COURT: Absolutely.

11 MS. LEE: Briefly, for record, it's our
12 contention that it would also put the Defendant's
13 character at issue before it's been challenged under
14 404-A. and not -- the language of 404-B. does not specify
15 a wrongful act but rather just act, wrong or crime and the
16 or is the modifier there.

17 And our position would be that it would be
18 propensity evidence or evidence of habit or routine
19 practice for which the State will not be able to lay a
20 proper foundation.

21 That would just be our position, Your Honor.

22 THE COURT: Okay. And when you're talking about
23 404-A., and essentially character of the accused, it still
24 talks about evidence of the person's character or trait of
25 character that's essential to proving this particular

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1 offense.

2 And so, for example, in a murder case you're
3 trying to show the person's never been violent. That's a
4 character trait of murder. But just having a knife is not
5 an illegal activity. I don't think that that goes to his
6 character or trait for doing anything. He just had a
7 knife. It doesn't mean anything.

8 MS. LEE: Yes, Your Honor.

9 THE COURT: All right. Anything further? Are
10 you ready to proceed with jury selection?

11 MS. FENT: We are, Your Honor.

12 THE COURT: All right. Okay. Jurors, please.

13 (Jury enters courtroom at 2:52 p.m.)

14 THE BAILIFF: Jury panel. All present, Your
15 Honor.

16 THE COURT: Thank you. Good afternoon, ladies
17 and gentlemen. My name is Michelle Childs. I'm a Circuit
18 Court Judge here in Richland County, and I welcome you all
19 to jury service.

20 You all have been, actually been qualified to
21 serve as jurors from your qualification this morning. And
22 we are here to begin the trial of the State versus Willie
23 Gilmore. We will be selecting you as jurors for this
24 particular case and so I'll be asking you all a series of
25 questions relating to this particular case and your

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1 ability to serve on this particular case.

2 At this time, I would like the attorneys to stand
3 with respect to Mr. Gilmore first and if you would
4 introduce yourselves.

5 MS. LEE: Good afternoon. My name is Megan Lee.
6 I'm an attorney here in Columbia. I represent Mr. Gilmore
7 today. Along with me is my co-counsel, Mary LaFave.
8 She's also an attorney here in Columbia.

9 THE COURT: It's the State who will be
10 prosecuting the case. If you'll introduce yourself.

11 MS. FENT: Good afternoon. I'm Margaret Fent.
12 I'm an assistant solicitor here from the Solicitor's
13 Office, Richland County. This is my partner, Richard
14 Cathcart, also an assistant solicitor.

15 THE COURT: Okay. And Mr. Gilmore has been
16 charged with the offense of criminal sexual conduct first
17 degree which is on the indictment and this is merely an
18 indictment, the manner in which the case is brought to
19 trial.

20 He has decided to plead not guilty and is
21 exercising his constitutional right to a jury trial. And
22 that is why we are here, to select a jury of his peers who
23 can actually pass judgment and deliver a verdict in this
24 case based on all the evidence and testimony and all that
25 you will hear in this case.

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1 So at this time I am going to ask the clerk to
2 swear you all in with respect to the questioning that I
3 will ask you for your qualifications for this panel.

4 (Jury sworn).

5 THE COURT: Ladies and gentlemen of the jury,
6 just as you did earlier today, I will ask you a series of
7 questions. And to the extent that you have a response to
8 that question, I'm going to ask you to stand up right at
9 your seat and then as I call on you, then you will need to
10 state your juror name and your number so that the record
11 is very clear with the court reporter who's actually
12 responding to this particular matter.

13 I do apologize in advance that some of these
14 questions may be perceived to be embarrassing. And that
15 is not intended to embarrass you, but it's just that there
16 are certain questions that I would have to ask you by
17 statute with respect to any of these issues.

18 If there's anything that you do not want to say
19 in front of the entire group, please just raise your hand,
20 direct yourself to a bailiff and you can come down and
21 speak with me by the court reporter and the attorneys will
22 be invited to at least be in earshot of your answers so
23 that they can decide whether or not you would be a good
24 juror for this particular case.

25 All right. Now, let's begin with the attorneys

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1 themselves. Is any member of the jury panel related by
2 blood, marriage, or have a close social or personal
3 relationship with Ms. Megan Lee, Ms. Mary LaFave, and have
4 you ever been represented or a family member represented
5 by the Richland County Public Defender's Office which is
6 where they work? If so, please stand.

7 (No response.)

8 And I would ask that question with respect to
9 their client, Mr. Willie Gilmore. Does any member of the
10 jury panel know Mr. Gilmore by family relationship, or
11 marriage or blood relationship or have a close social or
12 personal relationship with Mr. Gilmore? Mr. Gilmore, if
13 you'd please stand again and face the jurors.

14 THE DEFENDANT: (Complying).

15 (No response.)

16 THE COURT: Thank you. You can sit down.

17 And then with respect to the Solicitor's Office,
18 does any member have any close personal or social
19 relationship, related by blood or marriage or otherwise
20 know Mr. Richard Cathcart or Ms.. Margaret Fent or have
21 yourself or a family member been represented by the
22 solicitor's office in terms of you either being a victim
23 or your family member accused of a crime and having to go
24 through a proceeding with the Richland County Solicitor's
25 Office insofar as adjudicating that claim? If so, please

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1 stand.

2 (No response.)

3 We will have several witnesses in this case. So
4 please listen closely to these persons' names. So also
5 let me know if you have a close social or personal
6 relation, related by blood or marriage, or have any
7 personal contact with the following: Rosa L. McCullough.
8 Ms. McCullough is standing in the courtroom.

9 Brian McCullough. Bruce Gene Hunter. Ronald
10 Manly. Alberta Goins. And the rest of them may not be in
11 the courtroom so you don't have to look all around. Betty
12 Parris, Registered Nurse. Ken Brown, 9-1-1 Communications
13 Center. Debra L. Brooker, Columbia Police Department.
14 Glenn J. Bullock, Columbia Police Department. Pete
15 Currie, Columbia Police Department. Walter Rose, Columbia
16 Police Department. JoAnn Lewis, Columbia Police
17 Department. Jimmy Reed, Columbia Police Department.
18 Rafael Douglas, Columbia Police Department. Reginald
19 Stephens, Columbia Police Department. Sergeant Marilyn
20 Dowling, Columbia Police Department. Donna Martin,
21 Columbia Police Department. Carol Brooks, formerly with
22 the South Carolina Law Enforcement Division or otherwise
23 known as SLED. Sheree Brown, SLED. Stephanie Stutts,
24 SLED. Kenneth Bogan, SLED. Barry Butler, SLED. Marilyn
25 Fitzpatrick, SLED. Wendy C. Bell, SLED.

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1 MR. CATHCART: Your Honor, if I may.

2 THE COURT: Yes.

3 MR. CATHCART: It's Betty Butler.

4 THE COURT: Okay. Thank you. Betty Butler,
5 SLED.

6 And is that all of the witnesses that we
7 understand on behalf of either party?

8 MS. FENT: Yes, Your Honor.

9 MS. LEE: (Nods head affirmatively.)

10 THE COURT: Okay. Is any member of the jury
11 panel related by blood or marriage to or a friend or
12 acquaintance of a member of any law enforcement agency?

13 Yes, ma'am. Please stand. State your juror name
14 and number.

15 THE JUROR: My name is Cameala Oswald. I'm juror
16 number 167. I have a few cousins who are in law
17 enforcement and the Highway Patrol and the Richland County
18 Sheriff's Department.

19 THE COURT: And state your last name.

20 THE JUROR: Oswald.

21 THE COURT: Oswald. Okay. And knowing that we
22 will have several persons testifying on behalf of the
23 State with respect to law enforcement, would that affect
24 your ability to proceed as a fair and impartial juror in
25 this case?

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1 THE JUROR: Not to my knowledge, no.

2 THE COURT: Okay. Thank you. Yes, ma'am?

3 THE BAILIFF: Everybody stand. Everybody just
4 stand.

5 THE COURT: Anyone who's going respond to this
6 question. Okay. Thank you, ma'am, on the first row.

7 THE JUROR: Karen Cross, juror number 46. My dad
8 who is now deceased was a deputy warden at a correctional
9 facility.

10 THE COURT: Okay. And would that affect your
11 ability to be fair and impartial in this case?

12 THE JUROR: No.

13 THE COURT: Okay. Thank you. Yes, sir?

14 THE JUROR: Willis Gonzales, juror 86. My father
15 is an investigator for Richland County Sheriff's
16 Department.

17 THE COURT: And how long has he served in that
18 capacity?

19 THE JUROR: Six years, five, six years.

20 THE COURT: And would that affect your ability to
21 proceed in this case as a fair and impartial juror?

22 THE JUROR: No, ma'am.

23 THE COURT: Please state your juror name and
24 number again.

25 THE JUROR: Willis Gonzales, juror number 86.

SELECTION OF THE JURY

1 THE COURT: Thank you. Yes, sir?

2 THE JUROR: I have a brother-in-law who is a
3 member of Pardon and Parole in the State of Georgia.

4 THE COURT: Your juror number and name?

5 THE JUROR: John McGee, juror 149.

6 THE COURT: And what's your last name?

7 THE JUROR: McGee.

8 THE COURT: Would that affect your ability to
9 proceed as a fair and impartial juror in this case?

10 THE JUROR: No.

11 THE COURT: Thank you. Yes, ma'am?

12 THE JUROR: Rachel Tustin, juror number 215. My
13 husband's best friend is a senior prosecutor in Newark,
14 New Jersey. He prosecutes sexual offenses. He's done so
15 for nine years.

16 THE COURT: Would that affect your ability to be
17 a fair and impartial juror in this case?

18 THE JUROR: No, ma'am.

19 THE COURT: Thank you for the information. Yes,
20 sir?

21 THE JUROR: My name is Fred Gambrell, juror 75.
22 I have a frat brother who's a campus officer at a college.

23 THE COURT: Would that affect your ability to be
24 fair and impartial in this case?

25 THE JUROR: Oh, not at all. I just wanted to say

SELECTION OF THE JURY

1 that.

2 THE COURT: Thank you. All right.

3 Is any member of the jury panel related by blood
4 or marriage to, or a friend or acquaintance of anyone
5 employed by the Attorney General's Office, the Solicitor's
6 Office or any prosecuting attorney's office or also the
7 Richland County Public Defender's Office? Yes, ma'am?

8 THE JUROR: Rachel Tustin, juror 215. My husband
9 has many friends in the Attorney General's Office. He
10 audits their office. He works for the Auditor's Office
11 for the State of South Carolina.

12 THE COURT: Would that affect your ability to be
13 fair and impartial in this case?

14 THE JUROR: No, ma'am.

15 THE COURT: Thank you. Has any member of the
16 jury panel ever been employed by any civilian or military
17 law enforcement agency? If so, please stand. Yes, sir?

18 THE JUROR: Juror number 238, Tamerat Worku. I'm
19 with the Department of Juvenile Justice, training
20 administrator.

21 THE COURT: Okay. And when did you do that?

22 THE JUROR: Currently.

23 THE COURT: Oh, currently? Okay. And would that
24 affect your ability to be fair and impartial in this
25 case?

SELECTION OF THE JURY

1 THE JUROR: No, ma'am.

2 THE COURT: I didn't catch your last name.

3 THE JUROR: Worku, W. O. R. K. U.

4 THE COURT: Okay. Thank you. Yes, ma'am?

5 THE JUROR: Mary Outin, juror number 168. Years
6 ago when I was working my way through college, I was a
7 dispatcher for the Columbia Police Department.

8 THE COURT: Okay. How long ago -- how many years
9 did you serve in that capacity?

10 THE JUROR: Three years.

11 THE COURT: How long ago was that?

12 THE JUROR: About 20 years.

13 THE COURT: Would that affect your ability to be
14 fair and impartial in this case?

15 THE JUROR: It will not.

16 THE COURT: Thank you.

17 Is any member of the jury panel a member of or
18 contributor to any group which has as its primary concern
19 the promotion of law enforcement or victims' rights and
20 some of these groups include but are not limited to CAVE,
21 CADRE, MADD, SADD, or Sister Care.

22 Please stand.

23 THE JUROR: Juror number 167. I support Sister
24 Care every year with donations and their funds.

25 THE COURT: You're Carol Oswald?

SELECTION OF THE JURY

1 THE JUROR: Cameala Oswald.

2 THE COURT: Cameala. Okay. All right. Would
3 that affect your ability to be fair and impartial in this
4 case?

5 THE JUROR: No.

6 THE COURT: Okay. Yes, ma'am?

7 THE JUROR: Juror 171, Tamara Paschal. I'm a
8 contributor to Sister Care and MADD.

9 THE COURT: Would that affect your ability to be
10 fair and impartial?

11 THE JUROR: No, ma'am. No.

12 THE COURT: Okay. Yes, ma'am?

13 THE JUROR: Parrie Kandis, I'm 123. I work as a
14 group counselor for Sister Care.

15 THE COURT: Would that affect your ability to be
16 fair and impartial in this case?

17 THE JUROR: No, ma'am.

18 THE COURT: Thank you.

19 Has any member of the jury panel or their
20 immediate family ever been the victim of a crime? If so,
21 please stand. And if you wish to come forward, you're
22 welcome to do so.

23 I invite the attorneys over. I'm going to ask
24 that you go over to the right or the left, whichever is
25 closest to you.

SELECTION OF THE JURY

1 THE CLERK: Juror 109, Dale Henslee. She's
2 number 40 on our list.

3 THE COURT: Okay.

4 THE JUROR: I had been the victim of rape. And
5 also I had things stolen from my house. I had a car
6 stolen and money.

7 THE COURT: Okay. Are you aware that this is a
8 case of criminal sexual conduct in the first degree which
9 will have certain allegations of rape as well? Does that
10 affect your ability to be a fair and impartial juror in
11 this case?

12 THE JUROR: No, it will not.

13 THE COURT: You'll be able to listen to both
14 sides of the case and be fair to the State's case before
15 making up your mind and listen to the defense case, their
16 presentation as well and then be able to deliberate and
17 issue a fair and just verdict?

18 THE JUROR: It won't cause any problems.

19 THE COURT: Thank you very much. Juror 109 will
20 remain with us.

21 THE CLERK: This is juror number 141, Cheryl
22 Love, number 15 on our list.

23 THE JUROR: I myself was the victim of a sexual
24 assault. It was never prosecuted. The person has now
25 passed away, and I do think it will.

SELECTION OF THE JURY

1 THE COURT: She's a victim of sexual assault.
2 The person is deceased and she thinks it would affect her
3 ability. Tell me why it believe it would affect your
4 ability to be fair.

5 THE JUROR: I'm very angry about it. I'm very
6 angry about the crime and what it's done to me and it was
7 never prosecuted.

8 THE COURT: It never was?

9 THE JUROR: Huh-uh.

10 THE COURT: And how long ago was that?

11 THE JUROR: About, probably 45 years ago..

12 THE COURT: Oh.

13 THE JUROR: I was a very small child.

14 THE COURT: Even with that long passage of time,
15 you think that --

16 THE JUROR: It was never resolved. It was family
17 member and there's issues in the family because of it.

18 THE COURT: So you believe that you would bring
19 that experience into the courtroom.

20 THE JUROR: I don't think I could not want to. I
21 just have a very hard line towards that kind of crime
22 because it's so often not prosecuted.

23 THE COURT: I'm going to excuse you from the
24 trial of this case. And then you'll need to meet with the
25 deputy because there will be other cases that you might be

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1 placed on this week.

2 THE JUROR: Okay.

3 THE COURT: Juror number 141 will be excused.

4 THE CLERK: This is juror number 232, Monika
5 Wilson, 33 on our list.

6 THE JUROR: My mother has been robbed.

7 THE COURT: Okay. And how long ago did that
8 occur?

9 THE JUROR: Oh, probably eight years ago.

10 THE COURT: Have you personally been the victim
11 of any crimes?

12 THE JUROR: No.

13 THE COURT: Would the fact that your mother
14 experienced that crime, would that affect your ability to
15 be fair and impartial?

16 THE JUROR: No, it wouldn't.

17 THE COURT: Okay. I think -- appreciate it.
18 Juror 232 will remain with us.

19 THE CLERK: Juror number 46, Karen Cross. 35 on
20 our list.

21 THE COURT: Yes.

22 THE JUROR: I had some neighbors, I guess you
23 call them neighbors. They attempted to break into my home
24 and they didn't get in but I had to come to court and it
25 evidently didn't help the case.

SELECTION OF THE JURY

1 THE COURT: How long ago was that?

2 THE JUROR: Nine or ten years ago.

3 THE COURT: Okay. Would that affect your ability
4 to be fair and impartial and listen to the facts and
5 evidence just limited to this courtroom that you hear here
6 so that you can make your decision?

7 THE JUROR: No.

8 THE COURT: Okay. Thank you so much.

9 Did everybody hear that? Juror 46 will remain
10 with us.

11 THE CLERK: This is number 236, Nettie Wolfe. 23
12 on our list.

13 THE JUROR: My daughter was sexually assaulted
14 about five years ago.

15 THE COURT: Okay. And was that case prosecuted?

16 THE JUROR: No, because I think it was like she's
17 the only daughter, I didn't prosecute.

18 THE COURT: Do you feel like you could be fair
19 and impartial in a case that you have evidence of sexual
20 conduct like that?

21 THE JUROR: Yeah.

22 THE COURT: You could listen to the case and
23 justify -- decide the case based on the evidence based on
24 the evidence in this courtroom?

25 THE JUROR: Yeah.

SELECTION OF THE JURY

1 THE COURT: Okay. Thank you. She said her
2 daughter was sexually assaulted five years ago but she
3 didn't prosecute it.

4 So, juror 236 will remain with us.

5 THE CLERK: This is juror 167, Cameala Oswald.
6 16 on our list.

7 THE JUROR: My sister was the victim of domestic
8 violence, one of my older sisters. That's why I support
9 Sister Care and everything.

10 THE COURT: Would that affect your ability to be
11 fair and impartial in this case? In other words, could
12 you listen to just the facts and evidence as presented in
13 this courtroom about this case and make up your mind only
14 considering what's been presented to you in this case?

15 THE JUROR: Probably not.

16 THE COURT: And why do you say that?

17 THE JUROR: Because I seen people -- it bothers
18 me so much and it just seems aggravated, you know, the way
19 it's just violent so.

20 THE COURT: And you said that your work with
21 Sister Care. How did you come to do that?

22 THE JUROR: Well, I started off with a gentleman
23 that used to have the soup super and I go every year and I
24 contribute. I don't work for them but I contribute every
25 year and go to fund raisers and everything.

SELECTION OF THE JURY

1 THE COURT: Did you start working with Sister
2 Care after this incident with your sister?

3 THE JUROR: Uh-huh.

4 THE COURT: Did that have anything to do with why
5 you started working with Sister Care?

6 THE JUROR: Uh-huh.

7 THE COURT: Could you be fair and impartial?

8 THE JUROR: I'm going to say no. I have to be
9 honest.

10 THE COURT: Thank you. I appreciate that.

11 Juror 162 is excused from the trial of this
12 case. 167. Excuse me. Thank you.

13 THE CLERK: This is juror 149, John McGee. Six
14 on our list.

15 THE COURT: Okay.

16 THE JUROR: Your Honor, I've had couple of
17 burglaries that are unresolved. They are dated to 15
18 years or more.

19 THE COURT: Burglaries occurring against you?

20 THE JUROR: No, no. A victim.

21 THE COURT: A victim. That's what I meant,
22 occurring with respect to you. Would you be able to be
23 fair and impartial in this case, listen to the case in
24 this courtroom?

25 THE JUROR: Yes, ma'am.

SELECTION OF THE JURY

1 THE COURT: Thank you. Juror number 149 will
2 remain with us.

3 All right. And I asked you about you or really
4 any member of your immediate family been a victim of a
5 crime and then I want to make sure that other than the
6 responses that I already have, has any member been a
7 victim of a -- or your immediate family, of a sexually-
8 motivated crime including but not limiting to rape,
9 molestation, harassment or lewd act other than what you've
10 already told the Court.

11 (No response.)

12 Would the fact that Mr. Gilmore who is the
13 Defendant in this case is accused criminal sexual conduct
14 cause any member of the jury panel any problem in sitting
15 as an impartial juror?

16 (No response.)

17 Has any member of the jury panel read or heard
18 anything about this case?

19 (No response.)

20 Has any member of the jury panel discussed this
21 case in any regard with anyone?

22 (No response.)

23 Has any member of the jury panel now knowing the
24 charge for which Mr. Gilmore will stand for trial, do you
25 have an express opinion, any prejudice or bias toward the

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1 subject matter of criminal sexual conduct or any criminal
2 sexual activity or any crime involving sexual misconduct?

3 Any expressed or formed opinions, any bias or
4 prejudice, anything that would make you believe that you
5 could not sit in fair and impartial judgment and only view
6 the evidence as indicated from the witness stand and any
7 evidence presented at this trial, limiting your knowledge
8 of what you see here and being contained within the facts
9 that you will hear in this courtroom. Any member feel
10 like they could not do that?

11 (No response.)

12 Is there anything in the nature of the
13 allegations in this case which would cause any member of
14 the jury panel any problem in sitting as an impartial
15 juror?

16 (No response.)

17 Is there any member of the jury panel that
18 believes a person is guilty simply because they were
19 arrested?

20 (No response.)

21 Does everyone understand that a defendant is
22 presumed innocent and it is the burden of the State to
23 prove beyond a reasonable doubt the offense for which the
24 defendant is on trial?

25 And do you understand that -- is there any member

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1 who does not understand that the defendant has the
2 presumption of innocence throughout the trial?

3 (No response.)

4 And does the State have any objection to the
5 question 17 as proposed by the defense?

6 MS. FENT: It's repetitive of the other questions
7 you've already asked.

8 THE COURT: Is the defense okay with --

9 MS. LEE: We would ask that it be read, Your
10 Honor, if it's merely repetitive.

11 THE COURT: Does any member of the jury panel not
12 understand that if there is uncertainty as to whether
13 reasonable doubt exists, that the benefit of the doubt
14 shall be given to the Defendant and he must be acquitted?

15 (No response.)

16 All right. Then, finally, this case is expected
17 to last maybe two to three days. It may be a little less
18 and so please let the Court be aware of any issues that
19 would not allow you to sit as a fair and impartial or that
20 would not allow your full time and attention to this
21 matter with respect to the State.

22 I will indicate that me being chief judge of
23 criminal court of general sessions that on Wednesday
24 morning from ten to 12 I have some matters with the State
25 Grand Jury that I have to take up so we will not be doing

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1 this case that portion of the morning and would resume in
2 the afternoon to the extent that we did not finish between
3 now and then, but other than that we would expect this
4 case to probably conclude by Wednesday.

5 So let me know if anybody has back surgery
6 scheduled or some other issues of some sort because I say
7 that not jokingly, but the parties need your full time and
8 attention, your mind not distracted anywhere else because
9 this is a very serious matter with respect to the State as
10 well as to the Defendant who is here to defend himself and
11 exercise his constitutional right to a jury trial.

12 Yes, ma'am? Juror number?

13 THE JUROR: Juror number 83. I do have an
14 appointment for my son. He has orientation for a program
15 that he's in Wednesday. He's in at (inaudible) 5:30.
16 That is mandatory attendance.

17 THE COURT: And if the case were given to you all
18 but you were not finished with your deliberations, for
19 example, is it possible that someone else could take him
20 to the appointment?

21 THE JUROR: No. I am a single parent.

22 THE COURT: Oh okay. All right. We will have
23 that as a matter of consideration and thank you for giving
24 that information to the attorneys but that in and of
25 itself would not allow me to excuse you from the case and

SELECTION OF THE JURY

1 you may or may not get picked.

2 Anyone else? This is a speak-now-or-forever-
3 hold-your-peace time. Okay.

4 (No response.)

5 Thank you. We will take a short recess of about
6 ten to 15 minutes to allow the attorneys to review their
7 notes with respect to qualifications at this time.

8 MS. LEE: Thank you.

9 THE COURT: Okay. I remind you not to discuss
10 the case in any shape, form or fashion even among your
11 fellow jurors at this time. Nothing about this case at
12 all.

13 (Jury panel exits courtroom at 3:20 p.m.)

14 THE COURT: Any additional questions y'all
15 anticipate needing to be asked?

16 MS. LEE: No, ma'am.

17 THE COURT: Thank you. I'll make these exhibits
18 State's potential witness list as well as the voir dire.

19 (Thereupon, State's witness list was marked and
20 received as Court's Exhibit No. 2, and Defendant's witness
21 list was marked and received as Court's Exhibit No. 3)

22 (Break taken from 3:21 until 3:34 p.m.)

23 THE COURT: The parties ready? We'll proceed with
24 jury selection for this particular case.

25 MS. LEE: Yes, Your Honor.

SELECTION OF THE JURY

1 MS. FENT: Yes, Your Honor.

2 THE COURT: Okay. Madam clerk?

3 MS. LEE: Judge, may we approach?

4 (Off-the-record discussion. Sidebar.)

5 THE COURT: Yes, yes. That's the case. Okay.

6 Thank you.

7 THE CLERK: Ladies and gentlemen of the jury
8 panel, when I call your name and number please come to the
9 microphone here at the center of the room, bringing all of
10 your personal belongs with you, state your name, your
11 juror number and your occupation when you get up here.

12 Eileen Welch, juror 225 (white female).

13 THE JUROR: Right here?

14 THE CLERK: Say your name and juror number and
15 your occupation.

16 THE JUROR: Eileen Welch, juror number 225. I'm
17 retired from the Army.

18 THE CLERK: What says the State?

19 MS. FENT: Please present the juror.

20 THE CLERK: What says the defense?

21 MS. LEE: Please seat Ms. Welch.

22 THE CLERK: Have a seat in the jury box, please.
23 Tracy Etu (white female).

24 THE JUROR: Tracy Etu, juror number 62. I'm a
25 teacher.

SELECTION OF THE JURY

1 THE CLERK: What says the State?

2 MS. FENT: Please present the juror.

3 THE CLERK: What says the defense?

4 MS. LEE: Please seat Ms. Etu.

5 THE CLERK: Natia Halloway, juror 97 (black
6 female).

7 THE JUROR: My name is Natia Halloway. I work
8 for Super Dollar. I work in retail.

9 THE CLERK: What says the State?

10 MS. FENT: Please present the juror.

11 THE CLERK: What says the defense?

12 MS. LEE: Please excuse this juror.

13 THE CLERK: Have a seat in the back of the
14 courtroom, please.

15 Kelly Balko, juror number nine (white female).

16 THE JUROR: Kelly Balko, juror number nine.
17 Occupational therapist.

18 THE CLERK: What says the State?

19 MS. FENT: Please present the juror.

20 THE CLERK: What says the defense?

21 MS. LEE: Please seat Ms. Balko.

22 THE CLERK: Wilbur Hoesly (white male).

23 THE JUROR: Wilbur Hoesly, juror 112, senior tax
24 accountant.

25 THE CLERK: What says the State?

SELECTION OF THE JURY

1 MS. FENT: Please present the juror.

2 THE CLERK: What says the defense?

3 MS. LEE: Please seat Mr. Hoesly.

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

5 John McGee, juror number 149 (white male).

6 THE JUROR: John McGee, juror 149, self employed
7 in light construction.

8 THE CLERK: What says the State?

9 MS. FENT: Please present the juror.

10 THE CLERK: What says the defense?

11 MS. LEE: Please seat Mr. McGee.

12 THE CLERK: Please have a seat in the jury box.

13 Parrie Kandis, juror 123 (black female).

14 THE JUROR: I'm Parrie Kandis. 123 and I'm a
15 mental health counselor.

16 THE CLERK: What says the State?

17 MS. FENT: Please present the juror.

18 THE CLERK: What says the defense?

19 MS. LEE: Please excuse this juror.

20 THE CLERK: Have a seat in the back of the
21 courtroom, please.

22 Tamra Paschal (white female).

23 THE JUROR: Tamra Paschal, juror 171. I'm a
24 teacher.

25 THE CLERK: What says the State?

SELECTION OF THE JURY

1 MS. FENT: Please present the juror.
2 THE CLERK: What says the defense?
3 MS. LEE: Please excuse this juror.
4 THE CLERK: Have a seat back in the courtroom.
5 Ms. Casilda Murphy, juror number 158 (black female).
6 THE JUROR: Casilda Murphy, 158. I'm a call
7 central rep.
8 THE CLERK: What says the State?
9 MS. FENT: Please present the juror.
10 THE CLERK: What says the defense?
11 MS. LEE: Please seat Ms. Murphy.
12 THE CLERK: Have a seat in the jury box. Elaine
13 McWilliams, juror number 152 (white female).
14 THE JUROR: Elaine McWilliams, juror 152. I'm an
15 administrative assistant at Columbia International
16 University.
17 THE CLERK: What says the State?
18 MS. FENT: Please present the juror.
19 THE CLERK: What says the defense?
20 MS. LEE: Please excuse this juror.
21 THE CLERK: Have a seat in the back of the
22 courtroom. Sheri Felder, juror 68 (black female).
23 THE JUROR: My name is Sheri Felder. My number
24 is 68. I'm a district two employer.
25 THE CLERK: What says the State?

SELECTION OF THE JURY

1 MS. FENT: Please present the juror.

2 THE CLERK: What says the defense?

3 MS. LEE: Please seat Ms. Felder.

4 THE CLERK: Have a seat in the jury box. Rachel
5 Tustin, juror 215 (white female).

6 THE JUROR: Rachel Tustin, juror 215, teacher.

7 THE CLERK: What says the State?

8 MS. FENT: Please present the juror.

9 THE CLERK: What says the defense?

10 MS. LEE: Please excuse this juror.

11 THE CLERK: Have a seat back in the courtroom.
12 Jeannie Gates, juror 78 (white female).

13 THE JUROR: I'm Jeannie Gates. I'm a senior at
14 USC anthropology, and I work in the anthropology
15 department.

16 THE CLERK: What says the State?

17 MS. FENT: Please present the juror.

18 THE CLERK: What says the defense?

19 MS. LEE: Please excuse this juror.

20 THE CLERK: Have a seat back in the courtroom.
21 Cynthia Winn, Juror 234 (black female).

22 THE JUROR: My name is Cynthia Winn, juror 234.
23 I'm a full-time college student.

24 THE CLERK: What says the State?

25 MS. FENT: Please excuse the juror.

SELECTION OF THE JURY

1 THE CLERK: Have a seat back in the courtroom.
2 Frederick Gambrell, juror 75 (black male).

3 THE JUROR: My name is Frederick Gambrell, juror
4 75. And I attend Benedict College. I'm majoring in
5 psychology. I'm a senior.

6 THE CLERK: What says the State?

7 MS. FENT: Please present the juror.

8 THE CLERK: What says the defense?

9 MS. LEE: Please seat Mr. Gambrell.

10 THE CLERK: Have a seat in the jury box. Ayanna
11 Whitesides, juror 226 (black female).

12 THE JUROR: I'm Ayanna Whitesides, juror 226,
13 assistant manager.

14 THE CLERK: What says the State?

15 MS. FENT: Please present the juror.

16 THE CLERK: What says the defense?

17 MS. LEE: Please seat Ms. Whitesides.

18 THE CLERK: Have a seat in the jury box.

19 Courtney Hansberry, juror 102 (white female).

20 THE JUROR: I'm Courtney Hansberry, 102. I'm a
21 business student at USC.

22 THE CLERK: What says the State?

23 MS. FENT: Please present the juror.

24 THE CLERK: What says the defense?

25 MS. LEE: Please seat Ms. Hansberry.

SELECTION OF THE JURY

1 THE CLERK: Have a seat in the jury box. Kim
2 Keisler, juror 125 (white female).

3 THE JUROR: I'm Kim Keisler, 125. I'm a teacher.

4 THE CLERK: What says the State?

5 MS. FENT: Please present the juror.

6 THE CLERK: What says the defense?

7 MS. LEE: Please excuse this juror.

8 THE CLERK: Please have a seat in the courtroom.

9 Tamerat Worku (unknown race male), juror 238.

10 THE JUROR: Juror 238, Tamerat Worku. Training
11 administrative, Department of Juvenile Justice.

12 THE CLERK: What says the State?

13 MS. FENT: Please seat the juror.

14 THE CLERK: What says the defense?

15 MS. LEE: Please seat Mr. Worku.

16 THE CLERK: Have a seat in the jury box. Ernest
17 Davis, juror 50 (black male).

18 THE JUROR: My name is Ernest Davis, juror number
19 50. I work for Hanson Brick.

20 THE CLERK: What says the State?

21 MS. FENT: Please excuse this juror.

22 THE CLERK: Have a seat back in the courtroom.

23 Nettie Wolfe, juror number 236 (black female).

24 THE JUROR: Nettie Wolfe, juror 236. I'm a
25 school bus driver.

SELECTION OF THE JURY

1 THE CLERK: What says the State?
2 MS. FENT: Please present the juror.
3 THE CLERK: What says the defense?
4 MS. LEE: Please excuse this juror.
5 THE CLERK: Have a seat back in the courtroom.
6 Willis Gonzales, juror 86 (Mexican male).
7 THE JUROR: I'm Willis Gonzales, juror 86,
8 supervisor.
9 THE CLERK: What says the State?
10 MS. FENT: Please present the juror.
11 THE CLERK: What says the defense?
12 MS. LEE: Please excuse this juror.
13 THE CLERK: Have a seat in the Courtroom. Cherie
14 Snyder, juror 199 (white female).
15 THE JUROR: My name is Cherie Snyder, number
16 199. I'm a radiation therapist.
17 THE CLERK: What says the State?
18 MS. FENT: Please present the juror.
19 THE CLERK: What says the defense?
20 MS. LEE: Please seat Ms. Snyder.
21 THE CLERK: Have a seat in the jury box. Julie
22 Starnes, juror 201 (white female).
23 THE JUROR: I'm Julie Starnes, juror 201. I'm a
24 first grade teacher.
25 THE CLERK: What says the State?

SELECTION OF THE JURY

1 MS. FENT: Please present the juror.

2 THE CLERK: What says the defense?

3 MS. LEE: Please excuse this juror.

4 THE CLERK: Have a seat back in the courtroom.

5 George Wright, juror 241 (white male).

6 THE JUROR: I'm George Wright, juror 241. I'm a
7 line-haul driver for Ultimate Freightline System.

8 THE CLERK: What says the State?

9 MS. FENT: Please present the juror.

10 THE CLERK: What says the defense?

11 MS. LEE: Please seat Mr. Wright.

12 THE CLERK: Have a seat in the jury box. Two
13 alternates? We just picked one.

14 THE COURT: One should be fine. Y'all request
15 two?

16 MS. LEE: To be sure, Your Honor.

17 THE COURT: Let's go with two just because we
18 might go into three days.

19 THE CLERK: Are we doing two? Okay. Elisha
20 Baker, juror eight (white female).

21 THE JUROR: I'm Elisha Baker, juror number
22 eight. I'm a service coordinator with the Disability and
23 Special Needs Board.

24 THE CLERK: What says the State?

25 MS. FENT: Please present the juror.

SELECTION OF THE JURY

1 THE CLERK: What says the defense?

2 MS. LEE: Please excuse this juror.

3 THE CLERK: Have a seat back in the courtroom.

4 Anthony Garmon, juror 76 (white male).

5 THE JUROR: I'm Anthony Garmon, juror 76. I work
6 for the South Carolina Department of Transportation.

7 THE CLERK: What says the State?

8 MS. FENT: Please present the juror.

9 THE CLERK: What says the defense?

10 MS. LEE: Please seat Mr. Garmon.

11 THE COURT: If you could just review the strikes.

12 THE CLERK: The State had two, defense --

13 THE COURT: Talking about the numbers down the
14 list, just from the beginning

15 THE CLERK: I'm sorry?

16 THE COURT: Just go ahead and review the strikes
17 beginning just as to which strikes the Defendant has and
18 which the State had.

19 THE CLERK: The juror number?

20 THE COURT: Based on the sheet not the juror
21 number.

22 THE CLERK: Just say the number?

23 THE COURT: Right, right. Beginning with the
24 Defendant strikes and then the State strikes.

25 THE CLERK: Defendant strikes number three,

SELECTION OF THE JURY

1 seven, eight, ten, 12, 13, 20, 23, 24, 26, and 28.

2 MS. LEE: (Nods head affirmatively.)

3 THE CLERK: And State strikes 14, 22.

4 THE COURT: Okay. Is that correct?

5 MS. LEE: Yes, Your Honor.

6 MS. FENT: Yes, Your Honor.

7 THE COURT: Okay. Thank you.

8 Okay. Ladies and gentlemen, those jurors who
9 were not chosen for this case, we do have civil and
10 criminal trials for the remainder of the week. Jury
11 service will last until Friday. We will always have the
12 intention of letting you go as soon as we know that we've
13 got enough trials for the week or it does not look like we
14 will pull another case but in the meantime thank you for
15 your service and your time and attention to this very
16 serious matter.

17 I'd ask you to step with the bailiff and he will
18 give you further instructions for the week. Thank you.

19 (Jury panel exits courtroom at 3:50 p.m.)

20 THE COURT: Do the parties anticipate any
21 exception to the jury qualifications --

22 MS. LEE: No ma'am, Your Honor.

23 THE COURT: -- and the jury selected for this
24 panel?

25 MS. FENT: No objection from the State.

SELECTION OF THE JURY

1 THE COURT: Okay. Ladies and gentlemen of this
2 jury, thank you all for your patience. We are going to
3 proceed with beginning this trial in the morning. So I'm
4 going to ask that you report to your jury room at 9:30.

5 Do not discuss the case in any shape, form or
6 fashion. And what I mean by that is obviously the
7 individual facts of the case which you don't know yet but
8 you'll hear me say that all throughout the trial. I also
9 do not wish for you discuss with your significant other,
10 your spouses or any friends even the nature of the
11 allegations in this case because a lot of people will then
12 inject their opinion to you without you even having told
13 them any facts.

14 We want you to come into case being fair to both
15 sides. You will decide this case based on the testimony
16 and the evidence that you hear from this witness stand or
17 whatever is presented to you from this courtroom so we
18 don't want you to come in with any side opinions that
19 anyone else has told you with respect to the law or facts
20 or how these matters should be handled. I want you to be
21 fair and impartial to these parties and be fair to them
22 with respect to what they present to you in their case.

23 I'm going to excuse you all now for the rest of
24 the day. I know it's been a long day with you getting
25 qualified and all of that. We're going to ask you to

1 report to your jury room at 9:30.

2 I don't expect that this case will be covered in
3 the press or anything but to the extent it is, avoid
4 reading anything about it, any television accounts, any
5 radio accounts, just anything about it. Just make sure
6 that you come in here and just be fair and base everything
7 with respect to the courtroom.

8 Thank you for your service for now and we'll see
9 you in the morning.

10 (Jury exits courtroom at 3:54 p.m.).

11 THE COURT: Couple matters I need to review. One
12 is with respect to the Defendant's bond.

13 MS. FENT: It's denied.

14 THE COURT: Okay. So we know where he'll be
15 housed this evening. Okay. Anything else that the Court
16 needs to take up?

17 MS. LEE: Briefly, Your Honor, just before
18 opening statements tomorrow, we'd ask that all witnesses
19 besides Ms. McCullough and Investigator Bullock be
20 sequestered.

21 THE COURT: Any objection by the State?

22 MS. FENT: No, ma'am.

23 THE COURT: To the extent that you all need to do
24 any stuff, if you all could come just a little earlier and
25 take care of that. Well, thank you. Y'all have a good

1 evening.

2 END OF DAY AT 3:55 P.M.

3 CERTIFICATE OF REPORTER

4 I, Cheri L. Young, Registered Professional Reporter,
5 and Official Court Reporter for the State of South
6 Carolina, do hereby certify that the foregoing transcript
7 of proceedings heard on Monday, June 16, 2008, in
8 Columbia, South Carolina, was reported by me using machine
9 shorthand and realtime computer-aided translation and is a
10 true, accurate and complete transcript of the proceedings
11 had and evidence introduced in the hearing of the matter.

12 I do further certify that I am neither of kin, counsel
13 nor interest to any party hereto.

14 I have hereunto set my hand this Saturday, the 1st day
15 of November, 2008.

16
17
18
19 Cheri L. Young, RPR
20 Official Court Reporter
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
County of Richland	)	06-GS-40-2809
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
WILLIE GILMORE,	)	
	)	
DEFENDANT,	)	

June 17 - 19, 2008
Columbia, South Carolina

BEFORE:

THE HONORABLE J. MICHELLE CHILDS, JUDGE; and a jury.

APPEARANCES:

MARGARET FENT, ASSISTANT SOLICITOR
RICHARD CATHCART, ASSISTANT SOLICITOR
Attorneys for the State

MEGAN LEE, ASSISTANT PUBLIC DEFENDER
MARY LAFAVE, ASSISTANT PUBLIC DEFENDER
Attorneys for the Defendant

KAREN TRACY
Official Court Reporter

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1 (Court reporter Cheri Young began this trial.)

2 (WHEREUPON, State's Exhibit No. 5 was marked for
3 identification only.)

4 THE COURT: I asked if the parties had anything for
5 the Court to take up before we bring the jury in?

6 MS. LEE: Your Honor, just to settle Mr. Gilmore's
7 record just so I can best advise him as to what would come
8 in should he choose to testify.

9 Under 609(A)(1) record, and just looking for
10 truthfulness or untruthfulness, the Court here would do a
11 prejudicial versus probative value analysis.

12 It looks like there is a -- within the last ten
13 years, a '99 shoplifting, a 2000 -- well, a 2002 burglary,
14 and that's it.

15 Your Honor, our position would be that this is not
16 probative on any issue in this case and would be more
17 prejudicial than probative.

18 THE COURT: Does the state intend to put any of those
19 in?

20 MR. CATHCART: Your Honor, the State is allowing a
21 1999 shoplifting -- excuse me, 2000 shoplifting, 2002
22 shoplifting, and a burglary second.

23 Under the Al-Amin case, Your Honor, these are not for
24 the probative versus prejudicial balance test. These come
25 in. It's within a 10-year period. These are both crimes

1 of dishonesty, and for all of that, it will come in.

2 MS. LEE: Your Honor, with respect, that's the rule
3 for any witness other than the accused. This is specific,
4 rule 609, the record of the defendant, in which the Court
5 pursuant to the Rules of Evidence must do a prejudice
6 versus probative analysis. Not merely did it come in
7 within the last ten years and go to truthfulness or
8 untruthfulness.

9 MR. CATHCART: And with respect, Your Honor, I'm
10 speaking of the Al-Amin case which involved a crime of
11 larceny, which is a crime of dishonesty, not subject to
12 the analysis. These are two crimes of dishonestly,
13 burglary and shoplifting, which do not go to the analysis,
14 but they come in.

15 MS. LEE: Your Honor, I would say an armed robbery is
16 a larceny like crime. Here, these are not prior
17 convictions in which have anything to do with the case at
18 hand today. Therefore, they're not probative to any
19 matter and would be more prejudicial to the defendant
20 because they would be hearing that he is a convicted
21 felon.

22 THE COURT: Okay.

23 MR. CATHCART: And this does not -- goes to -- is
24 probative to the case. It goes to his credibility.
25 Therefore, it goes to eight -- and excuse me, 609(A)(2)

1 that if any witness has been convicted of a crime
2 involving dishonesty or false statement, regardless of the
3 punishment. We're not talking about 403. We're talking
4 about 609.

5 THE COURT: Okay. So 609(A)(2), okay. I see what
6 you're saying. Okay. Do you want to respond to that?
7 That's any witness with respect to a crime of dishonesty
8 or false statement?

9 MS. LEE: Yes, sir, Your Honor. I would just say
10 that rule(A)(1) does invoke the concerns of 403, which is
11 why I'm talking about an analysis versus a probative
12 value. If we can also clarify, I'm seeing an '02
13 shoplifting.

14 MS. FENT: I think when you said '99, I think you
15 were looking at the '98 to '99 versus the actual date of
16 conviction.

17 MS. LEE: Okay.

18 MS. FENT: So at the bottom it says January 27th,
19 2000.

20 MS. LEE: I see that as a conviction.

21 MS. FENT: Right.

22 MS. LEE: Or is that part of that probation
23 violation?

24 (Pause).

25 THE COURT: Okay. Did you settle the time period?

1 Both of them fall under less than ten years.

2 MS. LEE: That's correct, Your Honor.

3 THE COURT: Okay. So it's an issue of whether or not
4 the State is indicating these offense are a crime of
5 dishonesty? Do you dispute that?

6 MS. LEE: Your Honor, I don't think there's any
7 indication that burglary is. I think it's been held in
8 case law that shoplifting is a crime of moral turpitude.

9 The second shoplifting may be a probation violation,
10 so it's my understanding they would be seeking to admit
11 one shoplifting, not two.

12 THE COURT: Okay.

13 MS. FENT: A shoplifting conviction from January of
14 2000 and a burglary conviction from February 2002.

15 THE COURT: Okay. And then you all respond with
16 respect to burglary being a crime of dishonesty. That's
17 the State -- you're saying it is under the Al-Amin case?

18 MR. CATHCART: Yes, Your Honor. Any crime involving
19 a larceny is a crime of dishonesty; therefore, not subject
20 to a balancing test of probative versus prejudicial.

21 THE COURT: If that is the case, and I'm going to
22 look at the Al-Amin case, how do you get around that
23 because -- they're going in under 609(A)(2)?

24 MS. LEE: Yes, Your Honor. It would absolutely be
25 our -- I mean, the language of the statute is -- requires

1 proof for admission of an act of dishonesty of false
2 statement by the witness. I don't think it's been clear,
3 Your Honor, that burglary falls under that designation.

4 THE COURT: But if the Court were to find that, do
5 you have a way around it coming in?

6 MS. LEE: I mean, we would just ask the Court to
7 harken back to (A) (1) which requires a probative versus
8 prejudicial test.

9 THE COURT: Okay. Which the State is indicating that
10 you don't have to go there if it's this type of crime.
11 Okay. I see that. Let me look at the Al-Amin case and
12 look at the burglary, as well as --

13 MS. LEE: Yes, ma'am.

14 THE COURT: But you're not using any of that in your
15 opening?

16 MS. LEE: No, ma'am.

17 THE COURT: Anything further at this time?

18 MS. LEE: No, ma'am.

19 THE COURT: Okay. Are the parties ready to proceed
20 then?

21 MS. LEE: Yes, Your Honor.

22 MS. FENT: Yes, Your Honor.

23 THE COURT: Okay. You can bring in the jury.

24 (WHEREUPON, the jury came into open court at
25 approximately 9:39 a.m.)

1 MS. LAFAVE: Your Honor, I'll be opening for the
2 defense.

3 THE COURT: Okay. Thank you.

4 And who will be it opening for the State?

5 (Ms. Fent indicated).

6 THE BAILLIF: All jurors present, Your Honor.

7 THE COURT: Thank you. Good morning ladies and
8 gentlemen of the jury.

9 PRETRIAL CHARGE:

10 I would like to welcome you back again for your jury
11 service and let you know, and I will tell you throughout
12 the trial that we really, really appreciate your jury
13 service. It's one of the highest rewards that we have in
14 our democratic society, to actually have peers sit in
15 judgment of you.

16 With respect to this, we're going to call now the
17 case of the State vs. Willie Moore. Willie Moore has been
18 charged with the offense of criminal sexual conduct in the
19 third degree.

20 MS. FENT: Gilmore, Your Honor.

21 THE COURT: Gilmore, I'm sorry. Thank you.

22 Criminal sexual conduct in the first degree
23 indicating in the indictment that Willie Gillmore did in
24 Richland County on or about August 18, 2004 engage in
25 sexual battery, to wit, sexual intercourse upon and with

1 the body of Rosa McCullough without her consent. Such
2 sexual battery was accomplished by the use of aggravated
3 force and/or the victim submitted to such sexual battery
4 under circumstances where the victim was also the victim
5 of forcible confinement and/or kidnapping all in violation
6 of the South Carolina code of laws section 16-3-652.

7 As I remind you, this is an indictment. This is only
8 the manner by which the case has been called to trial. It
9 is not evidence.

10 With respect to this case, the defendant has pled not
11 guilty and has exercised his constitutional right to a
12 jury trial. So you all will be the jurors who will
13 actually decide the case in this regard.

14 With respect to the case as well, I need you to
15 understand that I'm going to need your full-time attention
16 and effort to this case. It's a very serious matter.

17 I know that we all engage in the video age and with
18 T.V. and things of that nature, and we're used to seeing
19 crime scenes and Law and Order and things of that nature.

20 You're expecting intense drama or things of that
21 nature, but this is for real. This is people's lives who
22 are affected with respect to this case.

23 The State has brought a serious case and charging
24 allegation, but Mr. Gilmore has the right to defend
25 himself. That's why we're here for him to exercise that

Pretrial charge

13

1 Constitutional Right to a jury trial.

2 The jury system is very fundamental to our system of
3 democracy. You all will be the fact finders in the case.
4 You are very important to the case because you are the
5 sole and exclusive judge of the facts in this case.

6 My role is to give you the law, and I'll indicate to
7 you the law is what I say it is at the end of this case.
8 Not what you think it ought to be, not what you have heard
9 it should be or not just -- anything other than what I
10 tell you it actually is.

11 With respect to this case, the order of the
12 presentation will be that we will have the State give
13 opening remarks, and their opening statement in which they
14 will tell you generally their version of the case.

15 We will also have that followed by the defense who
16 will have their opportunity to also present to you their
17 statements.

18 Nothing that the attorneys say is evidence. The
19 evidence that you will hear will come from the witness
20 stand or any of the documents that you will be allowed to
21 review that have actually be admitted into evidence.

22 Anything the attorney's state with respect to their
23 questioning or any comments, that's not evidence in the
24 case. I remind you to listen carefully to what is
25 actually the responses from the witnesses, as well as the

1 documents that are here.

2 You have been selected to be fair and impartial
3 jurors, and your purpose is to find and determine the
4 facts. You'll hear from several witnesses, and you would
5 tend to believe some part of a witness's statement, maybe
6 not some part.

7 Regardless, you are the ones who are the sole judges
8 of the facts, and you have to determine the credibility of
9 witnesses and what you'd like to believe with respect to
10 any testimony and any evidence that's in the case.

11 After we have those opening statements, it's the
12 State's burden of proof. They have to prove this case
13 beyond a reasonable doubt and convince 12 jurors that
14 Mr. Gilmore, in fact, committed this offense.

15 The state will do that by putting up witnesses with
16 direct examination. The defense then has the opportunity
17 to cross-examine those witnesses.

18 After the State concludes its case, the defense has
19 the opportunity to present its side of the case. I ask
20 you to give your full attention throughout the trial to
21 give both sides the fair opportunity to present their case
22 in this matter.

23 Now, every once in a while you will hear attorneys
24 particularly objecting maybe to certain things. We are
25 not trying to hide anything from you, but we do have to

1 follow the rules of criminal procedure, as well as
2 evidence and any courtroom decorum.

3 I assure you that these are very fine attorneys, and
4 they will act with the utmost ethical responsibility. If
5 you heard objections, listen to my ruling. If I have
6 sustained the objection, then I am agreeing that that
7 material or information elicited from the witnesses or the
8 documents was not something that was properly before the
9 court under our Rules of Evidence. If I overrule it, then
10 I'll allow you to go ahead and hear that response, so
11 listen to those types of things.

12 Every so often I have to have a sidebar where I have
13 to have the attorneys come up to the bench, and I will be
14 chatting with them about matters that will have to be out
15 of your earshot.

16 I will try to deal with as much of it as I can here,
17 but sometimes we have to make a full record in front of
18 the court reporter outside of your earshot. So I will
19 have to send you back to your jury room to allow us to do
20 that, but we will try to keep that at a minimum with
21 respect to your time and attention in this matter.

22 With respect to the case, as well, I ask that you not
23 read anything about it, listen to anything on the
24 newspapers, hear anything on television, just pay no
25 attention to that.

1 If it comes on or you happen to be reading a
2 newspaper, put it aside to the extent that occurs. We
3 want your minds to be made up from what you hear only in
4 this courtroom.

5 Don't talk about the case amongst your fellow jurors.
6 Do not discuss it in any shape, form, or fashion even to
7 other people.

8 Again, I remind you, I prefer that you not even
9 discuss it in terms of the subject matter. I don't want
10 other people to inject their opinions about the subject
11 matter to you. You all have to be the sole and exclusive
12 judges of the facts as you hear it here.

13 Now, as to the alternates, I need you to pay just as
14 much attention to this trial. There have been several
15 trials I've been involved in where an alternate has to
16 step in the place of another juror for one reason or the
17 another. We expect you to pay the same amount of
18 attention and not have to be caught up, so to speak, with
19 the trial with respect to your fellow jurors at this time.

20 I am now going to direct you to the attention of the
21 attorneys. Ms. Margaret Fent representing the State will
22 be presenting her opening statement on behalf of the
23 State, and then Ms. Mary LaFave on behalf of Mr. Gilmore
24 will be presenting at this time, as well.

25 You all may proceed with the trial, and I'll have the

Pretrial charge

17

1 jury sworn first.

2 THE CLERK: Good morning. Please stand and raise
3 your right hand to be sworn.

4 Do you swear or affirm that you shall well and truly
5 try and true deliverance make, between the State of South
6 Carolina, and the defendant at bar, whom you shall have in
7 charge, and a true verdict give, according to the law and
8 the evidence, so help you God? If you do, please say "I
9 do".

10 (All jurors responded affirmatively).

11 THE COURT: Ms. Fent?

12 OPENING STATEMENT:

13 MS. FENT: He pulled out a knife. He made her take
14 off all of her clothes, and she stood there naked. He
15 told her to take, pull a mattress, from the kitchen into
16 the bedroom. He said to her, "I am going to do something
17 to you that you will never forget."

18 Rosa Lee McCullough is here in this courtroom this
19 week to tell you what she will never forget. Rosa
20 McCullough and Willie Gilmore had lived together for a few
21 months from around February of 2004 until August of 2004.

22 They lived at one location. Then they moved over to
23 another home on [REDACTED] [REDACTED]. It was
24 around the end of July, the beginning of August,
25 August 4th, that Rosa McCullough moved out, left. She was

1 no longer living with Willie Gillmore.

2 She stayed with her son who was living in basically a
3 hotel at the time, and there was no room for her
4 furniture. So her furniture and her belongings were still
5 over at that house that she had previously shared with
6 Willie Gillmore.

7 On August 18th, 2004 she went over to that home to
8 check on her belongings, as she had been checking on them
9 and slowly boxing them up as she tried to save enough
10 money so that she could put her things into storage.

11 She first stopped over at a neighbor's house, Albert
12 Goins, because she had her mail start to be delivered to
13 Alberta Goins' house.

14 She stopped over there to see Alberta, and then went
15 down to this home at [REDACTED], as I said, to
16 check on her belongings.

17 Initially, Willie Gillmore wasn't at home. A lady
18 was there. Rosa sat down, chatted with her. After a
19 while, Willie came back. The woman left. She and Willie
20 chatted for a while.

21 At some page Willie went to the store. He bought
22 some alcohol. He bought some gin, brought it back to the
23 house. They had a glass. They chatted and sometime later
24 either another woman showed up, chatted with her.

25 Willie had gone into the kitchen, and Rosa was

1 chatting with this lady in the house and mentioned
2 something about there had been a gentleman that had come
3 by the house a couple of times.

4 The lady had asked Rosa about that man, did she see
5 this man that had stopped by the house a couple of times
6 while she was there.

7 It's at that point that Willie comes out of the
8 kitchen steaming mad and makes this other woman leave the
9 house. He walks over to Rosa and slaps her two or three
10 times in the face.

11 Rosa goes to get her purse to say, "I'm out of here.
12 I'm leaving. I'm gone." That's when he pulls a knife out
13 of his pocket and tells her she is not going anywhere. He
14 says, "You are going to" -- pardon me, "fuck me".

15 He tells her to take off all of her clothes. She
16 says to him, "Please do not do this to me. I'm on my
17 period," hoping that that will keep him from doing this.
18 He says, "Show me." He makes her sit down on the edge of
19 the couch, pull up her clothes and show him her tampon.
20 Then he tells her, "Take it out."

21 She had broken down her furniture in the house so
22 that she could come back and eventually get it. She had
23 broken down her bed. The mattress was leaning up in the
24 kitchen.

25 As he was holding that knife, he told her standing

1 there naked to drag that mattress into the back bedroom,
2 and she did it.

3 As he's holding that knife following her into the
4 bedroom, he says, "If I was like I used to be, you'd be a
5 dead bitch right now." And he says to her, "I killed
6 before. I will kill again," as he's holding that knife.

7 He made her lie down on that mattress, and the
8 defendant sexually assaulted Rosa McCullough. After he
9 was done, he got up and she tried to get away. She tried
10 to leave, and he grabbed her and said, "Aren't you going
11 to wash yourself up? Aren't you going to wash yourself?"

12 She said, "Oh, okay. Okay." She just kind of goes
13 to the bathroom and gets a little water on her leg to wash
14 the blood off of her legs.

15 She gets her clothes back on, and then she tells
16 Willie, "I need to go get a bag at the Goins' house. I
17 need to go back up to the Goins' house.

18 He said, "Well, you're not going without me." So
19 they leave out the front door, and they start heading out
20 to the Goins' house.

21 Outside of that home, outside on the street, is a
22 Bruce Hunter who knows both Rosa and Willie. He sees, as
23 they come out of that house, that Rosa is crying and is
24 upset.

25 He sees the two of them come up to the Goins' house.

1 Willie stops and stays outside and Rosa goes inside to the
2 Goins' house.

3 Willie tells Bruce Hunter, "I'm going. I'll see you
4 later," and Bruce sees him walk off across the field.

5 Inside that home Rosa is scared, crying, shaking,
6 tells Alberta Goins what just happened to her: That
7 Willie Gilmore sexually assaulted her, pulled a knife on
8 her, and that she was on her period. She had been on her
9 period. Ms. Goins said, "Go call the police. You can
10 call the police from my home." That's when 911 is called
11 and the police come out.

12 Rosa at some point comes out of the home and sees
13 Bruce and tells Bruce that she is crying and she is
14 shaking, that Willie had just sexually assaulted her and
15 had pulled a knife on her.

16 The police show up. One of the policemen talks to
17 Bruce Hunter, asks him, "Hey, do you know where this guy
18 went," where Willie Gilmore went. Bruce points out yeah,
19 he left. He's gone. He points off in the direction that
20 he saw Willie go.

21 That police officer, Officer Brooker, sits down and
22 talks to Rosa, gets the gist of what happened to her and
23 then takes her, transports her to the hospital so that
24 Rosa can have a sexual assault examination.

25 The police officers that respond to that location do

1 attempt to go in the home, but as we know from Bruce,
2 Willie had taken off across that field and had left
3 already.

4 Rosa McCullough then had to endure a sexual assault
5 examination at Richland Memorial Hospital. You'll hear
6 from a nurse, Betty Paris, who performed that exam, and
7 the things that Rosa had to endure and how that exam is
8 taken so that they can collect evidence, be presented
9 eventually in court.

10 They collected that tampon, swabs, hairs, and you'll
11 hear that eventually that evidence makes its way through
12 what we call the chain of custody.

13 This person takes the sexual assault kit from the
14 hospital to the police department, out to the South
15 Carolina Law Enforcement division, through people that
16 work there, ultimately to the analyst, Ken Bogan. He
17 looks at this sexual assault kit, and Willie Gilmore's
18 D.N.A. is collected from the evidence in that kit.

19 Investigator Glenn Bullock, the Columbia Police
20 Department, is assigned to the case. He contacts Rosa
21 McCullough and brings her in, and she sits down. She
22 gives her more detailed, thorough statement of the
23 horrible acts that Willie Gilmore did to her.

24 The judge has explained to you Willie Gilmore is
25 charged with criminal sexual conduct in the first degree.

1 Criminal sexual conduct is first, there is a sexual
2 battery that the actor, the defendant, uses what's called
3 aggravated force.

4 Aggravated force is defined under the law as either
5 physical force or physical violence of a high and
6 aggravated nature or threatening the use of a deadly
7 weapon. For example, a knife. So the mere presence of a
8 deadly weapon makes it sexual assault in the first degree.

9 Or the victim could also be the victim of a forcible
10 confinement, kidnapping, robbery, extortion, burglary,
11 house breaking, or other similar offense.

12 There's another way that involves drugs that's not
13 applicable in this case. We're talking about the use of
14 aggravated force, the fact that Rosa was also a victim of
15 forcible confinement or kidnapping. That's what makes
16 criminal sexual conduct in the first degree.

17 The definition of a sexual battery: Sexual
18 intercourse, oral sex, anal intercourse. Rosa McCullough
19 will describe for you sexual intercourse.

20 Finally kidnapping is also defined, you seize,
21 confine, inveigle, decoy, kidnap, abduct, or carry away
22 someone.

23 Seize or confine, you take hold of forcibly or
24 confine, limit, restrict, or enclose within bounds,
25 imprison, shut, or keep in.

1 Now, a lot of us when we think about kidnapping, we
2 automatically think a child is abducted, thrown into a
3 car, and crosses state lines. That is not the law of what
4 kidnapping is.

5 If you do not allow me, without my consent, to move
6 from this spot to this spot, that is a kidnapping. If
7 you, without my consent, require me to remain standing or
8 require me to move from one location to another, that is
9 kidnapping.

10 As you hear from the evidence, and you hear as Rosa
11 describes once he slapped her and hit her, she wants to
12 get up and leave, grab her purse and go, he takes out the
13 knife and says, "You're not going anywhere." When he
14 makes her move from the kitchen to the living room, that
15 evidence will establish a kidnapping.

16 The law in South Carolina, a criminal sexual conduct
17 case, the testimony of the victim need not be corroborated
18 in a criminal sexual conduct case.

19 The testimony of a victim alone is sufficient for you
20 to convict on a crime of criminal sexual conduct. As I
21 said, we will bring more than that. We will bring
22 witnesses that do corroborate immediately thereafter how
23 distraught, upset, Rosa is, and we have the D.N.A.
24 evidence that corroborates what happened in there.

25 He said to her, "I am going to do something to you

1 that you will never forget." Rosa McCullough is here
2 today to tell you the horrible facts, the horrible things,
3 that she will never forget.

4 At the end of our case, we will come up before you
5 again, and we will ask you, based on the evidence, to find
6 the defendant guilty of criminal sexual conduct in the
7 first degree.

8 Thank you.

9 THE COURT: Ms. LaFave?

10 MS. LAFAVE: May it please the Court, Your Honor.

11 OPENING STATEMENT:

12 MS. LAFAVE: Good morning.

13 THE JUROR: Good morning.

14 THE JUROR: Good morning.

15 MS. LAFAVE: Allegations are not evidence.

16 Accusations are not proof.

17 There is no doubt that Willie Gilmore and Rosa
18 McCullough had sex. There is no doubt that Rosa
19 McCullough went to Willie Gilmore's house, sat with him
20 drinking and talking for hours. Rosa will tell you that.

21 Now, the State has told you part of the story, but
22 there is much more to this story. We ask that you listen
23 to the entire story before making your decision. Because
24 Willie Gilmore is not a defendant on Law and Order. He is
25 a real person with a real life, with a real family, and

1 there are real consequences to your decision.

2 Rosa and Willie had a relationship. That
3 relationship had problems, problems of jealousy, problems
4 of infinity. Rosa moved out of Willie's house. On
5 August 18th, 2004, Rosa went back to Willie's house, but
6 when she got there, one of her stories is that Willie was
7 not home. He was at the store or something of that
8 nature.

9 She found someone there. There was a woman in her
10 roost. There was a woman there and Rosa stayed. You
11 heard the prosecutor tell you that Rosa went to check on
12 her furniture.

13 She stayed and waited on Willie to get back. So
14 Willie came back. He asked that woman to leave, so Rosa
15 and Willie sit and talk. Two hours pass, cocktails,
16 conversation, at some point Willie gives Rosa a foot rub.
17 Rosa will tell you that.

18 But then everything changes because the second woman
19 showed up, a second woman in a very short period of time.
20 Those are two things that Rosa will never forget, those
21 two women.

22 So that woman shows up, and Rosa is not happy about
23 that. She says to Willie, "Is that your girlfriend?"
24 Willie asked woman number two to leave, and that is when
25 the alleged assault took place.

1 Now, ladies and gentlemen, the allegations in this
2 case will be difficult to hear. The accusations will be
3 hard to listen to, but we ask that you remember that
4 accusations are not proof and allegations are not
5 evidence.

6 You're going to have to dig deep. You're going to
7 have to ask some tough questions. That's your duty as a
8 jury. Some of those questions should be, "Where is the
9 knife that Rosa says was used in this particular incident?
10 Does the medical exam reflect a rape, or is there no
11 injury, no trauma, no tearing?"

12 There's no question that they had sex. That's not
13 the question you're going to have to answer. The question
14 is, the big question is, are we here because of a rape, or
15 are we here because of a woman scorned? These are tough
16 questions. Be diligent in your efforts.

17 The State has the burden of proof in this case. You
18 heard the judge talk to you about reasonable doubt. You
19 must be firmly convinced. If you think it's possible that
20 Rosa is telling the truth, Willie Gilmore is not guilty.
21 If you think it's probable that she was raped, Willie
22 Gilmore is not guilty. He is an innocent man.

23 Now, ladies and gentlemen, that is the highest
24 standard in our criminal justice system, and you are
25 charged with a very serious duty.

1 We ask that you take the State's case and look at it
2 and don't take the accusations and allegations at face
3 value. Look at the whole story because allegations are
4 not proof and accusations are not evidence.

5 My name is Mary LaFave. I, along with Megan Lee,
6 represent Willie Gilmore in this case. We ask that you
7 return a verdict, after looking at all of the evidence and
8 all of the witnesses, of not guilty of Mr. Gilmore.

9 Thank you for your time.

10 THE COURT: Thank you, Ms. LaFave.

11 MS. FENT: May we approach?

12 THE COURT: Yes.

13 (WHEREUPON, a bench conference was held in the
14 Presence, but not within the hearing, of the jury).

15 THE COURT: All right. The State may proceed with
16 their case.

17 MS. FENT: The State calls Brian McCullough.

18 BRIAN MCCULLOUGH, after being duly
19 sworn, testified as follows:

20 THE WITNESS: I'm Brian McCullough.

21 DIRECT EXAMINATION:

22 BY MS. FENT

23 Q Brian, how are you related to Rosa?

24 A She is my mother. I'm her son.

25 Q Okay. I'm going to move this microphone just a

1 little closer to the middle.

2 A Okay.

3 Q Okay. Brian, how old are you?

4 A Twenty-nine.

5 Q And do you have siblings?

6 A One brother.

7 Q And do you have any children?

8 A No children, yet.

9 Q Nieces or nephews?

10 A A lot.

11 Q Okay. And Brian, what do you do for a living?

12 A I'm a musician, violinist, and I also work part-time
13 as a janitor.

14 Q Okay. How long have you been playing the violin?

15 A As long as I could remember, 15 years plus.

16 Q And where do you play?

17 A I do different gigs, I play for Angie Stone. I play
18 around town a lot.

19 Q Okay. I want to take you back to August of 2004.

20 How did you hear that your mother had been sexually
21 assaulted?

22 A I was at my --

23 MS. LEE: Objection, that assumes facts not in
24 evidence.

25 THE COURT: If you can lay a foundation, because he

1 is the first witness, and you only had an opening
2 statement.

3 BY MS. FENT

4 Q How did you hear that your mother had allegedly been
5 sexually assaulted?

6 A She called me, actually, at my -- at my residence on
7 the phone.

8 Q Okay. And prior to that day, or I guess around that
9 time period, where were you living?

10 A Actually, I was staying at a hotel. Yeah, so...

11 Q Okay. And prior to that day that you received the
12 phone call, who was living with you?

13 A My mother. She had come to stay with me.

14 Q Okay. And do you remember about how long she had
15 been staying with you?

16 A A couple of months, maybe. It's been a while ago.

17 Q Okay. Just a short period of time, or was this a
18 permanent --

19 A She was moving in permanently. She was moving from
20 her old residence. She actually had all of her clothes
21 and stuff, but she had to move all of her furniture and
22 most of her other things.

23 Q Okay. Was there room for her furniture and other
24 things in her hotel room?

25 A No. We were moving that into storage.

1 Q Okay. And did you know prior to when she started
2 staying with you at the hotel room where she was living?

3 A Yeah.

4 Q And where was that?

5 A That was on [REDACTED]

6 Q And who was she living at that time?

7 A Willie Gilmore.

8 Q Do you see him in the courtroom?

9 A Yes, ma'am. He's sitting in the defense seat.

10 MS. FENT: Okay. I have no further questions.

11 THE COURT: All right.

12 MS. LEE: Thank you, Judge.

13 CROSS-EXAMINATION:

14 BY MS. LEE

15 Q Brian, would I have seen you playing on Main Street
16 at that sandwich shop right out there?

17 A Probably.

18 Q I think I've seen you out practicing --

19 A Did you tip me?

20 Q -- your violin there.

21 I sure did.

22 A All right.

23 Q Brian, just real briefly, when is the first time you
24 were contacted by the Solicitor's Office about this case?
25 Was it pretty recent?

1 A No. When my mother filed, actually --

2 Q Okay.

3 A -- and we got the process going.

4 Q Anybody from the police department ever ask you to
5 give a written statement about where she was living?

6 A About where she was living?

7 Q Uh-huh.

8 A Not to my recollection.

9 Q Okay. Anybody from C.P.D. ever contact you?

10 A I talked to them.

11 Q Who did you talk to, do you remember?

12 A I can't remember exactly what was discussed. It's
13 been four years ago.

14 Q Right, but it's -- it's fair to say they didn't have
15 you write anything out and sign it under oath, right?

16 A No, not really.

17 MS. LEE: Nothing further, Judge.

18 REDIRECT EXAMINATION:

19 BY MS. FENT

20 Q Throughout this case, you have been in regular
21 contact with me, right?

22 A Yes, I have.

23 Q Okay. And you have, at times, been in contact with
24 the Columbia Police Department?

25 A Mr. Bullock, yes, I have.

1 Q Keeping up with the case?

2 A Yeah. Actually been calling right before the case
3 came up. I actually called your office and found out you
4 were on maternity leave.

5 MS. FENT: Okay. No further questions.

6 THE COURT: Sir, you can step down.

7 THE WITNESS: Thank you.

8 MS. FENT: May this witness be excused?

9 MS. LEE: No objection, Judge.

10 THE COURT: You may, sir. Thank you for coming.

11 MS. FENT: State calls Rosa McCullough.

12 ROSA MCCULLOUGH, after being duly
13 sworn, testified as follows:

14 THE CLERK: Have a seat in the witness box. Try to
15 speak into the microphone.

16 THE WITNESS: My name is Rosa McCullough.

17 DIRECT EXAMINATION:

18 BY MS. FENT

19 Q Rosa, how many kids do you have?

20 A I have two kids.

21 Q Okay. Both sons?

22 A Yes.

23 Q And do you have grandchildren?

24 A I have seven grandchildren.

25 Q Okay. Rosa, what kind of jobs have you had

1 throughout your life?

2 A Well, I work at the University of South Carolina. I
3 did a lot of private duty work.

4 Q Private duty work doing what?

5 A Taking care of the elderly.

6 Q Okay. Like home healthcare?

7 A Yes, ma'am.

8 Q Okay.

9 A And now I'm currently working at the lodging at Fort
10 Jackson, South Carolina.

11 Q Okay. And how long have you been at Fort Jackson?

12 A June coming would be one year.

13 Q Okay. Rosa, I want to take you back to 2004, and
14 first I'm going to ask you, do you know Willie Gilmore?

15 A Yes, ma'am, I do.

16 Q Okay. And do you see him in the courtroom today?

17 A Yes, ma'am.

18 Q Can you point to him and describe what he's wearing
19 so that we know who you're talking about?

20 A It looks like a gray shirt and a brown and beige tie.

21 Q Okay. And where is he sitting?

22 A With the defense.

23 MS. FENT: Okay. May the record reflect the witness
24 has identified the defendant?

25 THE COURT: Okay.

1 BY MS. FENT

2 Q And how long have you known Willie Gilmore?

3 A I have -- I had known of him, you know, but I have no
4 other -- I never did -- know him for so many years. I've
5 seen him, and we've always been chatting like friends in
6 the street or something.

7 Q Okay. Did you all start living together at some
8 point?

9 A Yes. It was after Valentines in 2004.

10 Q Okay. And where did you all live together first?

11 A Well, I had a place on Washington Street. I was
12 living on a house in Washington Street --

13 Q Okay.

14 A -- off of Forest Drive.

15 Q Okay. And do you remember about how long y'all lived
16 there together?

17 A Well, maybe a month, month-and-a-half.

18 Q Okay. A month or a month-and-a-half?

19 A Yes.

20 Q Okay. And then where did you all move to?

21 A Well, we moved to -- well, I moved with my son.

22 Q Okay.

23 A For a month-and-a-half, not Brian, my oldest boy.

24 Q Okay.

25 A Before because we didn't have a place to stay. So

1 then Willie Gilmore found the place on [REDACTED]

2 Q Okay.

3 A I left my son, my oldest son, and we moved in on

4 [REDACTED]

5 Q On [REDACTED]. Is that at [REDACTED]?

6 A Yes, ma'am.

7 Q Okay. And about how long then did you live on Senate
8 Street with him?

9 A It wasn't really three months, not totally a whole
10 three months.

11 Q Okay.

12 A After -- after we moved on [REDACTED]

13 Q Okay. And after those three months, where did you
14 move to then?

15 A With my son, Brian.

16 Q And where was he living?

17 A I think it was Motel 6 then, I think it was.

18 Q Okay. So a motel?

19 A Yeah. It was a motel.

20 Q And when you moved out of [REDACTED] into the
21 motel, what did you do with all of your belongings and
22 things and furniture?

23 A Well, I just started packing my stuff, my clothes and
24 bags because I knew I wasn't going to stay there.

25 Q Okay.

1 A Me and Mr. Gilmore didn't get along. It was just a
2 lot of fussing and fighting. I started packing up my
3 stuff to move.

4 Q Okay.

5 A And didn't have room at the hotel. I didn't have
6 money, really, at the time to get storage and a truck to
7 move my stuff.

8 Q At this time, were you working anywhere?

9 A I was getting ready to go back during the first,
10 because we was out for the summer.

11 Q Okay. So you kind of were slowly packing up your
12 stuff?

13 A Yes, ma'am.

14 Q And when would you do that, just come over to the
15 house periodically?

16 A Well, maybe a week or one time about two weeks, you
17 know, because I usually check on my mail, also.

18 Q Okay. Then on August the 18th of 2004, did you go to
19 the house on [REDACTED]

20 A Yes, ma'am, I did.

21 Q Okay. And tell us about that. Did you go someplace
22 else first or what happened that day?

23 A Well, at first I went down to Ms. Goins. I went down
24 to her house just to sit and talk and check on the mail,
25 missed the mail, it had gone at that time.

1 Q You were having your mail taken to the Goins' house?

2 A Yes, ma'am.

3 Q Okay. And how far away did Ms. Goins live from 2442
4 Senate?

5 A It wasn't -- it wasn't a whole block.

6 Q So just down the block?

7 A Yes, ma'am.

8 Q So you went there first. Do you remember about how
9 long you stayed?

10 A Maybe -- maybe half an hour to an hour, because it's
11 always someone there be on the porch talking with
12 Ms. Goins' son, and some guys that be in the neighborhood
13 used to be there all the time.

14 Q Okay. Hanging out there, just a place to hang out
15 and talk?

16 A Yes, ma'am.

17 Q Okay. Then where do you go after that?

18 A I went up on [REDACTED] at the 24 -- where Willie
19 Gilmore was.

20 Q Okay. And when you get to the house, who is at the
21 house?

22 A It's another lady was sitting there, and Willie
23 wasn't there at the time. I asked her where he was. She
24 said he went to the store.

25 Q Okay. Did you know this lady?

- 1 A Yeah, I had known her.
- 2 Q Okay. You met her before?
- 3 A Yes.
- 4 Q Okay. Were you friendly?
- 5 A Well, we always, you know, been friends. I knew her
- 6 a long time.
- 7 Q Okay. And while you were waiting for Willie, what
- 8 happens then?
- 9 A Well, he found the camera bag and said he was glad to
- 10 see me, and then the lady left, and then we started
- 11 talking, and then Willie went to the store, and he got
- 12 half a pint.
- 13 Q He got what?
- 14 A Half a pint of gin.
- 15 Q Half a pint of gin?
- 16 A Yeah.
- 17 Q Okay. He came back to the house?
- 18 A Yeah. He came back, and we drank some, some of it,
- 19 and then a guy kept coming back and forth. He was in and
- 20 out, Mr. Gilmore was, in and out.
- 21 Q Now, you didn't call him "Mr. Gilmore", did you?
- 22 A Well, I called him "Skip".
- 23 Q "Skip" is his nickname?
- 24 A Yes, ma'am.
- 25 Q Okay. He was in and out of the house. About how

1 much of the gin do you think you had?

2 A I may have had two shots.

3 Q Okay. About the equivalent of two shots?

4 A Yes, ma'am.

5 Q And how much did you see Mr. Gilmore drink?

6 A I think he drank the rest, about the last half.

7 Q Okay. So you're sitting there. You have some gin
8 with him, chat. You said a man is coming by, and Willie
9 goes outside a few times?

10 A Yes, ma'am.

11 Q Then what happens?

12 A Then later -- he was in the front, and then it was
13 another lady came. I think her name was Molly.

14 Q Okay.

15 A She came in. She came and I asked her to come in,
16 and then Willie went to the back and she --

17 Q So you invited Molly in?

18 A I did.

19 Q Okay.

20 A Yeah, and she asked me did I see a guy came by. I
21 said I seen him once earlier.

22 Q Okay.

23 A And so she was said why then Willie came out.

24 Q When she stayed a while, did you all chat?

25 A No. Really just -- just talk about did I see the guy

- 1 and I tell her, you know, I had seen him earlier.
- 2 Q Okay.
- 3 A And that's about all.
- 4 Q Okay.
- 5 A And then she left.
- 6 Q And where is Willie at this time?
- 7 A He was in the back.
- 8 Q Okay. In the back?
- 9 A Of the house.
- 10 Q Meaning?
- 11 A Maybe standing in the kitchen or -- I couldn't see
- 12 him.
- 13 Q Okay. Inside the house but just in the back of the
- 14 inside of the house?
- 15 A Yes.
- 16 Q Not in the backyard?
- 17 A No.
- 18 Q But inside the house in the back?
- 19 A Yes, ma'am.
- 20 Q Okay. While you're talking with Molly?
- 21 A Yes, ma'am.
- 22 Q Okay. And then you said that Molly left?
- 23 A Yeah.
- 24 Q Okay. And then what happened?
- 25 A And when he -- when he -- he ran from like running to

1 the front where I was, and he was saying that I was asking
2 Ms. Molly about the guy, but she was asking me did I see
3 him.

4 Q Okay.

5 A And then that's when he slapped me a couple of times.

6 Q When you said that Molly left and he comes running to
7 the front, describe what his -- kind of his emotion is or
8 his demeanor.

9 A Well, he was looking like he was in a rage. I could
10 see it in his eyes.

11 Q Okay. And he got mad because you were talking about
12 this guy?

13 A Yeah. He -- the way -- the way that I did it, like
14 he was saying I was asking her did I see the guy.

15 Q Okay.

16 A I mean, that I was looking for the guy.

17 Q Okay.

18 A Which I wasn't. She asked me.

19 Q Okay. And then you said that he hit you?

20 A Yes.

21 Q Okay.

22 A In my face.

23 Q How many times?

24 A Twice, maybe three times.

25 Q Okay. How hard did he hit you?

1 A He slapped me pretty hard, yes, ma'am.

2 Q When he slapped you, what did you do at this point?

3 A I didn't really take over. You know, I was -- I was
4 getting upset and getting afraid because he had a look
5 like -- he just had a look in his eyes.

6 Q Okay. So what did you do?

7 A I was getting ready to go, and he said, "You ain't
8 going nowhere. I want to..."

9 Q You can go ahead and say whatever it is he said.

10 A He said, "Because I want to fuck."

11 Q Okay. And so what did you do at this point?

12 A I told him, I said, "My period is on," and he acted
13 like he didn't believe me. That was when he made me take
14 my clothes off. Then he said, "Well, sit to the edge of
15 the chair so I could see."

16 I don't know if he thought I had a tampon or Kotex
17 on, sanitary napkin or what, but I sat to the edge of my
18 sofa, because the furniture was mine. I sat to the edge
19 of the chair, and he didn't see nothing.

20 I said, "Well, I wear -- I wear a tampon."

21 He said, "I don't believe you. I don't believe your
22 period is on," and so ---

23 Q He was saying that to you?

24 A Yes, ma'am. Then that's when he said, "Well, pull it
25 out. Let me see." I pulled it out.

1 Q Okay.

2 A And then I -- I didn't know he was going to rape me.

3 (Crying).

4 Q When he first hit you and you tried to leave --

5 A Yes, ma'am.

6 Q -- did he have anything in his hands?

7 A At first he had grabbed me, and then when he said
8 that he wanted to fuck, then he pulled his -- the knife
9 out of his pocket.

10 Q Okay. So out of his clothes' pocket?

11 A Yes, ma'am.

12 Q And do you remember what that knife looked like?

13 A It was a -- it was a yellow handled knife, and I know
14 it was a yellow handled knife because I looked at it.

15 Q Okay. Do you remember -- does it retract or fold
16 back, or was it just like a steak knife or how would you
17 describe it?

18 A When I seen it, the blade was already out.

19 Q Okay. So you don't know if it folded back. You
20 didn't see him fold out --

21 A No, ma'am.

22 Q -- a knife or anything out?

23 A Yes, ma'am.

24 Q And where did he have that when he...

25 A When I seen it, was in his hands.

1 Q Okay.

2 A After -- it was in his hands. The yellow -- I seen
3 the yellow part of the knife.

4 Q Okay. And where did he hold this when he was making
5 you sit down on the edge of that chair?

6 A He was just standing up with the knife, and he walked
7 over to the other chair like -- so he could just look like
8 he was going to look through me when I sat on the edge of
9 the chair.

10 Q Okay.

11 A That's when he was like standing where you are
12 looking.

13 Q Okay, looking to see if you had a Kotex or a tampon
14 in?

15 A Yes, ma'am.

16 Q Okay. What does he make you do next?

17 A And then after he said that he wanted to fuck, he
18 said, "Get that mattress and pull it back in the bedroom."
19 Then I was taking -- first, he made me take off all of my
20 clothes, I guess so I won't try to run. I don't know. If
21 I had a way, I would have.

22 Q Okay.

23 A He made me because I had the mattress. My bed broke
24 down in the kitchen against the wall, and he made me pull
25 the mattress into the bedroom, and he was walking behind

1 me just talking and -- talking about that.

2 Then he said, "I'm going to do something to you you
3 will never forget."

4 The first thing that came to my mind, I said, "What
5 you got, AIDS?" If you're going to rape me, do something
6 to me I'll never forget, that's what I thought about.

7 Then -- well, we went in the bedroom. He made me lie
8 down, and he sexually assaulted me, and I wasn't moving.
9 He said, "Move, move." And I wasn't -- I wasn't moving.
10 Then he made me move. He made me move, move with the
11 knife in his hand. The knife was in his hand while he was
12 on top of me, and he'd say, "Move, move."

13 (Crying).

14 Q And Rosa, when you say that he sexually assaulted
15 you, what did he penetrate you with?

16 A His penis.

17 Q You said that before you had to move the mattress
18 into the bedroom, he had made you take off your clothes?

19 A Yes, ma'am.

20 Q Okay. So you took off all of your clothes out in
21 like the living room? Did this happen in the living room?

22 A Well, going into the kitchen before I moved the
23 mattress.

24 Q Okay. Okay. During this time you said that while he
25 was moving the mattress or you're moving the mattress from

1 the front of the house to the bedroom, that he was talking
2 and talking, what else did he say to you?

3 A He was just babbling, but before -- before that, he
4 had said, "If I was like I was, Bitch, I would have killed
5 you. You would be a dead bitch," in so many terms. "I
6 killed one, and I'll kill again."

7 MS. LEE: Objection, Your Honor. I renew my
8 objection.

9 THE COURT: Okay. The same grounds, the Court
10 overrules it.

11 BY MS. FENT

12 Q And you said that he had said this before, so at what
13 point did he say those two things to you?

14 A On the -- on the way to the -- in the kitchen out of
15 front -- out of the front when he was walking behind me
16 just talking.

17 Q Okay. And did he still have -- he had the knife this
18 whole time?

19 A Yes, ma'am.

20 Q After he sexually assaulted you, what happened then?

21 A I was getting -- I was getting my stuff in. I was
22 going -- I was going to try to run to the door buck stark
23 naked, but he kind of grabbed at me because he seen I was
24 moving.

25 He was in the restroom, and I had to pass the door to

1 get out, but then he said, "You're not going nowhere.
2 We're going together."

3 Then he said, "You're not going to wash?" It was,
4 you know, a rough tone. He said, "You're not going to
5 wash?"

6 I said, "Yeah," but I really didn't wash my -- my
7 vagina. I just pretend like I was washing off my thighs,
8 the blood on my thighs. I washed that off, but I never
9 did went inside, inside of me.

10 Q Okay. And then what happened next?

11 A Then we got dressed, and then I said, "Well, I'm
12 going down to Ms. Goins to see whether the mailman had
13 gone yet."

14 He said, "Well, wait on me. Wait on me. We're going
15 together. We're going together."

16 As we was walking down to Ms. Goins' house, he said,
17 "Don't tell. You better not tell nobody. You better not
18 tell nobody."

19 I'm talking like, "I won't tell. I won't tell." All
20 the way inside I was just praying, "Lord, please help me
21 get to Ms. Goins' house. Please let me get to Ms. Goins'
22 house."

23 So once I got close to her house, I knew I was all
24 right. Then I went in Ms. Goins house, and I told her
25 what happened.

1 Q Okay.

2 A And then I called the police.

3 Q And do you remember, as you were walking to Ms. Goins
4 and when you went into Ms. Goins, how you were?

5 A By the time I was almost to her house, and I could
6 see people, I started, you know, crying because as long as
7 I was that far with him, I didn't want to do nothing
8 because I don't know what would have happened. I just
9 wanted to get so I could call the police.

10 Q Okay. And when you -- when you went into Ms. Goins'
11 house, did you tell her what happened to you?

12 A Yes, ma'am, I did.

13 Q Okay. And then after you told her, then what
14 happened?

15 A She said, "Call the police. Call the police."

16 Q Okay. And did you call the police?

17 A Yes, ma'am, I did.

18 Q Okay. Did the police show up?

19 A Yes, ma'am.

20 Q All right. And then what happened then?

21 A Then the police started questioning me, and then I'm
22 not sure. I'm not sure whether she said, "Are you sure
23 that he raped you?"

24 I said, "Yes, ma'am." She said, "Do you want to go
25 to the emergency?" I said, "Yes, I do, to the emergency

1 room."

2 Q Okay. And how did you get to the emergency room?

3 A In the police car.

4 Q Okay. Once you were at the hospital, what happened
5 at the hospital?

6 A Well, I waited and we got to -- back in the back to
7 the room where they examined me and took the tampon and my
8 panties and hair from me and saliva. They just did the
9 rape examination.

10 Q Okay. Do you remember how long you were at the
11 hospital having that exam done?

12 A Well, I was there because I don't think I got back to
13 where Brian stayed to, about two that morning.

14 Q Until like two in the morning?

15 A Yes, ma'am.

16 Q Okay. After that, did you meet at some point with
17 Investigator Bullock?

18 A Yes, ma'am, I did.

19 Q Okay. And do you remember about when that was?

20 A I know it was in September, probably the second week,
21 something like that.

22 Q Okay.

23 A In September. I was working at the university during
24 that time.

25 Q Okay.

R. McCullough - direct (Fent)

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1 A I think it was the second week in September.

2 Q And when you met with Investigator Bullock, did you
3 give him a written statement about what happened to you?

4 A Yes, ma'am, I did.

5 Q Okay. When Willie pulled out the knife and said that
6 he wanted to have sex with you, what did you think he may
7 do with that knife?

8 A I had -- I didn't know because he had a -- like I
9 said, he had a crazy look in his face, in his eyes, and I
10 didn't know whether he was going to hurt me or what.

11 Q Okay. And when he said to you that he had killed
12 before, he would kill again, did you believe him?

13 A I -- you know, I didn't -- I didn't know what he was
14 going to do. By him saying that, I didn't know whether he
15 meant it or not.

16 Q Okay. Since this happened, did you receive some
17 counseling for what had happened to you?

18 A Yes, ma'am.

19 Q Okay.

20 A I had went to the -- down in Five Points to the -- I
21 went down to talk to a couple of counselors on there, and
22 then I know one day I was -- I was out with my client, and
23 I seen Mr. Gilmore.

24 He was -- I was going -- I think we was going to
25 Richland fashion mall, and we seen him across the street.

1 I got all shook up again, and then I called the counselor
2 and I was -- I'm not going to lie. When I seen him, I was
3 too scared to sleep in my bed.

4 I slept on the floor trying to hide myself just in
5 case maybe -- if you knew him, you would understand. I
6 was just that scared, and the reason why I was scared like
7 that, because that night when I got home and I told Brian
8 what had happened and what he did to me and what he said
9 to me.

10 MS. FENT: Okay. Okay, Rosa.. That's all the
11 questions that I have for you right now. Just answer any
12 questions from defense counsel, okay.

13 CROSS-EXAMINATION:

14 BY MS. LEE

15 Q Ms. McCullough, my name is Megan Lee. I'm the
16 attorney for Willie, Skip. I just have a few questions
17 for you.

18 The first thing I'd like to do for this jury is to
19 kind of frame your relationship. I think you said y'all
20 had knew each other in the streets. Is that what you
21 said --

22 A Yeah.

23 Q -- in direct? That was for what about 20, 15 years?

24 A No. I didn't know him how long.

25 Q How long, would you say?

1 A Because -- let me see. I had seen him, but it wasn't
2 no 20 or 15 years. I had -- maybe about -- about ten
3 years.

4 Q Okay. But it was only in 2004 that y'all became
5 common law husband and wife living together?

6 A I won't say common law, but we lived together for a
7 short period of time. It wasn't even a whole year.

8 Q Okay. So you didn't tell investigator -- or excuse
9 me, Officer Brooker that you all were common law?

10 A Well, we stayed together.

11 Q But do you recall telling Officer Brooker that?

12 A No, I can't remember.

13 Q You do remember pretty much the exact date that
14 things got romantic between you and Willie, right?

15 A I know it was after Valentines in February.

16 Q Okay. I think he wrote it was the weekend after
17 Valentine's Day.

18 A (Nods in the affirmative).

19 Q Is that a yes? I'm sorry, the court reporter.

20 A Yes.

21 Q Okay. And after that time, that's when y'all started
22 cohabiting, right? Y'all were living together sometime
23 after that point?

24 A Well, yes. I -- yeah, after that point.

25 Q And then in early August, that's when you broke up?

1 A Well, probably the end of July, first of August, but
2 something like that.

3 Q Okay.

4 A Yes.

5 Q But I think it's August 4th that you say you moved
6 out?

7 A Yes.

8 Q So it was you who had to move out because it was his
9 house, right?

10 A Because I moved out because of the...

11 Q Okay. But he's the one who stayed at the house.
12 That's what I'm talking about.

13 A He's the one who had his name on the lease.

14 Q Okay. Thank you. And you told us you went from
15 living at that house to staying at the Economy Inn?

16 A With my son, yes.

17 Q Okay. Is it fair to say there is a dispute going on
18 about that furniture?

19 A No, because it was mine.

20 Q Didn't Janie Gilmore actually get it out of storage?

21 A She got it out of storage. He asked her to get it
22 out of storage. He was going to pay her for getting it
23 out of storage.

24 Q Uh-huh. So as Ms. Fent pointed out, even though
25 y'all had broken up and you weren't living together, you

1 would still go back and forth to the house to check on the
2 furniture?

3 A To check on my furniture and to check on my mail.

4 Q Okay. At the Goins' house?

5 A True.

6 Q Okay. So that's all you were going to do --

7 A Yes.

8 Q -- on August 18th?

9 A Yes.

10 Q That was your only motive in going there?

11 A Yes, ma'am, it was.

12 Q So Willie isn't the one who called you and invited
13 you up for that day, is that fair? You came over?

14 A I came over, yes.

15 Q You didn't call him first and tell him you were
16 coming over?

17 A No, I sure didn't.

18 Q Okay.

19 A Because I usually -- when I'm over on that side, I do
20 check because I had a key --

21 Q Uh-huh.

22 A -- to check on my furniture.

23 Q Okay. So you needed a key to get into the house?

24 A Not that day on August 18th.

25 Q Okay. Because there was somebody already inside?

1 A Yes.

2 Q And that was the lady -- I think you know her by the
3 name "Cube"?

4 A Cube? No, I don't know Cube. It was a lady named
5 Ann.

6 Q Okay. Ann, is that Ann Margaret or has she got --

7 A Ann Marshal.

8 Q Ann Marshal, okay. Ann Marshal, she is in her 40s;
9 is that right?

10 A No. She is older than I am.

11 Q Okay. So you -- you walk in. Ann Marshal is already
12 in there, and Willie is not there, right?

13 A Right.

14 Q So you don't know how long Ann Marshal had been in
15 there?

16 A No, because I really didn't ask her.

17 Q Okay. But you certainly didn't think she had broken
18 in, right?

19 A No.

20 Q It was --

21 A Because the door was wide open, and she was just
22 sitting on the couch.

23 Q Okay. So it was clear she was there because Willie
24 invited her over and didn't have a problem with her being
25 there?

1 A Apparently not.

2 Q All right. So when you walk in and there's another
3 woman in the house you used to share with Willie, you
4 don't just check on your furniture and leave?

5 A No. No. I just -- I just sat awhile.

6 Q Okay. You sat awhile with her. You waited until he
7 got back.

8 A Yes.

9 Q Even though your only motive that day, your only
10 motive, was just to check on that furniture?

11 A Yes.

12 Q Okay. So you wait. Willie comes back, and Ann
13 Marshal leaves?

14 A Yes, ma'am.

15 Q And y'all sit awhile. You talked awhile?

16 A Yeah.

17 Q Is that fair?

18 A Yeah.

19 Q Is it fair to say you weren't just talking about
20 furniture?

21 A Well, he really wanted to get back together, but I
22 couldn't see myself with him.

23 Q Uh-huh, okay. So -- so when you were not really
24 wanting to get back together --

25 A When -- when I had went -- had stayed with my son. I

1 knew it wasn't going to -- it wasn't going to work.

2 Q Okay. So your motive was not to get back together
3 with Willie that night?

4 A Not me, no, ma'am.

5 Q Okay. And Ms. McCullough, that's why you asked
6 Mr. Gilmore to give you a foot massage that night?

7 A Well, I told him I said -- because I had on some
8 heels. I said my foot hurt, so he rubbed it. I didn't
9 ask him. He volunteered to do it.

10 Q And you didn't pull your feet away.

11 A No, I sure didn't.

12 Q You didn't say, "Hey, I'm here to check on furniture.
13 It's not like that anymore"?

14 A No, it was -- because that's the way it was, on that
15 basis. I just sat there. It was my furniture.

16 Q Uh-huh.

17 A And I was just sitting there, and I was just looking
18 around. Like I said, we drank a couple of drinks.

19 Q And had your feet rubbed, right?

20 A Yes.

21 Q Okay. Now, after that point, you gave him some money
22 to go to the liquor store.

23 A Yeah, to get half a pint.

24 Q To get half a pint of gin. When he came back with a
25 half pint of gin that you paid for, you didn't say, "Hey,

1 look, I checked out the furniture. It's fine. I'm out of
2 here"?

3 A No, ma'am.

4 Q Okay. You stayed longer?

5 A Yes.

6 Q Kept talking to him?

7 A Well, really, I was waiting to see whether the
8 mailman passed, and I stayed there.

9 Q Okay. So instead of waiting at Ms. Goins' house, who
10 is a friend of yours, you waited at Willie's house?

11 A Yes, I waited there.

12 Q Where you were drinking gin and getting a foot rub?

13 A That all happened before the -- before the gin.

14 Q The foot rub happened before the gin?

15 A I think it did.

16 Q Okay. You think you were drinking gin that night,
17 right?

18 A Not with my foot getting rubbed, no, ma'am.

19 Q Okay. But you agree you had at least -- I think you
20 said two glasses?

21 A Yes, ma'am. It wasn't no glass. I don't drink it
22 out of a glass.

23 Q Okay. And you -- you're wearing a black dress that
24 night, correct?

25 A I had a black skirt on, yes, ma'am --

1 Q Okay.

2 A -- and a silver blouse.

3 Q A silver blouse. Now, had you walked from the
4 Economy Inn?

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

6 Q How did you get there? ,

7 A On the city bus.

8 Q On the city bus. About what time of day was it when
9 you got to the Goins' house?

10 A I think it was -- oh, it was after -- I knew it was
11 after one.

12 Q Okay.

13 A Maybe after two because I know the man. He runs late
14 on that side, too.

15 Q Okay. Okay. So you go to Ms. Goins' house first,
16 and it seems like a pretty lively neighborhood. There's
17 people out on the porch just chatting --

18 A Yeah.

19 Q Is that right?

20 A Yes, ma'am.

21 Q And for the jury's aid, this is the neighborhood
22 right off of Millwood across from the big Baptist church,
23 is that fair to say?

24 A Well, between Millwood and Gervais.

25 Q Okay. So a pretty lively neighborhood. You said you.

1 got there around one or two, and there's still people
2 outside talking?

3 A Yes, ma'am.

4 Q And you talked to him for a while. Let's get back to
5 the evening with Willie -- or not evening, really, middle
6 of the day when you're drinking gin. You told us that
7 some men would stop by?

8 A Well, everyone got -- he went back and forth on --
9 during the afternoon.

10 Q Skeeter or Jeff?

11 A No, I can't remember his name.

12 Q Okay.

13 A And then when the guy comes by, him and Willie would
14 go outside.

15 Q Okay. And when Willie would get up and leave, you
16 would stay put, right?

17 A Well, he would try to put some of my stuff together.

18 Q Okay. Try to put some of your stuff together because
19 you were going to take it back on the city bus with you?

20 A Just put it in boxes so when I get ready to move my
21 stuff.

22 Q Uh-huh, okay. So you didn't try to leave while he
23 was outside talking to those men?

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

25 Q Okay. And it was at that point that a second woman

1 came by that evening?

2 A Yes.

3 Q Okay. And this is Molly?

4 A Yes.

5 Q You know her from the Orange Party Shop?

6 A I seen her from around the Orange Party Shop.

7 Q Okay. And she is in her 40s, correct?

8 A She may be in her late 40s or middle 40s.

9 Q Okay. And I'm sorry. How old are you,

10 Ms. McCullough?

11 A I'm 55 at this time.

12 Q Fifty-five, okay. Okay. So Molly comes by, and on
13 direct examination you told us that it was actually you
14 who invited Molly in. Is that your testimony?

15 A Yeah, she came in.

16 Q Okay. Now, you're saying she came in?

17 A Well, I opened the door and she came in, yes.

18 Q Okay. So it was not like she was out on the street
19 when you said --

20 A No.

21 Q -- "Hey Molly, why didn't you come into Willie's
22 house?"

23 A No.

24 Q Okay. So she knocked on the door?

25 A Yes.

1 Q You opened the door?

2 A Yes.

3 Q And when that second woman came by the house, you

4 didn't leave then?

5 A No.

6 Q Okay. You stayed and you started asking Molly

7 questions, didn't you?

8 A No, I did not.

9 Q You didn't ask her --

10 A She asked me --

11 Q Okay.

12 A -- did I see some guy and I said early.

13 Q Okay. So it's your testimony that you did not ask

14 Molly if that was his girlfriend?

15 A I didn't ask Molly, no.

16 Q You asked Willie that, I'm sorry.

17 A Yeah.

18 Q Okay. So you wanted to know from Willie, whom you

19 had no interest in getting back together with --

20 A Right.

21 Q -- if the second woman was now his girlfriend?

22 A Yes, yes.

23 Q Okay. Now, when this second younger, to be fair,

24 woman leaves the house, the house you used to share with

25 Willie, that's when you said the knife came out; is that

1 right?

2 A Well, he come rushing out. He was saying that I was
3 asking her about the man she was looking for.

4 Q Uh-huh, uh-huh. Now, after you and Willie had sex, I
5 think you said he went and --

6 A We didn't have sex. He raped me.

7 Q Okay. You said that Willie went and took a shower.
8 He cleaned up?

9 A No. He washed himself.

10 Q Okay. How did he do that, in the tub?

11 A In the sink.

12 Q In the sink?

13 A Yes.

14 Q The sink in the bathroom?

15 A That's right.

16 Q Okay. Did he have the knife in his hand while he was
17 washing?

18 A No.

19 Q Where was the knife?

20 A I didn't see the knife at that time.

21 Q Okay. You didn't see the knife at the time, and he's
22 in the bathroom washing up?

23 A Yes, and the door was not closed.

24 Q Okay. You told us that you then wiped your legs; is
25 that right?

1 A I was getting my stuff because I was going to run
2 out, and that's when -- that's when he grabbed at me and
3 told me I wasn't going nowhere.

4 Q Oh, he grabbed at you?

5 A Grabbed at me.

6 Q Okay.

7 A And then he said, "You're not going to wash," and
8 that's when I -- when I washed my thighs off.

9 Q Ms. McCullough, when you say he grabbed at you --

10 A No, that's --

11 Q -- does you mean he held onto you?

12 A He was grabbing. When I was getting ready to go, he
13 grabbed me and said, "You're not going anywhere."

14 Q Okay. Now, you gave a statement to Investigator
15 Bullock; is that right?

16 A Yes, ma'am.

17 Q Do you recall telling him anything about that? I
18 have a copy of that statement, if you'd like to look at
19 it?

20 A Well, I can't remember telling him, but sometimes the
21 Holy Spirit will bring things back to your memory.

22 Q Oh, the Holy Spirit will bring it back. Okay.

23 Judge, can I approach with her statement?

24 THE COURT: Yes.

25

1 BY MS. LEE

2 Q This is that statement, isn't it, Ms. McCullough?

3 A Yes.

4 Q Okay. And nowhere -- well, let's kind of frame this
5 for a little bit. What happened was Investigator Bullock
6 came to the Master Economy Inn and interviewed you, right?

7 A No, ma'am, he did not.

8 Q Okay. You were at headquarters?

9 A Yeah, we went to headquarters.

10 Q Okay, okay. So he picked you up. You all drive to
11 headquarters, and you understand that this is your chance
12 to tell the story of what happened?

13 A Well, I'm telling exactly what happened.

14 Q Exactly what happened, absolutely. And you want to
15 be as thorough and as truthful as possible, right?

16 A Yes, ma'am.

17 Q Okay. Now, in this one, two, three, four, five-page
18 written statement you don't mention anything about him
19 grabbing you and trying to keep you from leaving at the
20 end?

21 A No. I didn't say, but he did try to keep me from
22 leaving.

23 Q Okay. But when Investigator Bullock brought you to
24 headquarters --

25 A Yes, ma'am.

1 Q -- you didn't tell him anything about that?

2 A No, I didn't. I didn't. I was just answering the
3 question that he was asking.

4 Q Okay. And you were asked the question, "What
5 happened next?" Right. "What happened next, Rosa?"
6 Isn't that at the top of page four?

7 A Yeah, "What happened next?"

8 Q Okay. So I want to talk about what else is not in
9 the statement. You never mentioned anything to
10 Investigator Bullock about going to Alberta Goins' house
11 first, right?

12 A No.

13 Q Okay. You don't mention anything about seeing a
14 Bruce Gene Hunter as you left the house. I think you know
15 him as Dooley?

16 A Yes, ma'am.

17 Q Okay. You don't mention him at all in this
18 statement?

19 A No, because I was -- he was asking questions about
20 what happened to me during -- when I got raped.

21 Q Okay. And it's your testimony that that happened
22 immediately after, right, when you saw Dooley as you were
23 walking out with Willie?

24 A No. Not at -- he was down by the Goins' house.

25 Q Okay, down by the Goins' house. In fact, you don't

1 even mention going back to the Goins' house here, do you?

2 A But we did -- no. I didn't mention it but we did.

3 Q Okay.

4 MS. FENT: Your Honor, we have --

5 THE WITNESS: That's where I called the police from.

6 MS. FENT: Your Honor, we have no objection if the
7 defense wants to admit her statement into evidence.

8 MS. LEE: Your Honor, I'm merely impeaching by
9 admission. I have no intent whatsoever on offering this.

10 THE COURT: Okay.

11 BY MS. LEE

12 Q Now, there were a couple of very troublesome
13 statements that you made, you said Willie said that night.
14 "I've killed before. I'll kill you."

15 A Right.

16 Q "I'm going to do something to you that you'll never
17 forget."

18 A Yes, ma'am.

19 Q Those are pretty concerning, terrifying statements.

20 A Yes, it is.

21 Q Can you show me where in that formal statement to
22 Investigator Bullock you put --

23 A No, ma'am. It's not -- it's not in my statement.
24 It's not here, but I did mention about when he said, "I'll
25 kill you, Bitch." I mentioned that to him.

1 Q Okay. But you never say anything about, "I'm going
2 to do something to you you'll never forget"?

3 A Well, he did -- he said that also. When I --

4 Q Okay. But my question is when you were interviewed
5 by the man who you know was investigating this case --

6 A Right, he didn't.

7 Q -- you never mentioned that statement.

8 A No, ma'am, I didn't.

9 Q Okay. You also told us that you asked Mr. Gilmore,
10 "You got AIDS?"

11 A Yes.

12 Q Y'all had been boyfriend and girlfriend, correct?

13 A Well, we had stopped making -- we had stopped having
14 sex for about a month so...

15 Q Okay. But Ms. McCullough, you don't mention asking
16 him that in this statement?

17 A No, ma'am, I didn't, but when it was just so much
18 going on and when he -- that's when I said when he was
19 walking behind me, he said, "I'm going to do something to
20 you." No, I did not mention it to --

21 Q Okay.

22 A -- but he was asking me some questions, Mr. Bullock
23 did.

24 Q Uh-huh.

25 A -- a lot of stuff didn't come.

1 Q Right.

2 A Yes, ma'am.

3 Q And I understand a lot was going on at the time. You
4 gave this statement a month after it happened, right?

5 A Yes, ma'am. I think it was in -- I see it now. It
6 was September 14th at...

7 Q Uh-huh, and it's your testimony that this happened
8 August 18th?

9 A Yes, ma'am.

10 Q Okay. Let's get back to -- to being at Willie's
11 house. You told us that you wiped off your legs, and then
12 you put in another tampon; is that right?

13 A Yes.

14 Q Okay. Ms. McCullough, if you had gone straight home
15 that night, you would have been going back to the Economy
16 Inn, isn't that right?

17 A Yes.

18 Q By bus?

19 A Yes, because I would try to catch the latest bus or
20 catch the one before the last bus because they stop
21 running certain times.

22 Q Uh-huh. So you tell -- it's your testimony that you
23 told Willie, "I got to go to the Goins' house" to do what
24 now, check on the mail?

25 A Yes.

1 Q Do you recall telling Investigator -- sorry, Officer
2 Brooker that you were going to the Goins' house because
3 you needed to get a bag that you left there?

4 A A bag -- I probably told that to Mr. Bullock. I
5 probably did. I'm not sure, but I know I'm going there to
6 get a -- check on my mail.

7 Q Okay. So you were going there to get a bag or the
8 mail?

9 A Probably both.

10 Q Probably both?

11 A Yes. I'm not sure.

12 Q Okay. When you tell Willie, "Hey, I got to go check
13 on the mail. I've got to get my bag," whatever it is, he
14 doesn't tell you, "No, ma'am. You're staying here
15 tonight"?

16 A No, ma'am. He didn't say that.

17 Q Okay. He didn't try to keep you from leaving the
18 house, right?

19 A Yes, he did. He didn't want me to leave the house.
20 He said, "If you go, we're going together."

21 Q Okay. But again in your statement, you didn't say
22 anything about him trying to keep you from leaving the
23 house?

24 A He didn't want me -- he didn't want me to leave.

25 Q Okay. But that was not in your statement?

- 1 A No, ma'am.
- 2 Q Okay. So it's your testimony that -- I mean, if he's
3 got the knife, under that assumption, he could have kept
4 you in the house, right? I mean, you told us you were
5 scared.
- 6 A Yes, I was.
- 7 Q But instead, he walked you to the Goins' house?
- 8 A While he walked me to the Goins' house, he kept
9 saying, "You better not tell nobody. You better not tell
10 nobody."
- 11 Q Okay.
- 12 A That's all he was saying.
- 13 Q Okay. So he told you, "Don't tell anybody" --
- 14 A Right.
- 15 Q -- "About us just having sex"?
- 16 A Yes.
- 17 Q That's pretty important. Did you tell Investigator
18 Bullock --
- 19 A No, ma'am --
- 20 Q -- about that?
- 21 A --I didn't.
- 22 Q Okay.
- 23 A Like I said, I was -- the questions he was asking,
24 that's what I was answering to.
- 25 Q Okay. And you didn't --

1 A More --

2 Q -- feel it was necessary when he asked you questions
3 like, "What happened" --

4 A Not -- not --

5 Q -- to include that?

6 A Maybe not at -- it was important, but it just didn't
7 come to my memory at the time.

8 Q A month later.

9 A That's right.

10 Q Okay. The fact is when Investigator Bullock
11 interviewed you at headquarters a month later, even he
12 asked you if you filed the police report because of the
13 other women who were at the house and because you were
14 jealous. He asked you that question, didn't he?

15 A (There was no response).

16 Q Ms. McCullough, I believe that's on page five. It
17 would be the second question down. Ms. McCullough, did --

18 A I was on page four.

19 Q I've got it on page five.

20 A Oh, I can't get it.

21 (Pause).

22 Ms. McCullough, while you're looking, I'll take a
23 brief second, Your Honor, if I could.

24 THE COURT: Sure.

25 (Pause).

1 BY MS. LEE

2 Q Ms. McCullough, do you recall the chief investigator
3 in this case asking you if you filed this report because
4 you were hurt about the other women?

5 A Yes, I recall, remember him saying that.

6 Q One final question. Ms. McCullough, do you still own
7 that furniture?

8 A No, ma'am. It's in storage out on -- it's still in
9 storage.

10 Q It's still in storage?

11 A Yes, ma'am.

12 MS. LEE: Okay. Thank you very much, Ms. McCullough.

13 THE WITNESS: All right.

14 MS. LEE: Judge, I don't have anything further.

15 THE COURT: Okay.

16 REDIRECT EXAMINATION:

17 BY MS. FENT

18 Q Rosa, were you jealous of these two women that came
19 by the house?

20 A No, ma'am, I wasn't.

21 Q And had you known them prior to that day?

22 A I had known Ms. -- the first lady, Ann, I had known
23 her for years.

24 Q Okay.

25 A I just know Molly from my past and what

1 Mr. Gilmore -- I don't know nothing about Ms. Molly.

2 Q And on August 18th of 2004 when you went over to that
3 house, did you want a relationship with --

4 A No, ma'am, I didn't.

5 Q -- Willie Gilmore?

6 A No, ma'am.

7 Q He was perfectly free to have relationships with
8 other women?

9 A Yeah, I didn't care, better them than me.

10 Q About when Investigator Bullock asked you if you were
11 jealous of those other women, you told Bullock that Willie
12 Gilmore had killed any love that you had?

13 A Yes, ma'am.

14 Q So you were not at all jealous of these other women?

15 A No, ma'am.

16 MS. LEE: Objection, leading.

17 THE COURT: Sustained.

18 (WHEREUPON, State's Exhibit No. 6 was marked for
19 identification only.)

20 BY MS. FENT

21 Q I'm going to show you what's been marked as State's
22 Exhibit Number 6 --

23 A Uh-huh.

24 Q -- and ask if you recognize that?

25 A Yes, ma'am.

1 Q Is that your statement that you gave to Investigator
2 Bullock?

3 A Yes, ma'am.

4 Q Okay. And your signature on all of these pages?

5 A Yes, ma'am.

6 Q Okay. Defense counsel asked you that at the top of
7 page four, you were asked by Investigator Bullock, "What
8 happened next, Rosa?" What did you tell Investigator
9 Bullock? What was your answer?

10 A He asked me, "What happened next?"

11 I said, "Willie told me I wanted to fuck, and he made
12 me pull out my tampon."

13 Q Read exactly what's there.

14 A "He made me pull my tampon out of my vagina. Willie
15 then made me pull the mattress from the kitchen into the
16 bedroom, and he forced me to have sex with him. After he
17 finished, he got up and said that that was good. He went
18 and washed. I did not wash up. I just wiped the blood
19 off of my leg and put another tampon in."

20 Q And when you were describing after the lady left and
21 Willie pulled out the yellow handled knife --

22 A Yes, ma'am.

23 Q -- and what he said to you, you told Investigator
24 Bullock -- or did you tell Investigator Bullock that he
25 said, "If I was like I used to be, you would be a dead

1 bitch"?

2 A Yes, ma'am.

3 Q And you put that in your written statement?

4 A Yes, ma'am.

5 Q Rosa, would you have let him rub your feet if you
6 knew he was going to pull out a knife and threaten to kill
7 you?

8 A No, ma'am, I wouldn't have. I wouldn't have probably
9 been there if I knew he was going to do that.

10 Q Would you have not shown up at that house if you knew
11 he was going to rape you?

12 A That's right. I wouldn't have shown up.

13 MS. FENT: At this time, Your Honor, I offer State's
14 Exhibit Number seven into evidence.

15 MS. LEE: That's just the statement?

16 I have no objection, Judge.

17 THE COURT: Okay. You earlier referred to it as
18 exhibit six. Is that the same one?

19 MS. FENT: State's Exhibit 6.

20 THE COURT: You just said seven.

21 MS. FENT: I'm sorry.

22 THE COURT: That's okay.

23 (WHEREUPON, State's Exhibit No. 6 was admitted into
24 evidence.)

25 MS. FENT: No further questions.

1 THE COURT: Anything?

2 MS. LEE: Real briefly, Your Honor.

3 RECROSS-EXAMINATION:

4 BY MS. LEE

5 Q Ms. McCullough, do you still have that statement in
6 front of you?

7 A Yes, ma'am.

8 Q Now, Ms. Fent had you read directly from page four,
9 that first line?

10 A Uh-huh.

11 Q And you read, "He went to wash up. I did not wash
12 up. I just wiped the blood off my legs and put on
13 another -- put another tampon in"?

14 A Yes, ma'am.

15 Q So you didn't tell Investigator Bullock that it was
16 Willie telling you, "You wash up", right?

17 A Say that again.

18 Q You didn't tell Investigator Bullock at all that it
19 was Willie Gilmore who was saying, "You better wash up
20 before you get out of here"?

21 A Well, he said, "You're going to wash." He just said,
22 "Are you going to wash?"

23 Q Okay. You don't have anything in your statement
24 about the door being opened while he went to wash?

25 A No, ma'am, but it was.

1 Q Okay. But the way you put it in your sworn affidavit
2 to Investigator Bullock was "he went to wash up"?

3 A Yeah.

4 MS. LEE: Okay. Nothing further, Your Honor.

5 THE COURT: Okay. Ma'am, you can step down, and
6 ladies and gentlemen, this will be a good time for us to
7 take a break. I'm going to remind you not to discuss the
8 case in any shape, form or fashion.

9 THE BAILIFF: Follow me, please.

10 (WHEREUPON, the jury left open court at approximately
11 11:18 a.m.)

12 THE COURT: Anything that the Court needs to take up
13 with the attorneys at this time?

14 MS. LEE: No, ma'am.

15 THE COURT: Okay. Be at recess about 15 minutes.

16 MR. CATHCART: Ten minutes?

17 THE COURT: Ten or 15, yes.

18 (WHEREUPON, a short break was taken.)

19 THE COURT: Anything the parties want to take up
20 before we proceed?

21 MS. FENT: Just to let you know, I've spoken with
22 Mr. Bogan next. I've spoken with Megan. Mr. Bogan is
23 very ill. We're going to try to get him in and out of
24 here, and we'll shore up the chain after Mr. Bogan
25 testifies as to the chain.

1 THE COURT: Okay. Any real challenges to the change?

2 MS. LEE: No, ma'am.

3 THE COURT: Okay, okay. If you can bring in the
4 jurors.

5 (WHEREUPON, the jury came into open court at
6 approximately 11:34 a.m.)

7 (WHEREUPON, State's Exhibit No. 7 was marked for
8 identification only.)

9 THE COURT: All right.

10 MS. FENT: The State is ready to continue. The State
11 calls Kenneth Bogan.

12 KENNETH BOGAN, after being duly sworn,
13 testified as follows:

14 THE BAILIFF: Have a seat in the witness box. State
15 your name for the record, please.

16 THE WITNESS: My name is Kenneth L. Bogan. My last
17 name is spelled B-O-G-A-N.

18 DIRECT EXAMINATION:

19 BY MS. FENT

20 Q Mr. Bogan, who do you work for?

21 A I am currently employed with the South Carolina Law
22 Enforcement Division, also known as S.L.E.D.

23 Q And in what capacity?

24 A I am a forensic D.N.A. analyst.

25 Q And this morning you are not feeling so well.

1 A I am not.

2 Q Okay.

3 A I apologize.

4 Q We'll go as slow as possible, and if you need a
5 break, just let us know, okay. How long have you been a
6 D.N.A. analyst with S.L.E.D.?

7 A I've actually been in the D.N.A. department since
8 1990. I began my employment with S.L.E.D. in 1984. I
9 have been there approximately 24 years.

10 Q Okay. And can you describe, basically, your
11 education, your training, to bring you where you are today
12 as an analyst?

13 A Yes. I have a -- excuse me. I have a bachelor of
14 science degree from the University of Central Florida. My
15 degree is medical technology.

16 Medical technology is a field of science which deals
17 with diagnostic medicine. I work in a clinical lab, in a
18 hospital laboratory, for approximately six years before
19 becoming employed with S.L.E.D.

20 While at the hospital laboratory I specialized in the
21 area of hematology, which is the study of blood. After
22 being employed in 1984 with the South Carolina Law
23 Enforcement Division, I was hired and trained as a
24 forensic serologist.

25 Serology is the field of forensic science which deals

1 with the identification of body fluids. I did that for
2 approximately eight years as a forensic serologist. I was
3 trained by court qualified forensic serologists at the
4 South Carolina Law Enforcement Division, as well as
5 attending the Federal Bureau Investigations school for
6 basic forensic serology.

7 I continued my education at various other institutes
8 in forensic serology until 1990. I transferred to the
9 D.N.A. department. I also attended the Federal Bureau of
10 Investigations school for D.N.A. typing or D.N.A. analysis
11 methods.

12 I subsequently attended further training through the
13 Federal Bureau of Investigation, as well as further
14 training through S.L.E.D. and continuing education.

15 Q And can you as -- I guess as simply as possible
16 explain to us what D.N.A. is?

17 A Yes. D.N.A. is, of course, an abbreviation for
18 deoxyribonucleic acid. D.N.A. is the genetic material
19 which is passed along from a person's mother and father.

20 D.N.A. is found in all enucleated cells of the body,
21 which would be white blood cells, skin cells, cells from
22 regular teeth or bones. Also, spermatozoa, which is a
23 male reproductive cell. That's what D.N.A. is and where
24 it's found.

25 D.N.A. can be used in the forensic setting for

1 comparing D.N.A. profiles for adults, D.N.A. compares that
2 to evidentiary samples.

3 Q And have you testified in courts in South Carolina as
4 a forensic D.N.A. analyst as an expert?

5 A Yes, I have.

6 Q And how many times have you been qualified as an
7 expert in this area?

8 A Approximately 65 times.

9 MS. FENT: Your Honor, at this time I tender
10 Mr. Bogan as an expert in the area of forensic D.N.A.
11 analysis?

12 THE COURT: Any objection?

13 MS. LAFAVE: Your Honor, I have no voir dire for this
14 witness and no objection to his field of expertise.

15 THE COURT: Okay. You're so qualified.

16 BY MS. FENT

17 Q Do any two people have the same D.N.A.?

18 A No two people would have the same D.N.A. profile
19 except identical twins.

20 Q Did you do an analysis on evidence that was submitted
21 in a Columbia Police Department case involving a Rosa
22 McCullough and Willie Gilmore?

23 A Yes, I did.

24 Q Okay. And when evidence is submitted to S.L.E.D., do
25 you all supply it a unique number or an identifying

1 number?

2 A Yes. It's given a laboratory identification number.

3 Q Okay. And do you have your reports with you?

4 A Yes, I do.

5 Q And what lab number was this assigned?

6 A It was assigned S.L.E.D. laboratory number L057297.

7 Q And basically, how does evidence make it through
8 S.L.E.D. to eventually come to you for analysis?

9 A Well, for example, evidence is submitted by the
10 Columbia Police Department. We have an evidence log in
11 area on the first floor of a fourth story laboratory.

12 The officers bring it in. It's basically logged in
13 there. What that means is that an evidence technician
14 there does a -- somewhat of an inventory, basically,
15 whether it's a bag -- they list it as a bag.

16 They don't open it. They just list the evidence as
17 it's listed on a log in sheet. They seal it. The officer
18 that submits and seals the evidence, and then eventually
19 it makes its way on to the appropriate department. In
20 this particular case it came for serological and D.N.A.
21 analysis.

22 Q You said that it's sealed upon -- when it's submitted
23 to S.L.E.D.?

24 A That's correct.

25 Q I'm going to show you what have been marked as

1 State's Exhibits 4, 3, and 2 and just see if you can kind
2 of look at those and see if you recognize them.

3 A Yes, I do.

4 Q Okay. And what is that?

5 A State's Exhibit Number two is what we call a heat
6 sealed pouch. I recognize it. It has my initials here.
7 It also has my S.L.E.D. case number, laboratory number.

8 State's Exhibit Number two is S.L.E.D.'s item number
9 two, which is a D.N.A. standard from Willie McCullough --
10 I'm sorry, Willie Gilmore.

11 Q And when you say a D.N.A. standard, what do you mean?

12 A It was a sample taken from the oral -- or from the
13 mouth of Willie Gilmore.

14 Q Okay.

15 A It was what we call a buccal swab. It's a swab from
16 the inside cheek area.

17 Q So his known D.N.A. sample from his mouth?

18 A Yes.

19 Q Okay. What else do you have?

20 A Okay. State's Exhibit Number three is also a heat
21 sealed pouch that has my initials on it, and item -- my
22 item 1.13 -- or 1.13 which was a pair of underwear
23 submitted from a victim, Rosa Lee McCullough.

24 Q Okay.

25 A And State's Exhibit Number four, also a heat sealed

1 pouch. It has my initials here. It also has my case
2 number here. This is a heat sealed pouch which contains
3 what is call a Sexual Assault Evidence Collection kit.

4 In this kit are items of -- items that are used
5 during the medical examination of a victim who may have
6 been sexually assaulted, which includes swabs for the
7 collection of evidence from various areas of the body.

8 Q And you spoke of the items, how when they're
9 submitted to S.L.E.D. are sealed. Is this the packaging
10 that they're sealed in?

11 A Yes.

12 Q Okay. And in making their way through S.L.E.D. from
13 the time that they're submitted up until you, how can you
14 tell if anybody has tampered or opened these packages?

15 A Well, the packages are heat sealed when they come in.
16 I would guess that this is the seal when it was originally
17 submitted to S.L.E.D.

18 When it's opened, it's obvious. You can tell it's
19 opened. This is a seal where I'm the only other person
20 that opened this particular package and then resealed it.
21 So anyone that does open it for any purpose would then
22 reseal it and sign their name to it.

23 Q Okay. So you can tell if anybody has opened any of
24 these packages?

25 A Yes.

1 Q And as part of your job and responsibilities, when
2 you get this evidence, do you review, I guess what's
3 called the chain of custody, review who all has touched
4 these packages at S.L.E.D.?

5 A Yes.

6 Q And do you make sure that if anybody has opened it,
7 their initials are on these packages?

8 A Yes, their corresponding initials along with the
9 chain of custody. It's not unusual for evidence to be
10 transported from our first floor log in area. My
11 laboratory is on the fourth floor. It's not unusual for
12 it to be transported to a third floor holding area and
13 then on to the fourth floor.

14 Sometimes it goes into a freezer for a while. A
15 blood sample, for example, a liquid blood sample, can't be
16 placed in the freezer. So it would have to be what we
17 call dried.

18 Liquid blood would be placed on a piece of sterile
19 paper and dried down. That function is sometimes done by
20 a technician, so that I -- I would know when I received it
21 that that technician has opened the package and dried that
22 sample for me.

23 Q Okay. And you said in reviewing State's Exhibit two,
24 I believe -- this is three, that no one else had opened
25 that package other than you?

1 A That's correct.

2 Q Okay. And that's the panties?

3 A That's correct.

4 Q Okay. In reviewing State's Exhibit 2, the standard
5 swab from Willie Gilmore, had anybody opened that package
6 prior to you getting it?

7 A No.

8 Q And you said that whenever there is an opening,
9 you're going to put your initials and I guess the date
10 that it's opened?

11 A Yes.

12 Q Okay.

13 A Or actually, the day it's sealed, seal it back.

14 Q Okay. And in looking at exhibit four, had anybody
15 opened this package prior to you receiving it?

16 A It had been opened. I think the initials are
17 probably covered up behind this, but it had been opened, I
18 think it's here, by a person who is now currently a D.N.A.
19 analyst. She was a technician at the time. Her name is
20 Stephanie Stutts.

21 She is the one who actually got this package and
22 opened it for the purpose of taking the liquid blood
23 sample, taking some of the liquid and putting it a piece
24 of sterile paper so it would dry out.

25 Q And then her initials are there when she seals it

1 back?

2 A Yes.

3 Q Okay. And those are the only -- that's the only
4 other opening, other than yours, on the package?

5 A Other than mine. I actually opened it and reseal it
6 several times.

7 Q Okay. Prior to -- between Stephanie Stutts about
8 you, who handled this package?

9 A State's Exhibit 4 was handled in the log-in area by
10 an evidence technician. Her name is Carol Brooks. It was
11 transported to a third floor holding area by another
12 technician, Sheree Brown, who is with the D.N.A.
13 department. Then, of course, it was handed off to
14 Stephanie Stutts who dried the blood then. Then Ms.
15 Stutts placed it in the holding area that we call the
16 D.N.A. freezer.

17 Once the case was assigned to me, the evidence was
18 removed from the freezer by another technician who is
19 Emily Norris. She placed it in an area with my name on
20 it.

21 Q And then you're the next person to get it after Emily
22 Norris?

23 A Yes.

24 Q Okay. And in reviewing all of that chain of custody
25 and reviewing all of those exhibits, had anybody tampered

1 with any of this evidence?

2 A Only the liquid blood sample from the victim in this
3 case, Rosa McCullough, and a technician dried it then.

4 Q That was Stephanie Stutts that dried it and resealed
5 it?

6 A Yes.

7 Q Okay. When you get all of this evidence in, what
8 specifically do you have available? What has been
9 submitted to you for your review?

10 A The Sexual Assault Evidence Collection kit, which I
11 talked about, is used during a medical examination. It
12 included, in this particular case, pubic hair combings
13 from the victim; a known blood standard, which I've talked
14 about; a vaginal smear, which is a sample that is taken
15 from the vaginal area put on a microscopic slide which I
16 can then review and look at; a vaginal swab; oral swabs;
17 there was a tampon included, and a pair of underwear. As
18 I described then State's Exhibit 2, I also received the
19 buccal swab of the D.N.A. standard from Willie Gilmore.

20 Q And by "buccal", it's a swab of his mouth?

21 A Yes. It's from the inside. Basically, what it does
22 is it collects skin cells, epithelial cells, from the
23 inside cheek area of the mouth that will be used as a
24 D.N.A. standard.

25 Q What then -- or were you able to develop a D.N.A.

1 profile from any of this evidence that was submitted to
2 you?

3 A Yes, I was.

4 Q Okay. And a D.N.A. profile, can you try to simply
5 explain that?

6 A Okay. A D.N.A. profile is a combination of genetic
7 markers that are found on the D.N.A. itself. Genetic
8 markers are something that we all share. We all have
9 them, except they exist in different forms.

10 An example of genetic marker might be someone's
11 A.B.O. blood type. We all have blood, naturally, and we
12 all have one of four types. It's either type A, type B,
13 type A.B. or type O.

14 It's a similar thing with D.N.A. profiling or a
15 D.N.A. profile. I simply look at genetic markers that all
16 of us have, but they exist in different forms. So a
17 D.N.A. profile is the combination of those genetic markers
18 for a specific individual.

19 Q And everybody is going to have, then, a different
20 profile?

21 A Yes, except identical twins.

22 Q Except, okay. What evidence were you able to develop
23 a profile from?

24 A I developed a D.N.A. profile for comparison purposes
25 from the known blood standard of Rosa McCullough. I also

1 developed a D.N.A. profile for comparison purposes from
2 the buccal swab of Willie Gilmore. I was also able to
3 develop a partial D.N.A. profile from the vaginal swabs
4 that were collected during the examination.

5 Q And this is the actual -- not the smear that you said
6 that they looked at under the microscope, but the swab
7 itself that was taken from her?

8 A Yes. The swab is like a Q-Tip or a cotton tip
9 applicator or swab. Yes, I was able to develop a D.N.A.
10 profile for comparison purposes.

11 Q And what you say a partial profile, what do you mean?

12 A The analysis that was performed was an attempt to
13 identify 13 separate genetic markers. In my attempt to do
14 that, I realized that I had a very minimal amount of
15 D.N.A. that was present from what I call the male fraction
16 or from the spermatozoa that were present.

17 I didn't get information about all 13 of those
18 particular locations on the D.N.A., so that's what I term
19 a partial profile. I did get enough information that I
20 could compare it, but it was not a complete profile.

21 Q And what was that profile you developed from the
22 swab?

23 A Well, I compared the D.N.A. profile that I developed
24 from the swab to the known standard from Willie Gilmore,
25 and I determined that there was, indeed, a D.N.A. profile

1 match.

2 Q And so that D.N.A. from the vaginal swab was whose?

3 A Well, what I did on that swab is I did what we call a
4 differential extraction. Basically, it was a mixture of
5 what I determined the semen and vaginal fluid.

6 I developed a D.N.A. profile also from Rosa
7 McCullough, and I also developed a partial D.N.A. profile
8 from -- or that appeared to match Willie Gilmore.

9 Q And what is the -- I guess you attach a statistical
10 number to this profile. The probability of randomly
11 selecting an unrelated individual having a D.N.A. profile
12 matching what's on the vaginal swab, correct?

13 A That's correct; that's correct.

14 Q And what is that statistic you're able to develop?

15 A Okay. I developed a probability or a likelihood.
16 What's the probability or likelihood that someone else has
17 that exact same profile that I developed from the vaginal
18 swab?

19 I determined that the probability of randomly
20 selecting an unrelated individual having a profile
21 matching what I developed off the vaginal swab was
22 approximately one in 8.6 billion.

23 Q And when you say that you had developed a partial
24 profile, if you had been able to develop more of a
25 profile, would that just affect your statistic that you

1 came up with?

2 A Yes. Certainly, the more genetic markers that -- if
3 I had developed more genetic markers, the statistic would
4 have gone -- the number would have gone higher, the
5 probability actually lower.

6 I would have projected the probability would go maybe
7 into the trillions or quadrillions. The probability of
8 someone else had that same profile would have been a more
9 rare event.

10 Q Just with the profile you were able to develop, it's
11 one in 1.86 billion?

12 A Yes. The probability of selecting someone else at
13 random unrelated is approximately one in 8.6 billion.

14 Q Meaning the chance that this D.N.A. belonged to
15 someone else other than Willie Gilmore is one in 8.6
16 billion?

17 A Well, I'm not going to put it exactly like that. I
18 would just say the probability of randomly selecting
19 another individual with that same profile is one in 8.6
20 billion.

21 Q Do you have an opinion as to a reasonable degree of
22 scientific certainty as to whose D.N.A. that was?

23 A One in 8.6 billion is approximately 25 to 30 times
24 the population of the United States. Based on that, I
25 would not expect anyone else, my opinion, would not expect

1 anyone else to have that same profile other than Willie
2 Gilmore.

3 MS. FENT: Thank you. No other questions.

4 (Pause).

5 (There was no response).

6 THE COURT: I thought you were conferring with him.
7 Are you done?

8 MS. FENT: I'm sorry. I said -- I must have mumbled.
9 I said no further questions.

10 MS. LAFAVE: Your Honor, I have no questions for this
11 witness.

12 THE COURT: Okay. Sir. You can step down. Any
13 reason why he can't be excused?

14 MS. LAFAVE: No, no objection.

15 THE COURT: Okay. No objection. Thank you for
16 coming.

17 THE WITNESS: Thank you. Thank you very much.

18 MS. FENT: The state calls Officer Brooker.

19 DEBRA BROOKER, after being duly sworn,
20 testified as follows:

21 THE CLERK: Have a seat in the witness box. State
22 your name for the record, please.

23 THE WITNESS: Debra Brooker.

24 DIRECT EXAMINATION:

25

1 BY MS. FENT

2 Q Ms. Brooker, who do you work for?

3 A The City of Columbia Police Department..

4 Q And in what capacity?

5 A I'm a master patrol officer. My assignment is a
6 school resource officer.

7 Q What school?

8 A Gibbs Middle School.

9 Q And how long have you been a school resource officer?

10 A Six years.

11 Q Okay. On August 18th, 2004 at approximately
12 six o'clock in the evening in what capacity were you
13 working?

14 A Overtime for the city.

15 Q Okay. So you were a school resource officer, but
16 when you're not doing that, you're doing regular patrol?

17 A Yes.

18 Q Okay. And what region were you patrolling?

19 A South region.

20 Q And that encompasses what area?

21 A Millwood, Gervais, Garners Ferry, Leesburg, and
22 Trotter, Wood Creek.

23 Q Around 6:30 that evening, were you dispatched to a
24 sexual assault call?

25 A Yes, ma'am.

Brooker -- direct (Fent)

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1 Q And I guess where did you go, what did you do?

2 A I went to [REDACTED].

3 Q And who did you contact?

4 A The supervisor met me there, Sergeant Dowling.

5 Q Okay. And then at that location, who did you talk
6 to?

7 A I came in contact with Ms. Rosa Brown McClockery, I
8 think it is.

9 Q Is that your handwriting on the report?

10 A Yes, it is.

11 Q Okay. Is it McCullough, Rosa McCullough?

12 A Yes, yes, I'm sorry.

13 Q Okay. And basically, what -- as a patrol officer,
14 what are your duties and responsibilities when you respond
15 out?

16 A When I responded out, to make contact with the victim
17 which, was Ms. McClock.

18 Q McCullough.

19 A McClerk, McCullough.

20 Q And what are your responsibilities in making contact
21 with the victim? What are you supposed to be doing?

22 A Make contact with her. E.M.S. will meet you there,
23 along with a sergeant, and they will take her to the
24 hospital. I then will follow her to the hospital to take
25 her report, take her side, of what took place.

1 Q Okay. And do you write an incident report in
2 connection with your work?

3 A Yes, ma'am.

4 Q Okay. And you have a copy of that in front of you?

5 A Yes, ma'am, I do.

6 Q Okay. And the information that you document on the
7 incident report, what type of information are you trying
8 to get down?

9 A What took place, who was present, and what happened.

10 Q Okay. And how many pages is the incident report,
11 typically?

12 A A normal incident report of this case?

13 Q Uh-huh.

14 A About two, three pages.

15 Q Okay. When you reported out there and spoke with
16 Ms. McCullough, in terms of talking to her to find out
17 what happened, are you getting a full, formal written
18 statement from that person?

19 A Not a statement. I'm just taking a report of what
20 she told me took place. I'm writing the report instead of
21 a statement from her.

22 Q Okay. And generally, when you report out just for
23 any type of incident, contact the victim, and then what
24 kind of determinations do you need to make, depending on
25 what kind of a crime is being reported?

1 A I take her information as to what took place. A
2 supervisor is notified, and we go for what type of
3 protocol or what incident took place, and you follow that
4 proper protocol.

5 Q Okay. Whether or not an investigator needs to be
6 called?

7 A Yes, ma'am, an investigator was called. Usually with
8 this case, or a major crime, investigators are notified,
9 supervisors are notified, E.M.S. is notified, and whoever
10 may be notified like crime scene or whomever.

11 Q Okay. And after talking to Ms. McCullough, was she
12 transported to the hospital?

13 A Yes, she was transported.

14 Q And how was she transported to the hospital?

15 A By E.M.S.

16 Q Okay. You didn't transport her to the hospital?

17 A No, ma'am; no, ma'am. E.M.S. was called. The
18 protocol for 911 is to call 911 and the police at the same
19 time.

20 Q Okay. Did you report to the hospital with
21 Ms. McCullough?

22 A Yes, ma'am, I did.

23 Q And who then -- who else responded to the hospital?

24 A Investigator -- correction, the Victim Advocate,
25 which was Jimmy Reed, at the time.

1 Q And basically, what did Ms. McCullough tell you, what
2 had happened to her?

3 A She stated she had gone over to [REDACTED] to
4 check on some -- on a residence that she shared with the
5 individual, Mr. Willie Gilmore. She stated when she got
6 to the home, she was surprised to see him there instead of
7 being at work.

8 She stated that they were engaged in a conversation
9 for two hours, and she stated that another female was
10 present at the time.

11 He then -- after a verbal altercation between the
12 victim and the suspect, he struck her with his hand, and
13 she stated that the other female left the residence. He
14 then forced her to take off her clothes and forced her to
15 have sex.

16 Q Did she tell you who had done this to her?

17 A Yes, ma'am. She said that Mr. Willie Albert Gilmore
18 was a suspect.

19 Q And what do you know about what was done to locate
20 Mr. Gilmore?

21 A I know the house was checked. I can't remember if I
22 checked it with the sergeant, but I know the house was
23 checked in an attempt to find Mr. Gilmore. We couldn't
24 find him.

25 Q The location you went to, is that located in Richland

1 County?

2 A Yes, it is.

3 Q [REDACTED], is that located Richland County?

4 A Yes, it is.

5 MS. FENT: No further questions.

6 MS. LAFAVE: May it please the Court, Your Honor.

7 THE COURT: Yes. Recross examination.

8 CROSS-EXAMINATION:

9 BY MS. LAFAVE

10 Q Good afternoon, Officer Brooker.

11 A Good afternoon.

12 Q Are you referring to some notes?

13 A Yes, ma'am, I am.

14 Q Can I see what you're looking at?

15 A Yes, ma'am.

16 MS. LAFAVE: Your Honor, may I approach?

17 THE COURT: Yes, you may.

18 BY MS. LAFAVE

19 Q Thank you.

20 Officer Brooker, you were dispatched in this case?

21 A Yes, ma'am.

22 Q You were dispatched in most cases, would you say?

23 A Yes, ma'am.

24 Q Okay. And when you're dispatched, you want to

25 respond to those scenes as soon as you possibly can?

1 A Yes, ma'am.

2 Q And you want to respond quickly because leads can dry
3 up in a short amount of time?

4 A Yes, ma'am.

5 Q And people's memories can fade?

6 A Yes, ma'am.

7 Q So a big part of your job as the first responding
8 officer is to document as much of the important
9 information as possible?

10 A Yes, ma'am.

11 Q Now, obviously, you can't -- you can't document every
12 single little detail, but you try to get the important
13 things, correct?

14 A Yes, ma'am.

15 Q So let's talk about what can be done to document a
16 crime. You could take statements from eyewitnesses, if
17 there are any?

18 A Yes.

19 Q You could record your observations at the scene of
20 the crime?

21 A Yes.

22 Q If someone has an injury or is upset?

23 A Yes.

24 Q You would collect physical evidence, if you were able
25 to do so?

1 A Yes, ma'am.

2 Q And you can request a crime scene analyst to report
3 to the scene, if you need one?

4 A Yes, ma'am.

5 Q And that C.S.I. officer can take photographs,
6 samples, things of that nature?

7 A Yes, ma'am.

8 Q All right. So let's talk about what was done in this
9 particular case. You arrived within 30 minutes of
10 Ms. McCullough calling dispatch?

11 A Yes, ma'am.

12 Q She said -- I think she called at 6:15, and you
13 responded at -- I mean, within -- 20 minutes probably,
14 correct?

15 A Yes, ma'am.

16 Q When you arrived, you spoke with Ms. McCullough?

17 A Yes, ma'am.

18 Q And you were able to determine that she had been
19 drinking?

20 A She stated that she was.

21 Q Did you check that the victim had been using alcohol
22 in the report that you are looking at?

23 (A cellphone rang).

24 (Pause).

25 A Yes.

1 Q And you said that you call the E.M.S. and the
2 supervisor?

3 A Dispatch would usually call the supervisor. I mean,
4 E.M.S. It's a protocol. Once they call the police, they
5 have to notify E.M.S.

6 Q Okay. And so when you were --

7 (A cellphone rang.)

8 -- talking to Ms. McCullough, you wrote down...

9 (Pause).

10 -- everything that you thought was important?

11 A Yes, everything she told me.

12 Q Everything she told you?

13 A Yes, ma'am.

14 Q So let's talk about what was not done in this
15 investigation, Officer.

16 A Yes, ma'am.

17 Q Did you take any pictures of Ms. McCullough to
18 document her appearance that night?

19 A No, ma'am. That is C.S.I.'s job.

20 Q Did you call C.S.I. to come take pictures?

21 A They were not notified, but two officers were there
22 before I got to the scene.

23 Q But they didn't take any pictures either?

24 A Not to my knowledge.

25 Q And you said that you went to the hospital with

- 1 Ms. McCullough?
- 2 A Yes.
- 3 Q And did you ask the hospital to take any pictures?
- 4 A No. I asked for a rape kit.
- 5 Q But no pictures?
- 6 A Not to my knowledge.
- 7 Q And you didn't describe any injuries being present in
- 8 your report that you recall?
- 9 A That is correct.
- 10 Q In fact, you checked "no" to non-visible injuries?
- 11 A That's correct.
- 12 Q And you said that you may or may not have gone to the
- 13 alleged crime scene?
- 14 A I can't remember. This was four years ago.
- 15 Q Yes, ma'am. But you know that you didn't call anyone
- 16 to process that particular scene?
- 17 A That is correct.
- 18 Q No one dusted for fingerprints, take photographs?
- 19 A That's correct.
- 20 Q Look for obvious signs of a struggle?
- 21 A That's correct.
- 22 Q And you were made aware that Ms. McCullough -- I
- 23 believe it's in your report that she was on her period?
- 24 A Yes, ma'am.
- 25 Q And so you didn't call anybody to take any blood

1 evidence?

2 A No, ma'am.

3 Q Didn't collect any of the furniture that was involved
4 in this?

5 A That's correct.

6 Q And you were given quite a bit of information as to
7 the person that Ms. McCullough said who raped her?

8 A Yes, ma'am.

9 Q You were even given right down to his eye color,
10 correct?

11 A Yes, ma'am.

12 Q And you said you're not sure if you went over there,
13 but the most that you did to try to locate Mr. Gilmore was
14 to go over to [REDACTED]

15 A Yes, ma'am. I know the house was checked. I can't
16 remember who checked the house.

17 Q But A warrant was issued?

18 A A warrant?

19 Q Yes, ma'am.

20 A I don't know if a warrant was issued or not.

21 Q Were you aware that a warrant wasn't issued for
22 another two months?

23 A I'm not sure of -- I don't have knowledge of that.

24 Q Okay. All right. I want to discuss your
25 conversation with Ms. McCullough.

1 (Pause).

2 And you spoke to Ms. McCullough on 8/18/04?

3 A Yes.

4 Q And what time did you speak to her?

5 A At 18:39.

6 Q 18:39 for us nonmilitary folks.

7 A I'm sorry, 6:39 p.m.

8 Q All right. Thank you, 6:39. And the information in
9 this report is directly from Ms. McCullough. You didn't
10 know this?

11 A That is correct.

12 Q And she had informed you that they were common law
13 spouses?

14 A That is correct.

15 Q And did she happen to say where Mr. Gilmore was when
16 she arrived to his house?

17 A When she arrived?

18 Q At his house.

19 A Yes, she said he was there at the house.

20 Q Are you sure about that?

21 A She stated that -- well, when she returned to the
22 house to check on some items or property, that he was at
23 the house instead of work.

24 Q Okay. And did she tell you that there's a weapon
25 involved?

1 A I do not remember.

2 Q Would you like to refer to your report and show me
3 where it is, if it appears in there?

4 A If it were -- if she has stated, or if I remember, it
5 will be on the first page.

6 Q Okay.

7 A You see incident location. Follow that line all the
8 way down past zip code. It would be right there on the
9 side of it.

10 Q Was there a weapon reported to you?

11 A No.

12 Q Okay. And did she say that she had been threatened
13 at all?

14 A I do not remember.

15 Q Would you like to refer to your report?

16 A She stated that he forced her to take off her
17 clothes.

18 Q But there's no threat documented that you can recall?

19 A Other than that statement.

20 Q I'm not trying to trick you. So, in fact, she said
21 that Mr. Gilmore told her that he loved her?

22 A Yes, ma'am.

23 Q And how many women would you say that she said were
24 at the house that night?

25 A One other person.

1 Q Are you sure?

2 A That's what she stated. One female was present.

3 Q One female was present, but didn't she also tell you

4 there was another one that showed up?

5 A In the report she stated that one was present.

6 Q And then that woman left?

7 A Yes.

8 Q That's the way you understood it?

9 A Yes, yes.

10 Q And then another woman showed up and left?

11 A I just understood it that one woman was present.

12 MS. LAFAVE: Beg the Court's indulgence, Your Honor.

13 THE COURT: Certainly.

14 (Pause).

15 MS. LAFAVE: Can I show you?

16 THE WITNESS: Yes.

17 MS. LAFAVE: Your Honor, may I approach.

18 THE COURT: Yes.

19 BY MS. LAFAVE

20 Q Okay. So it's your understanding that there were two

21 women that came to the house and then subsequently left

22 that night?

23 A I took it to mean that this was the same individual.

24 Q Okay. But in your report you understood it to be

25 another female, correct?

1 A Yes. She stated when she was at the house, that
2 another female came to the house and she and the suspect
3 became involved in a verbal altercation. She stated that
4 this female left the residence.

5 Q Okay. So it was your understanding there was only
6 one female?

7 A Yes.

8 Q Okay. And you said that -- earlier in your testimony
9 you said that she had informed you that she had been using
10 alcohol. She had been drinking?

11 A Yes.

12 MS. LAFAVE: Beg the Court's indulgence. Your Honor.

13 (Pause).

14 I have no further questions.

15 REDIRECT EXAMINATION:

16 BY MS. FENT

17 Q When the calls go out over dispatch, are you hearing
18 over dispatch the allegation and what the nature of the
19 call that you're going to?

20 A Yes, ma'am. She gives the nature of the call.

21 Q Okay. And the nature of the call in this case was
22 that she had been sexually assaulted with a knife?

23 A That could have been, yes, ma'am. I know she was
24 sexually assaulted.

25 Q Okay. And it could have been over dispatch that was

1 included in the knife?

2 A Yes, ma'am. That could have been included, yes,
3 ma'am.

4 Q Okay. I'm going to show you what's been marked as
5 State's Exhibit Number five and see if you recognize the
6 dispatch records.

7 A Yes, ma'am.

8 Q Okay. If you can just review the top of that
9 dispatch record?

10 A Yes, ma'am.

11 Q Just don't -- just to yourself.

12 MS. LAFAVE: Your Honor, I object. I don't know what
13 she is looking at, and there's been no foundation or
14 anything laid about this. I don't know how this witness
15 can identify or refer to her --

16 THE COURT: Okay. Counsel --

17 MS. FENT: Sure, it's the closed incident report that
18 was provided in discovery. I just -- I laid the
19 foundation by asking the officer if she was familiar with
20 the dispatch record, and she said yes.

21 THE COURT: You all approach me, please.

22 (WHEREUPON, a bench conference was held in the
23 Presence, but not within the hearing, of the jury)

24 BY MS. FENT

25 Q Okay. Again, I'm going to hand you back State's

1 Exhibit Number five. If you can just read the top few
2 lines to yourself and refresh your memory regarding the
3 dispatch.

4 (Pause).

5 Did the victim report that a knife was used in a
6 sexual assault?

7 A Yes, ma'am.

8 Q And when Ms. McCullough reported to you the details
9 of the assault, she indicated to you that she was on her
10 period, correct?

11 A Yes, ma'am.

12 Q And that the defendant wanted to see if she was on
13 her period?

14 A Yes, ma'am.

15 Q And that she had to sit down on the edge of the
16 couch --

17 MS. LAFAVE: Your Honor, I'm going to object to the
18 leading at this point.

19 THE COURT: Sustained. Let her indicate so.

20 BY MS. FENT

21 Q What did she do, say, next, that she had to do when
22 he wanted to see if he was on her period?

23 A The victim told the suspect that she was wearing a
24 tampon. The suspect told her to take it out. The suspect
25 forced the victim to go into the back bedroom. The

1 suspect --

2 Q Okay. Go back up. It was right after I asked you,
3 "The suspect stated he wanted to see".

4 A Yes, ma'am.

5 Q What did she have to do to show him?

6 A She had to take her tampon out.

7 Q Okay. The victim took off her clothes and sat on the
8 edge of the couch.

9 MS. FENT: I have no further questions.

10 MS. LAFAVE: Just briefly, Your Honor.

11 RECROSS-EXAMINATION:

12 BY MS. LAFAVE

13 Q Officer, Rosa McCullough never told you there was a
14 knife or a weapon involved in this?

15 A I do not remember. If she had, I would have
16 indicated.

17 Q You would have put that in your report?

18 A That's correct.

19 Q Because if a woman says, "I've been raped at
20 knifepoint," it's a pretty important thing to put the
21 weapon in your report.

22 A Yes, ma'am.

23 MS. LAFAVE: Your Honor, I have no further questions.

24 MS. FENT: No further questions.

25 THE COURT: Okay. You can step down. May this

1 witness be excused?

2 MS. LAFAVE: Without objection.

3 THE COURT: Okay. You can be excused.

4 MS. FENT: State calls Sergeant Dowling.

5 MARILYN DOWLING, after being duly
6 sworn, testified as follows:

7 THE BAILIFF: Have a seat in the witness box and
8 state your full name, please.

9 THE WITNESS: I'm sergeant Marilyn Ann Dowling.

10 DIRECT EXAMINATION:

11 BY MS. FENT

12 Q Sergeant Dowling, who do you work for?

13 A Columbia Police Department.

14 Q And in what capacity? What are your duties and
15 responsibilities?

16 A I'm a Sergeant with the Columbia Police Department.
17 I supervise the south region headquarters of the police
18 department.

19 Q Okay. And who do you supervise?

20 A I supervise my subordinates, the officers, the
21 M.P.O.'s, any supervisors under my authority.

22 Q The patrol officers?

23 A Yes.

24 Q Okay. So the patrol officers in the south region?

25 A That's correct.

1 Q And how long have you been doing that?

2 A I've been supervising the officers for several years,
3 ma'am.

4 Q Okay. On August 18th, 2004 at approximately
5 six o'clock in the evening, were you on duty?

6 A Yes.

7 Q Okay. And did a call come in regarding a sexual
8 assault on [REDACTED]

9 A Yes, it did.

10 Q And what are your duties and responsibility when is a
11 call comes in?

12 A I was the -- I was the Corporal at the time, and I
13 arrived on the scene. My job was to make sure that all of
14 the procedures was followed.

15 Q How did the different patrol officers in your region
16 know who should respond?

17 A There was another officer that was already on the
18 scene, and that officer came in contact with the victim at
19 the time.

20 Q Okay.

21 A And then that officer had a conversation with the
22 victim.

23 Q Okay. And that officer was who, at your
24 recollection?

25 A The initial officer that came in contact with the

1 victim was Officer Duckette.

2 Q Okay.

3 A At the time, and then Officer Brooker came to the
4 scene, also.

5 Q And you say that was making contact with the victim,
6 correct?

7 A That's correct.

8 Q And what was the nature of the call?

9 A It was a rape call that came out.

10 Q Okay. What happens next then after you make contact
11 or Officer Duckette, I guess, makes contact with the
12 victim?

13 A Yes. E.M.S. had arrived on the scene. My
14 understanding when I was there, that the victim stated
15 that the suspect, which was William -- I'm sorry, Willie
16 Gilmore, was at the address, which was [REDACTED]. I
17 went to that address.

18 Q Okay. And did you locate Willie Gilmore at [REDACTED]
19 [REDACTED]?

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

21 Q Okay. And so the victim was at another location.
22 She wasn't at [REDACTED]?

23 A No. She was several houses down the street on
24 Senate.

25 Q Okay. After getting the nature of the call, knowing

1 that it's a sexual assault case, what happens next in
2 terms of investigation?

3 A I did contact Sergeant Thomas Thomas informing
4 exactly what transpired, what was told to me briefly on
5 what happened, and then the victim was taken to Richland
6 Memorial Hospital for an interview with Sergeant -- I'm
7 sorry, with -- Officer Brooker talked to her just for a
8 code 40 kit.

9 Q Okay. For a sexual assault kit?

10 A That's for sexual assault, yes.

11 Q And did you have any other -- after checking to look
12 for Willie Gilmore, did you have any other involvement in
13 this case with anything?

14 A No. I just signed off on the report.

15 Q Okay. So at the bottom of, I guess, Officer
16 Brooker's report, you signed off on it?

17 A Yes, I did.

18 Q Okay.

19 A As approving supervisor.

20 MS. FENT: Okay. No further questions.

21 MS. LAFAVE: May it please the Court?

22 THE COURT: Certainly.

23 CROSS-EXAMINATION:

24 BY MS. LAFAVE.

25 Q Just a couple questions, Sergeant. This case

1 happened four years ago?

2 A Yes, it did.

3 Q And --

4 A Approximately four years ago.

5 Q Yes, ma'am. And Columbia Police Department, like
6 many police departments, take down incident reports to be
7 able to remember things that happened. For instance,
8 testifying in a case four years later?

9 A That's correct.

10 Q To make sure everything is remembered.

11 You signed the bottom of that particular incident
12 report approving what was in the incident report?

13 A What the officer had written down in the incident
14 report saying that this is what transpired, the victim
15 saying this is what transpired.

16 Q Although all the small details can't be identified in
17 an incident report, most important things are written
18 down.

19 A No. That officer wrote exactly what the victim
20 stated, and I signed off on it.

21 Q And you didn't file any reports or anything like that
22 in this case?

23 A No, ma'am.

24 MS. LAFAVE: Your Honor, I have no further questions.

25 THE COURT: Okay.

1 MS. FENT: Nothing further.

2 THE COURT: Okay. You can step down. Thank you.

3 You may be excused.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you.

6 MS. FENT: The state calls Betty Parris.

7 MS. LEE: Judge, may we approach?

8 THE COURT: Certainly.

9 (WHEREUPON, a bench conference was held in the
10 Presence, but not within the hearing, of the jury).

11 THE COURT: Ladies and gentlemen, we will be going to
12 lunch. We're going to take this one last witness, and
13 then we'll be heading for lunch after that.

14 BETTY PARRIS, after being duly sworn,
15 testified as follows:

16 THE CLERK: Have a seat in the witness box. State
17 your full name for the record.

18 THE WITNESS: Betty Parris, that's P-A-R-R-I-S, R.N.

19 DIRECT EXAMINATION:

20 BY MS. FENT

21 Q Ms. Parris, were -- where are you currently employed?

22 A Palmetto Richland emergency department.

23 Q And you are a registered nurse?

24 A Yes, I am.

25 Q How long have you been a registered nurse?

1 A I think it's 48 years.

2 Q Okay.

3 A Since 1959.

4 Q Okay. In your 48 years as a registered nurse, have
5 you had occasion to perform sexual assault examinations on
6 victims?

7 A Yes, I have.

8 Q Okay. And do you know approximately how many exams
9 you performed?

10 A Not really, in excess of a dozen, I think.

11 Q Okay. On August 18, 2004, did you perform an exam on
12 a Rosa Lee McCullough?

13 A I did.

14 Q Okay. And in preparation for your testimony today,
15 did you review those medical records?

16 A Yes, I did.

17 Q Okay. Can you describe for us, first, I guess
18 generally the process that a sexual assault examination
19 takes?

20 A Well, when they usually are brought in to the
21 emergency triage area, and they'll usually try to put them
22 in a room so that they'll, you know, have some privacy.

23 Law enforcement is called, sexual assault services is
24 called. Then they're triaged and sent to the examining
25 area.

1 Q Okay. And what happens in triage, what's that?

2 A Triage, they just get the vital signs and a note that
3 the authorities have been notified.

4 Q And is that done by a nurse or a doctor?

5 A A nurse.

6 Q Okay. And was that done by you in this instance?

7 A No, that was done by another nurse.

8 Q Another nurse?

9 A I worked in the treatment area.

10 Q Okay. Then once they're brought back to the
11 treatment area, what happens there?

12 A The nurse, which is myself, did a generalized
13 examine, assessment of the patient, and notified the
14 doctor. Then we also -- we did our part of the exam. The
15 doctor then goes and does his exam.

16 Q Okay. Going more specifically, do you recall the
17 doctor that worked with you on treating Rosa McCullough?

18 A Yes, I do.

19 Q And who was that?

20 A It was Dr. Frierson.

21 Q Okay. So Ms. McCullough comes back, and you said
22 first -- I guess the doctor will look her over and do an
23 exam?

24 A Well, I did just a preliminary exam, just listened to
25 her heart and lungs, reviewed her vital signs, and then

1 the doctor saw her, but before he saw her, we also told
2 him that she was complaining of a headache. He did an
3 ultrasound of her.

4 Q Okay, okay. So once the doctor starts his exam, or
5 specifically as Rosa is walking through this process, you
6 do your exam?

7 A I do mine first.

8 Q Okay.

9 A And then the doctor does his.

10 Q Okay. Is it -- at this point, are you doing any part
11 of the sexual assault collection of the evidence?

12 A Yes, I did.

13 Q Okay. And what specifically did you go through and
14 collect, and what specifically did your exam entail?

15 A Well, we did head hair, pubic hair combings. She
16 didn't have any fingernail scrapings. We did draw blood
17 and got a urine specimen.

18 Q Okay. I'm going to show you what's been marked as
19 State's Exhibit Number one. I ask you if you recognize
20 the contents of State's Exhibit Number one?

21 A Yes, uh-huh.

22 Q And I guess generally speaking, what is this?

23 A This is the evidence that we collect, and this stays
24 in our possession at all times. It's never left
25 unattended.

1 Q Okay. So when you're going to do a sexual assault
2 examination, do you pick up this kit?

3 A We get a kit from an examining room that is sealed,
4 and we open the kit ourselves.

5 Q Okay. And the contents of this kit, what is in this
6 kit?

7 A It has the forms, and then it has the detailed
8 listings of what needs to be collected if it's appropriate
9 for that case.

10 Q Okay. And when you got the kit out of wherever you
11 stored the kits, was it sealed properly?

12 A Yes, it was.

13 Q Okay.

14 A If it's not, we don't use it.

15 Q Okay. You pick up another one?

16 A Yes.

17 Q Okay. And I guess specifically looking at State's
18 Exhibit 1, is this the specific kit that you used with
19 Rosa McCullough?

20 A Yes, it is.

21 Q Okay.

22 A That's my signature on that.

23 Q You see your handwriting --

24 A Yes.

25 Q -- your signature.

1 In looking at State's Exhibits two and three, the
2 contents -- excuse me, two and -- three and four, three
3 and four. The contents of these kits, do you recognize
4 these envelopes?

5 A Yes. That comes in the kit.

6 Q Okay. These envelopes come in the kit?

7 A Uh-huh.

8 Q Okay. And specifically then, how do you walk
9 through? You said you collect hairs and --

10 A We go by the form and go from head to toe.

11 Q Okay. You start collecting the head hairs?

12 A After we get the clothes. We collect the clothes
13 first and put them in a hospital gown.

14 Q I'm going to ask you just to -- first, just to look
15 at these envelopes. And do you have a copy of your
16 medical records, the forms that you filled out?

17 A I think I do.

18 Q Okay. You said that these forms also come in the
19 kit?

20 A Yes, they do.

21 Q Okay. I'm going to hand this to you. You filled out
22 these forms as you went through the exam?

23 A Yes.

24 Q Okay. If we can work down that -- do you start out
25 by getting what we call, like I said, a history from the

1 victim?

2 A We don't get a history of the assault itself, the
3 nurse doesn't. The doctor does that.

4 Q The doctor does that?

5 A Yes.

6 Q Okay. Were you in there when that history was taken
7 by the victim?

8 A Yes, I was.

9 Q And you heard that history?

10 A Yes, ma'am.

11 Q Okay. And what was the history that you documented?

12 A That she was assaulted. She was assaulted at
13 knifepoint, threatened with a knife and was told to take
14 her clothes off, and then she was assaulted.

15 Q Okay. Did she also report being physically, other
16 than the knife, physically assaulted?

17 A As best I recall, he hit her, she was bruised beside
18 the head, and that's what had given her the headache.

19 Q And if you need to refer to your reports, please do
20 so.?

21 A Uh-huh.

22 Q Did she report to you that she had been hit?

23 A Yes, by the side of the face, the forehead.

24 Q Okay. And I'm going to ask you to refer to some
25 other medical records. Is this your handwriting?

1 A Yes, it is.

2 Q Okay. And did you see any bruising or redness or any
3 indication that she had been hit on her face?

4 A Well, she pointed to, I believe it was the right side
5 of the face. Yeah, right side of the face, and that's
6 where she was hit. I didn't see any visual --

7 Q What's an --

8 A Or a large bruise.

9 Q What's an edema?

10 A It's swelling.

11 Q Okay.

12 A Slight swelling.

13 Q Okay. Did you notice --

14 A Bruise is like --

15 Q -- slight swelling?

16 A -- on the right side of her forehead..

17 Q Of her face?

18 A Face, yes.

19 Q Okay. And you noted that in the medical records,
20 that you noticed swelling --

21 A Yes.

22 Q -- on the right side of her face?

23 A Yes.

24 Q Okay. Then as you, with the doctor, talk to the
25 victim, do you know how she was sexually assaulted, if it

1 was with an object or with --

2 A The doctor asked her and she --

3 Q Okay.

4 A In detail --

5 Q And what was that report?

6 A That she was penetrated in the vagina.

7 Q Okay. With what?

8 A With his penis.

9 Q Okay. Do you need to know -- I see there's

10 information on here regarding whether or not the person is

11 on their period.

12 A Yes, uh-huh.

13 Q And what was that indication?

14 A She indicated she was having her menstrual period at

15 this time.

16 Q Okay.

17 A And there was blood involved.

18 Q Okay. And is it important to know whether or not

19 there was a weapon used?

20 A She said there was not.

21 Q Okay. Can you refer to page -- actually, you just

22 testified that she said that he pulled out a knife?

23 A A knife.

24 Q Okay. And then on page two of your records, was

25 there any coercion used, and what did you indicate the

1 victim told you?

2 A Other than using the knife, he threatened her with a
3 knife.

4 Q Okay.

5 A That's the only one.

6 Q Okay, and noting during the exam what her emotional
7 state was?

8 A Well, even on arrival during the exam, she was very
9 tearful and seemed, you know, upset. She was visually
10 upset, she was very tearful.

11 Q Okay. Turning then to the evidence that you
12 collected, your checklist.

13 A Uh-huh.

14 Q If we can go down, specifically refer to that list.

15 A Okay.

16 Q What did you collect?

17 A Well, we collected, first of all, the underwear that
18 she was wearing. Then there was what appeared to be a
19 tampon that was collected.

20 Q Okay. And you noted that as miscellaneous?

21 A As miscellaneous because there's not an area for
22 that.

23 Q Okay.

24 A Also, we did oral swabs of her. We do not -- the
25 pubic hair and the vaginal swab was collected by the

1 doctor.

2 Q Okay. And when the doctor is collecting that, where
3 are you standing?

4 A I'm right -- let me look at the room, to his left.
5 I'm standing right there by his shoulder.

6 Q Do you see him do that vaginal --

7 A Yes. I stand there while he's doing the pelvic exam.
8 He hands me the swab, and then I secure them so they can
9 air dry.

10 Q Okay. So you see him actually do the swab --

11 A Yes.

12 Q -- and he hands it directly to you?

13 A Yes.

14 Q And you package it?

15 A Yes, after we have them air dried at first.

16 Q Okay. And are those --

17 A They would be in one -- I believe it's in one of the
18 red labeled bags.

19 Q Okay. In the content, the envelopes in State's
20 Exhibit Number three.

21 A Yeah.

22 Q Okay. The miscellaneous material?

23 A Should be in.

24 Q The tampon?

25 A Uh-huh.

1 Q Is this all your handwriting?

2 A Yes, it is.

3 Q Okay. And was there anything else collected?

4 A A urine specimen.

5 Q Okay.

6 A And also a swab for P.C. and chlamydia that was done
7 by the doctor.

8 Q Okay. And a blood sample from the victim?

9 A The blood samples we sent -- there's three that's
10 required to be packaged for S.L.E.D., and they were sent.

11 Q Okay. And as you're collecting all of this evidence
12 and putting them the envelopes, what are you doing with
13 those envelopes?

14 A We stack them in the box, so that they're -- we can
15 visually see them. We're over to an area where there's no
16 one else. You know, there's no other employees or
17 anything. We're to ourselves.

18 Q Okay. And then after you put the evidence in those
19 envelopes, do you put it -- where do you put it?

20 A After the evidence -- they're labeled certain bags
21 for certain specimens. We put those in. We fill out --
22 finish filling out all the forms and separate them for the
23 different agencies and put the one inside and one outside,
24 and then we sealed it.

25 Q Okay. And you sealed it and then what?

1 A It has a red evidence -- these tags right here. That
2 seals them.

3 Q Okay. So you put this evidence tape on this box?

4 A And initial it.

5 Q And those are your initials?

6 A Yes, it is.

7 Q On --

8 A Four sides, uh-huh.

9 Q Okay. And the chain of custody, what time is it then
10 that you, I guess, sealed it?

11 A 2:46 is when I gave it over to -- I believe it was
12 C.P.D.

13 Q Okay. And that person signed they received it from
14 you?

15 A They received it, uh-huh.

16 Q Okay. So it was that same on -- it was August 19th
17 at 2:46 in the morning?

18 A Yes.

19 Q And you handed it over?

20 A I handed it over.

21 Q Okay. And after you collect all of this evidence,
22 put it into the box and seal it, does it leave your
23 presence at any time?

24 A No, it did not. No, it did not.

25 Q It stays with you until you hand it over to C.P.D.?

1 A That's right.

2 MS. FENT: I have no further questions. If you'll
3 just answer any questions from defense counsel.

4 THE WITNESS: Yes.

5 MS. LEE: Thank you, Your Honor.

6 CROSS-EXAMINATION:

7 BY MS. LEE

8 Q Good afternoon, Nurse Parris.

9 Now, Ms. McCullough, it appears from your notes, was
10 released within a few hours of being admitted?

11 A Admitted to the emergency department, yes.

12 Q She was discharged with a pain level of zero?

13 A Yes.

14 Q And I think you all prescribed her a Tylenol.

15 A She had the Tylenol for the headache earlier, yes.

16 Q Okay. And you talked a little about your nursing
17 assessment where you -- where you note the patient's
18 appearance. I want to talk a little bit more about that.

19 I believe you noted she had appropriate eye contact?

20 A Most of the time, yes.

21 Q Okay. But you checked appropriate eye contact?

22 A Yes, ma'am.

23 Q You checked normal affect?

24 A Yes, uh-huh.

25 Q And that would be a sort of a person's facial

1 expressions when they're talking to you, right?

2 A In a -- when it's generalized, yes.

3 Q Okay.

4 A But she was visually upset.

5 Q Okay. But you checked normal affect?

6 A Yeah.

7 Q You also checked appropriate speech and clean
8 appearance?

9 A Yes.

10 Q And you marked that she was cooperative?

11 A Yes, she was.

12 Q All right. I want to talk a little more about this
13 edema. I think Ms. Fent had you refer to it as bruising,
14 but you marked it as edema, right?

15 A Yes. It's a slight swelling on the side, the right
16 side.

17 Q Okay. Because what edema is, it's really just a
18 collection of fluid under the skin?

19 A It's a swelling.

20 Q Okay. But it swells because of the collection of
21 fluid?

22 A Yes, uh-huh.

23 Q Okay. You didn't see any bruises or marks or any
24 sort of cause for that edema, did you?

25 A No.

1 Q You didn't note any abrasions or --

2 A I did not see any abrasions.

3 Q And you didn't document any?

4 A No.

5 Q Okay. Nothing to associate with the cause of that
6 edema, right?

7 A No, only what she told us.

8 Q Okay. No pictures were taken of this slight
9 swelling?

10 A No.

11 Q No diagrams were drawn to show exactly where on the
12 face?

13 A No.

14 Q Okay. No measurements were taken to show the length
15 and width of this edema?

16 A No.

17 Q Okay. And as a nurse, edema can really be caused by
18 a great variety of things. Is that fair to say?

19 A Well, it could be, but in this case she was --
20 verbalized that --

21 Q She told you that; is that right?

22 A -- she was bruised.

23 Q It's fair to say that heat and humidity can cause
24 edema; isn't that right?

25 A Not in a specific area, generalized.

- 1 Q A mosquito bite can cause edema, can't it?
- 2 A Yes.
- 3 Q Can cause swelling.
- 4 A But you also have a bite mark.
- 5 Q Okay. Allergies or salty foods, can't that cause
- 6 edema?
- 7 A Yes, but usually, that would be around the eyes and
- 8 not on the side of the face.
- 9 Q Okay. It was the upper side of the face?
- 10 A As best I can remember, because you know, it's been
- 11 four years, on the right side.
- 12 Q And because there was no documentation of exactly
- 13 where it was, correct?
- 14 A No.
- 15 Q Okay. Hormonal imbalances can also cause edema,
- 16 can't they?
- 17 A I would think so, but not necessarily just localized.
- 18 Q Okay. But it can cause that, right?
- 19 A It can cause some edema, but not localized as a
- 20 general rule.
- 21 Q Okay. And she was on her period at that time; is
- 22 that right?
- 23 A That's right.
- 24 Q And I believe she was 52. I'm sorry. I can't hear.
- 25 I believe she was 52 at the time?

1 A I believe -- I thought it was 60. Well, 52.

2 Q That would have -- that would be right around the
3 average age of menopause?

4 A Which I thought she had told me because -- well, it's
5 52. I thought she said 62.

6 Q Okay. Okay. You do recall she was on her period at
7 the time?

8 A Yes, uh-huh.

9 Q Is that right?

10 Now, I want to talk about the protocol that you
11 followed. When you're doing a sexual assault examination,
12 your purpose there is not just to assess the patient
13 physically and examine them, but also to collect evidence?

14 A Yes.

15 Q Is that fair? And that's what that box is all about?

16 A That's what it's all about.

17 Q Okay. Now, you can document both genital and
18 nongenital injuries doing a sexual assault examination,
19 isn't that fair?

20 A Yeah. There's an area for each.

21 Q Okay. An area for each, and you can look for those
22 injuries using both the naked eye and using things like a
23 colposcope; is that right?

24 A Well, the doctor or the certified S.A.N.E. nurse,
25 which we did not have one that was certified as far as

1 legal ramifications, you know.

2 Q Right.

3 A They go through different steps.

4 Q Okay. So you're not a S.A.N.E. certified nurse?

5 A No, I'm not. We are instructed, and we perform
6 S.A.N.E. exams, but before they started the certification
7 program.

8 Q And you're obviously trained in how to do that?

9 A Yes.

10 Q And you're following the State standards?

11 A That's right.

12 Q Okay. So this wasn't the first time you were doing
13 one of these examinations?

14 A No, it's not.

15 Q I think you told us you have how many years
16 experience?

17 A Forty-seven of these.

18 Q Okay.

19 A But these --

20 Q So you know what you're doing down in there. So you
21 obviously know what I'm talking about when I say you can
22 use the aid of a colposcope, right?

23 A Yes. Well, I can't because you have to be trained
24 specifically for that.

25 Q Yes, ma'am.

1 A And as a general rule, nurses do that or not. We do
2 not, the doctor.

3 Q You also know, though, being trained in the State
4 standards, you can also using a staining technique using a
5 type of dye to look for genital injuries.

6 A We did not use that.

7 Q Okay. You didn't in this case; is that right?

8 A We don't -- no.

9 Q Okay. Is that right?

10 A We don't use a dye.

11 Q You -- you did not refer her to someone who was able
12 to do that; is that right?

13 A No. Dr. Frierson used what we call a Woods light.

14 Q A Woods light, okay. Tell the jury about what that
15 is.

16 A That's a light that in the dark will show any sperm
17 or any, you know, foreign matter of that nature,
18 especially sperm, that's present when he does the exam.
19 The doctor does that part.

20 Q Okay. And a Woods light can also be used to
21 highlight abrasions; isn't that right?

22 A Yes.

23 Q Any sort of vaginal tearing, or I guess as I said,
24 abrasions?

25 A Uh-huh.

1 Q And they are basically highlighted by this very
2 specialized light, the Woods light?

3 A Yes.

4 Q Okay.

5 A The doctor uses that.

6 Q The doctor uses that. You can also look for vaginal
7 injuries without the use of --

8 A Yes. The doctor uses a speculum and does a vaginal
9 exam.

10 Q Okay. You can look for signs of tearing to the inner
11 and outer lips of the vagina?

12 A Yes.

13 Q Okay. You can look for redness or irritation or
14 swelling; is that correct?

15 A That's correct.

16 Q Okay. You can also ask the patient questions about
17 whether or not they're experiencing abdominal pain; is
18 that right?

19 A Uh-huh, that's correct.

20 Q Okay. Experiencing vomiting?

21 A She had none of those symptoms.

22 Q None of those symptoms. She didn't report any
23 unusual vaginal discharge, correct?

24 A Nothing other than having...

25 Q Yes, ma'am. And you can also examine, as you did in

1 this case, by -- help me with the pronunciation, your
2 palpation?

3 A Yes.

4 Q That would be --

5 A To feel.

6 Q -- when they press down real hard on your belly to
7 see if anything is tender.

8 A Tender.

9 Q And in this case when you did that, you marked
10 non-tender?

11 A Non-tender.

12 Q Okay. Now, we talked about documenting nongenital
13 injuries in this case. You can look for things like bite
14 marks; is that right?

15 A Yes, she had no bite marks.

16 Q No bite marks. She had no cuts or abrasions?

17 A No.

18 Q Okay. And no -- what I want to say, redness or
19 bruising that you could see?

20 A Not visual, no.

21 Q Okay. No hand marks where she was held down?

22 A No.

23 Q So at the end of your examination, you didn't observe
24 any injuries, any cuts, any abrasions; is that correct?

25 A That's correct.

1 Q And you are aware, absolutely, no vaginal areas,
2 correct?

3 A That's my understanding. When I was there, there was
4 no indication, even from the doctor, that there was any.

5 Q No indication that there was any vaginal trauma after
6 the use of that Woods light; is that right?

7 A That's correct.

8 MS. LEE: I don't have anything further, Your Honor.

9 REDIRECT EXAMINATION:

10 BY MS. FENT

11 Q The Woods light doesn't find trauma.

12 A No.

13 Q You said it finds foreign matter?

14 A Mainly they use it for sperm and that type of thing.

15 Q Okay. So the Woods light has nothing to do with
16 trauma?

17 A Not in a sense of trauma, no.

18 Q Okay. Can you get an edema on the side of your face
19 from being hit two or three times?

20 A Yes.

21 MS. FENT: No further questions.

22 RE CROSS-EXAMINATION:

23 BY MS. LEE

24 Q Very briefly, Your Honor.

25 I just want to make sure we understand your

1 testimony. When I spoke to you, you said the Woods light
2 can help highlight things like abrasions or tearing in the
3 vagina, correct?

4 A Well, it will highlight it, but that's not what it's
5 used for. It's used for --

6 Q But that is a -- a side effect is it assists the
7 doctor --

8 A But that would also already be visible.

9 Q Thank you. And in this case it wasn't visible,
10 correct?

11 A There was no tearing or anything.

12 MS. LEE: Nothing further, Your Honor.

13 MS. FENT: No further questions.

14 THE COURT: Thank you, ma'am. You can step down and
15 be excused.

16 MS. FENT: May this witness be excused.

17 MS. LEE: No objection, Your Honor.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, we're going to take our lunch break. I'm going to
20 ask that you report back to your jury room at 2:20. I
21 remind you not to discuss the case in any shape, form, or
22 fashion.

23 Thank you all.

24 (WHEREUPON, the jury left open court at approximately
25 1:00 p.m.)

1 MR. CATHCART: Your Honor, I would request that they
2 refrain from showing the jury their charts.

3 MS. LAFAVE: Sorry. I just set it there. I
4 apologize.

5 THE COURT: Okay. But that was the one that you did
6 with that witness.

7 MS. LAFAVE: Yes.

8 MR. CATHCART: Not with that witness, Your Honor.
9 No, ma'am.

10 THE COURT: Okay.

11 MS. LAFAVE: Not with that witness, no doubt.

12 THE COURT: Okay.

13 MS. LAFAVE: I apologize.

14 THE COURT: Okay. I just wanted to make it clear for
15 the record that it wasn't one you just put together. You
16 did have another witness up there.

17 MS. LAFAVE: Yes, Your Honor.

18 THE COURT: Not anything you inadvertently left up
19 there.

20 Okay. Anything else the parties now to take up?

21 MS. LEE: No, ma'am.

22 THE COURT: Okay. Let's quickly go over the Court's
23 ruling with respect to the prior offenses. I understand
24 that the two at issue are 2000 shoplifting and 2002
25 burglary.

1 With respect to the shoplifting, the shoplifting is
2 considered to be a crime of dishonesty, so that one comes
3 in under 609(A)(2) on its own without needing to go into
4 any probative versus prejudicial value.

5 With respect to the crime of burglary, according to
6 the case law that I have found, specifically referring to
7 State v. Bryant, burglary in and of itself is generally
8 not probative of truthfulness.

9 MR. CATHCART: Yes, Your Honor. If I may, in
10 anticipation of going --

11 THE COURT: Okay.

12 MR. CATHCART: -- into this analysis, I went ahead
13 and got -- this was a D.P. indictment he pled guilty to.

14 THE COURT: Okay.

15 MR. CATHCART: The underlying warrant is, if I can
16 read it, G608669, burglary in the first degree.

17 Obviously, any burglary you have to enter a dwelling
18 and/or a building with the intent to commit a crime
19 therein.

20 The crime in this burglary was an attempt to carry
21 away a television and a radio, which would be a larceny,
22 Your Honor. Therefore, it would fall under the Al-Amin.
23 It's not just burglary by itself. It's the burglary with
24 the intent to commit a crime. Therefore, a larceny. It
25 fits under the statute.

1 THE COURT: Okay. Now, that's the underlying
2 indictment so --

3 MR. CATHCART: The underlying crime, yes, ma'am.

4 THE COURT: Right. My point being, of course, I'm
5 not there at the plea. Do we have any information? You
6 know, some of this may have to come from the defense as to
7 whether or not -- I mean, what did he plead to? Did he
8 plead to burglary first?

9 MR. CATHCART: He pled to the burglary second degree.
10 Hold on a second. I'm sorry.

11 (Pause).

12 He pled to a burglary second degree. That was a
13 direct presentment to the burglary of the dwelling of
14 Kenner Broadhurst (phonetic).

15 The original charge that the D.P. was from is a
16 burglary, on that original warrant, of the dwelling of
17 Mr. Broadhurst from which he stole a radio, or attempted
18 to steal a radio, and/or television.

19 THE COURT: Okay. And that's what I wanted to know
20 then, if he --

21 MR. CATHCART: He pled to that one.

22 THE COURT: Okay. If it was pled down, but he does
23 admit to actually taking something?

24 MR. CATHCART: Yes, Your Honor. If you wish, I can
25 make each of these a Court's Exhibit.

1 THE COURT: Please do.

2 (WHEREUPON, Court's Exhibit No. 4 was marked for
3 identification only.)

4 MR. CATHCART: Your Honor, for the record this is
5 listed as Court's Exhibit number four.

6 THE COURT: Okay. And then back to my question.
7 You're saying that he pled down from burglary first to
8 burglary second, and that as part of the element of the
9 burglary second, he pled to actually taking some items?

10 MR. CATHCART: He pled that he entered this dwelling
11 with the intent to commit a crime therein. Intent to
12 commit a crime therein, that proves that it was a larceny
13 or attempted larceny.

14 Under the Al-Amin case law, Your Honor, that should
15 come in, I think. He pled guilty on D.P. 02062, which is
16 indictment number 02-GS-40-1078. The underlying facts as
17 being the same as on the original warrants.

18 THE COURT: Okay. All right. Defense?

19 MS. LEE: Your Honor, the State did not D.P. the
20 accompanying larceny. He did not -- there is nothing in
21 the indictment that specifically states about the T.V. and
22 whatever else it is that's in the warrant. It is not in
23 the charging indictment, which is what he pled guilty to.

24 MR. CATHCART: There was --

25 MS. LEE: There --

1 MR. CATHCART: Please continue.

2 MS. LEE: There is nothing -- I'm sorry. I lost my
3 train of thought.

4 I don't see what is so different in this case to
5 distinguish it from what you were telling us back in the
6 Bryant cases. Burglary is not generally considered to be
7 a crime of dishonesty. This would be a different matter
8 if this was a grand larceny charge, but that is not what
9 he pled to.

10 He got a reduction, and he pled to entering a
11 premises with the intent to commit a crime therein.

12 THE COURT: And you're saying that just by virtue of
13 the intent to commit a crime therein doesn't make it
14 larceny?

15 MS. LEE: No, ma'am, Your Honor.

16 THE COURT: Because larceny is the element of the
17 armed robbery, for example, under the State vs. Al-Amin
18 case, the element of taking the property of another.

19 MR. CATHCART: Your Honor, there was no accompanying
20 larceny. This was originally charged as a burglary first.
21 The indictment -- the warrant for the burglary first
22 indicated that he broke into the house with the intent to
23 commit a crime therein, the larceny.

24 A burglary generally does not always have to be an
25 intent to commit a crime therein of a larceny. He could

1 have gone in there to kill someone, to beat someone, to
2 rape someone.

3 In this case, what he pled guilty to is that he broke
4 into a house to commit a larceny. Therefore, it does fall
5 under the Al-Amin. It was D.P.'d as exactly to the
6 warrant that it was: The burglary first D.P.'d as a
7 burglary second to a larceny.

8 MS. LEE: Your Honor, that is not --

9 MR. CATHCART: If I may approach and hand up these
10 warrants.

11 THE COURT: Certainly. Thank you.

12 Okay.

13 MS. LEE: Your Honor, that is not on the indictment,
14 as you will see. The indictment only says with the intent
15 to commit a crime therein. It is not specific to that.

16 There is a plea deal accepted in this case. He could
17 have pled guilty under a different understanding of what
18 the crime to be committed therein was. We don't know, but
19 there is nothing that stands out in this burglary to make
20 it particularly egregious as a crime of dishonesty that
21 would classify it in those crimes that the courts have
22 said come in under 609.

23 MR. CATHCART: That's distinguished.

24 THE COURT: Okay.

25 MS. LEE: I don't see how it's distinguished, Your

1 Honor.

2 THE COURT: Okay.

3 MS. LEE: I just don't.

4 THE COURT: Let me look at these documents, and we'll
5 get back with this. I would like to know from the State,
6 are you standing on the fact that for the burglary to come
7 in, it would have to be under 609(A)(2) then as opposed to
8 (A)(1)?

9 MR. CATHCART: Your Honor, it would -- it does come
10 in under our statement of law under (A)(2). However, if
11 you do not feel it comes in under (A)(2), then it goes to
12 the (A)(1) analysis.

13 THE COURT: Which is the probative versus
14 prejudicial.

15 MR. CATHCART: That's correct, Your Honor.

16 THE COURT: Let's hear your arguments on that.

17 MR. CATHCART: Again, the arguments to that, Your
18 Honor, is that it's a crime of dishonesty. Even if it --
19 as to -- even if it -- you do not feel that the burglary
20 had the larceny aspect and basically straight to -- it's
21 still the underlying facts of the burglary show a breach
22 of his credibility.

23 THE COURT: But under (A)(1), I don't have to go into
24 a crime of dishonesty or false statement.

25 MR. CATHCART: Yes, ma'am, but I think there still is

1 a -- to a breach of his credibility. If it goes to how
2 credible he is as a witness. It goes to his credibility
3 that he committed a burglary within the last ten years
4 that carries up to 15 years in jail.

5 THE COURT: Okay.

6 MS. LEE: Judge, again, I think we have to harken --
7 I think we have to harken back to the rule itself which is
8 concerned with crimes of dishonesty or false statement.

9 This is not the kind of crime that just by virtue of
10 being a burglary, and a very run-of-the-mill garden
11 variety burglary as they come that distinguishes it as
12 something that would encroach upon his credibility.

13 THE COURT: Okay.

14 MR. CATHCART: Your Honor, by her own statements -- I
15 guess by her argument previously, if it was a more serious
16 purpose, such as it went into a murder, it would not be a
17 crime of dishonesty.

18 This goes to his credibility because he went to
19 someone else's house to deprive them of their property.
20 He's not the most credible person.

21 MS. LEE: Judge, shoplifting includes concealing
22 something and walking out.

23 THE COURT: Okay.

24 MS. LEE: I think that is largely why it's considered
25 to be a crime of dishonesty. What I know from the warrant

1 is that they had know each other from ten years -- for ten
2 years.

3 It does not appear to me that there's that intrinsic
4 dishonesty in this crime. I think that's why the Court
5 has held run-of-the-mill burglaries are not in and of
6 themselves dishonest crimes that fall under 609, Your
7 Honor, whether it's (A)(1) or (A)(2).

8 I think it fails prejudice versus probative value,
9 and I don't think it involves dishonesty or false
10 statement.

11 THE COURT: Okay.

12 MR. CATHCART: Your Honor, I would point out, she is
13 now arguing the (A)(2) as to your case.

14 Burglary, especially in this case, is not the same
15 kind of case he is up for trial on. It's not prejudicial
16 as to what he's charged with now.

17 There's no indication that he did any -- that the act
18 committed here -- there is no indication that he went
19 someone else's house. It occurred in his house. He raped
20 her there.

21 Burglary only goes to credibility. It's not
22 matching. It's not like we're trying him on burglary or
23 even trying him on a larceny. In this case, specifically
24 it should come in.

25 MS. LEE: Judge, it's --

1 MR. CATHCART: Under (A)(1), if not (A)(2).

2 MS. LEE: Judge, it's highly prejudicial. It's going
3 to be engrained in the minds of a jury: Once a felon,
4 always a felony. That's why this is highly prejudicial.

5 THE COURT: Okay. All right. Let me go back and
6 review those cases and documents you all have given me.

7 You all have a good lunch. We'll see you about 2:20.

8 (There was a lunch break).

9 THE COURT: We'll proceed with the evidentiary matter
10 later. I have a motion for Bruce Gene Hunter. I don't
11 know what order the witnesses are going -- the State, are
12 you planning on Mr. Hunter?

13 MS. FENT: We're expecting to put all of our
14 witnesses on today.

15 THE COURT: We'll just note this motion will come
16 right before. Is Mr. Hunter next?

17 MS. FENT: No.

18 THE COURT: All right. Thank you.

19 Okay. Jurors, please.

20 (WHEREUPON, the jury came into open court at
21 approximately 3:05 p.m.)

22 THE BAILIFF: All jurors present.

23 THE COURT: All right. Thank you. Ladies and
24 gentlemen, I apologize. I really like to try to keep
25 things on schedule, but I'm Chief Judge for General

1 Sessions, which sometimes matters just come to my
2 attention I have to deal with.

3 We had one case in which I had to do a deferred
4 sentencing for a person who pled in a case, so I had to
5 deal with that, and then another one who has a trial next
6 week, and had some issues with their attorney. So I had
7 to deal with all of those motions, so we could keep on
8 schedule, as well, for next week. Then I also had to
9 address State Grand Jury, which is another part of my
10 responsibility.

11 I apologize. Some of those things are not
12 anticipated, but they just have to know that I'm
13 accessible to them regardless of what role we're playing
14 at that particular moment in time. I appreciate your
15 patience, and we're ready to continue with the case.

16 State, call your next witness.

17 MR. CATHCART: At this time, the State calls Rafael
18 Douglas.

19 THE COURT: I just wanted to make clear, it was no
20 fault of any of these attorneys. They were not involved
21 in the matter. Okay.

22 RAFAEL DOUGLAS, after being duly
23 sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box, State
25 your name for the record, please.

1 THE WITNESS: Officer Raphael Douglas.

2 DIRECT EXAMINATION:

3 BY MR. CATHCART

4 Q Officer Douglas, where are you employed?

5 A City of Columbia Police Department.

6 Q And what do you do there?

7 A I'm a police officer.

8 Q Let me show you what's been marked as State's Exhibit
9 Number -- Your Honor, may I approach the witness?

10 THE COURT: Yes, you may.

11 BY MR. CATHCART

12 Q State's Exhibit Number one. Do you recognize what
13 this is?

14 A Yes, sir. This is an evidence box.

15 Q And evidence box from what case, do you recall?

16 A I'm not quite sure, but you can look at the box on
17 the case number or not.

18 Q Let me ask you this: If you take a look at State's
19 Exhibit Number one, do you recognize your signature on
20 this?

21 A Yes, sir, that's my signature.

22 Q Okay. And basically, what does that indicate?

23 A Chain of custody for C.S.C. case. The case number
24 should be on there.

25 Q Okay. And who did you get that case -- that box

1 from?

2 A Richland Memorial Hospital.

3 Q Okay. Do you recall, from the chain of custody, who
4 did you get it from?

5 A From Betty, Betty Parris.

6 Q Okay. And on what date did you receive that box?

7 A 8/19/04.

8 Q And what, if anything, did you do with that box?

9 A I took it down and placed it in the property room.

10 Q Did you break the seals of that box and go inside
11 that box in any way whatsoever?

12 A No, sir; no, sir.

13 Q Did you alter anything in that box in any way
14 whatsoever?

15 A No, sir.

16 MR. CATHCART: Please answer any questions from
17 defense counsel.

18 MS. LAFAVE: Your Honor, I'd just like to take a look
19 at the exhibit.

20 THE COURT: Certainly.

21 (Pause).

22 MS. LAFAVE: May I approach?

23 THE COURT: Yes, you may.

24 MS. LAFAVE: Thank you.

25 (Pause).

1 Your Honor, I have no questions for this witness.

2 THE COURT: Thank you, sir. You can step down and be
3 excused.

4 THE WITNESS: Thank you.

5 MS. FENT: The State calls investigator Pete Currie.

6 PETE CURRIE, after being duly sworn,
7 testified as follows:

8 THE CLERK: Have a seat in the witness box. State
9 your name for the record, please.

10 THE WITNESS: My name is Peter Currie.

11 DIRECT EXAMINATION:

12 BY MS. FENT

13 Q Investigator Currie, with whom are you employed?

14 A The Columbia Police Department.

15 Q In what capacity?

16 A I am a Crime Scene Investigator, assigned to crime
17 scene investigations.

18 Q Okay. Were you asked to collect some evidence in a
19 case 0426520 involving a suspect, Willie Gilmore?

20 A Yes, I was.

21 Q And what evidence were you asked to collect?

22 A I was requested to do an oral swab on the individual.

23 Q On the suspect?

24 A Yes, ma'am.

25 Q Okay. And where did you do that oral swab?

1 A I did that at headquarters at the Columbia Police
2 Department.

3 Q Okay. And on what day did you collect that swab?

4 A I collected that on November 23rd, 19--- I'm sorry,
5 2005.

6 Q Okay. And how exactly is that oral swab taken?

7 A An oral swab is a stick with some cotton on it that
8 is sterile, and it comes in a small package. You take it
9 out, and you collect saliva from inside your mouth.

10 Q I'm going to show you what we have marked as State's
11 Exhibit Number two, and I may need to get some scissors to
12 open that to see if you recognize that exhibit.

13 A Yes, I do. Everything is right here.

14 Q You can see through it?

15 A Yes, ma'am.

16 Q Okay. And what is this exhibit?

17 A This is an oral swab right here that was taken from
18 Willie Albert Gilmore.

19 Q Okay. In the packaging after you take the swab from
20 the suspect, what do you do?

21 A It is packaged and sealed. It is left to dry out.
22 The cotton swab has to dry out. Then it is turned over
23 into the evidence room, which they put it in the
24 refrigerator.

25 Q And after you took the swab from the suspect, did you

1 then put it into the property room?

2 A Yes, I did.

3 Q And do you know when it was that you put it into the
4 property room?

5 A That was on the same day.

6 Q The very same day, November 23rd, 2005?

7 A That's correct.

8 Q Okay. Did you have occasion to have any other
9 contact with this -- with this swab?

10 A Yes, I did. On January 6th, 2006, I then got the
11 swab from the evidence room and carried it out to S.L.E.D.
12 to their evidence room.

13 Q Okay. And when you take the swab -- I guess when you
14 had it initially, before it gets to S.L.E.D., is it in
15 this outer packaging, this heat sealed package or where do
16 you get this heat sealed package?

17 A This came from S.L.E.D.

18 Q Okay. So you take the inner packaging out to
19 S.L.E.D.?

20 A Right.

21 Q And then put it into this heat sealed package?

22 A They place it in there. They seal it in front of me,
23 and then I sign it. I initial it and date it myself.

24 Q Okay, where it is that they sealed it?

25 A Right.

1 Q Okay. And you said -- what date was this taken out
2 to S.L.E.D.?

3 A On January 6th, 2006.

4 Q 2006. At any point when you had custody of that
5 swab, the suspect's swab --

6 A I'm sorry?

7 Q -- did you tamperer with it in any way?

8 A I'm sorry?

9 Q When you had custody of that swab, at any time did
10 you tamper with it in any way?

11 A Oh, no.

12 Q And the individual that you swabbed, do you see him
13 in the courtroom today?

14 A Yes, Mr. Gilmore.

15 Q Can you point to him and describe what he's wearing?

16 A The defendant, suit, glasses.

17 MS. FENT: May the record reflect the witness has
18 identified the defendant.

19 THE COURT: Okay.

20 MS. FENT: No further questions.

21 MS. LAFAVE: Briefly, Your Honor.

22 CROSS-EXAMINATION:

23 BY MS. LAFAVE

24 Q Is it Officer Currie?

25 A Yes, ma'am.

1 Q Officer Currie, do you go to crime scenes and do
2 C.S.I. investigation?

3 A Yes, ma'am.

4 Q And are you the only C.S.I. investigator with the
5 Columbia Police Department?

6 A No, ma'am. There are five of us at this time.

7 Q There are five?

8 A Yes, ma'am.

9 Q And is this the only connection you had with this
10 case as far as crime scene investigation as to
11 Mr. Gilmore's buccal swab?

12 A That's correct.

13 MS. LAFAVE: Okay. Thank you.

14 MS. FENT: No further questions.

15 THE COURT: Okay. Sir, you can step down and be
16 excused.

17 You can proceed.

18 MR. CATHCART: The State calls JoAnn Lewis.

19 JOANN LEWIS, after being duly sworn,
20 testified as follows:

21 THE CLERK: Have a seat in the witness box. State
22 your full name for the record, please.

23 THE WITNESS: JoAnn Lewis.

24 DIRECT EXAMINATION:
25

1 BY MR. CATHCART

2 Q Ms. Lewis, where are you employed?

3 A City Police Department.

4 Q What do you do there?

5 A I supervise the property and evidence unit.

6 Q And what does that entail? What do you do?

7 A That entails that we receive all of the evidence on
8 the cases. We safeguard them, secure them, log them in
9 and transport from S.L.E.D. occasionally, maintain the
10 chain of custody.

11 Q Let me show you what's been marked as State's Exhibit
12 Number one. Do you recognize your signature on this?

13 A Yes, I do.

14 Q And what's the basis for your signature being on
15 that?

16 A The chain of custody. That entails when I received
17 it in the property and evidence unit.

18 Q Okay. And you received that from property -- in the
19 property unit?

20 A Yes, I did.

21 Q From who?

22 A From the evidence refrigerator.

23 Q It was entered into evidence to you?

24 A Yes.

25 Q Okay. And that was a lock box, correct?

1 A That's correct.

2 Q That's when an officer puts something into a secured
3 refrigerator?

4 A Yes.

5 Q Okay. And then you pulled it out of that secured,
6 locked refrigerator?

7 A Yes.

8 Q Okay. And on what day did you pull it out of the
9 secured, locked refrigerator?

10 A August 19th, '04.

11 Q And on what date was this evidence collected?

12 A August 19th, '04.

13 Q On the same day it was collected, you had placed it
14 into your care and custody, correct?

15 A Yes.

16 Q Did you do anything to alter the contents of this box
17 in any way whatsoever?

18 A No.

19 Q Let me show you what's been mark as State's Exhibit
20 Number two. Do you recognize what this is, or do I need
21 to take that out of the bag for you?

22 A Yes, I do.

23 Q Okay. What is that?

24 A It's a saliva sample.

25 Q Okay. And did you have any opportunity to come in

1 contact with that saliva sample?

2 A Yes.

3 Q And how did you come in contact with that saliva
4 sample?

5 A I received it from I.D. Tech Pete Currie to me at the
6 property room on November 23rd, 2005.

7 Q And did you -- when you received it, did you alter it
8 in any way whatsoever?

9 A No.

10 Q You just placed it in your care and custody?

11 A That's correct.

12 Q And what did you do with it when you got it in your
13 care and custody?

14 A It was placed in log in, and it was placed in the
15 evidence refrigerator.

16 MR. CATHCART: Okay. I beg the Court's indulgence.

17 (Pause).

18 Please answer any questions from defense counsel.

19 MS. LAFAVE: Your Honor, I have no questions for this
20 witness.

21 THE COURT: Okay, ma'am. You can step down and be
22 excused. Thank you for coming.

23 THE WITNESS: Thank you.

24 MS. LAFAVE: Without objection, Your Honor.

25 MR. CATHCART: The State calls Donna Martin.

1 DONNA MARTIN, after being duly sworn,
2 testified as follows:

3 THE CLERK: Have a seat in the witness box. State
4 your name for the record, please.

5 THE WITNESS: Okay. Donna Martin.

6 DIRECT EXAMINATION:

7 BY MR. CATHCART

8 Q Ms. Martin, where are you employed?

9 A City of Columbia Police Department, evidence unit.

10 Q Okay. What do you do there?

11 A I work with evidence. I'm an evidence clerk.

12 Q Okay. Let me show you what's been marked as State's
13 Exhibit Number one. Have you had an opportunity to
14 observe this before?

15 A Yes.

16 Q And on what basis have you had the opportunity to
17 observe it?

18 A I signed this out to I.D. Tech Rose to take to
19 S.L.E.D.

20 Q Okay. You signed it out. What do you mean by that?

21 A He signed it -- they took the evidence, came -- it
22 was taken to S.L.E.D. to be tested.

23 Q Okay. And you got it from the evidence room?

24 A Yes.

25 Q And when you got it from the evidence room -- from

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1 the evidence room, had you altered it or changed it in any
2 way whatsoever?

3 A No.

4 Q And at that point, you gave it to Investigator Rose;
5 is that correct?

6 A Yes.

7 Q What day did you give it to Investigator Rose --
8 Officer Rose, I'm sorry?

9 A I gave it to him 6/24/05.

10 Q Do you recall about what time?

11 A No, sir, I do not.

12 MR. CATHCART: Please answer any questions from the
13 defense counsel.

14 MS. LAFAVE: I have no questions for this witness,
15 Your Honor. No objection to her being excused.

16 THE COURT: Thank you very much. You can step down
17 and be excused.

18 THE WITNESS: Thank you.

19 MR. CATHCART: State calls Billy Rose.

20 MS. LAFAVE: Richard, is this the same person as
21 Walter Rose?

22 MR. CATHCART: Yes. We call him "Buddy".

23 MS. LAFAVE: Okay.

24 WALTER ROSE, after being duly sworn,
25 testified as follows:

1 THE CLERK: Have a seat in the witness box. State
2 your name for the record, please.

3 THE WITNESS: My name is Walter Rose.

4 DIRECT EXAMINATION:

5 BY MR. CATHCART

6 Q Mr. Rose, where are you employed?

7 A The City of Columbia Police Department.

8 Q And what do you do there?

9 A I work in the crime scene unit.

10 Q And could you please describe to the jury, basically
11 what your job entails working at the crime scene unit?

12 A Yes, sir. We document and collect evidence, take
13 things to S.L.E.D. We analyze any evidence that we
14 collect, fingerprints, photographs, things of that nature.

15 Q Okay. And let me show you what's been marked as
16 State's Exhibit Number one. Do you recognize what this
17 is?

18 A Yes, sir.

19 Q What is that?

20 A That's a C.S.C. kit.

21 Q Do you recognize it from a specific time in your
22 life?

23 A Yes, sir.

24 Q And what would that be?

25 A On June 24th, 2005 I had a request to take this piece

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1 of evidence to S.L.E.D. to be analyzed.

2 Q Okay. And did you do so?

3 A Yes, sir.

4 Q Where did you get that piece of evidence from?

5 A From the Columbia Police Department evidence room.

6 Q Okay. And did you -- once you got it in your
7 possession, what did you do with it?

8 A I went to S.L.E.D.

9 Q Okay. When you got to S.L.E.D., what did you do with
10 it?

11 A I handed it to the evidence clerk there at S.L.E.D.
12 where she had separated it to go to the several places --
13 for the evidence inside to be analyzed.

14 Q Okay. When you say separate, what does she do?

15 A She opens this box. Inside the box is four pieces of
16 evidence that she singly placed in bags to be sent to the
17 analyst.

18 Q And she -- did she do this in your presence?

19 A Yes, sir.

20 Q Did you see her tamper with any of the evidence that
21 she placed in the bags in any way other than to place them
22 in bags?

23 A No.

24 Q Let me show you what's been marked as State's Exhibit
25 Number four. Is this the type of bags we're talking

1 about?

2 A Yes, sir.

3 Q Okay. And when she sealed it -- did you -- you said
4 she placed it in the bag. What did she do with the bag?

5 A She sealed it in the bag, and I initialed her seal.

6 Q And did you initial her -- so that's your initials up
7 there on the seal?

8 A Yes, sir.

9 Q Okay. While this box was in your possession, did you
10 do anything to alter the interior of that box in any way
11 whatsoever?

12 A No, sir.

13 Q Let me show you what's been marked as State's Exhibit
14 Number three. Do you recognize that?

15 A I do.

16 Q Is that -- whose initials are on the seal on that
17 bag?

18 A Mine.

19 Q Okay. And that same date?

20 A Yes, sir.

21 Q Okay. Let me show you what's been marked as State's
22 Exhibit Number seven. Again, whose initials are on the
23 seal?

24 A It's mine dated the same date.

25 Q Same date. These are two of the bags that came out

1 of that box?

2 A It's two of the pieces of evidence that was placed in
3 those bags, yes, sir.

4 MR. CATHCART: Please answer any questions from
5 defense counsel.

6 CROSS-EXAMINATION:

7 BY MS. LAFAVE

8 Q Officer rose, when you take evidence from the
9 Columbia Police Department to S.L.E.D., do you have to
10 fill out a form to check it out and take it?

11 A I don't fill a form out. When I receive it from the
12 evidence room, I sign their card. They have a card that
13 we sign --

14 Q Okay.

15 A -- saying I received it from whoever and the date.

16 Q But is it a service request for you to take it over
17 to S.L.E.D.?

18 A (There was no response).

19 Q Do you have any idea what I'm talking about?

20 A I had -- the investigator asked me to take it to
21 S.L.E.D., the evidence, yes.

22 Q And you signed a piece of paper that you took it to
23 S.L.E.D.?

24 A I --

25 Q That you --

1 A The lab request from S.L.E.D., I do sign.

2 Q You do sign that?

3 A Yeah.

4 Q Okay. Do you remember what was on that form?

5 A Yes, ma'am, the S.L.E.D. Laboratory Forensic form?

6 Q Yes.

7 A Yes.

8 Q And where -- there's a couple of questions on there,
9 and one of them is where the incident occurred?

10 A Uh-huh.

11 Q And your answer, if you would read it, it's in the
12 bottom box there.

13 A It said the victim's residence.

14 Q Yes, sir. And you also checked another answer right
15 below that. Would you read that to the jury?

16 A I've got a photocopy. It's standards from
17 possible -- I believe it's body fluid donors been
18 submitted?

19 MS. LAFAVE: May I approach, Your Honor?

20 THE COURT: Yes.

21 THE WITNESS: Is that what you're talking about?

22 Oh, was there a weapon involved. I'm sorry. I have
23 unknown.

24 BY MS. LAFAVE

25 Q That's all right. And what was your answer?

1 A Unknown.

2 Q And are you aware of the date that this incident
3 occurred?

4 A (There was no response).

5 Q Not the incident of you taking the --

6 A I do not have that.

7 Q -- items over to S.L.E.D. If I was to tell you it
8 was in 2004 --

9 A Yes, ma'am.

10 Q Yeah. And what was the date that this was clocked in
11 to S.L.E.D. for processing?

12 A I believe it was 6/24/05 at 3:26 in the afternoon.

13 Q And that -- approximately ten, 11 months after the
14 incident?

15 A -- Yes.

16 MS. LAFAVE: Okay. I have no further questions, Your
17 Honor?

18 THE COURT: Okay.

19 REDIRECT EXAMINATION:

20 BY MR. CATHCART

21 Q Just a couple of questions.

22 Other than you taking this box from evidence to
23 S.L.E.D., do you have any knowledge whatsoever about this
24 case?

25 A I do not.

1 Q So when you type, put down "unknown", you had no
2 clue?

3 A No, sir, I did not.

4 Q Didn't know anything about the facts?

5 A No, sir. It was unknown to me.

6 MR. CATHCART: No further questions. Thank you.

7 THE COURT: Anything further?

8 MS. LAFAVE: No, Your Honor.

9 THE COURT: Okay. You can step down and be excused.

10 MS. LAFAVE: Without objection.

11 THE COURT: Thank you.

12 MR. CATHCART: At this time, the State calls Reginald
13 Stephens.

14 REGINALD STEPHENS, after being duly
15 sworn, testified as follows:

16 THE CLERK: Have a seat in the witness box. State
17 your full name for the record, please.

18 THE WITNESS: My name is Reginald Stephens.

19 DIRECT EXAMINATION:

20 BY MR. CATHCART

21 Q Mr. Stephens, where are you employed?

22 A City of Columbia evidence property room.

23 Q Could you basically describe what you do there?

24 A I get property, log it in, safeguard it, and I
25 maintain a chain of custody.

- 1 Q Basically, what we're doing today, correct?
- 2 A (There was no response).
- 3 Q Let me show you what's been marked State's Exhibit
- 4 Number two. Do you recognize what this is?
- 5 A Yes, looks like D.N.A. evidence.
- 6 Q Have you seen this D.N.A. evidence before. Do I need
- 7 to take it out of S.L.E.D. bag for you?
- 8 A It's item number two? Okay. I'm not sure. It's on
- 9 the sheet.
- 10 Q I'm sorry?
- 11 A I'm not showing it as signing this item out, number
- 12 two. What item is this? It's exhibit two on there.
- 13 Q It's State's Exhibit Number two. Could it help if I
- 14 take it out of it's --
- 15 A Our item number three, let me see.
- 16 (Pause).
- 17 Yes. I got this from S.L.E.D. on 1/6/2006, I
- 18 believe.
- 19 Q Okay. You got it back from S.L.E.D.?
- 20 A Yes, I got it now.
- 21 Q But before it made it to S.L.E.D., was it in your
- 22 custody?
- 23 A Yes, sir.
- 24 Q Okay.
- 25 A Okay. From me, and I sign it out to Officer Currie,

1 right.

2 Q Okay.

3 A 1/6/2006, I believe is what the date is there.

4 Q So as an evidence technician, you signed it out to
5 Investigator Currie?

6 A Officer Currie, right.

7 Q And on what date was that?

8 A Well, it looked like 1/6/06. I'm not sure of the
9 handwriting here.

10 Q And while it was in your possession and control, did
11 you alter it in any way whatsoever?

12 A Oh no, sir.

13 Q Until you gave it to Mr. Currie, did you have
14 anything other than removing it from the evidence room to
15 giving it to him?

16 A No, Investigator Currie.

17 MR. CATHCART: Please answer any questions from
18 defense counsel.

19 MS. LAFAVE: Your Honor, I have no questions for this
20 witness.

21 THE COURT: Sir, you can step down and be excused.

22 MS. LAFAVE: Without objection.

23 THE COURT: Thank you.

24 MS. FENT: The State calls Carol Brooks.

25 CAROL BROOKS, after being duly sworn,

1 testified as follows:

2 THE CLERK: Have a seat in the witness box. State
3 your full name, please.

4 THE WITNESS: Carol Belinda Brooks.

5 DIRECT EXAMINATION:

6 BY MS. FENT

7 Q Ms. Brooks, are you currently employed?

8 A Retired from S.L.E.D., and I am now training horses
9 in Camden.

10 Q Okay. How long did you work for S.L.E.D.?

11 A For the last two -- approximately two years, I was
12 with S.L.E.D., but I was with them several -- you know,
13 back in the late '80s, early '90s.

14 Q Okay. And what was your position with S.L.E.D.?

15 A I was a forensic technician --

16 Q Okay.

17 A -- with the evidence room.

18 Q Okay. As a forensic technician, what were your
19 duties and responsibilities?

20 A When the law enforcement agencies would come with
21 evidence to be tested, they would come to the evidence log
22 in, and we would log in the evidence, as well as put it in
23 the appropriate containers and have the officers to sign
24 and date, and then they would get their receipt for the
25 evidence that they left.

1 Q Okay. I'm going to show you a document L057297.

2 Just take a look at that and see if you recognize it.

3 A Yes..

4 Q Okay. And what is that?

5 A The L0507297?

6 Q Uh-huh.

7 A That's the lab number that this particular case was
8 given that S.L.E.D. would issue to that evidence for that
9 case that came in.

10 Q Okay. And what's the document that I handed you?

11 A This is the log in sheet that S.L.E.D. provides to
12 the officer that brings in the evidence.

13 Q Okay. When the evidence comes -- you know, the
14 officer comes in and hands you evidence. I'm going to
15 show you State's Exhibit Number one and ask you just
16 generally do you recognize what this is?

17 A Yes. This is the C.S.C. kit.

18 Q Okay. And when they come in with a C.S.C. kit, what
19 happens with this kit?

20 A It is sealed by the agency that brings it in, and we
21 make sure that the seal is intact. We open it up, and we
22 take the different packets that are within there, that's
23 being brought to S.L.E.D. to be tested, and then we put it
24 in our heat sealed pouches.

25 Q Okay. In looking at -- I think the packaging has

1 gotten...

2 I'm going to show you first what we've marked as
3 State's Exhibit Number four and ask you if you recognize
4 this exhibit.

5 A Yes, I do.

6 Q Okay. And what is this?

7 A That was the D.N.A. trace that came in for analysis,
8 and this is the official S.L.E.D. bag. That's the bar
9 code for the container, the E232354.

10 Q Okay. The evidence that's submitted, do you all
11 give -- aside from the lab number, do you give the
12 specific pieces of evidence an individual number, I guess?

13 A Container numbers.

14 Q Okay.

15 A That's the "E".

16 Q So the container number for these pieces of
17 evidence --

18 A Close --

19 Q -- is what number?

20 A Container number for the L0507297, this is container
21 E232254.

22 Q Okay. And what items of evidence were contained in
23 that E232254?

24 A The D.N.A. trace.

25 Q Okay. Do you have the chain of custody to be able to

1 look at that?

2 A Yes, ma'am.

3 Q Okay.

4 A "One sealed item contained" -- converted item.

5 Q Okay. The items that you have in your chain of

6 custody are listed like a 1.1, 1.2, 1.3. How are those

7 numbers created? Like what's item number one?

8 A Item 1.1 would be the known head hairs.

9 Q Okay. And item 1.2?

10 A And 1.2 would be the known pubic hairs.

11 Q Okay. Item 1.3?

12 A Item 1.3 would be pubic hair combings.

13 Q Okay, 1.4?

14 A Known blood sample.

15 Q 1.5?

16 A Smears, sealed item contained smears.

17 Q Okay, 1.6?

18 A 1.6 would be vaginal swabs.

19 Q 1.7?

20 A 1.7 oral swabs.

21 Q Okay, 1.8?

22 A Rectal swabs.

23 Q 1.9?

24 A Body fluid.

25 Q 1.10?

1 A Fingernail scrapings.

2 Q 1.11?

3 A Bite marks.

4 Q Okay, 1.12?

5 A Miscellaneous materials.

6 Q Okay. And all of these items, 1.1 through 1.12, do

7 they all have the same container number, not 1.13 but just

8 1.1 through 1.12, do they have the same...

9 A No.

10 Q Batch E --

11 A We had to separate --

12 Q -- 232254?

13 A There were four separate containers.

14 Q Okay. Look back at your chain of custody, if you can

15 tell us.

16 A I had container 1.1, the known head hairs. You had

17 container E232254, and that was also for item 1.2.

18 Q Okay.

19 A That was for item 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9,

20 1.10, 1.11, 1.12.

21 Q Okay. So 1.1 through 1.12 were in E232254?

22 A That is correct.

23 Q Okay. 1.13, what's 1.13?

24 A That was the panties, and that was in container

25 E232255.

1 Q I'm going to show you exhibit number three and ask if
2 you recognize that.

3 A Yes.

4 Q And what is that?

5 A This was the panties --

6 Q Okay.

7 A -- submitted --

8 Q Okay.

9 A -- for D.N.A.

10 Q And then the other item, 1.14, what was that?

11 A The known blood sample.

12 Q And what is that container?

13 A E232256.

14 Q I'm going to show you State's Exhibit Number seven
15 and see if you recognize this.

16 A Yes.

17 Q Okay. And is that E232256?

18 A That is correct.

19 Q Okay. The known blood sample?

20 A Yes.

21 Q And you said that you -- as these things came out of
22 box and you separated them into the different containers,
23 then they go to different places within S.L.E.D.?

24 A That is correct.

25 Q Okay.

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1 A But when we -- when we put them in these, we have an
2 officer who brings it in to sign the sealed barrier. The
3 evidence was placed in these containers.

4 Q Okay. These items that you just testified to, what
5 officer did you receive those from?

6 A Walter Rose.

7 Q Okay. Of the Columbia Police Department?

8 A The Columbia Police Department.

9 Q Okay. And what day was that that you received it
10 from him?

11 A 6/24/05.

12 Q Okay. Then once you -- these were separated into the
13 different containers. Where specifically did then, I
14 guess, container E232256, which was item 1.14, the
15 toxicology, where did you place that?

16 A When it was logged in and we take custody, we put it
17 in the restricted area in the refrigerator.

18 Q Okay. For it to be sent to the toxicology
19 department?

20 A For toxicology to come down to take custody of it.

21 Q Okay. And then the other items, the other two
22 containers, where did you place those two items, the
23 panties that were in container E232255 and the 1.1 through
24 1.12?

25 A Those were placed in the restricted area where the

1 evidence remains for the different sections to come in.

2 Q Okay. For D.N.A. to come down and pick up their --

3 A Correct.

4 Q -- their appropriate ones?

5 A Yes.

6 Q At any time when you are with Officer Rose and these
7 were getting place into the their heat sealed packages,
8 did you tamper with them in any way?

9 A No, I did not.

10 Q Okay. And these were, you said, separated and sealed
11 in your presence?

12 A Correct, and in front of the officer that brought the
13 evidence in.

14 Q Okay. And then as part of the chain, I guess how is
15 it documented that you received these items from Officer
16 Rose.

17 A At that time, the log in sheets that the agency
18 brought into evidence --

19 Q Okay.

20 A -- would fill out and then show that they brought in
21 a sexual assault evidence collection kit.

22 Q Okay.

23 A And it's on the copy that I'm reading from here.

24 Q Okay.

25 A That he brought it in, and I received it.

- 1 Q Okay. Signed that you received it --
- 2 A Yes.
- 3 Q -- from Officer Rose on that date and time?
- 4 A Correct.
- 5 Q Okay. In looking at item two that was submitted --
- 6 A Uh-huh.
- 7 Q -- did you have contact with what's listed as item
- 8 two, the swab from Willie Gilmore?
- 9 A Yes.
- 10 Q And what did you do with that? What was your
- 11 involvement?
- 12 A I placed it in a heat sealed pouch.
- 13 Q Did you tamper with it in any way?
- 14 A No.
- 15 Q Was that also given a container number?
- 16 A Yes, it was.
- 17 Q What's that container number?
- 18 A E241617.
- 19 Q I'm going to have you look at State's Exhibit No. 2
- 20 and ask if you can identify that.
- 21 A Yes.
- 22 Q Is that that container, the item that you received
- 23 the swab?
- 24 A That's correct.
- 25 Q Okay. In looking at item number two again, the swab

1 from Willie Gilmore, who was it that actually received it
2 from Pete Currie from the Columbia Police Department?

3 A That was Betty Butler.

4 Q Okay. And then you were next in line in that chain
5 after Betty Butler?

6 A That's correct.

7 Q Okay.

8 A The -- Sheree Brown, D.N.A., came to take custody of
9 it, and I placed that container, E241617, put it in her
10 custody.

11 Q Put it in Sheree Brown's custody?

12 A Correct.

13 Q So you worked down in the same area that Betty Butler
14 does?

15 A Yes.

16 Q Or did work down in that same area?

17 A Yes.

18 MS. FENT: Okay. No further questions.

19 MS. LAFAVE: May it please the Court, Your Honor.

20 Just briefly.

21 CROSS-EXAMINATION:

22 BY MS. LAFAVE

23 Q How are you doing?

24 A Good.

25 Q Just a couple of questions for you to clarify some

1 things.

2 Did you say what day it was that S.D.E.D. received
3 the item number two -- the buccal swab from Willie
4 Gilmore?

5 A Item number two I did not receive. I did not log it
6 in.

7 Q You did not log it in. I want to refer you to item
8 1.10, and this is just because I don't understand maybe
9 the terminology. Are you looking at some notes?

10 A Yes.

11 Q Can I see what you're looking at?

12 A I'm looking at the chain of custody.

13 Q To make it easier for both me and you, on page
14 seven --

15 A Okay.

16 Q -- you said that you had received fingernail
17 scrapings, that's what the logbook said for item 1.10?

18 A You're at page seven.

19 Q Page seven of 11.

20 A Just give me your item number.

21 Q 1.10.

22 A 1.10, which was fingernail scrapings. On 6/24/05 I
23 logged that evidence in.

24 Q Okay. And my question for you is this --

25 A Uh-huh.

1 Q -- you received a kit that has apparatuses in it that
2 allow medical professionals to take different types of
3 evidence as a rape kit, correct?

4 A Correct.

5 Q And -- so you received something that was labeled
6 fingernail scrapings here, but there's a -- there's a term
7 that's used when that vial may be empty; is that right?
8 Right here in your notes.

9 A That's part of this -- when this -- when the chain of
10 custody is printed out.

11 MS. LAFAVE: May I approach, Your Honor?

12 THE COURT: Yes.

13 THE WITNESS: We -- we don't enter -- we don't.
14 That's just something that comes into this --

15 MS. LAFAVE: Okay.

16 THE WITNESS: -- computer program.

17 BY MS. LAFAVE

18 Q Okay.

19 A That S.L.E.D. chose to use.

20 Q So -- but the notes say it was not submitted, is what
21 I'm getting at. Basically, it is --

22 A It says it was not submitted. However, there is a
23 container number, and we put the container numbers on the
24 evidence that is submitted for testing.

25 Q Right. And when I comes to these kits, you number

1 each container whether they have anything in them or not?

2 A If there's nothing in them, the box is sent back with
3 the officer, as well as -- if -- the individual folders,
4 the little packets that are in there, we leave them in the
5 box and return -- and those are returned with the officer
6 that brought them in, if there's no evidence to be tested.

7 MS. LAFAVE: Your Honor, may we approach?

8 THE COURT: Yes, you may.

9 (WHEREUPON, a bench conference was held in the
10 Presence, but not within the hearing, of the jury).

11 MS. LAFAVE: Your Honor, I have no further questions
12 for this witness.

13 THE COURT: Okay.

14 REDIRECT EXAMINATION:

15 BY MS. FENT

16 Q Ms. Brooks, when the sexual assault kit comes into
17 S.L.E.D., this box comes to S.L.E.D., you said that
18 it's -- you check to see if it's sealed, correct?

19 A Correct.

20 Q Okay. And then you -- in the presence of the
21 officer, you open up this kit?

22 A That is correct.

23 Q Okay. In your experience and training, this kit
24 contains what, like -- is every a sexual assault evidence
25 collection kit the same?

1 A That's correct.

2 Q Okay. They all have the same envelopes in them so
3 that every nurse is collecting the same items?

4 A Correct.

5 Q Okay. And then as far as logging in each individual
6 specific item, do you go through those envelopes together
7 with the officer to log in each specific item?

8 A That is submitted that was taken at the hospital
9 because they -- whoever takes it signs -- there's -- each
10 envelope has signatures and all where they log in -- I
11 mean, excuse me. Where they record on the individual
12 envelopes.

13 If they're blank, then the officer knows the case,
14 you know. They say -- they -- if there's something that
15 is not submitted, then it goes back. It's because there's
16 no evidence in there.

17 Q Okay. The officer comes in, and you logged in item
18 1.1, which is an envelope for known head hairs, correct?

19 A Correct.

20 Q And in this -- on this chain of custody, it says "not
21 submitted", correct?

22 A That is correct.

23 Q Okay.

24 A But that's the computer issue --

25 Q Okay. Then item 1.2, known pubic hairs, also says

1 "not submitted".

2 A It does say--

3 Q So items 1.1 through 1.13 are all the envelopes that
4 are contained in every single sexual assault evidence
5 collection kit?

6 A That is correct.

7 Q Okay. And you say as a general practice, you know,
8 sometimes they may be returned, but in this case, I mean,
9 it does clearly state that these items were not submitted?

10 A Correct.

11 Q Okay. And some of these items, for example 1.4, it
12 doesn't say "not submitted", known blood sample.

13 A That is correct.

14 Q Okay. 1.5 is the smear?

15 A That is correct.

16 Q That indicates it was submitted?

17 A Yes.

18 Q 1.6, vaginal swabs, was submitted?

19 A Yes.

20 Q 1.7, an oral swab was submitted?

21 A Yes.

22 Q 1.8, rectal swab, indicates they were not submitted?

23 A Yes.

24 Q 1.9, miscellaneous body fluids, not submitted?

25 A Yes.

1 Q 1.10, fingernail scrapings, not submitted?

2 A Yes.

3 Q 1.11, bite marks, not submitted?

4 A Yes.

5 Q 1.12, that miscellaneous material, was submitted?

6 A Yes.

7 Q 1.13, the panties, was submitted?

8 A Yes.

9 Q The 1.14, the known blood sample that was sent to
10 toxicology was submitted?

11 A Yes.

12 Q Okay. So there is a distinction on this chain of
13 custody that's done when you're logging evidence in that
14 some items were not submitted and some were?

15 A That's correct.

16 MS. FENT: Okay. No further questions.

17 MS. LAFAVE: I have no further questions, Your Honor.
18 I'd just like to get my notebook.

19 THE COURT: Certainly.

20 Ma'am, you can step down and be excused.

21 THE WITNESS: Thank you.

22 MR. CATHCART: The State calls Sheree Brown, Sheree.

23 SHEREE BROWN, after being duly sworn,
24 testified as follows:
25

1 THE CLERK: Have a seat in the witness box, State
2 your name for record, please.

3 THE WITNESS: Sheree Brown, B-R-O-W-N.

4 DIRECT EXAMINATION:

5 BY MR. CATHCART

6 Q Ms. Brown, where are you employed?

7 A South Carolina Law Enforcement division, also known
8 as S.L.E.D.

9 Q And what do you do there?

10 A I'm a forensic technician in the D.N.A. department.

11 Q Do you have a copy of a S.L.E.D. log form, lab number
12 L0507297?

13 A Yes, I do.

14 Q Let me ask you, as it relates to your item number
15 two?

16 A Uh-huh.

17 (Pause).

18 Got it.

19 Q I'm getting there. Let me show you what's been
20 marked as State's Exhibit Number two. Do you recognize
21 what that is?

22 A Yes.

23 Q And what is that?

24 A This is a heat sealed pouch that we received within
25 S.L.E.D.

1 Q Is that containing item number two?

2 A Yes.

3 Q Okay. Did you come in contact with that item while
4 working at S.L.E.D.?

5 A Yes, I did.

6 Q And in what capacity did you get in -- come in
7 contact with that?

8 A Formerly, my duties at S.L.E.D. as a technician, I
9 retrieved it from the evidence log in department.

10 Q And from the log in department, is that from Carol
11 Brooks?

12 A Yes.

13 Q Okay. What did you do with it after you retrieved it
14 from the log in department?

15 A I took it back upstairs and put it in a -- scanned it
16 in our bar code system. I scanned it into the computer
17 system and put it in D.N.A. department, third floor.

18 Q And what is that?

19 A That's just a secure location.

20 Q A secured room?

21 A It's a room. It's actually a refrigerator.

22 Q And that's secure?

23 A It's secure, yes, it is.

24 Q And while you had that in your possession, did you
25 alter it in any way whatsoever?

1 A No, I did not.

2 Q Did you break the seal?

3 A No.

4 Q Okay. Let me point you as to State's Exhibit Number
5 -- excuse me, on lab number one-four, one-twelve and
6 one-five?

7 A Is that 1.1 and 1.12?

8 Q 1.4, 1.5, 1.12.

9 A Okay.

10 Q Had you had an opportunity to come in contact with
11 those items?

12 A According to my notes, yes, I did.

13 Q Okay. And how did you come in contact with those
14 items?

15 A The same procedure as item number two. I went down
16 into our evidence control log in and received it.

17 Q Was it -- can you describe how they were packaged?

18 A In a heat sealed pouch.

19 Q Did you break the heat sealed pouch in any way
20 whatsoever?

21 A No, I did not.

22 Q What did you do with these items once you had gotten
23 them?

24 A I took them back to the D.N.A. department and scanned
25 the bar code on that particular pouch to the D.N.A.

1 processing room, third floor.

2 Q All right. And again, what is the D.N.A. processing
3 room, third floor?

4 A It's just a secure location within the D.N.A.
5 department.

6 Q And if you would, take a look at State's Exhibit
7 Number 1.6.

8 A Okay.

9 Q And I believe 1.12.

10 A All right.

11 Q Can you please describe to the jury what, if any,
12 contact you had with those items?

13 A Same procedure as the above items I already went
14 through, picked them up from evidence control and put it
15 in -- scanned the bar code into the D.N.A. processing
16 room, third floor. All those items above are in one heat
17 sealed pouch.

18 Q Let me show you what's been marked as State's Exhibit
19 Number four. Do you recognize that?

20 A Minus the stuff in it.

21 Q That's correct.

22 A Okay. This would be a heat sealed pouch that we
23 retrieved.

24 Q Is that the pouch that contained those items?

25 A Yes.

1 Q And that's State's Exhibit Number four. You received
2 those items from who?

3 A 1.6 and 1.12, from Carol Brooks.

4 Q Okay. And you took them to who?

5 A I put it in a location within the D.N.A. department.

6 Q Okay. And that was a secured location, as well?

7 A (There was no response).

8 Q Secured location, as well?

9 A Yes, it is.

10 Q Did you alter it in any way while it was in your
11 possession?

12 A No, I did not.

13 MR. CATHCART: Okay. Please answer any questions
14 from the defense counsel.

15 (There was no response).

16 THE COURT: You can proceed.

17 MS. LAFAVE: Your Honor, I have no questions for this
18 witness.

19 THE COURT: Okay, ma'am. You the step down and be
20 excused.

21 MS. LAFAVE: Without objection, Your Honor.

22 MR. CATHCART: The State calls Stephanie Stutts.

23 THE BAILIFF: Your Honor.

24 THE COURT: Yes.

25 THE BAILIFF: Could they stretch while they wait?

1 THE COURT: Absolutely, absolutely.

2 THE JUROR: Thank you. Thank you.

3 (Some of the jurors stood).

4 THE COURT: I was going to get through the quick
5 chain witnesses and then take a break. Do you wish to
6 take a break now?

7 THE JUROR: No. Okay.

8 THE COURT: That's okay. Thank you. Thank you for
9 letting me know. I want to make you happy and be
10 accommodating.

11 STEPHANIE STUTTS STANLEY, after being
12 duly sworn, testified as follows:

13 THE CLERK: Have a seat in the witness box and state
14 your name for the record, please.

15 THE WITNESS: Stephanie Stanley, S-T-A-N-L-E-Y.

16 DIRECT EXAMINATION:

17 BY MR. CATHCART

18 Q Did you used to go by Stephanie Stutts?

19 A I did.

20 Q What was your maiden name?

21 A Maiden name.

22 Q Congratulations.

23 A Thank you.

24 Q Where are you employed?

25 A I'm employed by the South Carolina Law Enforcement

1 Division, which is commonly referred to as S.L.E.D.

2 Q And what do you do there?

3 A At the time of this case, I was a forensic technician
4 assigned to the D.N.A. lab.

5 Q And what, if anything, did you have to do with the
6 evidence in this case?

7 A As a forensic technician, I'm responsible for
8 facilitating evidence transfer throughout S.L.E.D. If
9 there is any liquid blood standards, I would preserve them
10 in the dried form, and I uphold the chain of custody.

11 Q Okay. Let me show you what's been marked as State's
12 Exhibit Number four. Do you recognize what that is, and I
13 guess what it used to contain?

14 A I do.

15 Q Okay. And what did it contain? Well, did you have
16 and opportunity to observe it before?

17 A When it first came in to S.L.E.D.

18 Q Okay. And how did you -- what contact did you have
19 with it?

20 A Can I refer to my chain of custody?

21 Q Please.

22 A This is a heat sealed pouch that comes in to S.L.E.D.
23 I know that I've examined it. I've at least had contact
24 with it. This is my lab number for this case. This is my
25 evidence number that it was given, the submission for this

1 package, and where I entered the bag, my seal is right
2 here.

3 Q Okay. And how did you come in contact with this bag?

4 A I picked this bag up from what's known as the D.N.A.,
5 third floor, which is a secure room in the D.N.A.
6 department.

7 Q Okay. And what did you do with that bag once you
8 retrieved it from that secure room?

9 A I transferred the evidence into my custody in order
10 to preserve a liquid blood standard.

11 Q And that liquid blood standard was listed as what on
12 your chain?

13 A It is my item 1.4 known blood sample for D.N.A.

14 Q Okay. And what did -- how did you -- what did you do
15 with the item 1.4 that you retrieved from, I believe --
16 what was the evidence number, again, on that bag? That's
17 state's Exhibit Number four. What did you do with 1.4,
18 item four?

19 A When evidence from rape samples are submitted, a
20 known blood standard is drawn from an individual. That
21 blood standard comes to us in a tube usually, a lavender
22 top tube.

23 I am responsible for preserving by just actually
24 physically pouring that blood standard onto a sterile
25 piece of paper. I let the paper dry, and I will repackage

1 it into a coin envelope and then put it back with the
2 regular evidence.

3 Q And did you do that at this time?

4 A I did.

5 Q Did you tamper with it other than to pour it on a
6 sterile sample?

7 A I did not.

8 Q Then what did you with the sample other than perform
9 it -- did you put it -- where did you put it after you put
10 it in the little -- I believe you said it was a what? It
11 was a --

12 A It was a coin envelope.

13 Q Okay.

14 A A little envelope. After it was dried, it went back
15 into the same pouch.

16 Q And what did you do with that pouch after you put it
17 back in there?

18 A I sealed that pouch with my initials and the date.

19 Q Okay. So you sealed it in what way?

20 A Along the side where I opened it, it was sealed. My
21 initials are S.M.S., and the date is 7/6/05.

22 Q Again, you sealed it by how?

23 A A heat seal.

24 Q A heal seal?

25 A Uh-huh.

1 Q And then initialed over your seal?

2 A Yes.

3 Q Okay. And that's on State's Exhibit Number four.

4 And then what did you do with it after you sealed it up?

5 A The evidence was transferred to a location known as
6 D.N.A. F13. It's the secured freezer within the D.N.A.
7 department.

8 Q Okay. And do you know who Emily Norris is?

9 A I do.

10 Q And who is Emily Morris?

11 A Emily Norris was a forensic technician at the time of
12 this case.

13 Q Okay. And what was her job, her duties, at that
14 time?

15 A We had the same duties. In this case, her -- the way
16 she came in contact with the evidence is she picked it up
17 from the secure location, D.N.A. F13 and transferred it to
18 another secure location.

19 Q Okay. And what secured location would that have
20 been?

21 A That would be the D.N.A. refrigerator, fourth floor.

22 Q And that was retrieved from there by whom?

23 A Kenneth Bogan.

24 MR. CATHCART: Beg the Court's indulgence.

25 (Pause).

1 BY MR. CATHCART

2 Q Other than the blood sample that you indicated what
3 you had done, did, did you tamper with any of the other
4 items that was in State's Exhibit Number four?

5 A No.

6 MR. CATHCART: Please answer any questions from
7 defense counsel.

8 MS. LAFAVE: I have no questions for this witness,
9 Your Honor.

10 THE COURT: Okay. You can step down at this time and
11 be excused.

12 MS. LAFAVE: Without objection.

13 THE COURT: Okay. I'm going to let the jurors take
14 about a ten-minute break. I just remind you not to
15 discuss the case in any shape, form, or fashion.

16 (WHEREUPON, the jury left open court at approximately
17 4:15 p.m.)

18 THE COURT: Yes. All right. We'll be in recess.

19 (WHEREUPON, a short break was taken.)

20 THE COURT: Are the parties ready to continue with
21 the case?

22 MS. LAFAVE: Your Honor, I have just a matter of law
23 briefly.

24 THE COURT: Okay.

25 MS. LAFAVE: The witness that was just on the stand,

1 I believe her -- maybe it wasn't just on the stand.

2 (Pause).

3 Was it Betty Butler that was testifying as to the
4 item numbers and not submitted?

5 MS. FENT: Carol Brooks.

6 MR. CATHCART: Carol Brooks.

7 MS. LAFAVE: Carol Brooks. I apologize, Your Honor.

8 Carol Brooks was giving her testimony, and at some
9 point a statement came out that she had received
10 fingernail scrapings.

11 As Your Honor is well aware, the nurse in this case
12 that was responsible for conducting and supervising the
13 doctor conducting the rape kit in the case testified that
14 there were no fingernail scrapings that were collected,
15 and unfortunately, Your Honor, I did not object
16 contemporaneously with that statement by that particular
17 witness.

18 So, Your Honor, at this point in time I would make a
19 motion for a mistrial based on ineffective assistance of
20 counsel.

21 I should have objected during -- when she said that
22 because that is not supported by the documentation.
23 Ms. Fent did go back and clarify, but because of the
24 confusion to the jury, Your Honor, that is my motion at
25 this time.

1 THE COURT: Okay. All right. The State?

2 (There was no response).

3 I believe -- well, I will at least say that at the
4 sidebar conference, you did bring up that issue to the
5 Court.

6 At that time, the Court's strategy with respect to
7 involving both parties was to allow Ms. Fent to try to
8 cure it by going through various items on there to
9 distinguish what had been submitted and what had not been
10 submitted. I believe that Ms. Fent was effective in
11 distinguishing that for the witness, who I believe was
12 just mistaken.

13 So I believe in that regard the jury now sees it, and
14 while that was not contemporaneous on the record, you did
15 bring it to the Court's attention immediately when you saw
16 it, so I'd like the record to reflect that you did do your
17 job in that respect.

18 In that regard, I don't believe that you were
19 ineffective in terms of counsel. We just all spoke
20 together in terms of what would be the most effective way
21 to handle the situation. I believe it was cured.

22 Do you need to say anything further, Ms. Fent?

23 MS. FENT: No, Your Honor.

24 THE COURT: Okay. Thank you.

25 MS. LAFAVE: And I take it, Your Honor, my motion

1 is...

2 THE COURT: Denied.

3 MS. LAFAVE: Thank you, Your Honor.

4 THE COURT: Okay. Next?

5 (There was no response).

6 Okay. We're ready to proceed. Bring the jury.

7 (WHEREUPON, the jury came into open court at
8 approximately 4:27 p.m.)

9 THE BAILIFF: The jury is all present.

10 THE COURT: Thank you. I had to take up a brief
11 matter of law with the parties, but we're ready to
12 continue with the case.

13 Just from a timing schedule, because we do have some
14 more short witnesses and then some more substantive ones,
15 I did ask the parties if it's all right to push on until
16 about 5:30.

17 Does anyone have any real concern with that?

18 (There was no response).

19 Okay. Thank you all. I appreciate your patience.

20 Please, State, continue with your case.

21 MR. CATHCART: The State calls Betty Butler.

22 BETTY BUTLER, after being duly sworn,
23 testified as follows:

24 THE CLERK: Have a seat in the witness stand. State
25 your name for the record.

1 THE WITNESS: Betty Butler.

2 DIRECT EXAMINATION:

3 BY MR. CATHCART

4 Q Ms. Butler, where are you employed?

5 A I'm employed with the South Carolina Law Enforcement
6 Division, also known as S.L.E.D.

7 Q And what do you do there?

8 A At that particular time I was a forensic technician
9 in the evidence control department.

10 Q And that would have been back in January of '06?

11 A Yes, it was.

12 Q At that point, did you receive what's been marked --
13 let me ask you, do you recognize State's Exhibit
14 Number two?

15 A Yes, I do.

16 Q And what is State's Exhibit Number two?

17 A This is a heat sealed pouch that I logged in. When
18 we get evidence, we put it in a heat sealed pouch like
19 this.

20 We -- in this case, we already had a lab number. A
21 lab number is a unit we put it in our tracking system
22 where it can track throughout the agency. We always give
23 it a new container number, which is E242617, and we give
24 it an item number. In this case, it's item number two.

25 Q Item number two contains what?

1 A And we work on a "said to contained" policy, which
2 says on our evidence inventory sheet "a mouth swab".

3 Q From who?

4 A From Peter Currie of the Columbia Police Department.

5 Q He's the person who gave it to you?

6 A Yes, he did.

7 Q And who was -- the swab is from whom, was taken from
8 whom?

9 A I don't know who the swab was taken from. We work on
10 "said to contain".

11 Q Okay.

12 A It's on the evidence inventory sheet. It had one
13 mouth swab, and that's what I logged in.

14 Q Okay. And you received that from Pete Currie?

15 A Yes.

16 Q And you received it on what day?

17 A Received it on January 6th, 2006.

18 Q And that would be item number two, according to the
19 chain, correct?

20 A Correct.

21 Q And what did you do with it after you got it from
22 Mr. Currie?

23 A After I got it from him, I put it in this heat sealed
24 pouch. I sealed it. He initials and dates across the
25 seal, and he signs and he dates it.

1 I put the lab number on it, container number on it,
2 and item number on it. I take it into my custody. After
3 I log it into the system, then I put it into our evidence
4 room in a D.N.A. box.

5 MR. CATHCART: Thank you. Answer any questions from
6 defense counsel.

7 MS. LAFAVE: I have no questions for this witness.

8 THE COURT: Ma'am, you can step down. Thank you for
9 coming.

10 MS. LAFAVE: Without objection.

11 THE COURT: You're excused. Thank you.

12 MS. FENT: State calls Wendy Bell.

13 WENDY BELL, after being duly sworn,
14 testified as follows:

15 THE CLERK: Have a seat in the witness box. state
16 your name for the record, please.

17 THE WITNESS: My name is Wendy Bell, B-E-L-L.

18 DIRECT EXAMINATION:

19 BY MS. FENT

20 Q And with whom are you employed?

21 A I work for the South Carolina Law Enforcement
22 Division.

23 Q In what capacity?

24 A I'm currently the supervisor of the drug analysis
25 department, but at the time of this case, I was a senior

1 chemist for the forensic toxicology department.

2 Q Okay. Did you, in terms of this lab number, L057297,
3 did you perform an analysis?

4 A Yes, I did.

5 Q Okay. And you said you were a toxicologist at that
6 time?

7 A Yes, I was.

8 Q And what are your duties and responsibilities? What
9 were they as a toxicologist?

10 A Well, toxicology is basically the study of drugs and
11 poisons and how they affect your body. We analyze blood,
12 urine, or other specimens to see if they'll point to a
13 presence, and we're able to interpret what our finding
14 means.

15 Q I'm going to show you what's been marked as State's
16 Exhibit Number seven and see if you recognize that.

17 A Yes.

18 Q And what is that?

19 A This is one of our tamper evidence bags, and it is
20 marked with my initials and dated each time that I would
21 have had access to the evidence to remove some of the
22 sample for testing.

23 Q And is that the packaging for the evidence that you
24 analyzed in this specific lab number?

25 A Yes, it is.

1 Q Can you basically tell the jury a little bit about
2 your education and training that brought you to be a
3 toxicologist?

4 A Sure. I have a B.S. in chemistry from Furman
5 University. From there, I went on to get my PhD in
6 analytical chemistry from the University of South
7 Carolina.

8 I started with S.L.E.D. in 1998 in the toxicology
9 department, and I served in that unit for nine years until
10 around April of last year. At the time I left that
11 department, I was actually the Senior Technical Leader,
12 which means my duties were in charge of training all of
13 the toxicologists as they came in. I also was responsible
14 for writing all of our protocols and verifying any new
15 instrumentation that came in, so I was the Technical
16 Specialist for the department.

17 Once I came to S.L.E.D., you -- at the time, I went
18 through the police academy, which is our law enforcement
19 certification program. I began, as soon as that was
20 completed, my toxicology training, which was over a
21 year-and-a-half of very extensive training in how to
22 analyze the samples and what my results mean.

23 We went through course work and were given tests
24 regularly to show our competence in those areas. Once I
25 became a certified toxicologist, we are proficiency tested

1 yearly because of our A.S.C.L.D. certification, which is
2 an accrediting body for our laboratory. It's just to
3 prove that we are competent in all areas of fields that we
4 are testing.

5 Q Have you previously testified in courts in South
6 Carolina regarding forensic toxicology?

7 A Yes, I have.

8 Q And have you been declared an expert in that area?

9 A Yes, I have.

10 Q Approximately how many times?

11 A Around 20.

12 MS. FENT: Your Honor, at this time, I'd tender
13 Ms. Bell as an expert in the area of forensic toxicology.

14 THE COURT: Any objection?

15 MS. LAFAVE: I have no voir dire for this witness, no
16 objection.

17 THE COURT: Okay. So qualified.

18 BY MS. FENT

19 Q The exhibit that I showed you, what is the container
20 number for this -- for this item?

21 A This was in container E232256.

22 Q Okay. And how did this item come to you?

23 A This item comes -- at the time, there was a locked
24 refrigerator with a drop box, much like a mailbox, where
25 items can be put into the drop slot. They cannot be

1 removed.

2 This was located in the evidence log in department.
3 So the delivering officer would have come in, placed the
4 evidence into this bag, signed it and dated it with his
5 name and initials. Then he would have placed this bag
6 into that locked refrigerator. Then the next person who
7 has access to it would be the person who cuts into it,
8 which would be my name and initials as indicated on this
9 bag. I have bags where I put my name.

10 Q When you took custody of this item, had it been in
11 any way tampered with?

12 A No, it had not. It was actually sealed in this bag.
13 It was also sealed inside another evidence bag that has
14 initials. It's usually from the nurse who collected the
15 sample.

16 My initials and date on this bag indicate that that
17 seal was intact. If anything had been out of the ordinary
18 with this bag, that would have been noted, and it would
19 not have been analyzed.

20 Q Okay. And then basically, what were you asked to
21 analyze? What were you asked to look at?

22 A In this case I received a sample of blood, and it was
23 labeled "McCullough, Rosa Lee". I was asked to perform a
24 C.S.C. analysis, which is our standard rape protocol
25 analysis on the sample.

1 Q And what were your results on that analysis?

2 A I performed a head space gas chromatography on this
3 sample, which basically looks for volatile compounds,
4 things like ethanol, which is found in blood after
5 consuming alcoholic beverages.

6 My results for that were negative with a threshold of
7 .01 weight percent. I also performed a drug screen, which
8 basically looks for classes of drugs that are typically
9 abused for use recreationally. It was a seven panel
10 screen for that, and it was negative for all of those
11 compounds. I can list them, if you like.

12 Q So negative for ethanol and then negative for all the
13 drugs that you tested for?

14 A Yes, that's correct.

15 Q And your ethanol result, would that be consistent
16 with someone who just reports having about two shots of
17 gin hours before the blood sample is collected?

18 A It certainly could be. There was actually a reading
19 on the ethanol test, but it was below our threshold.
20 That's why it was reported as negative.

21 When I looked at my actual chromatogram for the case,
22 there was a reading there of .0048, which is a readable
23 amount, but we consider anything less than a .01 negative
24 and will report it as that.

25 Q Okay.

1 A There was a trace amount in the blood.

2 Q Okay. And you said it was a .00...

3 A Four-eight.

4 MS. FENT: Four-eight.

5 No further questions.

6 THE COURT: All right.

7 MS. LAFAVE: Just briefly, Your Honor.

8 CROSS-EXAMINATION:

9 BY MS. LAFAVE

10 Q Good afternoon, ma'am.

11 A Good afternoon.

12 Q Just a quick question for you. You're testing for
13 these drugs and alcohol in a sample that comes to you, and
14 all you know is what's in that box?

15 A Correct.

16 Q So you don't know at what time of the day this
17 woman's blood was drawn to be able to test for the sample
18 that you tested?

19 A Sometimes it is written on the tube, but that's not
20 usually my concern. I'm usually just tasked with testing
21 it, and that would be for someone else to --

22 Q Was it written on the tube in this case?

23 A I think a date is on there in this case, but I don't
24 see a time.

25 Q No time of day?

1 A It's difficult to read, if it was there. There's a
2 bar code, which I usually can scan, but I can't tell from
3 that.

4 Q And your understanding of drugs, the longer the
5 amount of time between someone taking a drug or drinking
6 alcohol, the less will be in their blood, the longer the
7 time span between the two events when the blood is drawn
8 and the drugs or the alcohol is ingested?

9 A Certainly. As soon as you take any foreign substance
10 into your body, your body immediately starts to metabolize
11 that substance to try to get rid of it. It sees it as a
12 foreign substance, so you do begin to eliminate anything
13 as soon as you consume that substance.

14 Q You say it's metabolized? Is that what you said?

15 A Yes.

16 MS. LAFAVE: Thank you.

17 Thank you, your Honor.

18 THE COURT: You're welcome.

19 MS. FENT: No further questions.

20 THE COURT: Okay. You can step down and be excused.

21 MS. FENT: Investigator Glenn Bullock.

22 GLENN BULLOCK, after being duly sworn,
23 testified as follows:

24 THE COURT: Have a seat in the witness box. State
25 your name for the record.

1 THE WITNESS: Glenn J. Bullock.

2 DIRECT EXAMINATION:

3 BY MS. FENT

4 Q Investigator Bullock, with whom are you employed?

5 A The City of Columbia Police Department.

6 Q In what capacity?

7 A Currently, I'm an investigator with the Columbia
8 Police Department.

9 Q And how long have you been an investigator with
10 C.P.D.?

11 A I've been involved in investigations for over nine
12 years.

13 Q Okay. Can you tell the jury a little bit about your
14 training and your educational background that brings you
15 to today with C.P.D.?

16 A Yes, ma'am. I've been with the Columbia Police
17 Department for approximately 22 years and ten months,
18 started as a patrolman. I was assigned special operations
19 for a time. Then went back to patrol. In approximately
20 1994, I started working investigations.

21 Since that time I have worked property crimes,
22 violent crimes against persons, those being rapes,
23 robberies, murders, homicides, things of that nature.

24 Up until the time of my retirement in 2005, I was
25 working violent crimes, which brought me to work this case

1 here. When I retired, I came back, worked Internal
2 Affairs for awhile and now I'm assigned to the Columbia
3 Police Department Cold Case Unit.

4 Q Okay. Back in, I guess, September of 2004, were you
5 assigned then the case that we've been discussing today?

6 A Yes. I received a note and a copy of the incident
7 report in my in-box. All of the other investigators in
8 the area had boxes. It has their name on it, and the
9 cases would be assigned. The supervisor would assign
10 them.

11 I came in that morning and found a note and a faxed
12 copy of this incident report to contact Ms. McCullough's
13 son. I spoke to my supervisor, found out the
14 circumstances behind this case, being that I noticed that
15 it happened in August. It was now September. Then I
16 attempted to make contact with them, worked the case from
17 there.

18 Q Okay. Typically, when is an investigator assigned to
19 a case like this, to a sexual assault case?

20 A Ideally -- ideally, we would have been called on that
21 evening if we were working. All of our investigators were
22 working on that evening.

23 We had been dispatched to that area. If the victim
24 had already gone to the hospital, we would check the crime
25 scene. We would have called C.S.I., had them come check

1 crime scene. If any evidence was there, we would have
2 collected it at that time. Then we would have gone to the
3 hospital.

4 Now, rape protocol persons generally don't like us in
5 there when they are talking to the victims because it's
6 mainly women victims, and they are somewhat uncomfortable
7 talking to men about what has happened to them.

8 So generally, we will give them our card, pass the
9 information off to the rape protocol or the nurse who is
10 there, and then we will have them contact us within
11 several days and then conduct an interview with them.

12 Q Okay. To your knowledge and understanding in this
13 case then, was any crime scene investigator called out to
14 the crime scene?

15 A No, ma'am.

16 Q Okay. And on what date -- we said it was in
17 September you were assigned this case. What date
18 specifically were you assigned to this case?

19 A If I could just look at this. Apparently, a phone
20 call had come in sometime in the afternoon of the 7th of
21 September from Ms. McCullough's son to investigations.

22 A copy of the incident report was requested that
23 afternoon, and it came in at almost five o'clock in the
24 afternoon on that date.

25 The next morning -- I was working day shift that

1 particular time, and when I came in, I looked in my box
2 that morning, and there was the report with the note from
3 my supervisor, seeing him before I did anything with this
4 case.

5 Q Okay. And then on that date, what efforts did you
6 make to make contact with Ms. McCullough?

7 A I attempted to call the number that was left by her
8 son. Apparently, as was previously testified to, they
9 were staying at the Master's Economy Inn at that time. I
10 couldn't make any contact, and I then spoke with the
11 victim's advocate, Mr. Reed, who apparently had spoken to
12 Ms. McCullough one time.

13 I found out that Brian was, in fact, a musician, and
14 he would play on Main Street sometimes. So when I checked
15 there, he wasn't there. I went to the Master's Economy
16 Inn, left my business card, asked him to call me. I did
17 receive a phone call later that day from Ms. McCullough's
18 son.

19 Q Okay. And what arrangements did you make at that
20 point?

21 A I asked when his mother would be returning. He said
22 that she was employed at the university, wasn't quite sure
23 how to get in touch with her, but he would give her the
24 information.

25 Ms. McCullough did contact me. I set up a time when

1 we could meet, and I could take a statement from her.
2 Initially, her schedule changed, and she was not able to
3 make it.

4 When I did finally meet up with her on the 14th of
5 September, Ms. McCullough was getting off of work at like
6 8:30 in the evening. School had just came back in. She
7 was working at the Russell House. I picked her up in my
8 police car and took her to police headquarters and took a
9 statement from her.

10 Q Now, did you pick her up because she was being
11 uncooperative, or why did you go pick her up?

12 A No. Ms. McCullough did not have transportation. She
13 relied on public transportation. It was more convenient
14 and better for me to be able to go and assist her by
15 picking her up when she got off of work instead of having
16 her try to ride the city bus at nine or ten o'clock at
17 night and come to the police department. Then I could
18 take care of the afternoon. After that, I would give her
19 a ride home.

20 Q Okay. When you went down to the Columbia Police
21 Department with Ms. McCullough, did you get a written
22 statement from her?

23 A I did, ma'am.

24 Q Okay. And can you describe for the jury how she was,
25 what her demeanor was, and how she was emotionally when

1 she gave you that written statement?

2 A Yes, ma'am. This has been on all occasions that I've
3 dealt with Ms. McCullough in this case. She was visibly
4 upset. She was very distraught.

5 On the 14th of September when I picked her up, I
6 started trying to talk her into the car with me, riding to
7 the police department, just talking to her a little bit,
8 come back.

9 I got her to start talking to me. She started
10 crying. I said "Oh, let me wait until I get to the police
11 department."

12 I got her into the police department. I asked her if
13 she wanted something to drink, sat her down in a room that
14 we had where we do private interviews. We don't do them
15 out in the open. I got her settled down some, and then we
16 started asking her questions as to what had happened to
17 her on this day.

18 On that occasion, when I spoke to her that day, she
19 was visibly distraught. She was -- when I would ask her
20 certain questions, she would break out into tears, and at
21 some point she was shaking. This woman was still
22 traumatizing from this event.

23 Q Did she indicate to you who had done this to her?

24 A She did. She told me that it was Willie Gilmore, the
25 defendant, sitting over there.

1 Q Okay. And since she has now identified, or she
2 identified to you who did this to her, what information do
3 you need from her so that you can go find this person?

4 A Well, once she gave me the name, we have certain
5 databases that we can check. We have our police
6 department records where people have filed police reports.

7 Some of you may have filed a police report and find
8 your name, things of this nature. We also have other
9 databases where photographic lineups could be made. We
10 have access to D.M.V. files.

11 Q Let me ask, did you make a photo lineup then for her
12 to identify?

13 A I did, ma'am.

14 MS. FENT: Okay.

15 (WHEREUPON, State's Exhibits Nos. 8, 9 were marked
16 for identification only.)

17 MS. LAFAVE: Your Honor, may I see the lineup before
18 she shows it to him in?

19 MS. FENT: Yeah.

20 THE COURT: Yes.

21 (Pause).

22 BY MS. FENT

23 Q I am going to show you State's Exhibit Number eight.
24 Yes or no, do you recognize that?

25 A I do.

1 Q And is that the photo lineup that you presented to
2 Ms. McCullough?

3 A It is.

4 Q And was she able to identify Willie Gillmore, the
5 person that sexually assaulted her?

6 A She was.

7 Q Okay. And I'm going to show you State's Exhibit
8 Number nine and ask you if you recognize that.

9 A I do. This is the standard photo lineup form that we
10 use when we show a photo array of six photographs, and we
11 ask the persons if they can identify the person that
12 committed the crime against them to indicate who it is.
13 Then we fill out a sheet, which is this sheet here, and we
14 ask them to sign it.

15 Q Okay. And which person on the photo lineup did she
16 indicate that she was identifying?

17 A Number four, which was Willie Gillmore.

18 MS. FENT: I offer into evidence State's exhibits
19 eight and nine.

20 MS. LAFAVE: Without objection, Your Honor.

21 THE COURT: Thank you. They're admitted.

22 (WHEREUPON, State's Exhibit No. 8, 9 were admitted
23 into evidence.)

24 BY MS. FENT

25 Q Now, that you have the actual, physical -- you know,

1 who it is you're looking for, Willie Gilmore, what do you
2 do with this information? What do you do to disseminate
3 this information?

4 A You said so you don't confuse it with any other?

5 Q Yeah. Now that -- now that you know which Willie
6 Gilmore --

7 A I'm sorry.

8 Q -- has sexually assaulted her, what do you do with
9 this information?

10 A I had showed her the lineup for that specific
11 purpose, to make sure that even though she said she knew
12 Willie Gilmore, I wanted her to show me on pictures that
13 that was the Willie Gilmore that she was speaking of.

14 Q Okay.

15 A What took place then was I attempted to contact
16 former Assistant Prosecutor Erin Gaddy, who was at that
17 time prosecuting criminal sexual conduct cases for the
18 Solicitor's Office. She was at the Solicitor's conference
19 in Myrtle beach. I was unable to make contact with her.

20 The reason I was going to contact her was to get
21 authorization to draw up an arrest warrant for Willie
22 Gilmore.

23 When I did finally make contact with her, I spoke
24 with her, relayed the facts of the case, and she
25 authorized an arrest warrant.

1 I secured the arrest warrant, placed it into the
2 N.C.I.C., which is a national database where we could
3 place somebody's name in it. If they're stopped here, New
4 York, California, as long as they're stopped and they give
5 the right information, it pops up to show he's wanted.
6 They're identified.

7 I also went to one of our intelligence unit, saw him,
8 had him make a B.O.L.O. sheet which included a picture,
9 like you would sometimes see on News 19 now, when people
10 are looking for people, different agencies are looking for
11 them. They say B.O.L.O.

12 We send this out to the actual units that work the
13 city. I sent this city wide, and that was out for some
14 time before Mr. Gilmore was apprehended.

15 Q Okay. And B.O.L.O. stands for Be On The Lookout?

16 A Be On The Lookout.

17 Q Okay.

18 A Yes, ma'am, I'm sorry.

19 Q And then at that point, you're just waiting for
20 Willie Gilmore to show up or to be arrested on the
21 warrant, correct?

22 A Be arrested or have some police contact. I did make
23 some effort to find him myself. I checked with some
24 places where he may have been staying. I did get a lead
25 that he may have been in the Eau Claire area, which is in

1 north Columbia. That didn't pan out.

2 Eventually, he was arrested. By the time I was
3 notified, though, that he had been arrested, he had
4 already made bond and was back out of jail.

5 MS. FENT: No further questions.

6 MS. LAFAVE: Beg the Court's indulgence just a
7 moment.

8 THE COURT: Certainly.

9 (Pause).

10 MS. LAFAVE: May it please the Court, Your Honor.

11 THE COURT: Yes.

12 CROSS-EXAMINATION:

13 BY MS. LAFAVE

14 Q Good afternoon, Investigator.

15 A Good afternoon.

16 Q Could you tell me exactly what the date was that you
17 took out the warrant?

18 A I don't believe I have that paperwork up here. I
19 don't have a copy of the warrant.

20 Q Do you have a copy of your notes?

21 A No. That is possibly over there with my case jacket,
22 the day I drew the warrant.

23 Q Would that refresh your memory?

24 A It would.

25 (Pause).

1 No, not those. I don't recognize those. There's an
2 affidavit that I wrote.

3 Q Uh-huh. It's just your case summary notes.

4 A Uh-huh.

5 (Pause).

6 Q In the interest of time, would you like for me to
7 show you where I'm talking about?

8 A The date it says here is 10/7/2004.

9 Q 10/7/2004?

10 A Yes, ma'am.

11 Q Thank you. Now, Investigator Bullock, you have been
12 a police officer for over two decades?

13 A Yes, ma'am.

14 Q You're in the business of crime fighting, right?

15 A Yes, ma'am.

16 Q And the motto of the police department, correct me if
17 I'm wrong, is to "protect and serve"?

18 A Yes, ma'am.

19 Q And if you believe that someone is hurt or you
20 believe that someone is going to be hurt, you want to do
21 everything you can to stop that, correct?

22 A That's true. There's some things you just can't
23 stop.

24 Q Agree. The way to do that, if you know that someone
25 is going to be hurt, if you believe that they're going to

1 be hurt, is to get the person that you believe is going to
2 hurt them off the street, correct?

3 A In a perfect world, yes.

4 Q In a perfect world. In this particular case, you
5 said that you had done a couple of things to try to find
6 Mr. Gilmore, which was you went to his house, and you
7 searched for him in some places that you knew he
8 frequented, correct?

9 A Yes, ma'am.

10 Q But you were given a list of information about Willie
11 Gilmore. You were given everything from his name to his
12 hair color to his eye color. You knew, really, all there
13 was to know, except maybe who his parents were, as far as
14 his relationship to this case. Is that fair to say?

15 A No. I don't think it's fair to say because I didn't
16 know everything about Willie Gilmore. I knew his name. I
17 knew his Social Security. I knew what he looked like. I
18 didn't know what his habits were. I didn't know where he
19 hung all the time.

20 Q But didn't you say that you went to a couple of
21 places you knew that he frequented?

22 A It was like the Homeless Ministry. Up there, run by
23 Lou Holtz and stuff. He was flopping down there, sleeping
24 there.

25 Q Okay. But my question for you is this --

1 A At some point.

2 Q I understand. My question for you is this: In this
3 case, the only person that you ever thought could be
4 involved was Willie Gilmore. There weren't a range of
5 suspects you were trying to sift through here.

6 A No, ma'am.

7 Q Okay. And what I'm asking you is that you had all of
8 the information that you had on Willie Gilmore.

9 A Yes.

10 Q And it took Columbia Police Department almost two
11 months to issue any type of warrant, search warrant or
12 arrest warrant for Mr. Gilmore, is that correct, sir?

13 A As I previously stated. Okay, Columbia Police
14 Department, we are required to contact the Solicitor's
15 Office before issuing a warrant. That is their protocol
16 with the Columbia Police Department.

17 Q I understand.

18 A I've been there for 20 some years, and we have to
19 call the Solicitor, be it the Solicitor that is on call,
20 that is allowed to be woke up in the middle of the night
21 if we feel it warrants it, or Ms. Gaddy was specifically
22 assigned as the C.S.C. prosecutor at that time.

23 Q I understand, sir, but what was the date that you
24 attempted to contact the Solicitor's Office for the first
25 time?

1 A It was back in September. The week of the 20th of
2 September I attempted to contact Erin Gaddy.

3 Q Over a month after this incident?

4 A That's true.

5 Q Okay. Now, you took a statement from Rosa McCullough
6 on 9:14?

7 A Yes, ma'am.

8 Q And you interview people to take down information so
9 that when you're testifying four years later, you have
10 something to refer to to refresh your memory and to help
11 refresh the witness's memory, correct?

12 A Correct.

13 Q And so you want to document all of the important
14 points?

15 A Yes, ma'am.

16 Q And although you can't document every single minute
17 detail, you document the things that you think are most
18 pertinent to that particular crime.

19 A That's true.

20 Q And you reduce these to writing because memories
21 fade, correct?

22 A Yes.

23 Q And people forget, right?

24 A Yes.

25 Q Okay. Give me just a second.

1 (Pause).

2 So you took a statement from Rosa McCullough on
3 9/14/04. Do you have a copy of that statement in front of
4 you?

5 A I do, ma'am.

6 Q I just want to go through a little bit of this
7 statement with you. Refer to it, if you need to remember
8 exactly what the answers were.

9 Did Rosa McCullough refer to Mr. Gilmore as her
10 boyfriend?

11 A I think she did in the report. She said he was some
12 kind of ex-boyfriend.

13 Q In her statement on 9/14, did she refer to Willie
14 Gilmore as her boyfriend?

15 I can point you to the right page if you don't
16 remember, page four, just under halfway down the page.

17 A I asked her the question, "How long have you known or
18 been boyfriend and girlfriend with Willie Gilmore?"

19 Ms. McCullough's answer was, "We started being
20 boyfriend and girlfriend about a week after Valentine's
21 this year, 2004."

22 Q Okay. And initially in her statement, she said that
23 when she arrived at [REDACTED], did she say that
24 Willie was there or he was gone?

25 A (There was no response).

1 Q That's on page one.

2 A Uh-huh.

3 "I had gone over to his house on [REDACTED] right
4 over to the house that Willie and I had lived together in
5 on [REDACTED] close to Peyton Street. When I arrived
6 at the house, there was another woman in the house.
7 Willie was not there. The lady said Willie was at the
8 store. A short while later, Willie came back."

9 Q And what kind of -- okay. Did Rosa tell you there
10 was a weapon used in this statement?

11 A (There was no response).

12 Q Page three, I believe.

13 A Said, "He had a yellow handled knife out."

14 Q Okay.

15 A After he slapped her in the face two or three times.

16 Q And just under that, he also -- she also said that he
17 threatened her. He said -- was it, "If I was like I used
18 to be, you would be dead, Bitch"?

19 A That's correct. That's what I reported that she
20 said.

21 Q Okay. How many women -- or excuse me, how many
22 people did she say had come by throughout the time that
23 she was there? That's at the top of page two.

24 A If you recall, that's page two. Page three said
25 "Molly, a woman named Molly came by."

1 Q I'm specifically referring to the top of page two at
2 the bottom of that first paragraph.

3 A Yeah, that starts there on page one. He said, "I'm
4 glad to see" -- he asked the lady to leave, and she left.
5 We sat and talked. Willie rubbed my feet. Everything was
6 good."

7 Q Okay. So she said two people had come by? Is that
8 the way you understood it?

9 A Uh-huh.

10 Q Okay.

11 A I believe there was some testimony, too -- it may not
12 be in this statement, but some man came by several times
13 that Willie was talking to.

14 Q But specifically females?

15 A Females, that I have knowledge of, that she told me
16 about.

17 Q And the last thing concerning this statement is you
18 asked Rosa if she and Willie were drunk.

19 A Where is that at, ma'am?

20 Q That's at the bottom of page five, sir.

21 A That's true.

22 Q So she said, "I was not drunk, but Willie was."
23 Wasn't that her?

24 A That's right, "Willie was drunk and high."

25 Q All right. I want to talk to you about Rosa

1 McCullough's residence at the time that you first met her.
2 You said it was the Master's Economy Inn; is that right?
3 A Yes, ma'am. It's on Knox Abbott Drive.
4 Q Excuse me, I'm sorry?
5 A Uh-huh, it's on Knox Abbott Drive.
6 Q Okay. And this is a motel?
7 A Yes.
8 Q And it's not the nicest motel, is it?
9 A I couldn't really say. It didn't look too bad when I
10 was over there that day.
11 Q Is it by the highway?
12 A It's on Knox Abbott Drive, ma'am.
13 Q And it's a motel where Rosa didn't have any of her
14 belongings?
15 A Not to sound flippant, but when you stay in a hotel,
16 I don't think you can move your furniture in.
17 Q Well, right, and you were here when she testified
18 that she didn't have anything --
19 A Uh-huh.
20 Q -- but just some small personal effects?
21 A Uh-huh.
22 Q And motels are generally a small space.
23 A I would say so.
24 Q But Ms. McCullough hadn't always been staying at this
25 particular motel?

1 A No, ma'am.

2 Q She had been staying at home?

3 A [REDACTED].

4 Q Uh-huh.

5 A That's what she said.

6 Q With all of her belongings there, as you understood
7 it?

8 A As I understood it, ma'am.

9 Q Okay. So it's fair to say that she went from a home
10 to a place that probably wouldn't be as comfortable?

11 A It depends on her state of mind. I can't answer
12 that.

13 Q Okay.

14 A I don't know if she was comfortable there or she was
15 not comfortable there, ma'am.

16 Q I'm just saying in general if you had your choice
17 between living in a house or living in a motel with none
18 of your things with you, you probably would pick the
19 house.

20 A I probably would.

21 MS. LAFAVE: Okay. Thank you. Beg the Court's
22 indulgence.

23 (Pause).

24 Investigator Bullock, I thank you for your time.

25 THE WITNESS: Yes, ma'am.

1 MS. LAFAVE: Your Honor, I have no further questions.

2 THE COURT: Thank you. Redirect?

3 MS. FENT: No further questions.

4 THE COURT: Okay. You can step down, sir.

5 THE WITNESS: Thank you, ma'am.

6 MS. FENT: Bruce Hunter.

7 MS. LEE: Judge, this is the matter that I need to
8 take up with the Court.

9 MS. FENT: I can call the other witness first.

10 THE COURT: Okay.

11 MS. FENT: We'll call Alberta Goins.

12 (WHEREUPON, a bench conference was held in the
13 Presence, but not within the hearing, of the jury)

14 THE COURT: If you all would be just a little
15 patient. The next witness is an elderly woman who has to
16 be wheeled in on her wheelchair. She has -- is exercising
17 some comfort needs right now.

18 (Pause).

19 ALBERTA GOINS, after being duly sworn,
20 testified as follows:

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION:

23 BY MS. FENT

24 Q Can you tell the -- can you tell the jury what your
25 name is?

- 1 A My name is Alberta Goins.
- 2 Q Alberta Goins?
- 3 A Yes.
- 4 Q Okay. And did you once live on [REDACTED]
- 5 A Yes.
- 6 Q Okay. How long did you live on [REDACTED]
- 7 A Sixteen years.
- 8 Q Okay. Do you know Rosa Lee McCullough?
- 9 A Yes.
- 10 Q And how long had you known Rosa?
- 11 A About three years.
- 12 Q Okay. Did she also live on your street?
- 13 A Yes.
- 14 Q Okay. Do you remember when Rosa came to your house
- 15 back in August of 2004?
- 16 A Yes.
- 17 Q Okay. And do you remember how she was behaving on
- 18 that day on August 18th, 2004?
- 19 A Oh, she was -- she was just shaking down when she
- 20 came in the house. She sat in the chair, and she started
- 21 talking, told me what happened.
- 22 Q Okay.
- 23 A She started shaking.
- 24 Q She was shaking, and you said she was upset?
- 25 A Yes. She was very upset.

1 Q How could you tell that she was upset?

2 A She was just shaking.

3 Q And what did she tell you happened to her?

4 A She said, "Willie Gilmore raped me, and my period was
5 on."

6 I said, "Well, that's gross."

7 Q And when she told you that, what did you tell her?

8 A "Call the police".

9 Q Did she call the police?

10 A Yes.

11 Q And did the police show up at your house?

12 A Yes.

13 Q Okay. And they talked to Rosa?

14 A Yes.

15 MS. FENT: Okay. I don't have any more questions.

16 Maybe other counsel have questions for you, okay.

17 One second.

18 MS. LEE: Thank you.

19 CROSS-EXAMINATION:

20 BY MS. LEE

21 Q How are you doing, Ms. Going?

22 A I'm okay.

23 Q My name is Megan Lee. I'm the attorney for Willie
24 Gilmore.

25 Now, this happened about four years ago?

1 A Yes.

2 Q Okay. Do you remember what happened the day after
3 you say Rosa came to your house?

4 A I beg your pardon?

5 Q Do you remember what happened the day after Rosa came
6 to your house?

7 A No.

8 Q What about the day before?

9 A She hadn't been to my house.

10 Q Okay. Now --

11 A Before, the day before.

12 Q -- let me ask you, did the police ever come to your
13 house and ask you questions about what Rosa told you?

14 A No. No -- no one had come to my house and asked me
15 anything about Rosa, what was said to me, the detective.

16 Q Okay. When you say the detective, you mean the
17 solicitor's investigator, right?

18 A Whatever.

19 Q Yeah, whatever. And he didn't have you write
20 anything down about what you remember. He just talked to
21 you, right?

22 A Yes.

23 Q So what you're telling us today, Ms. Goins, is what
24 you remember from four years ago; is that right?

25 A He asked me -- I wasn't at home the first time he

1 came. Then he came back. I was home. I came home then,
2 and he said he was wanting to talk to me about Rosa, what
3 happened to her.

4 Q Okay.

5 A And I told him.

6 Q But he didn't have you write anything down, right?

7 A I didn't see him write anything down.

8 Q Okay.

9 A So far.

10 Q And he was the only investigator to come and talk to
11 you; isn't that right?

12 A That one over there with the black shirt on.

13 Q Yes. Yes, ma'am, but this gentleman never came and
14 talked to you?

15 A No.

16 MS. LEE: Okay.

17 Judge, I think that's all the questions I have.

18 Thank you very much, Ms. Goins.

19 THE COURT: Okay.

20 MS. FENT: That's all.

21 THE COURT: Thank you so much, Ms. Goins, for coming.

22 If someone could assist her, please.

23 MS. LAFAVE: And the witness may be excused without
24 objection, Your Honor.

25 THE COURT: Thank you very much.

1 MS. FENT: Bruce Hunter is our next witness, Your
2 Honor.

3 THE COURT: Okay. And we'll just go ahead and deal
4 with the legal matter at this time. I'll excuse the jury.

5 I'm going to ask you all to recess for the evening.
6 I do -- wanted to remind you, thank you for keeping you a
7 little late. You'll have the morning off because I have
8 to deal with state grand jury matters.

9 I'd like you report to your jury room at 1:30, and
10 we'll continue on with the case and perhaps even conclude
11 the case tomorrow. We'll see.

12 If you all can report to your jury room at 1:30. I
13 remind you not to talk about the case but also not to look
14 at any news media or accounts of any sort. You all have a
15 good evening.

16 (Whereupon, the jury was excused at approximately
17 5:17 p.m.)

18 (A juror motioned).

19 THE COURT: Yes, ma'am.

20 JUROR: May I talk to you?

21 THE COURT: Certainly.

22 THE BAILIFF: Go out that way.

23 JUROR: I need to talk to her.

24 THE COURT: That's fine.

25 (Whereupon, a juror and Her Honor had a bench

1 conference).

2 (The juror left the courtroom).

3 THE COURT: Okay. Let's take up a matter of law.

4 The State's next witness is going to be Bruce Gene
5 Hunter, I believe.

6 MS. LEE: Yes, Your Honor. Last Friday, Ms. Fent was
7 kind enough to meet with me and go through discovery and
8 make sure that I had everything she had, and we did that.

9 I also asked her if I could take a look at her
10 witness list. She gave me a list of the witnesses she
11 intended to call.

12 I was surprised at the amount of lay witnesses, as
13 the majority of them do not appear anywhere in the
14 discovery that I was given. So I asked Ms. Fent what each
15 one of the lay witnesses planned on testifying to.

16 She told me Brian McCullough would only testify as to
17 where his mother was living. She told me about Ronald
18 Manly, and we investigated that, and Alberta Goins, who we
19 just heard from. None of that was a surprise.

20 What I was informed about Bruce Gene Hunter was that
21 he was merely being called for character, or what we argue
22 was character, Your Honor, and that he was only going to
23 testify, "I know Willie Gilmore. I know him to carry a
24 knife."

25 I operated on that assumption. I did not try to get

1 any last minute emergency funding to get an investigator.
2 I did not ask for a continuance from Your Honor based on
3 that.

4 What I gleaned from Ms. Fent's opening statement is
5 that she intends to have Mr. Hunter testify that he was on
6 [REDACTED] on August 18th, 2004; that he saw
7 Ms. McCullough with my client, Willie Gilmore; that he can
8 describe her demeanor; that he possibly even spoke to
9 Ms. McCullough that night, and that there are some
10 statements about the incident.

11 I understand from our brief conference up there after
12 opening statements that Ms. Fent feels that this was not
13 exculpatory. Your Honor, I would refer to Rule 5,
14 subsection C of the continuing duty to disclose, "If prior
15 to trial the party discovers additional evidence or
16 material previously requested or ordered which is subject
17 to discovery or inspection under this rule, he shall
18 promptly notify the other party or his attorney or the
19 court of the existence of the additional evidence or
20 material."

21 I'm not saying that I think there's a written
22 statement out there by Mr. Hunter. However, this is
23 evidence, evidence of someone being able to put my client
24 with the alleged victim in this case that I was not made
25 aware of. Again, we could have sought money for an

1 investigator and did not.

2 Our Rule 5 in this case, motion for discovery, which
3 we filed back on March 30th, 2005 specifically requests
4 the names and addresses of any witnesses who have given
5 written or oral statements of information concerning the
6 incident in question.

7 I understand the Solicitor's position is that this is
8 not discoverable because it's not exculpatory. However, I
9 do think that it is material, and that is the standard,
10 Your Honor. This is an eyewitness who can put the two
11 together on the day in question, and that is a very
12 significant piece of evidence.

13 Judge, it's our position that this is a nondisclosure
14 violation. It's a violation of my client's due process
15 rights and rights to a fair trial, and more than that,
16 Your Honor, I think it speaks to bad policy that you can
17 do a minimal investigation at the beginning through the
18 police department and then go back with Solicitor
19 Investigators and talk to a bunch of people but not have
20 them take any written statements knowing that you can
21 circumvent Rule 5 by not getting that material.

22 It is under that basis I would object to this
23 additional testimony that Ms. Fent proffered in her
24 opening statement as violation of Rule 5, violation of due
25 process, and violation of my client's right to a fair

1 trial.

2 THE COURT: Okay.

3 MS. FENT: I'll start with responding to her saying
4 that this is bad policy. What it is, is good lawyering.

5 There is nothing under Rule 5 that says -- even
6 though she asked for it in a motion for discovery, she can
7 type it out on a piece of paper and say, "I want the names
8 and addresses of your witnesses."

9 I don't see it anywhere in Rule 5(A) that we have to
10 give her the names and addresses of our witnesses. It's
11 statement of a defendant. It's the defendant's prior
12 record, documents and tangible objects, it's reports of
13 examinations and tests. Then under "information not
14 subject to disclosure" is witness statements.

15 We went out, you know, in the heat driving around
16 trying to find Bruce Gene Hunter, and my information at
17 the time that I talked to Ms. Lee on Friday was the extent
18 of the information he had was that it was a yellow knife.

19 It wasn't until Mr. Hunter responded to the notes
20 that we left around and the homes that we went out and
21 beat down on the streets to try to locate him that it was
22 when he came in and spoke with us in the office that he
23 said, "Hey, I was outside, you know, that house. I
24 actually, you know, saw Rosa McCullough after it
25 happened," that that information came to us.

1 It's not subject to Rule 5. It's not in there
2 that -- that this information of what Mr. Hunter would be
3 testifying to needs to be disclosed.

4 MS. LEE: Judge, number one, she refers to subsection
5 (2) of (B), information not subject to disclosure. Your
6 Honor, that specific exception is dealing with physical
7 statements that are taken by the prosecution of a witness,
8 in which case they only have to hand them over directly
9 after direct examination for the lawyer to review before
10 cross-examination. That's what that subsection is about.
11 This is a completely different issue.

12 Subsection (C) is very clear on this issue, Your
13 Honor. It's the continuing duty to disclose, and you
14 know, if they found it out over the weekend, I certainly
15 was here bright and early on Monday and available to talk
16 before opening statements, but we truly were ambushed by
17 that piece of information in the opening statement.

18 As a result, I was not able to properly investigate
19 and do that lawyering, as Ms. Fent put it, that she talked
20 about, because we didn't know he existed, Your Honor.

21 I would say that the majority of people in the
22 community that Mr. Hunter frequents know him under the
23 nickname "Dooley".

24 Frankly, we don't have the resources that the
25 Solicitor's Office does to investigate this, these things.

1 It's their duty to investigate. It's their duty to make
2 the case.

3 They went out and investigated, and I do maintain
4 that it is bad policy, Your Honor, because if we do a
5 minimal investigation and then allow them to go and just
6 take oral statements from people, you're depriving a
7 defendant of their constitutional right to investigate and
8 confront their accusers.

9 The remedy we seek, Your Honor, is that this witness
10 be limited to only testifying about that night.

11 THE COURT: Okay.

12 MS. FENT: She cites to subsection (C), continuing
13 duty, but that's the continuing duty under the statute.

14 If there's not part of the statute that says I have
15 to turn over, you know, what a witness is going to testify
16 to, then there is no continuing duty to do so.

17 That subsection (C) is not just, you know, everything
18 you know, everything else that's not covered in the other
19 subsections, you have to hand over. It's specifically you
20 have a continuing duty to hand over what's required: A
21 statement of a defendant, a defendant's prior record,
22 documents and tangible objects, reports of examinations
23 and tests. That's what I am required to hand over.

24 And you know, it is ridiculous to say that I am
25 supposed to be, you know, in my investigation reporting

1 everything that my investigation does and reveals. It's
2 not exculpatory information.

3 THE COURT: Well, let me ask you this: Is there a
4 distinction when you all were meeting last week and she
5 asked you what each witness was going to testify about, do
6 you feel that in response to that question, you have to
7 give all of the information or just --

8 MS. FENT: Well, and that's why I responded that --
9 actually, I told her what I knew at the time. At the time
10 I had that conversation with her, I had never met Bruce
11 Gene Hunter, hadn't talked to him myself.

12 It was information I got from talking to my victim
13 that this person knows Mr. Gilmore to carry a yellow
14 handled knife. "See if you can find him."

15 We were out trying to see if we could find him. That
16 was only Monday morning. You know, in talking to him, he
17 showed up at the courthouse in response to us leaving all
18 of those notes and everything, and then sat down and
19 chatted with him and found out some more information.

20 THE COURT: So it's only at the time of Monday
21 morning that you actually spoke with him to verify the
22 information yourself, spoke with Mr. Hunter?

23 MS. FENT: Correct.

24 THE COURT: Okay.

25 MS. FENT: Correct.

1 THE COURT: Okay. But your victim had told you about
2 it before. You're just saying that you had not had the
3 opportunity to verify any of that.

4 MS. FENT: Right, that it was my understanding that
5 Mr. Hunter -- when I told Ms. Lee it was my understanding
6 that Mr. Hunter would say Mr. Gilmore carries a yellow
7 handled knife and would be able to corroborate the yellow
8 handled knife.

9 THE COURT: Did you let her know at that time how he
10 would know that, meaning that he lived on the street or --

11 MS. FENT: No. Nor am I under any kind of obligation
12 to tell her anymore. I didn't even have to tell her. I
13 could have said, "He's on my witness list. You'll find
14 out. You know, there is no exculpatory information for me
15 to hand over to you. You'll find out, you know, when I do
16 my opening statement what Mr. Hunter is going to testify
17 to."

18 I told her at that time that this is my understanding
19 of -- you know, and when you're putting your witness list
20 together, you don't have him on that witness list. He
21 pops up in the middle of your trial, you don't have him on
22 your witness list, you can't call him.

23 THE COURT: Right.

24 MS. FENT: So, you know, you put everyone down there
25 that possibly, you know, hopefully you can get by the end

1 of your trial, and you have got to put him on.

2 So I wasn't under any obligation to tell her
3 anything, but I did go ahead and give her that witness
4 list and tell her the information that I knew at the time.

5 THE COURT: Okay.

6 MS. FENT: And under Rule 5, you know, there is no
7 obligation for me to -- you know, for me to share with her
8 the information that I had at the time.

9 THE COURT: And then obviously, no statement that he
10 had because you just met him yourself on Monday.

11 MS. FENT: Right. And as far as setting bad policy,
12 I mean, if we're going to be punished for sharing
13 information that we're not obligated to share, you know,
14 from now on, I'll just keep my witness list until, you
15 know, the trial starts and say, "You know, I hope you
16 figured it out yourself who it is and, you know, good
17 luck."

18 If there's no exculpatory information, I think I
19 handed over everything that I'm required to, but I went
20 beyond that, you know --

21 THE COURT: Okay.

22 MS. FENT: -- trying to be...

23 THE COURT: And just so it's clear in my mind, in
24 addition to testifying about him seeing him with a knife
25 on various occasions, and we have dealt with the motions

1 on that issue, he'll also testify about what with respect
2 to putting the parties together?

3 MS. FENT: That he was standing outside the Goins'
4 home when he sees Rosa and Willie Gilmore come outside
5 from their home walking up to the Goins' house; that Rosa,
6 he can tell is, crying and is upset. Rosa goes into the
7 Goins' house. Willie says, "Hey, I'm leaving," and he
8 takes off across the field.

9 Rosa comes outside then a little bit later and says,
10 "Willie raped me with a knife." Then the police come by
11 and ask, "You know, do you know where Willie is?" He
12 said, "You know, hey, he went off across that field."

13 THE COURT: Okay. All right.

14 MS. FENT: And then -- and then the knife, yellow
15 handled knife, we told you about.

16 THE COURT: Okay.

17 MS. LEE: Judge, what I would just want to put on the
18 record is we tailored our preparation in this case based
19 on what we were told by the prosecution, and we were never
20 told any differently.

21 THE COURT: Well, let me ask you that with respect to
22 her -- because the other policy, like she said, would be
23 to go forward with them not even having to tell who
24 witnesses are. Do you disagree with that?

25 MS. LEE: Judge, I would hope that our purpose is for

1 everyone to share the evidence so we can reach the best
2 possible verdict, and you know, I didn't --

3 THE COURT: But she shared with you what she knew at
4 the time --

5 MS. LEE: Yes, ma'am.

6 THE COURT: -- based on what --

7 MS. LEE: But --

8 THE COURT: We're not saying what she knew, what she
9 could confirm.

10 It doesn't matter, as you all know, what your clients
11 always tell you. It's what you can verify.

12 MS. LEE: Absolutely, Your Honor. I was available to
13 be spoken to before we picked a jury and they were sworn
14 in and jeopardy attached. I was available to talk about
15 it then.

16 I don't see what is to be gained by -- well, I don't
17 -- I'm not trying to make a policy argument, Your Honor.

18 THE COURT: Yes, ma'am.

19 MS. LEE: My point is that we tailored our
20 preparations in this case to what we were told about these
21 witnesses on that Friday afternoon.

22 THE COURT: Based of what about she knew at the time?

23 MS. LEE: Apparently, Your Honor.

24 THE COURT: All right.

25 MS. LEE: I don't know when --

1 THE COURT: I mean, she is an Officer of the Court.
2 You have to accept that.

3 MS. LEE: Absolutely, Your Honor.

4 THE COURT: And then she said she learned something
5 else on Monday morning.

6 MS. LEE: Yes, Your Honor.

7 THE COURT: Okay.

8 MS. LEE: And we were certainly available to be
9 spoken to before Monday morning.

10 THE COURT: Okay.

11 MS. LEE: And had a --

12 THE COURT: What would you have done different? If
13 you had the investigator, and I had assigned extra funds,
14 what could you have done different?

15 MS. LEE: Thank you, Your Honor. We certainly would
16 have launched an investigation because this is the only
17 witness that I am aware of who they can call who can put
18 the -- Mr. Gilmore and the victim in this case together on
19 the day in question.

20 Someone who is going to testify as to evidence of
21 flight, I mean, his credibility is key. We would have
22 wanted to know questions about what is the relation of
23 this relationship with Ms. McCullough? What is the nature
24 of his relationship with out client?

25 There are a lot of credibility issues here that we

1. could have examined --

2. THE COURT: But when you --

3. MS. LEE: -- or at least asked the Court for a
4. continuance.

5. THE COURT: But when you say "put them together", are
6. you disputing everything that the victim has testified to,
7. as well as the police --

8. MS. LEE: I mean, obviously --

9. THE COURT: -- that relates to -- the rest of the
10. information that suggests --

11. MS. LEE: Obviously, it's --

12. THE COURT: Okay.

13. MS. LEE: -- a consent case, Your Honor.

14. THE COURT: That's good.

15. MS. LEE: But my point is --

16. THE COURT: I'm trying to figure out what you mean by
17. "putting them together".

18. MS. LEE: The witness puts them together, and
19. apparently says how Rosa talks about the knife and that
20. Willie took off, which is -- which is evidence of flight.
21. That's a -- that's a big deal to us, Your Honor.

22. We keep talking about exculpatory, but that's not the
23. only standard here. The standard is material or
24. exculpatory.

25. Kyles v. Whitley, the question is not whether or not

1 the defendant would be more likely than to have received a
2 different verdict with the evidence, but whether in its
3 absence he received a fair trial.

4 Materiality is determined by weighing lots of
5 factors, Your Honor, not just whether or not something is
6 exculpatory, the importance of the witness, the
7 significance of the evidence. It is on that basis that we
8 would ask you to limit this witness's testimony.

9 THE COURT: Okay. And again, if she knew about it
10 Monday morning --

11 MS. LEE: Uh-huh.

12 THE COURT: -- and she had told you then, we're
13 getting ready to go into trial --

14 MS. LEE: Yes, ma'am.

15 THE COURT: -- would you have broken, delayed, or
16 just needed the ability to talk to this witness?

17 MS. LEE: I mean, it's hard to say, Your Honor. I
18 think that in the interest of good lawyering, I would have
19 offered my client the same opportunity that the State did.

20 They sent an investigator to go speak to him. I
21 would have hoped to have done the same.

22 THE COURT: Right.

23 MS. LEE: And to see if he was willing to give a
24 statement.

25 THE COURT: Where is this person?

1 MS. FENT: In jury selection when Your Honor read the
2 witness list, Mr. Bruce Hunter stood up. He was in this
3 courtroom during jury selection Monday morning.

4 They could have asked for a continuance at that
5 moment and said, "We would like to go talk to him." He
6 has been in this courthouse all day today, all day
7 yesterday, and all day today.

8 THE COURT: Oh he was? Okay.

9 MS. FENT: Here. I mean, he stood up in jury
10 selection --

11 THE COURT: I remember that part.

12 MS. FENT: -- so he could be identified by the
13 potential jurors.

14 THE COURT: Okay.

15 MS. FENT: At that point, they could have said --

16 THE COURT: Where is he now?

17 MS. FENT: In the hallway. When we called him, he
18 had come in. We put him back out in the hallway.

19 THE COURT: He's physically here?

20 MS. FENT: I think he is.

21 THE COURT: Okay. The way I want to handle this is
22 that he be tendered over to the defense for them to go
23 ahead and speak with him.

24 MS. LEE: Thank you, Your Honor. I --

25 THE COURT: And then you can gather up -- because

1 obviously, that's the first part of your investigation is
2 go to the source, and then you can gather what you can
3 from him at this point.

4 MS. LEE: Thank you, Your Honor.

5 THE COURT: And then let me know if there had been
6 anything else that you would have needed.

7 MS. LEE: And --

8 THE COURT: Because we won't resume tomorrow until
9 1:30 --

10 MS. LEE: Yes, ma'am.

11 THE COURT: -- so that gives you time to work that
12 angle, as well.

13 MS. LEE: And ms. Fent is right. Obviously, I saw
14 him in here. It was my understanding this was maybe an
15 old friend, just someone from the neighborhood who was
16 going to say, "I have always seen him with a knife."

17 THE COURT: Right.

18 MS. LEE: You know, maybe I should have spoken to
19 him, but at that point I did not realize --

20 THE COURT: Not at jury selection you didn't because
21 you said this is offered in the opening statement.

22 MS. LEE: Yes, Your Honor.

23 THE COURT: Okay. But that's what I'd like to do to
24 attempt to cure it is to make him available to you, to
25 speak to you.

1 All right. Anything further?

2 MS. LEE: No, ma'am.

3 THE COURT: Okay. Is he here? I see somebody was
4 trying to go get him?

5 MS. FENT: Yes, yes.

6 THE COURT: So he still is here?

7 MS. FENT: Yes.

8 THE COURT: Okay. Well, thank you.

9 Okay. Anything further then?

10 MS. LEE: Would it be possible for him to be here
11 around like nine or earlier so that we could speak to him?
12 Is he still...

13 MS. FENT: I mean, you know, I'm not keeping anybody
14 from a witness. I think he's been getting a ride.

15 B. MCCULLOUGH: He's got to get a ride with us.

16 THE COURT: Okay. If you all want to try -- I know
17 it's late, but you all are attorneys. You're used to it.

18 MS. LEE: Yes, ma'am.

19 THE COURT: You may want to try to speak with him
20 now. My point being is that to bring him at nine, but the
21 case doesn't start until 1:30.

22 MS. LEE: Yes, ma'am.

23 THE COURT: That's too long.

24 MS. LEE: No, absolutely.

25 THE COURT: I would suggest --

1 MS. LEE: Yes, ma'am.

2 THE COURT: -- you do what you can now. Then arrange
3 another convenient time with him, if it meant him coming
4 back at one or, you know, whatever.

5 MS. LEE: Okay.

6 THE COURT: Okay. Anything further?

7 MS. LEE: No, ma'am. Thank you.

8 THE COURT: Okay. Recess for tonight. Thank you
9 all.

10 MR. CATHCART: Thank you.

11 (There was an overnight recess.)

12 (WHEREUPON, the jury came into open court at
13 approximately 1:38 p.m.)

14 THE BAILIFF: The jurors are all present, Your Honor.

15 THE COURT: Thank you again, ladies and gentlemen,
16 for accommodating me this morning as I dealt with matters
17 with the State Grand Jury. Then when I came back, we had
18 some matters to deal with, other than this trial, for
19 other -- dealing with my criminal docket.

20 Right at this time I've got one other matter to deal
21 with, so what I'd like you all to do is to step to your
22 jury room. I didn't want you just leave you hanging out.

23 I did need you all to select a foreperson. This is a
24 person who has no greater vote than any other person, nor
25 is there any additional payment for this position.

1 Essentially, you are the person who will guide the
2 deliberations with respect to just organizing amongst
3 yourselves with respect to the trial and your
4 deliberations.

5 It can be any one of you except the two alternates.
6 It has to be somebody who is within the original jury
7 panel, so I'd like you just to take that time over this
8 short break that I'll give you to do that. I should be
9 done with this matter, and then I'll be done with this
10 matter, and we will resume with the matter.

11 Thank you very much.

12 (WHEREUPON, the jury left open court at approximately
13 1:40 p.m.)

14 (Other matters not related to this case were heard.)

15 THE COURT: Are you all ready to resume?

16 MS. FENT: Yes, Your Honor.

17 MS. LEE: Yes, Your Honor.

18 (WHEREUPON, the jury came into open court at
19 approximately two o'clock p.m.)

20 THE BAILIFF: If jurors are all present.

21 THE FOREMAN: They gave me an offer I couldn't turn
22 down.

23 THE COURT: I really appreciate that happening and
24 occurring and being an obvious choice among your fellow
25 peers, okay.

1 Let's continue on with the trial. State, your next
2 witness, please.

3 MS. FENT: May we just approach briefly?

4 MS. LEE: Your Honor, we would renew our motion.

5 THE COURT: That's okay. All right.

6 BRUCE GENE HUNTER, after being duly
7 sworn, testified as follows:

8 MS. LAFAVE: Judge.

9 MS. LEE: I am so sorry to interrupt one last thing.
10 Just so I'm clear, I don't think the ruling was put on the
11 record. I take it that my motion was denied, just for
12 that?

13 THE COURT: Yes, it was because the Court felt like
14 it gave a curative suggestion and made the opportunity
15 available between last night through 1:30 or so when we
16 were supposed to resume this trial, and that -- had
17 requested that you all let me know if there was anything
18 further that was necessary to do anything. I assumed
19 that --

20 MS. LEE: Yes, ma'am.

21 THE COURT: Okay.

22 MS. LEE: And I apologize for the interruption.

23 THE COURT: That's okay, but we want to make
24 everything clear.

25 MS. LEE: Okay.

1 THE COURT: Okay. Thank you.

2 THE BAILIFF: State your full name for the record,
3 sir.

4 THE WITNESS: Bruce Gene Hunter.

5 DIRECT EXAMINATION:

6 BY MS. FENT

7 Q Mr. Hunter?

8 A Yes.

9 Q Do you know Rosa McCullough?

10 A Yes.

11 Q And do you know Willie Gillmore?

12 A Yes.

13 Q How long have you known Rosa?

14 A About 25 years.

15 Q Okay. And how long have you known Willie Gilmore?

16 A About 40.

17 Q Okay. Do you see Willie in the courtroom today?

18 A Yes.

19 Q And can you point to him so we know who you're
20 talking about?

21 A (Indicating).

22 Q I guess describe what he's wearing.

23 A A black -- got on a gray suit with a blue or black
24 and yellow tie with glasses on.

25 MS. FENT: May the record reflect the witness has

1 identified the defendant?

2 THE COURT: Yes.

3 BY MS. FENT

4 Q Back on August 18th, 2004 at approximately six
5 o'clock in the evening, did you see Willie and Rosa?

6 A Yes.

7 Q And can you tell the jury where you saw them?

8 A Well, first me and Willie was down in a friend's
9 yard, and he went up the street to where he was staying
10 and Rosa was up there. They came back down the street
11 together, and that's when I seen her eye full of water,
12 but I didn't pay any attention.

13 Q Okay. You saw what?

14 A Rosa's eyes, Rosa Lee.

15 Q Okay. You saw?

16 A Eye full of water.

17 Q Eye full of water?

18 A I thought they was arguing.

19 Q Okay. Where were they coming from, and where were
20 they headed to?

21 A Willie Gilmore was standing.

22 Q Okay.

23 A Going to where I was standing, coming to where I was
24 standing.

25 Q And where were you standing?

- 1 A At the corner. Over there at the house on the corner
2 from Ms. -- I forgot the name. She was here yesterday,
3 the old lady.
- 4 Q Alberta Goins?
- 5 A Ms. Goins', they was in Ms. Goins' yard.
- 6 Q Okay.
- 7 A And that's where they were coming to.
- 8 Q Okay. And what else could you tell besides Rosa's
9 eyes were full of water, anything?
- 10 A Well, she was just like the eyes were full of water.
11 I thought they was arguing, had been in an argument, you
12 know, which was kind of normal.
- 13 Q Okay.
- 14 A They argued all the time.
- 15 Q You saw them coming up towards --
- 16 A Coming down the street, coming to where I was at.
- 17 Q Okay.
- 18 A To the house, to the yard I was in.
- 19 Q Okay. And then where did they go?
- 20 A She went in the house, and he stood on the side with
21 me and the rest of the guys.
- 22 Q So Rosa went into Alberta Goins' home?
- 23 A The Goins' house, yeah.
- 24 Q Okay.
- 25 A And she was in there for awhile.

1 Q Okay. And then where did Willie go?

2 A He was still on the porch; come sit on the side of
3 the porch with me and the rest of the guys.

4 Q For how long?

5 A For about two minutes, and he left and went through
6 the field across the street into a field toward Peach
7 Street.

8 Q Okay. Did you see him again that night?

9 A Not that night.

10 Q Okay. Then what -- did you see Rosa again?

11 A She come by the house, and she told me what happened,
12 and I couldn't believe it. In a little bit, the police
13 came.

14 Q Okay.

15 A And she got in the police car.

16 Q Back up. When Rosa came out of the house, can you
17 describe --

18 A She called me up, told me -- she was crying. She
19 called me over and told me what happened.

20 Q Okay. You said she was crying?

21 A Yes.

22 Q Okay. And can you describe any -- anything else
23 about how the -- how she was acting or behaving?

24 A She was crying and nervous, holding her face.

25 Q And what specifically did she tell you happened?

1 MS. LEE: Objection, hearsay.

2 MS. FENT: It's the defendant's statement.

3 THE COURT: You said as to --

4 MS. FENT: Willie -- excuse me, Rosa. It's an
5 excited utterance. Pardon me.

6 THE COURT: Okay. Go ahead.

7 BY MS. FENT

8 Q What specifically did Rosa tell you?

9 A She called me to the side and told me what Willie had
10 done --

11 Q And --

12 A -- and she was crying.

13 Q -- what did she say that Willie had done?

14 A Willie had came up to the house and drawn the knife
15 on her and raped her.

16 Q And then you said the police came?

17 A Well, after she was in the house, and she came
18 outside and talked to me, she stayed there for awhile. I
19 guess she was in there talking to Ms. Goins.

20 Q Okay. Did you talk to any of the police when they
21 were there?

22 A It was a female police --

23 Q Okay.

24 A -- that came up in a cruiser.

25 Q Okay.

1 A And I asked where she was. I told her she was in the
2 house.

3 Q Okay.

4 A But she came out, and she talked with the police.
5 They got in the car, and they drove off.

6 Q You said they got in the car and drove off?

7 A The police.

8 Q But it's --

9 A The police cruiser.

10 Q Okay.

11 A She got in the backseat.

12 Q Rosa got in the seat of the --

13 A Rosa got in the backseat, yes.

14 Q Okay. Did anybody ask or did you hear anybody
15 looking for Willie Gilmore?

16 A I guess the police was looking for him.

17 Q Okay. Did anybody ask you where he was?

18 A Well, I think the lady officer asked, "Where did he
19 go?" You know, was he still out here. I say no, and that
20 was it.

21 Q Okay.

22 A Her and Rose -- Rose come out of the house and got in
23 the car, stood out there to the car, back -- driving up
24 out of the car. She opened the door, and they were both
25 standing there.

1 Q Okay.

2 A And they drove off.

3 Q And did you tell the police officer where you saw
4 Willie go?

5 A Well, I just told the police he just left.

6 MS. FENT: Okay. No further questions.

7 MS. LEE: Thank you, Your Honor.

8 CROSS-EXAMINATION:

9 BY MS. LEE

10 Q Mr. Hunter, I'm going to -- thank you. I think you
11 talked with one of my colleagues yesterday.

12 A Yes.

13 Q You didn't have to do that. We certainly appreciate
14 your cooperation with us.

15 Now, you said that you and Rosa had known each other
16 about 25 years?

17 A Yeah.

18 Q And I believe you told my colleague that you met
19 through a brother-in-law, something like that?

20 A Yes.

21 Q Okay. And you're still friends, aren't you?

22 A All three of us was still friends.

23 Q And you're also friends with her son Brian, right?

24 A Yeah.

25 Q And, in fact, you have been spending some time

1 together this week, haven't you?

2 A They come pick me up and bring me up here.

3 Q Okay. So they give you a ride from your house to the
4 courthouse and then back home every day?

5 A That's right.

6 Q Okay. And I think I've seen you also out in the
7 hallways --

8 A That's right.

9 Q -- together talking, go to lunch together?

10 A That's right.

11 Q Go to lunch together, and that's been at least Monday
12 through Wednesday?

13 A That's right.

14 Q Today. They're going to give you a ride home today?

15 A Probably will.

16 Q Hope so?

17 A Court have a problem with that?

18 Q No, sir, not at all.

19 A Okay.

20 Q I'm just trying to give the jury the whole picture of
21 what's going on here, and I assume you've seen Rosa
22 between back when this all happened in 2004 and just this
23 month. Y'all have seen each other since then?

24 A Probably once or twice.

25 Q Only once or twice?

1 A Probably once or twice.

2 Q Okay. And in the time that y'all have spent together
3 this week coming and going in the car, going to lunch,
4 talking whenever we've got a recess in the hall, it's fair
5 to say y'all have talked about this case?

6 A We're here to discuss this case. They told us not to
7 discuss it.

8 Q Okay. And so it's your testimony that driving to and
9 from this trial --

10 A The case wasn't discussed.

11 Q -- the case wasn't discussed? Okay, sir.

12 I want to talk about what else you told my associate
13 yesterday. Is it fair to say that you were able to see
14 all of this because you were sitting out in the yard
15 drinking that day?

16 A See all of what?

17 Q Everything you just talked about, sir.

18 A The rape?

19 Q No. No, sir.

20 A No, I didn't see the rape.

21 Q I asked you --

22 A I seen them coming down the street together.

23 Q Yes, sir.

24 A Yes.

25 Q And you were able to see that --

1 A Yes.

2 Q -- because you were out in the yard.

3 A We was out in the yard. You could see the house

4 where Skipper stayed at from where we were staying.

5 Q Okay. And y'all were out in the yard because you

6 were drinking?

7 A We had a couple of drinks, yes.

8 Q Okay.

9 A We wasn't intoxicated --

10 Q Well --

11 A We just had a few drinks.

12 Q Okay, a few drinks.

13 A Yes.

14 Q Beer, liquor?

15 A Both.

16 Q Both. Okay. Now, when y'all are sitting out there

17 drinking beer and liquor, you see Rosa and Willie'-- or I

18 think you call him Skip --

19 A Yeah.

20 Q -- Rosa and Skip walking by. You said Rosa's eyes

21 were watering?

22 A Well, watered down. She was coming by where I was.

23 Q Okay. Okay. I understand that. Coming towards

24 where you were.

25 A Right.

1 Q You said her eyes were watering?

2 A Eyes was full of water. I didn't pay any attention
3 because they argue a lot.

4 Q Okay. Okay. They were arguing. Did you hear what
5 they were arguing about?

6 A No, no. I just said they argued a lot.

7 Q Okay.

8 A I just seen her eyes were full of water, and I
9 assumed they was arguing.

10 Q All I'm asking, sir, is if you heard whatever they
11 were arguing about.

12 A They argued at the house, I assumed, because they
13 wasn't saying nothing coming down the street.

14 Q Okay. So --

15 A I didn't hear one word coming down the street.

16 Q Okay, okay. You didn't hear one word. I thought on
17 direct you said they were arguing?

18 A I said I assumed they were arguing in the house, out
19 of the house, because when they came down the street, her
20 eyes was full of water.

21 Q Okay. Now, I notice you keep saying watery eyes or
22 eyes full of water. You're not saying she was sobbing or
23 crying?

24 A Her eyes were full of water, okay.

25 Q Okay, sir. All right, sir. I'm just trying to

1 figure out what your testimony is here. I'm not trying to
2 trick you, okay.

3 Were there tears running down her face?

4 A Her eyes was full of water.

5 Q Okay, got it. Thank you.

6 You said they were walking together?

7 A Yes.

8 Q It wasn't like he was walking behind her with
9 something in his hand?

10 A They were walking together.

11 Q Okay. You didn't see anything in his hand, right?

12 A He didn't have nothing in his hand.

13 Q He didn't have anything in his hand.

14 A At the time.

15 Q At the time. It didn't appear as though he was
16 walking behind her, and she was kind of running and he was
17 chasing her, anything like that?

18 A They were walking together. It wasn't no running.
19 Didn't appear to be returning or nothing.

20 Q Okay. And when you saw them walking, like you said
21 like normal, you didn't see anything between them that
22 made you go, "Hey, I better stand up and see what's going
23 on here, make sure everything is okay"?

24 A I was already standing up when I seen her coming down
25 the street.

1 Q Okay. But you didn't particularly approach them to
2 see if you needed to help out in the situation?

3 A No, because they normally walk down the street
4 together.

5 Q Okay. They normally --

6 A Even when they argue.

7 Q Okay. I'm sorry. I didn't hear that last part.

8 A Even if they were arguing.

9 Q Even if they were arguing you would see them walking
10 down the street together?

11 A They would walk down the street together from where
12 we were at to the house where we were, to Ms. Goins'
13 house.

14 Q Okay. Now, when you said Willie went through the
15 field, is that the cut you're talking about --

16 A That's the cut. Right across the street from
17 Ms. Goins' house, I mean, Senate and Peach Street -- I
18 mean, Senate and House, he crossed House Street and went
19 through the field going toward Peach Street.

20 Q Okay. And when we say "cut", we're talking about a
21 shortcut?

22 A Yeah, shortcut, block away.

23 Q Okay. Something that people would normally use?

24 A Yeah, we use it every day.

25 Q Use it every day, okay. So it's not like he's

1 running through an abandoned field, right? It's something
2 that --

3 A It's just a big old field.

4 Q Okay.

5 A And we just go through it to get to the next street.

6 Q All right. Thank you. I think I understand that.

7 Now, you said there was a female police officer there
8 that night. Did she -- do you remember did she take your
9 name? Did she ask you if you had seen anything?

10 A No, I don't think she asked me my name.

11 Q Okay.

12 A And she just asked about Skip, you know. I said he
13 left.

14 Q I'm sorry?

15 A He just -- she just said, "Where is Skip?" You know,
16 Willie, and he left. I said he left.

17 Q Okay. Did she --

18 A And that was it. Me and her had no more
19 conversations.

20 Q So she didn't ask you what direction did he leave in,
21 right?

22 A I just told her. She left.

23 Q Okay.

24 A He left. She didn't say, "Which way he went?" I
25 just said he left.

1 running through an abandoned field, right? It's something
2 that --

3 A It's just a big old field.

4 Q Okay.

5 A And we just go through it to get to the next street.

6 Q All right. Thank you. I think I understand that.

7 Now, you said there was a female police officer there
8 that night. Did she -- do you remember did she take your
9 name? Did she ask you if you had seen anything?

10 A No, I don't think she asked me my name.

11 Q Okay.

12 A And she just asked about Skip, you know. I said he
13 left.

14 Q I'm sorry?

15 A He just -- she just said, "Where is Skip?" You know,
16 Willie, and he left. I said he left.

17 Q Okay. Did she --

18 A And that was it. Me and her had no more
19 conversations.

20 Q So she didn't ask you what direction did he leave in,
21 right?

22 A I just told her. She left.

23 Q Okay.

24 A He left. She didn't say, "Which way he went?" I
25 just said he left.

1 THE COURT: Certainly.

2 (Pause).

3 BY MS. LEE

4 Q Mr. Hunter, the knife you were talking about on
5 direct examination, when we're talking about Skip having
6 like a --

7 A A pocketknife.

8 Q A pocketknife?

9 A A little pocketknife.

10 Q It's like a --

11 A Fingernail picking, some of us carry a little
12 pocketknife. You clean fingernail pickings. That's what
13 we call it.

14 Q Okay. Yellow handled?

15 A No. I think it was a little brown handled like
16 knife. It was a brown handled knife.

17 Q Okay.

18 A It wasn't yellow. It was a pocketknife, and it
19 wasn't yellow.

20 Q Okay. And the way you would describe it is not as
21 this long blade thing, but as something you --

22 A No. It's just a little knife.

23 Q Okay. And it's something you would use to groom your
24 fingernails?

25 A Clean your fingernails out.

1 MS. LEE: Judge, I don't have anything further.

2 Thank you.

3 THE COURT: Okay. Anything on redirect?

4 MS. FENT: A couple of things.

5 REDIRECT EXAMINATION:

6 BY MS. FENT

7 Q You're referring to someone named Lee. Who is that?

8 A Ms. McCullough.

9 Q Her name is Rosa Lee?

10 A Rosa Lee.

11 Q Okay.

12 A We call her Lee.

13 Q Okay. The knife that they were talking about, the
14 pocketknife, had you seen Willie carry that knife before?

15 A Yeah. He just carried it in his pocket.

16 Q Okay. Had you been into Willie's house before?

17 A Several times.

18 Q Okay. And --

19 MS. LEE: Objection, beyond the scope of
20 cross-examination.

21 MS. FENT: No. She asked him about a yellow handled
22 knife.

23 THE COURT: Okay. Is that where you're heading with
24 it?

25 MS. FENT: Uh-huh.

1 THE COURT: Okay. That's fine.

2 BY MS. FENT

3 Q In the house, had you seen other knives inside the
4 house?

5 A The yellow handled knife?

6 Q Yes.

7 A Yes. I've seen it in the kitchen, and I've seen it
8 in the living room.

9 Q Okay. And can you describe that knife? Is it a
10 retractable knife?

11 A No. It's just a straight blade with a handle on it,
12 and it's yellow.

13 Q Okay. A yellow handled --

14 A A kitchen knife, I called it, a kitchen knife.

15 Q And where exactly, and how much times had you seen
16 that knife?

17 A Every time I went there. It was in the kitchen or
18 either in the living room on the table.

19 MS. FENT: No further questions. Thank you.

20 THE COURT: Okay.

21 MS. LEE: Briefly, Your Honor.

22 THE COURT: Certainly.

23 RE CROSS-EXAMINATION:

24 BY MS. LEE

25 Q Real quick, Mr. Hunter, if you'll bear with me.

1 This yellow handled knife, you said it was like a
2 kitchen knife?

3 A It's a kitchen knife. You know, what you cut meat
4 with.

5 Q Okay.

6 A It's not no real big old thick knife. Just a little
7 -- like a steak cutter or something, you know.

8 Q Okay. So is it something that you would ever put in
9 your pocket? Have you ever seen the little thing in a
10 pocket?

11 A In a pocket?

12 Q Yeah. Because it's an exposed blade, right?

13 A He would put it -- he wears farmer jeans. Well,
14 painter pants, but they're made of jeans.

15 Q Uh-huh.

16 A Jean material, and now I've seen him in the house
17 with it inside of his pocket.

18 Q Okay. You had seen it?

19 A Yeah. I have seen it.

20 Q Okay.

21 A Plenty of times.

22 Q Did you ever tell the police that?

23 A The police never asked that.

24 Q Okay. And you never came forward to say that?

25 A No.

1 Q Okay. And the only time when you saw it like that
2 was when --

3 A It was in the house.

4 Q -- was when he was wearing -- describe the clothes
5 for me.

6 A It's like painter, white painter's pants, what they
7 work in.

8 Q Okay.

9 A They're made of jean material but they're blue. They
10 had blue.

11 Q Okay.

12 A And they got a side pocket on it where you put your
13 scraper at, and he had it in there a few times.

14 Q And the reason why it would work in those pants, I
15 guess, is because an exposed knife wouldn't be as likely
16 to cut you, right?

17 A An exposed knife would cut anybody.

18 MS. LEE: Okay. Thank you, sir.

19 I have nothing further.

20 THE COURT: Okay. Sir, you can step down and also be
21 excused.

22 THE WITNESS: Yes, ma'am. Thank you.

23 THE BAILIFF: Watch your step down.

24 MS. FENT: Your Honor, at this time, we offer into
25 evidence State's Exhibit 1, 2, 3, 4 and 7.

1 THE COURT: Any objection?

2 MS. LEE: No objection, Your Honor.

3 THE COURT: All right, so admitted.

4 (WHEREUPON, State's Exhibits Nos. 1 - 4, having been
5 marked in previous testimony, were received into
6 evidence.)

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

9 MS. FENT: Your Honor, at this time, we rest our
10 case.

11 THE COURT: Okay. All right. Ladies and gentlemen
12 of the jury, we will take a short break because at the
13 conclusion of one party's case, the Court has to deal with
14 any potential legal matters. So be at ease for about ten
15 or 15 minutes or so, and I remind you not to discuss the
16 case.

17 (WHEREUPON, the jury left open court at approximately
18 2:25 p.m.)

19 THE COURT: Are there any issues before the Court at
20 this time?

21 MS. LEE: Yes, Your Honor.

22 THE COURT: Okay.

23 MS. LEE: Your Honor, at this time the defense would
24 renew all objections made and motions denied previously,
25 including but not limited to, the Court allowing in the

1 testimony about Mr. Gilmore being known to carry the
2 knife; number two, the statement by Ms. McCullough that he
3 killed before and would kill again; number three, allowing
4 Mr. Bruce Gene Hunter to testify as to information that we
5 learned in the opening statement.

6 At this time, Your Honor, we would move for a
7 directed verdict. Your Honor, there's been no physical
8 evidence to suggest that there was a sexual battery, that
9 it was without consent, with the use of aggravated force.

10 The State was unable to produce the knife into
11 evidence. There is no indication of vaginal injuries or
12 other injuries consistent with rape.

13 THE COURT: All right.

14 MS. FENT: In the light most favorable to the State,
15 the victim's testimony alone is sufficient to overcome a
16 directed verdict. She testified she didn't consent. She
17 testified that he threaten her with a knife, and that
18 alone is sufficient to overcome a directed verdict.

19 THE COURT: The Court would agree with the State with
20 respect to the evidence that's been presented so far and
21 then also considering the light most favorable to the
22 State, who has the burden of proof in this case.

23 Then the Court, at this stage of the presentation, is
24 not required to weight any credibility of witnesses just
25 to see if there has been evidence presented.

1 So I will rule with the State with respect to the
2 issue going to the jury on first degree criminal sexual
3 conduct at this stage of the proceeding, and then stand by
4 my prior rulings, as well as the grounds with respect to
5 the objections and previous motions. Okay.

6 MS. LEE: Thank you, Your Honor.

7 THE COURT: Anything further?

8 MS. LEE: Your Honor, at this time, we would like a
9 brief recess so that we may further discuss with our
10 client whether or not he wishes to testify and whether we
11 wish to put up any further evidence.

12 THE COURT: Okay. Thank you.

13 The Court will be in recess.

14 MR. CATHCART: Well, actually, Your Honor, I don't
15 know if you have actually made a final ruling as to
16 whether or not the burglary --

17 MS. FENT: The burglary.

18 MR. CATHCART: -- can come in.

19 THE COURT: Okay. And that may bear on the decision.

20 MS. LEE: Yes, ma'am.

21 THE COURT: Okay. All right. I've looked at this
22 issue extensively because there hasn't been case law
23 directly on point, so I've had to kind of read the cases
24 and then go through the analysis.

25 Because what happens is when these cases get on

1 appeal, they're either a harmless error issue or either
2 they'll state that the trial judge did or did not do
3 sufficient -- insofar as the balancing test is concerned,
4 so there wasn't enough evidence to actually consider it,
5 and then perhaps there might have been a reversal.

6 With respect to the State's request of the admission
7 of the defendant's prior burglary second conviction, the
8 State wishes to have that evidence presented under Rule
9 609(A)(2), which indicates that evidence that any witness
10 has been convicted of a crime shall be admitted if it has
11 involved dishonesty or false statement regardless of the
12 punishment, and the emphasis that that is on any witness.
13 So a defendant also could be a witness.

14 The Al-Amin case that was cited earlier is dealing
15 with robbery as a crime of dishonesty, because robbery has
16 within the element of the crime the larcenist aspect of
17 it, which is the key element of the taking of the
18 property.

19 Under State v. Bryant, they indicate that robbery,
20 burglary, theft, and drug possession beyond the basic
21 crimes themselves not generally probative of truthfulness,
22 which I had to think about that, but it makes sense
23 because when you look at the elements of burglary first,
24 as well as burglary second, one of the elements is not the
25 taking of something, but just to do so without consent and

1 an intent to commit a crime therein. Then that's -- what
2 is the intent to commit a crime therein?

3 So taking that further, the cases cited within State
4 v. Bryant, it does indicate you can't just look at the
5 crime itself, which is the burglary. You have to go
6 further to see if the crime therein involves any element
7 of dishonesty or acts of deceit, and in that regard, the
8 State's presentation that they indicated that's Court's
9 Exhibit number four, which is the indictment for burglary,
10 particularly burglary second degree for a dwelling and the
11 attached sentencing sheet which has burglary in the second
12 degree, which is what the defendant then pled to, and
13 then, as well, the arrest warrant that supports the
14 indictment, as well as the plea, indicates within it that
15 the defendant, while inside of that particular building or
16 residence attempted to carry away a television and a radio
17 which belonged to the resident.

18 So I believe that using the Al-Amin case, and that
19 the larcenist aspects of robbery as a crime of dishonesty
20 requiring the taking away of property in conjunction with
21 the Court's Exhibit that specifically indicates to the
22 Court that certain property was actually taken away, but I
23 have the larcenist element here. So therefore, it would
24 be a crime of dishonesty because it gets beyond just
25 burglary itself, the crime itself. We know what the crime

1 therein is.

2 To be taken even further on the prejudicial versus
3 probative analysis, just in case --

4 MR. CATHCART: Yes, Your Honor. I would just -- and
5 I put on the record before but just also for that
6 analysis, the defendant's burglary second conviction, he
7 was incarcerated in the Department of Corrections on that
8 until January 30th, 2004, the year that he committed this
9 act.

10 THE COURT: Okay.

11 MR. CATHCART: So a close incident in time.

12 THE COURT: Okay. And then in terms of the Colf,
13 C-O-L-F, analysis, I have to look at impeachment value,
14 time of conviction, and witness's subsequent history,
15 similarity of the offenses, and the importance of the
16 defendant's testimony and the centrality of the
17 credibility issue.

18 Going to the impeachment value, as I indicated
19 earlier, burglary in and of itself is not a crime
20 involving deceit unless we can also proof an aspect of
21 dishonesty, which I've already discussed with you, and I
22 believe that based on the arrest warrant and what the
23 defendant pled to as the crime therein, then I do have
24 that crime of dishonesty.

25 This would -- that crime of dishonesty, obviously, is

1 probative of the defendant's credibility. So I believe
2 that that impeachment value is there.

3 In terms of the time of conviction and witness'
4 subsequent history, just as indicated by Mr. Cathcart, the
5 closeness of the time of that offense and potentially this
6 alleged offense also occurring within the requisite
7 ten-year time period makes it more probative.

8 I would say that burglary is not similar to a
9 criminal sexual conduct. So in that degree, we don't have
10 the prejudice that would be indicated if we had another
11 crime of the same.

12 I would make sure that would be more prejudicial
13 because you wouldn't want the defendant being retried for
14 the prior crime, and assuming that his actions were in
15 conformity with here.

16 Importance of the defendant's testimony: Consent is
17 an element that is part of the defense, at least at this
18 time.

19 The Defendant, essentially has the victim, who has
20 testified in support of the State's case. So the only
21 other allegation that it being nonconsensual would have to
22 come from the defense.

23 So by the defendant being on the stand, that's going
24 to test his credibility, as well, because burglary is a
25 crime that requires no consent.

1 Credibility will be an issue here because you have
2 the victim going against the defendant, and then the
3 others indications by the State witnesses through the
4 chemical analysis and D.N.A. and that chain of custody,
5 not finding something that they could say clearly was
6 indicative of a rape, but you also have to temper that
7 with what the victim's testimony is who was there and who
8 has come forward to present this case on the State.

9 So I believe on the prejudicial versus probative,
10 that analysis is quite clear that this evidence of a prior
11 burglary conviction would come in, as well.

12 MR. CATHCART: Thank you, Your Honor.

13 THE COURT: Anything further?

14 MS. LEE: No, ma'am.

15 THE COURT: Okay. Are you all ready?

16 MS. FENT: Ready.

17 THE COURT: Ready?

18 MS. LEE: Yes.

19 MS. LAFAVE: Your Honor, I have a matter of law to
20 take up with the Court at this point in time.

21 THE COURT: Okay.

22 MS. LAFAVE: Your Honor, we just heard from a witness
23 in this case that testified as to what Rosa McCullough had
24 told him about what had happened on the night of this
25 incident. He testified to, as I understand it, a prior

1 consistent statement by the victim in this case.

2 Now, as Your Honor is well aware, the Rules of
3 Evidence typically allow a prior consistent statement by a
4 witness in a trial to be testified to by other witnesses,
5 especially in South Carolina. That type of statement does
6 not seem as hearsay because it's been a prior testifying
7 witness.

8 However, Your Honor, the case law specifically
9 addresses cases in which criminal sexual conduct is a
10 chief -- the charge that the defendant is being tried for.

11 In those particular cases, the case law, Your Honor,
12 that I found, and I have two for the Court, is that when a
13 victim testifies in a case to a rape specifically and
14 provides the details to the Court, any other witness that
15 testifies to those same details is improperly bolstering
16 the victim's testimony.

17 I found, Your Honor, that that bolstering is not
18 harmless, is not harmless error.

19 THE COURT: Okay. And then let's define details,
20 because when you say that someone -- and I assume you're
21 talking about the statement that the State indicated was
22 an excited utterance.

23 MS. LAFAVE: Yes, Your Honor.

24 THE COURT: And that's by Mr. Hunter, which
25 Ms. McCullough came by and said what she believed what

1 happened.

2 MS. LAFAVE: Yes, Your Honor.

3 THE COURT: Okay.

4 MS. LAFAVE: And to preface what was said in this
5 case, before I get into those details, I just want to
6 educate the Court on what I found, and that is basically
7 that a witness may testify as to what a victim told them
8 but only in a specific vein, which would be the time and
9 place of this -- of the incident, not details.

10 Specifically, Your Honor -- specifically from State
11 v. Barrett, "When the victim testifies, evidence from
12 other witnesses that she complained of sexual assault is
13 admissible as corroboration of the incident. However, the
14 evidence must be limited to the time and place of the
15 assault and may not include the particulars or details."

16 This was also held, Your Honor, in State v. Cox,
17 State v. Harrison, State v. Dawson, et cetera.

18 I asked the court reporter to pull up the transcript
19 from the direct examination by Ms. Fent of Mr. Hunter, and
20 I wrote down exactly what I read from there, if you'd like
21 the court reporter to read back to the Court. It's very
22 short.

23 The question was, "What did Rosa tell you? Did Rosa
24 -- what did Rosa tell you happened?"

25 The answer was that "Willie came in the house" and

1 one, drew a knife and two, raped her, which are two
2 details that do not fall within the Supreme Court's
3 definition of what a subsequent witness to the victim can
4 testify to. It does not fall into the limited vein of
5 time and place.

6 And Your Honor, because of that witness' testimony,
7 the improper bolstering of the victim's testimony, Your
8 Honor, at this point in time, I would make a motion for a
9 new trial.

10 THE COURT: Okay. The State's response, and let's
11 also look to these cases.

12 MS. FENT: Well, that's when it doesn't otherwise
13 fall under an excited utterance. To other witnesses, for
14 example, a nurse or a counselor or something like that,
15 when the witness is not under, you know, doesn't fall
16 under an excited utterance, then those witnesses are
17 excluded to time and place.

18 But when you establish a clearly -- already, you
19 know, hearsay exception, I mean, she was under excited
20 utterance. It had just happened. He said that she was,
21 you know, scared and crying and shaking, and she
22 immediately comes out and this is what she reports, it
23 falls under excited utterance.

24 The time and place exception is separate. It's not a
25 limitation of every single, you know, victim of sexual

1 assault. It's a limitation of other witnesses to whom
2 this victim has spoken to. If you can't otherwise
3 establish it under another exception, then you're limited
4 to time and place.

5 THE COURT: Okay.

6 MS. LAFAVE: Your Honor, as I stated initially,
7 although the Court is very aware of the Rules of Evidence
8 and that typically a witness testifying to a prior
9 consistent statement by the victim is admissible in court
10 under many different exceptions to the hearsay rule, this,
11 as the case law has defined, is a completely separate
12 situation.

13 The reason for that is that criminal sexual conduct
14 cases are of a very sensitive nature, and they are very
15 unique when being prosecuted and when being defended.

16 Most of the time, it ends up being one person's word
17 against another. I think the Court, out of attention for
18 -- and the interest of justice, Your Honor, has made this
19 exception because of its improper bolstering of one side
20 as opposed to the other.

21 Your Honor, I have copies of case law. If Ms. Fent
22 has case law to support her argument, I'll be happy to
23 entertain that, and if the Court would like to see what I
24 have --

25 THE COURT: Okay.

1 MS. LAFAVE: Ms. Fent, I can give you -- I have one
2 copy of this.

3 MS. FENT: From what I read, all that Ms. LaFave is
4 relying on is 801(D)(1)(D). If we were trying to get it
5 in under prior statement by a witness, and that is
6 something that's not hearsay. They say this is not
7 hearsay.

8 What we admitted it under was a hearsay exception
9 under 803. So you know, it was only if we were trying to
10 get it under 801 as a prior statement by a witness. This
11 is an exception under 803.

12 THE COURT: I'm looking at the cases, as well because
13 even under State v. Barrett -- and I just want to make
14 sure that when this -- in State v. Barrett, a D.S.S.
15 social worker testified, I want to make sure that's not a
16 difference from the excited utterance because, obviously,
17 a social worker who is testifying is doing so in response
18 to questioning, almost like Crawford, when you have
19 interrogation and the responses back.

20 I want to make sure that those aren't the type of
21 witnesses that are prevented from testifying. That makes
22 more sense. I want to make sure that's not the analysis
23 that the Court is going to...

24 MS. LAFAVE: Your Honor, I would just point out to
25 the Court that despite the fact that this was a D.S.S.

1 social worker that was in this particular case, I would
2 agree with Your Honor in that represent.

3 At the same time, the rule that is written in this
4 case, and I have read that verbatim to the Court, does not
5 distinguish between a D.S.S. worker, a janitor, Mr. Hunter
6 or anybody. It's a witness, other witnesses.

7 THE COURT: Yes.

8 MS. FENT: The distinction is the method you're
9 trying to get the statement in under, and they're saying
10 that under 801, these statements are not hearsay. They
11 are not hearsay statements.

12 A prior statement by a witness: The declarant
13 testifies at the trial or hearing and is subject to
14 cross-examination concerning the statement, and the
15 statement is -- and then you go down to (D). It says
16 "consistent with the declarant's testimony in a C.S.C.
17 case or an attempted C.S.C. case where the declarant is
18 the alleged victim, and the statement is limited to time
19 and place of the incident."

20 So every person that she talks to, even six months
21 later, nine months later, a year later, four years later,
22 I could have brought every single counselor that she ever
23 talked to, and those people could all testify that she
24 said it happened at [REDACTED], you know, in the bedroom
25 on August 18th, 2004.

1 I could call every person she has ever told the time
2 and place to in this courtroom as a witness, but I am also
3 allowed to admit evidence under 803 as an excited
4 utterance. This doesn't limit excited utterances. It
5 limits what all those people that she has ever told,
6 talked to about being raped for past four years.

7 You know, whether she is calm, cool, and collected or
8 she is upset, you know, it limits all of those people to
9 time and place, but immediately after the incident when
10 she is crying and it falls often an excited utterance, it
11 falls under 803, it's admissible.

12 MS. LAFAVE: Your Honor, just to point out, and I may
13 have remembered this incorrectly, but it's my
14 understanding that defense counsel objected to the
15 statement before he answered it based on the hearsay
16 objection, and the Court overruled Ms. Lee's objection,
17 but at the time, Ms. Fent also said that this was an
18 excited utterance.

19 It's my understanding from reading the transcript
20 that the court reporter has shown me that this was a phone
21 call that was made later. This was not contemporaneous
22 with any stress or any rape or anything of that nature.

23 We made the objection because we don't believe that
24 803 applies. We believe that statement, "A", was hearsay
25 and "B", there's been improperly bolstering by a witness

1 of the victim's testimony, and the jury has heard it.

2 MS. FENT: I don't know what courtroom Ms. LaFave was
3 in, but Mr. Hunter was saying he was standing outside the
4 Goins' house, she walks outside of the house. She is
5 inside the house for about two minutes. She walked
6 outside the house. She is still crying. She said, "He
7 just raped me," and the cops show up.

8 It's not a phone call. It's in front of the Goins'
9 house minutes after it happened.

10 MS. LAFAVE: Like I said, I could have been
11 misunderstood.

12 THE COURT: There's a big distinction.

13 MS. LEE: I do remember testimony about a phone call.
14 I don't know if we can -- if there's a --

15 THE COURT: You can -- you know, you can go back to
16 the statements before the statements that was corrected by
17 the court reporter. If you can give me the testimony way
18 before, "What did Rosa tell you" in terms of Mr. Goins --
19 or Hunter.

20 (The court reporter complied).

21 MS. FENT: Oh, I think they said she called me over,
22 like come here, she called me over.

23 THE COURT: Okay. Right, right, right. That's what
24 I heard. I never hear phone call.

25 MS. FENT: Yeah.

1 THE COURT: Okay. I just need to look a little
2 further. Again, with the State's distinction and in the
3 case of -- you had given me State v. Dawkins or Dawkins v.
4 State, it says the Chamblis, I assume that's the alleged
5 victim in this case, testified in detail about the sexual
6 and physical abuse allegedly perpetrated by the petitioner,
7 in the case.

8 Then it says, "In addition, Chamblis' church
9 counselor, psychiatrist, mental health counselor, and
10 investigator testified about the conversations they had
11 with Chamblis regarding the alleged abuse."

12 Again, I think those types of people are the reason
13 the rule was to protect with respect to it being more of
14 an interrogation versus an excited utterance, so that's
15 the distinction I have to look at in terms of what's made
16 there.

17 Because at least in those two cases, we can talk
18 about counselors, and I can see the analysis behind
19 protecting that type of conversation.

20 MS. FENT: I also have another case that I'm handing
21 up. I'm having the law clerk go pull. It's State vs.
22 Whisonant, W-H-I-S-O-N-A-N-T. It's 515 S.E.2d 768, and it
23 says -- "held that the trial court erred in admitting
24 statements the child victim made to her stepmother
25 concerning alleged sexual abuse because the statement,

1 which gave the child's account of the details of the
2 alleged abuse exceeded the limited exception for
3 statements as to time and place under rule 801(D)(1)(D)
4 and the because the statements were not within the excited
5 utterance exception of 803."

6 So you can fall under either of those two to get
7 those in, so they're not -- 801(D) doesn't keep excited
8 utterance out.

9 THE COURT: And that's what I wanted to look at. At
10 least based on the ones that the defense was presenting me
11 or statements of a certain kind of class of people, which
12 are counselors, ministers, that you go say something to
13 much later and you go into detail about it, the State is
14 presenting it as an excited utterance.

15 I just see that that qualifies as to the witness who
16 is limited to the time and place. That's what I see as
17 the distinction between your arguments.

18 MS. LAFAVE: Your Honor, I would also -- and I
19 appreciate the Court's dedication to reading the case law
20 that we provided as to that issue, but I would like for
21 the Court to have the court reporter read back those
22 responses so that we make sure that this does fall under
23 the excited utterance rule, and our objection initially
24 should have been -- should have been overruled or
25 sustained.

1 THE COURT: Okay.

2 (Whereupon, testimony was read back.)

3 THE COURT: Any further response from the defense
4 then having heard it read back?

5 MS. LAFAVE: Your Honor, I believe I made my argument
6 clear about the defense's position on this.

7 THE COURT: Okay. I'm looking at a couple of these
8 cases a little further.

9 (Pause).

10 All right. Having heard these arguments, I believe
11 the cases in which the defense is stating are
12 distinguishable because under State v. Whisonant, and as
13 I've been trying to indicate, the Court under excited
14 utterance looks to certain events, you know, essentially
15 whether the -- the condition, you know, was it made under
16 stress.

17 I believe that certain foundation was established,
18 and these other cases appear to be later opportunities to
19 tell someone about something when you're not necessarily
20 under the impending stress of the starting event.

21 So this is an exception to that rule. I would also
22 note that we had Ms. Goins testify earlier, and she also
23 stated facts to that extent, as well, with the event
24 impending and the nervousness and the description that she
25 had with the victim in that case. So I respectfully

1 overrule you.

2 MS. LAFAVE: Thank you, Your Honor.

3 THE COURT: Okay. Has the defendant made his
4 decision about testify?

5 MS. LEE: He does not wish to testify, Your Honor,
6 and the defense will not be putting up a case.

7 THE COURT: Okay. All right. So we can go ahead and
8 proceed then?

9 MS. LEE: We certainly can, Your Honor. We're ready
10 to proceed. My only concern then is the jury will be
11 getting the case after four o'clock.

12 THE COURT: Right. I believe that that's fine. I
13 can just -- the court reporter knows -- I mean, the clerk
14 knows now. I mean you all are ready to proceed with your
15 closing?

16 MS. FENT: Just an issue with the charge is we were
17 requesting a C.S.C. second to be submitted to the jury.

18 THE COURT: You are?

19 MS. FENT: Yes.

20 THE COURT: Okay.

21 MS. LAFAVE: Your Honor, I have 11 charges I'm asking
22 the Court to give to the jury. Probably four of those --
23 I don't have a copy of Your Honor's general charge.

24 THE COURT: Okay.

25 MS. LAFAVE: So probably four of those are included

1 in Your Honor's general charge. I do have copies of what
2 I'm asking the Court to charge the jury.

3 We are not asking for C.S.C. second degree. We are
4 asking for C.S.C. third degree and A.B. H.A.N. If I could
5 put my hands on my copies, I'll give you one.

6 THE COURT: Okay. And both of you are going to need
7 to make arguments because there has to be evidence on that
8 issue such that the jury can only find on those issues,
9 and my understanding on the case law is that evidence has
10 to be something that you all submitted and not something
11 where the jury has to kind of essentially reject in part
12 or accept in part certain evidence that's presented.

13 MS. LAFAVE: Yes, Your Honor. I have -- I'm prepared
14 to make those arguments. I just need to put my hands on
15 my original.

16 THE COURT: Let me speak with you on the side.

17 (Whereupon, there was a bench conference.)

18 (WHEREUPON, Court's Exhibit No. 5 was marked for
19 identification only.)

20 MS. LAFAVE: Your Honor, for the record I have
21 State's exhibit 5, which is the Defendant's requested jury
22 instructions, with copies being provided to the State, the
23 Defendant's requested jury charge.

24 THE COURT: Okay.

25 MS. LAFAVE: I apologize.

1 THE COURT: All right. Let's continue on with the
2 jury charges. Obviously, the C.S.C. first will go to the
3 jury.

4 The State has requested criminal sexual conduct in
5 the first degree, and the defense is requesting criminal
6 sexual conduct in the third degree, as well as assault and
7 battery of a high and aggravated nature.

8 The State, I need to put your presentation on the
9 record as to what evidence would be for the criminal
10 sexual conduct second.

11 MS. FENT: Yes, Your Honor. A knife was not
12 recovered, and therefore, it potentially -- and -- but
13 threats were made, you know, "I've killed before. I'll
14 kill again. If I was like I used to, you would be a dead
15 bitch."

16 And with those threats alone are -- constitute a
17 C.S.C. second, so potentially since the knife was
18 recovered, the jury could believe that if he's guilty of
19 anything, he's guilty of a C.S.C. second.

20 You know, the -- there wasn't a knife, but clearly,
21 threats were made to do harm to her, and that's why she
22 submitted.

23 THE COURT: Okay. All right. And then the knife is
24 the element that is taken out of --

25 MS. FENT: The first.

1 THE COURT: -- the use of the deadly weapon for the
2 first, okay.

3 MS. FENT: Correct.

4 THE COURT: All right. Defense?

5 MS. LAFAVE: Your Honor, the defense is requesting
6 C.S.C. third degree. I believe that's jury instruction
7 number seven in my Court's exhibit five.

8 Your Honor, the defense maintains that C.S.C. third
9 degree is the intent to have a relationship, a sexual
10 relationship, by using force or coercion.

11 It is distinctive from C.S.C. second degree because
12 there is no threat that if you don't do this, then I'm
13 going to hurt you or you'll be a dead bitch or whatever.

14 I think there is a question as to whether those
15 threats were ever made. Two of them were never made to
16 law enforcement initially, and for that reason, Your
17 Honor, the defense requests C.S.C. third.

18 THE COURT: Okay.

19 MS. LAFAVE: In addition to there being no knife
20 present, as Ms. Fent has previously stated.

21 THE COURT: Okay. All right. And then you also
22 asked for assault and battery of a high and aggravated
23 nature.

24 MS. LAFAVE: Yes, Your Honor.

25 As Your Honor well knows, this is a case where we

1 have maintained that there is a consensual sexual
2 relationship.

3 Ms. McCullough argued -- or she testified that she
4 was grabbed at one point or she was slapped at one point,
5 and due to the defending -- the difference in gender, Your
6 Honor, we think that those two acts would qualify as an
7 assault and battery of a high and aggravated nature.

8 They are not separate from the actual intercourse.
9 They are not separate from the actual intercourse. The
10 State maintains that those are part of the initial crime.

11 There was lack of vaginal injury in this case such
12 that the jury could believe that the slap or the grab
13 could have occurred but the sex was consensual. For that
14 reason, Your Honor, we're asking for A.B. H.A.N. to be
15 charged to the jury.

16 THE COURT: Okay. All right.

17 MS. FENT: The only issue I have with that is as A.B.
18 H.A.N. is that it's a separate act. It's not a
19 lesser-included.

20 Either they believe that it was, you know,
21 nonconsensual sex, therefore, you know, convict him of one
22 of those C.S.C.'s, or it's consensual and he's acquitted.

23 The slap is a totally separate -- it's a separate
24 charge. I guess we could have charged him with either
25 like a C.D.V. or an A.B. H.A.N. or hitting her.

1 But the -- I wasn't following the argument as to why
2 A.B. H.A.N. would be a lesser-included, because if you
3 take out the sex, he should be acquitted.

4 Right, so it would be -- it would be part of the
5 coercion that makes it a third, I guess, the force that
6 would make it a third.

7 MS. LAFAVE: Beg the Court's indulgence.

8 THE COURT: Okay.

9 (Pause).

10 MS. LAFAVE: Your Honor, I think I'm not being clear
11 on the relationship between the -- I guess the slap and
12 the grab and the actual sexual act itself.

13 I know that Mr. Hunter testified today that they
14 argued a lot, and that they easily could have been arguing
15 on the day that this happened, and I don't know that --

16 THE COURT: Arguing is not a crime.

17 MS. LAFAVE: I'm sorry?

18 THE COURT: Arguing is not a crime.

19 MS. LAFAVE: No, Your Honor. I'm aware of that, but
20 what I'm saying is that I think that these are -- it's a
21 situation where even if the sex was consensual, it doesn't
22 mean that Mr. Gilmore did not in any way batter her, is I
23 guess what I'm trying to say.

24 It may not have been sexual in nature, but it doesn't
25 preclude him from battering her. Am I being clear?

1 THE COURT: Okay.

2 MS. FENT: In order to be submitted, it has to be a
3 lesser-included offense of something you have charged him
4 with.

5 What she is kind of suggesting is that we let the
6 jury decide if he committed another crime.

7 THE COURT: Right.

8 MS. FENT: If you take out -- it has to be a
9 lesser-included offense, so if you take out the sex, he
10 should be acquitted.

11 THE COURT: And A.B. H.A.N. is generally not, I don't
12 think, a lesser-included of C.S.C.

13 MS. FENT: Well, if you take out the sex.

14 THE COURT: Right.

15 MS. FENT: So if you say that, "Oh, he could have,
16 you know, touched her inappropriately, but there was no --
17 no sex."

18 You know, so a person does -- we have pled cases to
19 A.B. H.A.N.'s as lesser includeds when we're not saying
20 that there was a sexual act or we're just saying it's an
21 inappropriate touching, but here there was sexual
22 intercourse.

23 There's no evidence that if anything happened at all,
24 it was just a --

25 MS. LAFAVE: I understand Ms. Fent's argument. Where

1 I'm coming from is that the C.S.C. statute is about --
2 there -- well, it lists what a sexual touching is,
3 fellatio and all this other stuff.

4 The only thing that makes it unlawful is the battery
5 part of it, which is the unlawful touching. What I'm
6 saying, Your Honor, is if we have consented to the sex
7 portion of this particular incident, what you're left with
8 is a battery, because without the sexual element, it would
9 be assault and battery of a high and aggravated nature.

10 Your Honor, I have cited cases at the bottom of my
11 defendant's requested instruction number eight that
12 identified the inclusion of A.B. H.A.N. in a C.S.C. case.
13 And I mean, from what I've read, that is a -- that is not
14 uncommon. I do have the case law for Your Honor, if you
15 wish to review it.

16 THE COURT: Okay.

17 MS. LAFAVE: Your Honor, I'm handing up State v.
18 Elliott which establishes the lesser-included essential
19 elements test.

20 I'm handing up supporting case law, which is State v.
21 Sutton, providing the State copies, and I have two more,
22 Your Honor. I have Magazine v. State and State v.
23 (unintelligible).

24 THE COURT REPORTER: I'm sorry, what was the last one
25 you said? State v. --

1 MS. LAFAVE: Brimus, B-R-I-M-U-S.

2 THE COURT: Under the case of State v. Magazine,
3 though, when that A.B. H.A.N. was allowed as C.S.C.,
4 again, it goes back to what evidence was presented, not
5 utilizing the evidence that has been presented and then
6 making credibility determinations for it in terms of
7 you're accepting some part and rejecting some part, but
8 what evidence has been presented.

9 In this particular case, the victim testified, you
10 know, the defendant beats her, puts hands around her
11 throat, knocks her, hits her, then the defendant testified
12 that no, it was consensual.

13 So there was evidence put forth that it could have
14 just been the lesser; that the Court holding that because
15 the defendant's testimony, if believed, would establish
16 that he was guilty of the lesser-included offense, and so
17 that's what I was getting at in terms of the evidence put
18 forth to believe that he may be only potentially guilty of
19 lesser-included offense.

20 MS. LAFAVE: Your Honor, and I understand the Court's
21 position. I respect the Court's position.

22 I would refer the Court to page five of State v.
23 Magazine to the bottom part of the page, such that the
24 trial judge must charge the jury on a lesser-included if
25 there is any evidence from which it can be inferred that

1 the defendant committed the lesser, rather than the
2 greater offense.

3 Your Honor, despite the fact that the defendant did
4 testify in this case, it's my position that Mr. Gilmore
5 has a constitutional right not to testify, and the fact
6 that he has not testified, I would ask the Court not to
7 consider that when making the Court's ruling. Again, I
8 understand the Court's position.

9 THE COURT: No, no, no. What I'm suggesting is that
10 I'm not requiring the defendant to testify. I'm saying
11 that because he testified such that there was then
12 evidence, and evidence is testimony, that there was no
13 rape and that apparently, you know, whatever occurred was
14 consensual, that's the evidence that the jury had to
15 consider the lesser offense. That's what I'm getting at.

16 MS. LAFAVE: Yes, sir.

17 THE COURT: Okay.

18 MS. LAFAVE: I understand, Your Honor's position.

19 THE COURT: Okay.

20 MS. LAFAVE: I just wanted to make it clear about
21 what my argument was, for the record. There was evidence
22 of a battery here, such that it -- A.B. H.A.N. would be
23 appropriate, Your Honor.

24 MR. CATHCART: If it please the Court, Your Honor.

25 THE COURT: Yes.

1 MR. CATHCART: State's Exhibit Number seven is back
2 in the building.

3 THE COURT: Okay. Thank you very much, let the
4 record reflect.

5 And in State v. Geiger, you know, going back to that
6 again, it again states that the jury instruction was given
7 only where the evidence warrants such an instruction. The
8 mere contention that the jury might accept the State's
9 evidence in part and reject it in part is insufficient to
10 satisfy the requirement that some evidence tends to show
11 that the defendant was guilty of only the lesser offense.

12 By the State presenting, essentially, in this case
13 presenting, based on the victim's testimony, that it was
14 nonconsensual, what would you have as an -- and that a
15 battery occurred?

16 MS. LAFAVE: Your Honor, I guess in response to that
17 I would say that Ms. McCullough testified that this was
18 nonconsensual. There is no physical hard evidence of any
19 rape here. There is nothing in the medicals. There is
20 nothing like that.

21 The Court, as I'm aware, instructs the jury that they
22 can accept a witness's testimony in part, in whole, or
23 reject it in whole.

24 I am saying if the jury chooses to believe part of
25 Ms. McCullough's story, without all of her story, this

1 allows the jury to be able to do that.

2 THE COURT: Okay. But that's what I'm trying to
3 counter with State v. Geiger. It saying the mere
4 contention that the jury might accept the State's evidence
5 in part and reject it in part is insufficient to satisfy
6 the requirement that some evidence tends to show the
7 defendant was guilty of only the lesser offense.

8 MS. LAFAVE: I understand, Your Honor.

9 THE COURT: Okay. Let me see counsel for a second.
10 (Whereupon, there was a bench conference.)

11 THE COURT: All right. Having reviewed these
12 arguments and looking into the counsel's argument, I'm
13 going to charge the criminal sexual conduct first, second,
14 and third degree. Because right now, we do have the issue
15 about sexual battery and the issue of consent, and these
16 are formulated within that charge.

17 Okay. If I can turn the State's attention to the
18 defendant's requested charges, as well.

19 MR. CATHCART: Your Honor, as to number one, I
20 believe that would be in your regular charge, the
21 indictment is not evidence. I think, in fact, you may
22 have already told them it is in evidence.

23 Do you have it?

24 THE COURT: Yes, we have lots.

25 (Pause).

1 Okay. Let me go through yours. I will tell you
2 that -- I believe it's easier to go my -- the other way in
3 terms of what we're going to propose.

4 MR. CATHCART: Okay.

5 THE COURT: The duties of the jury and trial judge,
6 the charge, arrest, indictment not being evidence,
7 presumption of innocence, reasonable doubt, credibility of
8 witnesses, expert witnesses, direct, and circumstantial
9 evidence, criminal sexual conduct in the first degree,
10 first degree, second degree, and third degree, consent to
11 criminal sexual conduct, because that's the one that says
12 the State must prove beyond a reasonable doubt that the
13 victim did not consent, and then failure of defendant to
14 testify, and then essentially the jury verdict can't be
15 based on sympathy, passion, or prejudice.

16 Okay. So those are the ones we propose to charge,
17 and then you can look at the defendant's request. I
18 believe you have taken care of number one.

19 MS. LAFAVE: Your Honor, I believe you have taken
20 care of one through four, Your Honor.

21 THE COURT: Okay. Okay. So the defendant would like
22 prior inconsistent statement in there?

23 Any objection by the State?

24 MR. CATHCART: Your Honor, I object. As to -- at
25 this point, they're asking you to comment on the facts

1 during the jury charge.

2 Especially as to number five, and most importantly,
3 as to number six, I believe State v. Davis or State v.
4 Day, I cannot remember off the top of my head, was
5 straight talking about how you're not -- it's not proper
6 to comment on the -- on which witness to believe more than
7 the other. But as to -- speaking as to number five,
8 that's asking for a comment on the facts. I believe
9 that's an argument they can make.

10 THE COURT: And within the issue about credibility,
11 we tell them that they can reject a part, believe some or
12 all, and that they need to look at bias, interest in the
13 case.

14 We kind of covered that as to all witnesses. Then
15 when we deal with expert, we have to explain why they're
16 an expert, but then we are to say that they are to be
17 given no more weight than the others. I think that would
18 take care of the police officers, as well.

19 MS. LAFAVE: The police officer, number six, is out.

20 THE COURT: Out?

21 MS. LAFAVE: Then onto number five, Your Honor, there
22 -- a large part of this case has been the victim's
23 testimony and her statements, whether consistent or
24 inconsistent with other witnesses.

25 I would ask that that be given to the jury so that

1 they can utilize not only Your Honor's instructions as to
2 rejecting or accepting but also to determine what an
3 inconsistent statement does and how it can be related to
4 someone's testimony.

5 I do have case law to support, Your Honor, that
6 inconsistent statements are subjective evidence, but in
7 this case, there has only been one written statement, and
8 I think that case law has to do with written statements,
9 Your Honor.

10 THE COURT: Okay. I'm going to go ahead and allow
11 that in. I put it in with credibility of witnesses.

12 MS. LAFAVE: Thank you, Your Honor.

13 THE COURT: Okay.

14 MR. CATHCART: Your Honor, I'd just point out again
15 that this -- that she did not give any prior -- the only
16 prior inconsistent statements was the testimony about
17 other witnesses.

18 You're asking the jury -- you are commenting on the
19 facts of what other witnesses said and the facts of the
20 case.

21 THE COURT: Okay. I'm getting it now. He -- in
22 other words, this is not like when you're in a trial,
23 civil matter, when there's a deposition and then you
24 impeach, actually.

25 I think what I'm hearing Mr. Cathcart say is that

1 when you are trying to get inconsistencies in, you are
2 doing it by saying what someone did not potentially tell
3 that officer or that investigator or whatever.

4 MR. CATHCART: Or what the officer didn't write down
5 in their report.

6 THE COURT: Or -- and then also some of the responses
7 were, "I only answer the question that I was asked."

8 So is it inconsistent if you can't point to a prior
9 statement and then talk about a statement that is hearsay
10 on the stand?

11 MS. LAFAVE: Yes, Your Honor. As I say, I do have --
12 the case law that I have cited down at the bottom here
13 refers to prior inconsistent written statements, which
14 don't apply to this case, but I was asking Your Honor to
15 charge the jury because I felt that it was an important
16 part of this case.

17 I accept Your Honor's rejection of instruction number
18 five.

19 THE COURT: Okay. Thank you.

20 MS. LAFAVE: Yes.

21 THE COURT: Okay. We've dealt with lesser-included
22 number three. Then I've already ruled we don't do assault
23 and battery of a high and aggravated nature.

24 MS. LAFAVE: Yes, Your Honor.

25 THE COURT: And then any objection to number nine by

1 the State?

2 MS. LAFAVE: I think we have to take out assault and
3 battery of a high and aggravated nature, the language of
4 that, Your Honor, since Your Honor has chosen not to
5 charge that.

6 MR. CATHCART: Yes. I mean I don't have a problem
7 with this other than the fact it has to be amended to add
8 first, second, and third and get rid of it on the A.B.
9 H.A.N.

10 THE COURT: Okay. So that will be in number nine.

11 MS. LAFAVE: Thank you, Your Honor.

12 THE COURT: And then number ten, you have already got
13 a charge about the defendant not testifying and then lack
14 of consistent.

15 MS. FENT: And we would request statute 16-3-657,
16 testimony of a victim need not be corroborated in the
17 prosecution under C.S.C. first, second, or third.

18 THE COURT: 16-357?

19 MS. FENT: 657.

20 THE COURT: Okay.

21 MR. CATHCART: And also, Your Honor, a request to
22 charge for voluntary intoxication not being a defense.
23 There was testimony that the defendant was high and drunk.

24 THE COURT: Okay.

25 MS. LAFAVE: I'm sorry, what did you say?

1 THE COURT: One --

2 MR. CATHCART: Voluntary intoxication not being a
3 defense.

4 MS. LAFAVE: We've never asserted that as a defense,
5 Your Honor. That's never even been brought up.

6 MR. CATHCART: It's in evidence.

7 THE COURT: It's in evidence that he was drinking
8 that day, so they wanted to ask --

9 MS. LAFAVE: Okay.

10 THE COURT: -- me to consider it.

11 MS. LAFAVE: Your Honor, I'm not sure exactly how we
12 got off to that. Are you going to charge by lack of
13 consent?

14 THE COURT: They didn't object.

15 MS. LAFAVE: Okay. And as far as Ms. Fent saying
16 that they want 16-3-657, Your Honor, my argument to the
17 Court would be that that would be putting improper
18 emphasis on the victim's testimony.

19 As Your Honor just ruled, you would not charge the
20 police officer charge because it would put improper
21 emphasis on their testimony. So I would just ask that
22 Your Honor apply the same rule to Ms. Fent's request.

23 THE COURT: Okay.

24 MS. FENT: While there is case law that addresses the
25 police officer, this is South Carolina law, and you are

1 charging them on the law. It's not a comment on the
2 evidence. It's a comment on the law.

3 THE COURT: Okay, about the victim. Okay. I'll look
4 at that.

5 MS. FENT: Yes.

6 MS. LAFAVE: And, Your Honor, just so the record is
7 clear, the -- I would cite State v. Rayfield, and it would
8 be Justice Pleicones' dissenting opinion about this
9 particular charge that it unduly emphasizes the victim's
10 testimony.

11 I understand Ms. Fent's position. Respectfully, Your
12 Honor, I just want to make the record clear.

13 THE COURT: Okay. That was in dissent, correct?

14 MS. LAFAVE: Yes, Your Honor.

15 THE COURT: Okay.

16 Okay. One last sidebar with the parties.

17 (Whereupon, there was a bench conference.)

18 THE COURT: Okay. Because we want to get all of
19 these clear, get your thoughts together and all of that,
20 we're going to close and charge promptly at 9:30.

21 MS. LEE: Yes, ma'am.

22 THE COURT: Okay. And then the jury would get the
23 case, be fresh about it, and -- because right now as we
24 stand, it's going to take probably an hour with the
25 closing arguments, and then it takes me another 20 minutes

1 to give them the charge. Then they go back there, and we
2 don't know how long, but I would probably have to order in
3 dinner. So there's another element of it, and I don't
4 want them to be rushed. It's a very serious case.

5 This will also give you all, the attorneys, a chance
6 to actually look at the written print of the jury
7 instructions, because those need to be incorporated into
8 your arguments. So that would be fair to you all, and
9 you'll see that.

10 You all make sure you stick around your offices,
11 because I'm going to have those delivered to you.

12 MS. LEE: Yes.

13 THE COURT: So that you can at least have those
14 before tonight. So just be ready to close and charge.
15 That means you all set up.

16 I have got some matters I'm going to take care of
17 before we start with this. I'll cut them off, and we'll
18 get right to you. I want you already set up and me not
19 waiting on anything.

20 If you have got any issues, we're here early all the
21 time. You get that to my attention so that I can come out
22 here early and deal with you all, okay.

23 MS. LEE: Yes, ma'am.

24 THE COURT: Okay. You all have a good evening.

25 MS. LEE: Thank you, Your Honor.

1 THE COURT: Yes.

2 MR. CATHCART: Are we going to just release them?

3 THE COURT: No. I'm sorry. Stay here while we do
4 that, though.

5 (WHEREUPON, the jury came into open court at
6 approximately 3:55 p.m.)

7 THE BAILIFF: Jurors are all present, Your Honor.

8 THE COURT: Okay. Thank you, thank you, thank you
9 for your patience. I feel like I'm always having to plead
10 and somebody calls it like James Brown, "Please, Please,
11 Please."

12 So anyway, we are going to allow you all to recess
13 for evening and bring you back fresh, because after we've
14 gone through all of our legal matters that we had to take
15 up with respect to the trial, the State has formally
16 rested.

17 The defense, if you would rest on the record.

18 MS. LEE: The defense rests, Your Honor.

19 THE COURT: Okay. So both portions of the case are
20 over, and you'll be reminded tomorrow that the defendant
21 does not have to testify in a trial because that's a
22 constitutional right, and that the State has the burden of
23 proof anyway.

24 So that's why you won't have a second piece of the
25 case, so to speak. It will take probably, you know, 45

1 minutes to an hour to allow both sides to do their closing
2 arguments to you. Then the Court has to charge you on the
3 law. So that would be like another 20 minutes.

4 As we're factoring this all in, it would take you to
5 probably 5:30 or so before you even got the case. Let's
6 just let everybody be fresh, then have a chance to
7 incorporate the law that I'm going to charge into their
8 closing arguments to convince you of their side.

9 I really appreciate your time and effort. I'd like
10 juror number 68 to come forward first before I release you
11 all, and then the parties, if you would come sidebar one
12 moment. Please come forward.

13 (Juror 68 and the attorneys approached the bench).

14 THE COURT: Okay. For reasons previously discussed
15 with juror number 68 and then counsel, I'm going to excuse
16 Juror Number 68 from the remainder of the trial of the
17 case, and then I will place an alternate in her place.

18 Madam clerk, I need you to put in a hat the names of
19 the other two alternates.

20 (The clerk complied).

21 THE COURT: And do the parties agree that's the
22 appropriate selection for the alternates?

23 MS. LEE: Yes, Your Honor.

24 MR. CATHCART: Yes, Your Honor.

25 THE COURT: Then the clerk will shake them around to

1 make sure they're still in there.

2 THE CLERK: The winner is Anthony Garmon.

3 THE COURT: Okay. All right. Mr. Garmon, then you
4 will come into our full jury panel tomorrow.

5 Then the other alternate, you still need to come
6 back. You have been here throughout the week. Anything
7 can happen between tomorrow, but we appreciate your time
8 and patience.

9 You all have a wonderful and restful evening. We'll
10 see you all at 9:30 in the morning.

11 (WHEREUPON, the jury left open court at approximately
12 3:58 p.m.)

13 MS. LEE: Before we break, Your Honor, I'd ask
14 that -- the defense just rested. We would just renew all
15 objections renewed and made.

16 THE COURT: So noted. The court will stand by its
17 prior ruling. Okay.

18 All right. And then we'll bring to you all the
19 proposed verdict form, as well.

20 MS. LEE: Yes, ma'am.

21 THE COURT: And that way you'll have everything. You
22 all have a restful evening yourself and part of your
23 preparations. Thank you.

24 MS. LEE: Thank you.

25 (There was an overnight recess.)

1 THE COURT: Okay. Ladies and gentlemen, with respect
2 to the case of State vs. Willie Gilmore, we broke last
3 night early so that you all could prepare for closing
4 arguments, which I'm sure that was a lot more refreshing,
5 and also for us to go over the jury charges.

6 I know that my clerk and I spent extensive time to
7 get those to you and give you all overnight and then you
8 get in my office this morning to discuss some of the
9 semantics of the charges.

10 With respect to the charge about the consent to
11 criminal sexual conduct, that one the Defendant has not
12 raised that defense. So I would be taking that one out
13 because there's been no testimony or any evidence put
14 forth specifically by defendant.

15 So the one that is labeled "consent to criminal
16 sexual conduct", the Court is inclined to take that one
17 out. Is there any disagreement there?

18 MS. LAFAVE: Your Honor, I understand Court's ruling.
19 I'm not arguing with the Court, but the defense does take
20 exception to that ruling.

21 Your Honor, it's my understanding at the end of the
22 day you had ruled that you were going to charge that; is
23 that incorrect?

24 THE COURT: Well, I had given these as proposed
25 charges, but me, as well as you all, have had a chance to

1 reflect on it.

2 MS. LAFAVE: And your Honor, I believe --

3 THE COURT: And the reason I'm saying it, so it's
4 clear, it indicates in the first paragraph that the
5 Defendant has raised the defense, and that is not -- the
6 second paragraph starts, "If you find the victim
7 consented," which is just another portion of the prior,
8 then I think that they all go together.

9 So I couldn't charge one part without the other
10 because there's an assumption that there's been
11 consensual -- the defense of consent has been raised.

12 MS. LAFAVE: As our -- just to respond briefly, Your
13 Honor, I would state to the Court that nonconsensual is
14 part of the statute and part of the elements.

15 THE COURT: Not those words.

16 MS. LAFAVE: Yes, Your Honor.

17 THE COURT: Okay.

18 MS. LAFAVE: Not in those words, but in theory, the
19 State must prove that this was a nonconsensual act.

20 Your Honor, as we discussed in chambers, my assertion
21 is it's the defense's position that there has been
22 testimony that there could be an inference this was
23 consensual.

24 There's no vaginal injuries in this case. The
25 defendant and the victim had a prior relationship, a prior

1 sexual history, and I think that the jury could reasonably
2 make the inference that Ms. Rosa McCullough did consent.

3 For that reason, Your Honor, I'm asking for the
4 charge. I believe not charging the jury in this -- not
5 only do I believe that the statute is ambiguous as to what
6 the relationship between consent and the crime that's
7 charged, but also not charging this to the jury is burden
8 shifting and somehow inferring that the defendant had to
9 prove that this was consensual rather than the State
10 having to prove that this was coerced or forced sexual
11 battery.

12 THE COURT: Okay.

13 MS. LAFAVE: Thank you, Your Honor.

14 THE COURT: There are two charges, just so we're
15 clear. One is consent to criminal sexual conduct, and the
16 other one says lack of consent.

17 The one I was referring to is the consent to criminal
18 sexual conduct because it specifically says the defendant
19 has raised that defense, and that's just not true. So
20 that's why that one was taken out. Now, the --

21 MR. CATHCART: Your Honor, for the record, what's the
22 second charge that you will be charging?

23 THE COURT: I didn't say I will.

24 MR. CATHCART: Okay.

25 THE COURT: Okay. That one reads, "Now I charge you

1 that to find the existence of force or coercion in this
2 case, you must, of necessity, find that the alleged victim
3 did not consent to the sexual conduct. For the existence
4 of consent negates the presence of force or coercion."

5 So I'm ready to hear argument on that one. The
6 defense wants it in, and the State wants it out.

7 MR. CATHCART: Your Honor, I mean -- Your Honor, as
8 to that, I think that meets what they're asking for. I
9 think that would be a proper charge.

10 THE COURT: You -- it --

11 MR. CATHCART: The second one.

12 THE COURT: It what?

13 MR. CATHCART: I think the second one would be fine.

14 THE COURT: Okay.

15 MR. CATHCART: Because I think that -- that
16 alleviates their concern as to the fact that we have to
17 show that force and coercion actually -- that's to each
18 one of those, C.S.C. first, second, and third as an
19 element of force and coercion.

20 If, simply, we have not met that element; therefore,
21 they must find him not guilty of these charges.

22 THE COURT: Okay. Then I think that that clarifies
23 it for both parties.

24 MS. LAFAVE: Thank you, Your Honor.

25 THE COURT: All right. Then let's -- okay. Let's

1 see where this one will be placed. I would suggest, then,
2 after we say third degree criminal sexual conduct, then it
3 would be placed after there, the lack of consent.

4 Okay. All right. That takes care of that, and then
5 here are the charges with the ones that will actually be
6 charged, a copy to each one of you.

7 Okay. I've got a note from a juror, the jury
8 foreperson, that says, "We were approached yesterday after
9 we were excused by a gentleman that has been in the
10 courtroom. He wanted to talk to a juror that had been
11 excused, but we were all together."

12 I will tell you that Mr. Deon O'Neill from the Public
13 Defender's Office tried to approach the juror who was
14 excused.

15 He did come to the Court afterwards and ask was it
16 inappropriate, because she had been technically released,
17 and that's not normal that she would.

18 I just advised him that in my personal opinion, the
19 only time I believe it is a better or more appropriate
20 time is when, not only has the juror been released but the
21 other jurors are actually deliberating, because you -- you
22 know, even though you have assumed that they're going to
23 be separate, you would want to make sure that they are
24 actually -- have no ability to be in contact with each
25 other at the appropriate time.

1 He did advise me that particular juror, number 68,
2 specifically told him that "I can't talk to you. I'm
3 still a juror in this case," and that there was no
4 discussion.

5 This juror, apparently, has just indicated that he
6 heard the conversation, that conversation or that
7 exchange, but I could ask the foreperson to come out and
8 then just make sure that was the case.

9 MS. LEE: Yes, ma'am, and we apologize for that.

10 THE COURT: Okay. All right. Let me just have the
11 foreperson come out.

12 THE BAILIFF: Yes, ma'am.

13 THE COURT: And then I will also find out from him
14 whether or not there were any others in this area within
15 earshot that I need to speak with.

16 (Whereupon, the foreperson entered the courtroom).

17 THE COURT: Mr. Foreperson, we've gotten your note.
18 I just want to understand the contents of what happened.

19 Just to give you a little back group, Mr. Deon
20 O'Neill, who is with the Richland County Public Defender's
21 Office did come to me yesterday and told me that he had
22 approached the juror, number 68 --

23 THE FOREMAN: That's right.

24 THE COURT: -- who was relieved.

25 THE FOREMAN: That's correct.

1 THE COURT: And she told him that she couldn't speak
2 to him because she's a juror in this case.

3 THE FOREMAN: Yes, ma'am.

4 THE COURT: Okay.

5 THE FOREMAN: That's correct.

6 THE COURT: Do you understand there to be any further
7 exchange than that?

8 THE FOREMAN: No, ma'am. That's -- the details are
9 accurate. We're leaving out, as a group, he specifically
10 pointed her out and asked if he could speak to her. She
11 responded that she could not.

12 THE COURT: Okay.

13 THE FOREMAN: He said, "You're dismissed." She said,
14 "I can't. I'm a juror." That's the end of the
15 conversation.

16 THE COURT: Okay.

17 THE FOREMAN: We thought it would be appropriate to
18 report that this morning.

19 THE COURT: Okay. Absolutely. Thank you very much.

20 THE FOREMAN: Yes, ma'am.

21 THE COURT: Did he in any way, just so the record is
22 clear, try to approach anyone else?

23 THE FOREMAN: No, ma'am.

24 THE COURT: Okay. And you feel comfortable that's
25 limited to juror 68, that confrontation?

1 THE FOREMAN: Once I left out, I don't know what
2 happened. There was a group of about five or six of us.
3 As far as I can tell, no one was approached.

4 THE COURT: Okay. What I'd like to do is go back to
5 the jury room and inquire of all of your fellow jurors and
6 make sure that no one was approached by Mr. O'Neill or
7 anyone else, for that matter.

8 THE FOREMAN: And then come back and report?

9 THE COURT: Yes.

10 THE FOREMAN: Either way?

11 (The foreman left the courtroom).

12 MS. LAFAVE: Your Honor, may I take a look at the
13 evidence real quick?

14 THE COURT: Yes, absolutely.

15 (Pause).

16 MS. FENT: Actually, I'd like to take an opportunity.
17 Yesterday when I admitted the remainder of what I believed
18 were the S.L.E.D. packages, I inadvertently offered
19 State's Exhibit 5.

20 There would have been, and was no objection for
21 objection from defense, because I believed I was just
22 moving in the S.L.E.D. packages. So I've spoken with
23 Ms. Lee, and we have agreed to withdraw State's Exhibit
24 Number five from evidence.

25 THE COURT: All right. Thank you.

1 MS. LEE: Thank you.

2 Yes. We agree to that, Your Honor.

3 THE BAILIFF: The foreperson is ready, Your Honor.

4 THE COURT: After we finish this exchange, are we
5 ready to proceed?

6 MS. LEE: Absolutely.

7 (The foreman entered the courtroom).

8 THE FOREMAN: No, Your Honor. No one else was
9 approached. That juror was the one that was -- contact
10 was attempted with, so no one else was approached.

11 THE COURT: Okay.

12 THE FOREMAN: That was the end of it.

13 THE COURT: Okay. Thank you for doing the further
14 inquiry for me.

15 THE FOREMAN: Thank you.

16 THE COURT: And he's going to ask the rest of you to
17 come out as a group, so just come out as a group. Thank
18 you.

19 (The foreman left the courtroom).

20 THE COURT: I'm going to make as a Court's Exhibit
21 the proposed charges that encompassed everything,
22 including voluntary intoxication and the ones we discussed
23 this morning. Then after we read the charges, the ones
24 that were actually read to the jury, those will be a
25 Court's Exhibit.

1 (WHEREUPON, Court's Exhibit No. 6 was marked for
2 identification only.)

3 THE COURT: We're ready for the jurors, I'm sorry.

4 (WHEREUPON, the jury came into open court at
5 approximately 9:53 a.m.)

6 THE BAILIFF: Your Honor, the jury is present.

7 THE COURT: Okay. Thank you ladies and gentlemen of
8 the jury. The parties, meaning the State, has already
9 rested their case, as we indicated yesterday, and then so
10 has the defense.

11 So now is the portion of the trial where you will
12 hear the closing arguments. I remind you that the
13 statements by the lawyers are not evidence.

14 You shall recall the evidence as presented by the
15 witnesses and then the particular documents or other
16 evidentiary information that will be given to you for your
17 deliberations.

18 This is the part of the trial where the lawyers can
19 assist you in recalling the evidence and then giving you
20 an opportunity to view any inferences, reasonable
21 inferences from that evidence, to swear you toward their
22 side.

23 Please give your full and kind attention, as you have
24 throughout the case, to each of these parties for the
25 conclusion of this case.

1 State?

2 MR. CATHCART: May it please the Court, Your Honor.

3 THE COURT: Yes.

4 CLOSING STATEMENT:

5 MR. CATHCART: Good morning.

6 THE JUROR: Good morning.

7 MR. CATHCART: I want to first thank you all for the
8 attention that you have given me, Ms. Fent, the witnesses
9 in this case.

10 Most importantly, I want to thank you for the
11 attention you gave Rosa, Ms. McCullough. She, in the
12 beginning of this when he told her, "I'm going to do
13 something to you that you'll never forget," to where she
14 had to tell the police, tell the neighbors, submit to a
15 rape protocol kit, give a statement, go through
16 counseling, until she finally had the opportunity to sit
17 here before you this week, has been consistent as to what
18 occurred to her. She has never forgotten this. He was
19 right. She never will.

20 One does not choose to become a victim of rape. One
21 does not choose to have a knife held against her, to have
22 to lay there and submit while a man is on top of her
23 yelling at her to move.

24 One does not choose to have to tell the neighbors
25 what just happened to her, call 911 to say that "Willie

1 Gillmore raped me with a knife."

2 One does not choose to have to go to a doctor and
3 have a S.A.N.E. nurse do vaginal and rectal swabs, poking
4 and prodding to tell what that man did to her.

5 She doesn't choose to have to go through counseling.
6 She doesn't choose to have to sit in front of 12 strangers
7 and explain again and again what was done to her. They
8 don't choose that. They are chosen.

9 Willie Gilmore chose his victim. Willie Gilmore
10 chose the place where it occurred. He chose the only
11 eyewitness to what he did. Rape is not a public crime.
12 It's a private crime. Only two people are involved.

13 No one else was there when he put a knife to her. No
14 one else was there when he forced her to remove the tampon
15 from her. No one else was there when he made her lay down
16 and raped her.

17 She was there alone, and that's the way it is with
18 rape cases. That's why the law in South Carolina is that
19 you may take her testimony, the testimony of the victim
20 alone.

21 It need not be corroborated by anything whatsoever,
22 because the defendant, the rapist, does this in private
23 with only one eyewitness.

24 He can't say it didn't happen because his D.N.A. is
25 in her. I submit to you, ladies and gentlemen -- I thank

1 you for your patience with me as I go through the chain as
2 we -- because that's what we have to do. It's the burden
3 on the State to prove that it's his D.N.A. in her.

4 We have to do that by going through a long and
5 lengthy chain, but the only person who can say how that
6 happened to her is Rosa McCullough.

7 For that reason, he has been charged, arrested by,
8 and indicted by the Richland County grand jury for the
9 crime of criminal sexual conduct first degree.

10 Criminal sexual conduct in the first degree is that
11 the defendant engages in a sexual battery with the victim.
12 He uses aggravated force, which is physical force or
13 physical violence of a high and aggravated nature, or he
14 threatens the use with a deadly weapon, such as a gun or a
15 knife.

16 The victim is also the victim of a forcible
17 confinement, kidnapping, as in this case when he made her
18 go from one place in the house to another.

19 Kidnapping doesn't mean bundle up and tied up.
20 Kidnapping means I make you do something without the
21 authority of law that you don't want to do. I make you go
22 from one section to another, and I won't let you leave
23 until I have had my way.

24 The judge is going to charge you that there are
25 charges it could be. There are also lesser-included

1 offenses that the judge will charge you on.

2 If you feel that he did not have a knife since a
3 knife was not recovered but he did forcibly rape her under
4 threats of death or harm, such as when he told her, "I've
5 killed before, and I'll kill again, or you'll be a dead
6 bitch," you may find him guilty of criminal sexual conduct
7 in the second degree.

8 Criminal sexual conduct, again, is a sexual battery
9 upon the victim, but it uses aggravated coercion,
10 threatens the use of violence of a high and aggravated
11 nature or to overcome the victim or another person.

12 The victim reasonably believes that the actor has the
13 present ability to carry out that threat. "I've killed
14 before. I'll kill again," saying that with a knife in his
15 hand.

16 If you feel that he just held her down and raped her,
17 no threats, just had his way with her without her consent,
18 without her wanting to have him inside of her while she
19 was on her period.

20 You may find him guilty of criminal sexual conduct in
21 the third degree, which engages in sexual battery of the
22 victim, uses force or coercion. Those are the three
23 choices you'll have in this case, Your Honor -- I mean,
24 excuse me, ladies and gentlemen.

25 The State has to prove the elements of these cases

1 beyond a reasonable doubt. That's the burden, that's the
2 State's burden. That's the way it should be.

3 It's not merely enough for the State to say that this
4 guy did this. We have to put forth evidence to show that
5 he did. We have to prove it beyond a reasonable doubt.

6 Proof beyond a reasonable doubt is not proof beyond
7 any doubt whatsoever. Proof beyond a reasonable doubt is
8 merely proof that leaves you firmly convinced of the
9 defendant's guilt.

10 There are few things in this world that we know with
11 absolute certainty. In criminal cases, the law does not
12 require that proof overcomes every possible doubt.

13 If, based upon your consideration of the evidence,
14 you are firmly convinced the defendant is guilty of the
15 crime charged, you must find him guilty.

16 If, on the other hand, you think there's a real
17 possibility that he's not guilty, give him the benefit of
18 the doubt.

19 The standard is that you must be firmly convinced
20 that he forced himself on her, that he raped her. We do
21 that by putting forward the witnesses in the case.

22 You heard from the victim of happened to her. She
23 gave a statement to Ms. Roberta Goins. She told her what
24 happened. She told 911 what occurred to her. It has been
25 consistent throughout. She told Mr. Hunter what occurred

1 to her.

2 I would point out to you, ladies and gentlemen.
3 Alberta Goins and Mr. Hunter know the victim, but they
4 have known him longer. I believe Mr. Hunter said he had
5 known him for 40 years.

6 When Ms. Rosa goes to Ms. Goins and says that,
7 "Willie Gilmore raped me," the first time she is away from
8 him, she tells the first person she can, "He raped me."
9 Ms. Goins doesn't say, "Oh, not Willie." What she says
10 is, "Call the police". There's no question about that.

11 When she tells Mr. Hunter, "He raped me." You heard
12 him testify. There's no doubt what was said. They know
13 them both, known them for years.

14 911 is called. She tells them, and as the defense
15 counsel -- excuse me, as the officer testified to, they
16 were dispatched to a rape with a knife, Willie Gilmore
17 being the defendant.

18 Officer Booker came. She relayed it to her also,
19 told her what occurred. Defense counsel wants to say some
20 things are in her report, some things are not in her
21 report.

22 Ladies and gentlemen, the officer chose what to put
23 in the report. You can't blame Rosa, the officers, for
24 what she put in. Rosa has been consistent. She went to
25 the hospital. She submitted to a rape protocol.

1 During that rape protocol, the officer -- the nurse
2 observed bruising on the side of her face consistent, not
3 with a bug bite, not with menstrual symptoms, but
4 consistent with what Rosa told her happened: Slapped two
5 to three times before he pulled the knife and before he
6 raped her.

7 She again described the yellow knife and how he did
8 it, described the fact that she was on her period, and the
9 steps that he took before he raped her, consistent with
10 each person that she has already told.

11 Mr. Hunter agrees, "Yeah, have known Willie for
12 years. He's got that knife. It's right there in his
13 house."

14 When she is waiting for the officers to do something
15 about Mr. Gilmore, she and her son are waiting for
16 Mr. Gilmore to be arrested for what occurs. They called
17 the cops. They say, "What's going on with this case?
18 What's going on with the man who has raped my mother?"

19 They go and get a statement from her. The statement
20 is consistent with everything she has said. It's
21 consistent because it's the truth. It's consistent
22 because he is going to something to her that she is never
23 going to forget, and she hasn't.

24 Ladies and gentlemen, we have first argument in this
25 case. Defense counsel is going to get up, and she is

1 going to argue also.

2 She is going to, I guess, pick apart the victim,
3 attack the victim. She has already said that she dressed
4 for rape. She was wearing a black skirt. She must have
5 dressed for it.

6 She has already talked about the fact she lives in a
7 seedy motel. I believe that's the term they called it.
8 She talks about the fact that she drinks. Toxicology
9 proves it, and yes, she did. She was not intoxicated.

10 Tox. showed her to have a .004 alcohol level, not
11 intoxicated, but she talks about the fact she had her foot
12 rubbed. That's true, but I would point out to you, ladies
13 and gentlemen, she didn't drag that out of the victim.

14 She didn't -- these are not concessions that the
15 victim made. These are the things the victim has said
16 from the beginning.

17 Defense counsel knew about it because it's in her
18 statement. She told what happened that night. She had a
19 couple of drinks. Why did she say it? She had a couple
20 of drinks? Because she did.

21 She got a foot rub from that man before he raped her.
22 How do we know that happened? Because she told the
23 police, and She told y'all.

24 I would submit to you, ladies and gentlemen, if she
25 is lying about this, if she is lying about the fact that

1 he raped her and she was going to go through the whole
2 spiel of going through a rape protocol, going through
3 counseling, coming before you people and telling the story
4 about it, I submit to you she wouldn't say she was there
5 having a couple of drinks.

6 I submit to you she wouldn't say that she had her
7 foot rubbed. She would say, "I went there. I was picking
8 up some furniture. The next thing I know, that man
9 attacked me and raped me."

10 She didn't say that. Why didn't she say that?
11 That's not the way it happened. She testified as to the
12 way it happened, that's the truth. She says that's what
13 happened because that's the way it occurred.

14 Defense counsel says, "Well, she doesn't say
15 everything that happened." This is a five-page statement,
16 large space, and I submit to you everything in the world
17 is not in there.

18 She answers the questions that were asked by the
19 investigator. Defense counsel said, "Well, you didn't
20 answer all the questions."

21 I submit -- I point you to page number four, "What
22 happened next, Rosa?" And she stopped there. She didn't
23 ask Rosa what did she say in her statement as to what
24 happened next to that question.

25 Well, I'll tell you what she said. The answer to

1 that is, "Willie told me I want to fuck. He made me pull
2 my tampon out of my vagina. Willie then made me pull the
3 mattress from the kitchen into the bedroom and forced me
4 to have sex with him. After he finished, he got up and
5 said that was good. He went to wash up. I did not wash
6 up. I just wiped the blood from my legs and put another
7 tampon in." That's the answers to the questions. That's
8 the questions that were asked. You have the statement.
9 I'll ask that you read it.

10 The evidence in this case comes from this stand, as I
11 stated. Questions are not evidence. It's not remarks
12 about what the victim was wearing are not evidence. The
13 answers are.

14 The only evidence in this case, the only evidence in
15 this case, is that on August 18th, 2004, Rosa McCullough
16 was raped.

17 Defense counsel wants to talk about there were no
18 vaginal tears. Therefore, it could not be a rape. We
19 know he had sex because D.N.A. is in there. They can't go
20 around that.

21 They're going to say, "Well, it wasn't a forcible
22 rape because there's no tears."

23 Rosa McCullough had been slapped three times. She
24 had a knife put to her by a man who said, "I've killed
25 before. I'll kill again."

1 She testified, as he raped her, she laid there. She
2 was submissive and not fighting back, not wanting to die.
3 Laying there such that he told her to move.. I submit to
4 you she was bleeding, no argument about that. Absolutely
5 right because that's consistent with what happened.

6 The evidence in this case is as you heard from this
7 witness stand. Defense counsel came forth -- excuse me.
8 The defendant, when he started this case, said "I'm going
9 to do something to you that you'll never forget," and Rosa
10 has never forgotten.

11 She has been before a number of people having to
12 recount this story again, recount what happened to her.
13 She has gone through counseling. She has gone to you, and
14 she has told you what had happened.

15 She will never forget this, and I can't help that. I
16 can't heal that. I'm not asking anyone to heal it. What
17 the State of South Carolina and Rosa McCullough is asking
18 for is that you people hold that man accountable for what
19 he has done. Hold him responsible for what he did to her.

20 She never will be able to forgive this. I'm asking
21 that you make sure of that and find him guilty.

22 THE COURT: Thank you, Mr. Cathcart.
23 Defense?

24 MS. LEE: Yes, Your Honor.

25 CLOSING STATEMENT:

1 MS. LEE: Ladies and gentlemen, I want to start out
2 by apologizing to you if there's anything that I have done
3 or Ms. LaFave has done, we've been inartful in our
4 questions, or if there's a manner in which we addressed a
5 witness that has offended you.

6 If there's something that our office has done to
7 offend you or to make you feel uncomfortable, I want to
8 apologize to you for that. More than anything, I want you
9 ask you to not hold that against Willie Gilmore.

10 Willie Gilmore is an innocent man. Willie Gilmore is
11 falsely accused. Mr. Cathcart just tried to boil this
12 case down to the defense is trying to say she is dressed
13 for rape. It's the old "she deserves it" argument.

14 He knows good and well that any reasonable person who
15 hears that is disgusted. Nobody accepts that precept, and
16 folks, that is not what we're asking you to do today.

17 The fact is, he tries to boil this case down to that
18 because the State is trying to shame you out of doing what
19 you're obligated to do.

20 When you all first came in and you sat in this
21 audience, you swore, you took an oath. You swore to be
22 impartial jurors. Then when you came up here, you took
23 another oath, an oath to try this case not on emotion, not
24 on political correctness, but on the law and on the
25 evidence.

1 Unfortunately, sometimes that means doing what is
2 difficult and what is uncomfortable, and what is very
3 sensitive.

4 We have to do it because that is our sworn obligation
5 as Americans, because when you come into a courtroom, it's
6 not good enough to somebody just says that you did
7 something and that it was embarrassing. You have to do
8 more than that.

9 There has to be proof, and it's not saying someone
10 deserved it or they dressed for rape when you, as jurors,
11 critically evaluate the evidence and listen to the
12 victim's testimony. See how it matches up with the
13 evidence, what's consistent and what's not. Folks, don't
14 let anyone tell you that that is not your duty, because
15 that's exactly what you swore to do.

16 This is a case about three things: A story that
17 doesn't make sense, a story that never stays the same, and
18 it's a story without evidence and without injuries.

19 First, let's look at the story. Mr. Cathcart says
20 nobody chooses rape, and he's right. But we do have an
21 obligation to look at Rosa McCullough's choices on
22 August 18th, 2004 because we can infer from her choices
23 what her state of mind was that day, because really,
24 that's what this case is all about. We must look at her
25 choices and how her story doesn't make sense.

1 Start from the very first part of this story. One of
2 first questions I asked her on cross-examination, "So you
3 only came up there because you wanted to check on your
4 furniture?" Yes.

5 "That was the only reason you came there? You
6 weren't trying to visit with Willie?" No. That's not
7 what the evidence suggests.

8 A few things: One, Ms. Goins, that nice lady who
9 came and spoke to us from the wheelchair, one of the last
10 witnesses, she said that just the day before, Rosa had
11 been in Willie's neighborhood.

12 Folks, how many times do you need to check on your
13 furniture to make sure it's okay? It's an excuse to stay
14 in Willie's life, okay.

15 So if I'm a woman who had a break up and really, all
16 I want to do is sever my last tie with this man, put the
17 furniture in storage whenever I can, but I want to check
18 on it, make sure it's still there, everything is not
19 damaged, if I get to the house and the man isn't there,
20 isn't that the best possible scenario?

21 Oh, I can just check on my stuff. I don't even have
22 to see him. It won't be awkward. I'm just going to do
23 that. That's not what she does, is it?

24 She says she stays, especially when she sees another
25 woman in the home she used to share with a man she called

1 her husband.

2 She sits, she stays, and when Willie comes and when
3 the other woman, the first woman eventually leaves, Rosa
4 doesn't leave with her. Oh no, she stays and she talks
5 for hours.

6 Rosa says that she is a woman who is only trying to
7 save up her money so she can get the furniture into
8 storage and sever her last tie with this man, but then she
9 tells us she spends her money on that man that day.

10 She gives him money so that they can split a bottle
11 of gin. That doesn't make sense. It's not consistent
12 with a woman who tells us, "I only went there to check on
13 my property."

14 So why does she lie? Why doesn't she just say, "No,
15 we're still friends. We still kind of talked."

16 What was her intent on that day? Let's set the
17 scene: Rosa comes in, sets down her purse, and we know
18 she is there to stay because she told us on
19 cross-examination takes off her shoes.

20 She sits down, talks with Willie, talks with Willie
21 for hours and at some point, some point during this
22 conversation, her feet end up on Willie's lap.

23 (Sitting at witness stand, propping feet up.)

24 He massages her feet, and at some point, a bottle of
25 gin comes out, a couple of drinks.

1 (Pouring water from the courtroom water pitcher).

2 More conversation and she stays. She stays. She
3 drinks. She has her feet rubbed. It's not Willie who
4 invited her over. She came over on her own accord without
5 calling him first.

6 Ladies and gentlemen, this is not a rape scene. This
7 is not a rape scene.

8 Every time she tells this story, it's different. The
9 first time she tells the story, we know as to Officer
10 Brooker.

11 You remember, Officer Brooker was the first officer
12 to take the stand. She is the lady officer, and she spoke
13 to Rosa in detail about what happened fairly soon after
14 this happened. Rosa says it happened around 6:15. This
15 is when she talks to her.

16 Mr. Cathcart says, "Well, that officer just chose to
17 put in that report," demeaning the credibility of the
18 Columbia Police Department officer that he put up on the
19 stand.

20 But we also heard from that officer's supervisor.
21 She was the next witness, Sergeant Dowling, and Sergeant
22 Dowling told us about how detailed, how dedicated Officer
23 Brooker is.

24 She said, and her exact words, "If the victim said
25 it, it's in that report," because why do we hire these

1 officers to take reports? We do it to follow leads. We
2 do it to find out if people have been hurt. We do it to
3 figure out, "Hey, can we anything out who this guy is and
4 go get him?"

5 What does Rosa tell Officer Brooker? We're common
6 law husband and wife. When I got there, Willie was home.
7 It doesn't mention anything about a knife. She doesn't
8 say anything about these colorful threatening comments
9 that we've heard all about in this trial, folks.

10 "I'm going to do something to you you'll never
11 forget. I killed before, I'll kill again. You'll be a
12 dead bitch." The comment that she shares with the first
13 officer to take her story, "Willie told me he loved me
14 afterwards". Does that make any sense? Is the state
15 saying the officer made that up?

16 Rosa says there was only one female there initially
17 analyzing the women coming in out of the house, but she
18 does admit drinking.

19 The second time she gets to tell the story: Cool
20 calm, and collected. This is a month later. Her story is
21 more detailed. It's longer. We can expect that.

22 She gets the opportunity to sit down with someone.
23 She is not in an emotional state. She has had the
24 opportunity to reflect, so we can expect the story to get
25 more complex.

1 What you wouldn't expect is these details to
2 completely contradict what she said the first time. Now
3 she is minimizing her relationship with Willie. She is
4 saying Willie wasn't home when she got there. She is
5 saying yeah, there was a weapon, the yellow-handled knife,
6 and folks, we'll discuss that in a minute.

7 We start hearing these threats. The first one she
8 comes up with is, "You'll be a dead bitch," something she
9 never bothered to say when she is first contacted by
10 police, doesn't say anything about Willie professing his
11 love.

12 Now, she admits there were two females there, and she
13 says, "I wasn't drunk." Now, I understand, and I have no
14 doubt the toxicology report tells us her blood alcohol
15 level was zero, sure.

16 They didn't test her blood when she was having sex
17 with Willie. They didn't test her blood when she was
18 telling her story the first time.

19 We know that this happened around six. She didn't
20 get out of the hospital until two. As the toxicologist
21 told us, and we all know as reasonable people, alcohol
22 gets metabolized as soon as it enters your system. We
23 know she had at least a couple of drinks of gin that
24 night.

25 Now, how does this contrast with her testimony in

1 court? Now, we hear details that we've never heard
2 before. We hear them for the first time four years later,
3 but these new details, these added details, they still
4 don't make any sense.

5 Let's start with Molly, the second younger woman to
6 come into the house that night, because really, this is
7 the whole motive for the entire rape.

8 Molly comes in, sits next to Rosa and Molly says,
9 "Hey, have you seen this dude? I've been looking for him.
10 Did he come by?"

11 Rosa says -- Rosa answers her and this, this one fact
12 simultaneously enrages and arouses Willie Gilmore, not
13 when they were sitting on the couch rubbing feet and
14 drinking gin. He didn't try to make a move then, but when
15 a woman that Rosa has known for years asks her, "Hey, have
16 you seen this dude," that was it. That was when we go
17 from zero to 60. That was the motive.

18 The State has never explained that because they don't
19 have an explanation. It doesn't make sense. It's a
20 doubt, a reasonable doubt.

21 Her story gets more improbable, and folks, this is
22 what I'm talking about when I say I understand your job is
23 difficult and uncomfortable and that we all rather not
24 talk about these kinds of things, but we've got an
25 obligation to do it.

1 She says after the sex, Willie goes and washes up.
2 She wipes her legs, and she puts in a tampon. She goes to
3 her purse, and she puts in a tampon.

4 After being vaginally raped at knifepoint, she does
5 that? Now, we're all reasonable people. That doesn't
6 make a lick of sense.

7 It doesn't make sense that that would be a concern of
8 yours if you know you're only trying to leave the house to
9 go call 911. It doesn't make sense that you would want to
10 put yourself in that kind of pain.

11 It's a part of her story that doesn't make sense.
12 Her story gets a little bit better, a little more
13 detailed, a little more threatening and dangerous every
14 time she tells it.

15 There's no doubt that she is emotional when she tells
16 it. There's no doubt there were tears on direct
17 examination, but the interesting thing is there wasn't one
18 tear on cross-examination.

19 When you ask her about the specifics of her story,
20 the stuff she didn't bring up on direct examination, like
21 the foot rub, Mr. Cathcart says she wasn't trying to hide
22 it, but she sure didn't bring it up on direct examination.
23 I had to ask her about it on cross.

24 When you ask her about the specifics, she is
25 calculated. She is measured. She is careful, but you

1 could not describe her as emotional on the stand, not on
2 cross-examination. That's a doubt, a reasonable doubt.

3 So why tell a story that is this embarrassing knowing
4 that at some point you might have to tell it to 12
5 strangers, and your personal effects are going to come
6 into evidence.

7 Well, let's look at what we know. We know that she
8 used to live in a home with this man, called him her
9 husband. We know she had her belongings there. We know
10 that's where she calls her home, but when they broke up,
11 it was her that had to leave. She had to leave and stay
12 at a motel instead of the comfort she once had.

13 We know that once they broke up, she made excuses to
14 keep seeing him. We know she kept checking on her
15 furniture when she could have asked Bruce Gene Hunter,
16 some of the Goins' family, to do that for her.

17 She went back, and she would go back more than once a
18 week. We know that even though this is a woman who says
19 she had no interest in reconciling, and when I asked her
20 about other women, she said "better them than me."

21 We know when other women came to the house, she asked
22 them. She asked Willie, rather, is that your lady? Is
23 that your girlfriend? Does that sound like a woman who
24 could care less? Does it sound like a woman who wants to
25 separate herself from this relationship?

1 So why did she lie about it? It's not consistent
2 with someone who is happily broken up and wants a
3 permanent separation. It's not consistent with someone
4 only concerned with their property, but it is consistent
5 with someone who has been hurt.

6 Bruce Hunter said something interesting, the last
7 witness y'all heard from. He said that he just thought
8 the two of them were arguing; that they argued a lot.

9 Isn't this consistent with people who were arguing?
10 Isn't it consistent with someone who thought maybe having
11 sex with an ex-husband or boyfriend meant more to her than
12 it did to him, who maybe thought that because they had
13 sex, it meant she would be moving back in or at least
14 spending the night?

15 Isn't this consistent with someone who has been hurt,
16 who has seen other women in her roost, someone who has
17 been drinking? Isn't it more consistent with that than a
18 man who gets enraged and aroused because you answer a
19 question about whether or not some dude has come by the
20 house?

21 This is a case where the story doesn't make sense, it
22 doesn't stay the same, and it's a story without evidence
23 and without injuries.

24 We got a table full of evidence here that y'all will
25 take back with you. What does it prove? They had sex.

1 We told you that in opening statement. We all agree with
2 that.

3 There is nothing in this pile of evidence that proves
4 anything more than consensual sex happened, nothing. This
5 is not helpful to your deliberations in any way, so what
6 would have been helpful?

7 I don't know. Maybe if the Columbia Police
8 Department was told a woman was raped at knifepoint, they
9 swear out a search warrant and go to his house that night.

10 They knew Willie Gilmore's date of birth, his eye
11 color, hair color, where he lived. What do they do about
12 it? Nothing. Somebody went.

13 (Indicating).

14 Knocked on the door. He didn't answer. That was it.
15 That was the extent of trying to find the rapist with the
16 knife. Nobody in the four years since this has happened
17 has bothered to go to that home to look for any evidence.

18 To this day, they know exactly where that furniture
19 is, where the mattress is. Rosa told us on cross what
20 storage facility it's in. Did they go and get it? Did
21 they try to corroborate her story? Nope, nothing.

22 Didn't even bother to call C.S.I. to take pictures of
23 the house, see if there's obvious signs of a struggle, try
24 to find a knife, none of it. Why didn't they bother?
25 What do we pay the police department for if they don't

1 bother to even do this? I think it's pretty clear why
2 they didn't use the State's resources.

3 The State did not find Rosa McCullough's claims
4 credible. This is Investigator Bullock asking Rosa
5 McCullough, "Did you file the police report and say that
6 Willie forced sex on you because the other women had been
7 at the house and you were hurt?"

8 Even the lead investigator, a month later, is
9 suspicious of this story. That's why the State didn't
10 bother to get a nurse with a colposcope. That's why they
11 didn't bother to involve C.S.I., and that's why we have
12 this incredible timeline in this case, folks.

13 This allegedly happens August 18th, 2004. The lead
14 investigator isn't assigned until what, sometime in early
15 September.

16 The lead investigator finally talks to the victim
17 September 14th, calls the solicitor's Office, I think six
18 days later, saying, "Can I get a warrant authorized?"

19 The Solicitor is not there. She is at a conference,
20 so instead of calling one of the, I don't know, 25 other
21 solicitors that work in the office and getting a warrant
22 authorized, they wait until October 7th, two months later.

23 Are you kidding me? When a woman was saying she was
24 raped at knifepoint, they didn't find her credible. It
25 was only until Rosa McCullough pushed this investigation

1 with the phone calls that they felt a responsibility to at
2 least do something.

3 Even if it wasn't involving C.S.I. Even if it wasn't
4 trying to legitimately find the knife or find this guy,
5 that's when it happened.

6 Now, what else would have been helpful to this
7 investigation? How about the knife, right? We don't have
8 it because the State never tried to find it, but let's
9 talk about it briefly because Bruce Gene Hunter, the last
10 witness, he talked about it quite a bit.

11 What does he say? He says the knife that Willie
12 carries is just fingernail clippers. That's what he's
13 talking about, but in his house there is a long steak
14 knife with a yellow handle, a knife you would use to cut
15 meat.

16 Rosa says in her testimony, "I don't know. It might
17 have been a folding knife." Those are two very
18 distinctive knives, and it's something you remember and
19 you note if that knife is being used against you, but is
20 it a surprise to anybody that Rosa and Mr. Hunter, who
21 have known Willie for what, 20 years, 40 years, that they
22 know somewhere in this house there is a yellow handled
23 knife? Of course, they know that.

24 How many times do you think they've been over to that
25 house? A lie is most convincingly hidden between two

1 truths.

2 Why wouldn't you incorporate that into your story?

3 It doesn't prove anything. What would have proved
4 something is if they found the knife, if they bothered to
5 go to the house that night, and they found Rosa's D.N.A.
6 on it. They didn't do that because that evidence doesn't
7 exist.

8 Now, Bruce's testimony got, like Rosa's, a little
9 more detailed every time he told the story. Every time a
10 lawyer got up to ask him more questions, more details
11 emerged.

12 Here is the interesting thing: He says that he sees
13 Rosa and Willie walking together along the street. He
14 doesn't get up or approach them. He said it's like
15 normal. She has watery eyes, but figured they were just
16 arguing.

17 He didn't see him chasing her saying, "Hey, get back
18 to the house." He doesn't see her walking ahead trying to
19 outpace him or anything like that.

20 Now, let me ask you a question: If you -- excuse me.
21 A reasonable person thinks that a rape just occurred with
22 a knife, and the victim of that rape says, "I'm actually
23 going to go get a bag and go leave," would a reasonable
24 person expect the rapist to acquiesce to that request?

25 If he's had the knife and he's in control, why in the

1 world would he be walking around like normal with Rosa
2 down that street, a lively street, as we've heard, people
3 sitting on porches talking.

4 Why would you do that if this was a genuine
5 knifepoint rape? It wasn't. The behavior after the sex
6 isn't consistent with what they're saying happened, and
7 more than that, you have to look at Mr. Hunter's demeanor
8 on cross-examination because the judge, Judge Childs, is
9 going to tell you all about how you go about judging the
10 credibility of witnesses.

11 Did he seem particularly forthcoming to you, or did
12 he seem extremely aggressive and defensive? I don't know
13 exactly what his relationship is with Rosa McCullough, but
14 what I do know is that every day this week, they have
15 ridden together to the courthouse. Any time we took a
16 break, which I know has been very frequent in this case,
17 they all walked outside and talked in the corridor. Every
18 time we broke for lunch, they go to lunch together, the
19 three of them, the McCullough's and Bruce Hunter. Every
20 day when we adjourned, they'd drive home together, but
21 they didn't talk about the case.

22 His testimony is not credible. When I asked him
23 about that, when I asked him about riding around with the
24 McCullough's and going to lunch with them, what was his
25 response? "The Court got a problem with that?" That's

1 not somebody who is being forthcoming, somebody who is
2 being defensive for good reason. His testimony is not
3 credible.

4 This is a story with no evidence, and it's a story
5 without injuries. Mr. Cathcart talked about having to go
6 through a rape kit examination, and folks, it's right.
7 It's very, very thorough.

8 You'll be able to take this back with you. You heard
9 that every piece of this rape kit was used by a nurse with
10 40 years of experience, and using every piece that they
11 have in this rape kit, they found no injuries.

12 Mr. Cathcart says that a bruise was found on her
13 face. That's not what the nurse said. I specifically
14 asked the nurse, "Did you find any bruises?" She said no.
15 What she said is there was some edema, some swelling, not
16 broken capillaries under the skin where there's redness or
17 a blue tinge. She saw some slight swelling, so slight she
18 didn't take a picture, so slight it didn't require
19 treatment, so slight she didn't even diagram it so we'd
20 know exactly where it was.

21 Here is the thing about the edema: It's in a very
22 interesting place for what they're saying happened. It's
23 on the right side of her face, which would make sense if a
24 left handed person --

25 MR. CATHCART: Objection, Your Honor.

1 MS. LEE: Judge, I'm not attempting to put into
2 evidence what hand my client is. Just the fact they never
3 brought it up.

4 THE COURT: Okay. The jury shall recall any evidence
5 that was specifically from the witnesses in this case, and
6 that's the only evidence you can rely on.

7 MS. LEE: Yes, ma'am.

8 It's consistent with a left-handed person striking
9 you in the face. Did the State ask that? They have two
10 witnesses who have known him for decades. Ask either one
11 of them, is he among the, what, 10 percent of us or
12 whatever it is who are left handed? Nope. They didn't
13 bring that out. That injury doesn't make sense with what
14 they're saying happened.

15 The nurse couldn't tell us it was associated with any
16 bruise, any mark. She couldn't describe it as an
17 inflicted injury. She couldn't tell us how old it was,
18 whether it was subsiding or increasing in size, if it was
19 recent.

20 The only thing she complained about, after a
21 knifepoint rape, was a headache for which she received
22 Tylenol. The nurse said she couldn't even associate that
23 headache with the edema.

24 At the end of the examination of her body, they saw
25 no bruising, no abrasions, no hand marks, not on her

1 wrist, not on her hips or her legs from being held down.
2 No even superficial cuts from the steak knife that is
3 apparently being used against you, nothing. More than
4 that, no vaginal trauma.

5 Now, Mr. Cathcart says, "So what. There was no
6 tearing." But it's more than that. Not just no tearing,
7 no redness, no abrasions, no swelling.

8 Again, we're all adults here, and this isn't the
9 thing that we'd all like to be talking about, but there's
10 no allegation that any kind of instrument was used in this
11 rape.

12 You're telling me that at the end of this, after
13 being examined, went through a rape kit and examined by a
14 woman with 40 years of experience of doing this using a
15 speculum, using a Woods light, sort of a U.V. light, they
16 find nothing.

17 What else didn't they find? Fingernail scrapings.
18 None of Willie's D.N.A. under her fingernails to indicate
19 a struggle. There was no struggle because there was no
20 coercion, ladies and gentlemen. There's no evidence
21 indicating that this was a coerced rape. There's no
22 injuries consistent with rape. Ladies and gentlemen, this
23 is a story that doesn't make sense, and it doesn't stay
24 the same.

25 When we're in our own homes and we hear on W.L.T.X.

1 or whatever while we're sitting at the kitchen table that
2 there's been a rape, a woman has reported a rape and they
3 caught the guy, our first reaction is thank God, thank God
4 he's off the street. Thank God I have myself and my
5 family safe. That's natural and that's perfectly
6 acceptable.

7 It's fine sitting at the kitchen table, but it's not
8 fine here because in this box, you don't presume that
9 somebody is guilty. You presume innocence because we all
10 know that innocent people are charged with crimes.

11 We all know about false allegations of rape: Coby
12 Bryant, Duke lacross team, Christian --

13 MR. CATHCART: Objection, Your Honor.

14 THE COURT: Sustained.

15 MS. LEE: Your Honor -- excuse me, ladies and
16 gentlemen, false reports are made, and Willie Gilmore may
17 not be a celebrity, put he's falsely accused. Accusations
18 are not evidence and allegations are not proof.

19 Now, the State wants to hang their hat on this code
20 that says a rape victim's testimony does not have to be
21 corroborated. The fact is that testimony still has to be
22 credible.

23 Ladies and gentlemen, you are the sole judge of the
24 facts in this case. Don't let anybody tell you different.
25 You judge the credibility. You determine if it's

1 consistent with the facts or not.

2 Willie Gilmore is an innocent man. Willie Gilmore is
3 falsely accused. Thank you.

4 THE COURT: All right. The State?

5 Is he going to present anything more?

6 (Ms. Fent shakes in the negative).

7 THE COURT: All right. I'd like you to secure the
8 courtroom. There should be no one in here if they're not
9 going to stay for the full charge to the jury.

10 JURY CHARGE:

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, if you would direct your attention to me as I charge
13 you on the law.

14 Now, Mr. Foreperson and members of the jury, you have
15 heard the evidence and the arguments of both parties. I
16 will now explain to you the law which applies to this
17 action.

18 Defendant Willie Gilmore is charged with first degree
19 criminal sexual conduct. I remind you that during this
20 trial, you and I have certain duties to perform.

21 As the trial judge, it is my responsibility to
22 preside over the trial of this case, and I also have the
23 duty to rule on the admissibility of the evidence offered
24 during this trial. You are to consider only the competent
25 evidence before you.

Jury charge

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1 If there was any testimony ordered stricken from the
2 record in this case during this trial, you must disregard
3 that testimony. You are to consider only the testimony
4 which has been presented from this witness stand, any
5 exhibits which have been made a part of the record in this
6 case, and any stipulations of counsel.

7 I have the additional duty to charge you the law
8 applicable to this case. As the presiding judge, I am the
9 sole judge of the law of this case, and it is your duties
10 as jurors to accept and apply the law as I now state to it
11 you.

12 If you already have any idea as to what the law is or
13 what the law ought to be, and it does not agree with what
14 I now tell you the law is, you must abandon this idea
15 because you are sworn to accept the law and apply the law
16 exactly as I state it to you.

17 In every case tried in this court before a jury, the
18 jury becomes the sole and exclusive judge of the facts in
19 a case. A trial judge cannot intimate, state, comment on
20 or make any statement to a trial jury about the facts in a
21 case.

22 Since you, the jury, are the sole judges of the facts
23 in the case, you are not to infer from what I have said
24 during the progress of this trial in ruling upon the
25 admissibility of evidence or otherwise or anything I say

1 now during the course of this instruction to you that I
2 have any opinion about the facts in this case.

3 The law does not allow me to have an opinion about
4 the facts in this case. This is a matter solely for you,
5 the jury, to determine.

6 As jurors, it is your duty to determine the effect,
7 value, weight, and truth of the evidence presented during
8 this trial.

9 The indictment charges the defendant with first
10 degree criminal sexual conduct in violation of South
11 Carolina code annotated section 16-3-652.

12 I remind you that the fact that the defendant was
13 arrested, charged, and indicted in this case is not
14 evidence in this case and cannot be considered by you as
15 evidence of guilt in this case.

16 Nor does it create any presumption or inference of
17 guilt. That document is simply the formal written
18 instrument which contains the charge made against the
19 defendant. It is the formal document by which the case is
20 brought into this Court.

21 The defendant has pled not guilty to this indictment,
22 and that plea puts the burden on the State to prove the
23 defendant guilty. A person charged with committing a
24 criminal offense in South Carolina is never required to
25 prove himself innocent.

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1 I charge you that it is an important rule of law that
2 a defendant in a criminal trial, no matter what the
3 seriousness of the charge may be, will always be presumed
4 to be innocent of the crime for which the indictment was
5 issued unless guilt has been proven by evidence satisfying
6 you of that guilt beyond a reasonable doubt.

7 This presumption of innocence does not end when you
8 begin your deliberation, but it accompanies the defendant
9 throughout the trial until you reach a verdict of guilt
10 based on evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 The presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the defendant
14 which remains with the defendant until it has been
15 stripped from the defendant by evidence satisfying you of
16 the defendant's guilt beyond a reasonable doubt.

17 The presumption of innocence is not a mere legal
18 theory. It is not just a legal phrase. It is a
19 substantial right to which every defendant is entitled
20 unless you, the jury, are satisfied from the evidence of
21 the defendant's guilt beyond a reasonable doubt.

22 The State has the burden of proving the defendant
23 guilty beyond a reasonable doubt. Some of you may have
24 served as jurors in civil cases where you were told that
25 it is only necessary to prove that a fact is more likely

1 true than not true, such as by the greater weight or
2 preponderance of the evidence.

3 In criminal cases, the State's proof must be more
4 powerful than that. It must be beyond a reasonable doubt.
5 Proof beyond a reasonable doubt is proof that leaves you
6 firmly convinced of the defendant's guilt.

7 There are very few things in this world that we know
8 with absolute certainty, and in criminal cases, the law
9 does not require proof that overcomes every possible
10 doubt.

11 If, based on your consideration of the evidence, you
12 are firmly convinced that the defendant is guilty of the
13 crime charged, you must find the defendant guilty.

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

18 Necessarily, you must determine the credibility of
19 witnesses who have testified in this case. Credibility
20 simply means believability.

21 It becomes your duty as jurors to analyze and to
22 evaluate the evidence and determine which evidence
23 convinces you of its truth.

24 In determining the believability of witnesses who
25 have testified in this case, you may believe one witness

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1 over several witnesses or several witnesses over one
2 witness.

3 You may believe a part of the testimony of a witness
4 and reject the remaining part of the testimony of that
5 same witness. You may believe the testimony of a witness
6 in its entirety or reject the testimony of a witness in
7 its entirety.

8 You may consider whether any witness has exhibited to
9 you any interest, bias, prejudice or other motive in the
10 case. You may also consider the appearance and manner of
11 a witness while on the witness stand.

12 The testimony of the victim need not be corroborated
13 in prosecutions of criminal sexual conduct cases. The
14 Rules of Evidence normally or ordinarily do not permit
15 witnesses to testify to opinions or conclusions.

16 An exception to this rule exists for witnesses who
17 call expert witnesses, a witness who by education and
18 experience has become expert in some art, science,
19 profession, or calling, may state an opinion as to
20 relevant and material matter in which the witness claims
21 to be an expert and may be -- may also state the reasons
22 for the opinion.

23 You should consider any expert opinion received in
24 evidence in this case, and like any other evidence give it
25 the weight you think that it deserves.

1 If you decide that the opinion of an expert witness
2 is not based on sufficient education and experience or if
3 you conclude that the reasons given in support of the
4 opinion are not sound or that the opinion is outweighed by
5 other evidence, you may disregard the opinion entirely.

6 An expert witness's testimony is to be given no
7 greater weight than that of other witnesses simply because
8 the witness is an expert.

9 Further, you are not required to accept an expert's
10 opinion even though it is not contradicted. There are two
11 types of evidence which are generally presented during a
12 trial: Direct evidence and circumstantial evidence.

13 Direct evidence is the testimony of a person who
14 claims to have actual knowledge of a fact, such as an
15 eyewitness. It is evidence which immediately establishes
16 the main fact to be proved.

17 Circumstantial evidence is a proof of facts and
18 circumstances indicating the existence of a fact. It is
19 evidence which immediately establishes collateral facts
20 from which the main fact may be inferred. Circumstantial
21 evidence is based on inference and not on personal
22 knowledge or observation.

23 The law makes absolutely no distinction between the
24 weight or value to be given to either direct or
25 circumstantial evidence, nor is a greater degree of

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1 certainty required of circumstantial evidence than of
2 direct evidence.

3 You should weigh all of the evidence in this case.
4 After weighing all of the evidence, if you are not
5 convinced of the guilt of the defendant beyond a
6 reasonable doubt, you must find the defendant not guilty.

7 As I previously stated, the defendant is charged with
8 first degree criminal sexual conduct. The first element
9 which the State must prove beyond a reasonable doubt is
10 that the defendant engaged in a sexual battery with the
11 victim.

12 A sexual battery is sexual intercourse, cunnilingus,
13 fellatio, anal intercourse or any intrusion, however
14 slight, of a part of a person's body or of any object into
15 the genital or anal openings of another person's body
16 except when the intrusion is accomplished for medically
17 recognized treatment or diagnostic purposes.

18 If you find that the State has not shown beyond a
19 reasonable doubt that a sexual battery occurred, you
20 should stop deliberating, and your verdict would have to
21 be not guilty.

22 If you find a sexual battery did occur, you must then
23 decide whether the State has proven beyond a reasonable
24 doubt that the defendant used aggravated force to
25 accomplish the sexual battery. Aggravated force means the

1 use of physical force or physical violence of a high and
2 aggravated nature to overcome the victim. This includes
3 the threat of using a deadly weapon.

4 The victim submitted to sexual battery while the --
5 excuse me.

6 (Pause).

7 And that the victim submitted to sexual battery while
8 the victim was also the victim of forcible confinement,
9 kidnapping, robbery, extortion, burglary, house breaking,
10 or any other similar act or offense.

11 If you, the jury, have a reasonable doubt as to
12 whether the defendant is guilty of criminal sexual conduct
13 in the first degree or of the lesser-included offense of
14 criminal sexual conduct in the second degree, then you
15 must resolve that doubt in favor of the defendant and find
16 him guilty of the lesser-included offense of criminal
17 sexual conduct in the second degree.

18 Second degree criminal sexual conduct contains all of
19 the elements of the first degree sexual conduct except the
20 circumstances of aggravation.

21 Instead, the State must prove beyond a reasonable
22 doubt that the defendant used aggravated coercion to
23 accomplish the sexual battery.

24 Aggravated coercion means that the defendant
25 threatened to use force or violence of a high and

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1 aggravated nature to overcome the victim or another person
2 if the victim reasonably believed the defendant has the
3 present ability to carry out the threat.

4 Aggravated coercion may also exist if the defendant
5 threatened to retaliate in the future by the infliction of
6 physical harm, kidnapping, or extortion under
7 circumstances of aggravation against the victim or any
8 other person.

9 If you, the jury, have a reasonable doubt as to
10 whether the defendant is guilty of criminal sexual conduct
11 in the second degree or of the lesser-included offense of
12 criminal sexual conduct in the third degree, then you must
13 resolve that doubt in favor of the defendant and find him
14 guilty of the lesser-included offense of criminal sexual
15 conduct in the third degree.

16 Third degree criminal sexual conduct includes all of
17 the elements of second degree criminal sexual conduct
18 except that instead of proving aggravated coercion, the
19 State must prove beyond a reasonable doubt that the
20 defendant used force or coercion without aggravating
21 circumstances.

22 If you find that the State has failed to prove beyond
23 a reasonable doubt that the defendant is guilty of
24 criminal sexual conduct in the third degree, you must find
25 the defendant not guilty.

1 Now, I charge you that to find existence of force or
2 coercion in this case, you must of necessity find that the
3 alleged victim did not consent to the sexual conduct, for
4 the existence of consent negates the presence of force or
5 coercion.

6 Voluntary intoxication is not an excuse for, or a
7 defense to, a crime. A person who voluntarily becomes
8 intoxicated is just as responsible for the acts committed
9 while intoxicated as when the person is not intoxicated.

10 I instruct you and emphasize that the fact the
11 defendant did not testify is not a factor to be considered
12 by you in any way in your deliberations and in your
13 consideration of the question of the guilt or of the
14 innocence of the defendant.

15 It must not be considered by you in any manner
16 whatsoever. A defendant has the constitutional right to
17 remain silent, and the assertion of this right must not be
18 considered by you in your deliberations.

19 I repeat, under your oath you are to draw no
20 conclusion whatsoever from the fact that the defendant in
21 this case did not testify.

22 The fact that this defendant did not testify should
23 not even be discussed in the jury room. The burden of
24 proof, as I have stated to you, is on the State. The
25 defendant is not required to prove his innocence. The

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1 burden of proof remains on the State to prove guilt beyond
2 a reasonable doubt.

3 And finally, your verdict cannot be based on
4 sympathy, passion, prejudice, emotion, or any other
5 consideration not in evidence in this case.

6 Now, all 12 of you must agree. The 12 original
7 jurors, and there would be no consideration of any
8 deliberations by the alternate juror with the exception
9 of, obviously, the alternate who was placed into the jury
10 panel for purposes of this proceeding. It has to be a
11 unanimous decision by all 12 of you.

12 I direct my attention to Mr. Foreperson specifically.
13 I have before me the verdict form. On the verdict form we
14 have each of the choices listed, and it -- essentially, as
15 to the charge of criminal sexual conduct first degree,
16 "We, the jury, unanimously find for the defendant guilty."

17 You would have to initial that, so you consider that
18 particular offense first because that's the indictment for
19 which was brought against the defendant, or if you do not
20 believe the defendant is guilty of that offense, then you
21 would move on to the second question indicating as to the
22 charge of criminal sexual conduct second degree and then
23 make a determination of guilt or not guilty, and then --
24 or if you find that he's not guilty, then go on to your
25 consideration for the third choice, which is as to the

1 charge of criminal sexual conduct third degree. Then
2 again, that decision must be unanimous.

3 So essentially, you must go in that order in terms of
4 your deliberations to see if it's criminal sexual conduct
5 first degree, then criminal sexual conduct second degree,
6 criminal sexual conduct third degree, and then -- or
7 finally, none of the above and indicate not guilty.

8 Now, I know that there's guilty on here and then not
9 guilty, and again, the Court cannot comment on any of the
10 evidence or have any opinion.

11 The only reason guilty is listed first is because
12 it's a "G" and not guilty is an "N". There's no
13 indication by how I put it on the form that there is any
14 preference.

15 Then, of course, you would stop your deliberations,
16 and you would have yourself sign as the presiding juror
17 and the date on there.

18 Of course, if there are any questions, you would do
19 as you've done earlier. Write them out, put them on a
20 piece of paper. I'm not in any way suggesting that you
21 would have any, but that's the proper procedure.

22 Sign and date it as the foreperson, and then the
23 Court will take it up in the proper manner with respect to
24 having it on the record and discussing it with the
25 attorneys.

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1 All right. I'm going to ask you all to step to your
2 jury room. Do not begin deliberations until I send the
3 verdict form into the room, along with all of the
4 evidence, and then you can begin your deliberations at
5 that time. So I'm going to ask you all to go there first.

6 The alternate, I'm going to ask you to step with them
7 first to deal with legal matters with the attorneys. Then
8 to the extent I'm concluded with them, then I'll ask you
9 to come back out. Go with them for now because you're not
10 going to be discussing anything.

11 (WHEREUPON, the jury left open court at approximately
12 11:00 a.m.)

13 THE COURT: Okay. Are there any exceptions to the
14 jury charges from the State or the defense?

15 MS. FENT: Yes, Your Honor. When you were reading
16 the C.S.C. in the first degree, between one and two when
17 you described the defendant used aggravated force to
18 accomplish the sexual battery and then define aggravated
19 force, when you go to number two, you had said "and" and
20 it's an "or".

21 THE COURT: Okay.

22 MS. FENT: So they could find either aggravated force
23 or she was a victim of forcible confinement and
24 kidnapping.

25 THE COURT: Thank you. And it was written on

1 there --

2 MS. FENT: Yeah.

3 THE COURT: -- and then just as -- okay.

4 Is that appropriate? Would you like them to be
5 recharged just on that one?

6 MS. FENT: I would.

7 THE COURT: Okay.

8 MS. LAFAVE: Your Honor, I think that -- so we don't
9 point out the particular two charges, I think that a
10 general instruction that they can only select one, which
11 is on the instructions on the form, I think that would
12 probably cure what Ms. Fent is talking about.

13 MS. FENT: No, because --

14 THE COURT: What she has suggested is not the C.S.C.
15 first versus C.S.C. second versus C.S.C. third. She is
16 saying within the body of the C.S.C. first, it has to be
17 the defendant use aggravated force to accomplish the
18 sexual battery or the other part, the victim submitted to
19 sexual battery.

20 MS. LAFAVE: Oh, I see. I see. I agree.

21 THE COURT: Yes.

22 All right. Bring all jurors back out, please.

23 (WHEREUPON, the jury came into open court at
24 approximately 11:05 a.m.)

25 THE BAILIFF: Your Honor, the jury is present.

1 THE COURT: Thank you.

2 Ladies and gentlemen of the jury, please be patient
3 with me, but I have to reinstruct you just on one charge
4 just to make that clear because there was a difference
5 between an "or" and an "an", and it makes a lot of
6 difference with respect to the case.

7 So on the specific charge of first degree criminal
8 sexual conduct, the defendant is charged with first degree
9 criminal sexual conduct.

10 The first element which the State must prove beyond a
11 reasonable doubt is that the defendant engaged in a sexual
12 battery with the victim.

13 A sexual battery is sexual intercourse, cunnilingus
14 fellatio, anal intercourse, or any intrusion, however
15 slight, of any part of a person's body or of any object
16 into the genital or anal openings of another person's body
17 except when the intrusion is accomplished for medically
18 recognized treatment or diagnostic purposes.

19 If you find that the State has not shown beyond a
20 reasonable doubt that a sexual battery occurred, you
21 should stop deliberating, and your verdict would have to
22 be not guilty.

23 If you find that a sexual battery did occur, you must
24 then decide whether the State has proven beyond a
25 reasonable doubt that the defendant used aggravated force

1 to accomplish the sexual battery.

2 Aggravated force means the use of physical force or
3 physical violence of a high and aggravated nature to
4 overcome the victim. This includes the threat of using a
5 deadly weapon or the victim submitted to sexual battery
6 while the victim was also the victim of forcible
7 confinement, kidnapping, robbery, extortion, burglary,
8 house breaking, or any other similar act or offense.

9 Does that take care of it with the parties?

10 MS. FENT: Yes, Your Honor.

11 THE COURT: All right. At this time, I'm going to go
12 ahead and then release the alternate juror at this point.

13 Thank you so much for your service, but you won't be
14 required for the deliberations. You can hang out for the
15 lunch that will be coming, if you'd like to do that, but
16 then get further instructions, as well, from the bailiffs
17 with respect to your service for the rest of the week.

18 Okay. Thank you all. Please go to your jury room.
19 Do not begin deliberations until we send in the verdict
20 form and the evidence.

21 And Mr. Foreperson, let me just direct one thing to
22 you. To the extent the jurors, anyone wishes a break and
23 someone has to leave the room, you have to stop
24 deliberations because all 12 of you always have to be in
25 the room so that everybody can hear what everyone else has

1 to say.

2 I'm already trying to anticipate some of the
3 questions. You will ask, can you have smoke breaks? The
4 answer is yes; can you use your cell phone, if you want to
5 take a quick break before you start deliberations, the
6 answer is yes.

7 Once lunch comes, if you would like to just stop and
8 take the time to eat without discussing the case, that's
9 fine or if you want to continue, that's fine, as well. So
10 I'm just trying to anticipate some of the questions that
11 will come out.

12 THE FOREMAN: Thank you, Your Honor.

13 THE COURT: Okay. But be all together for
14 deliberations, okay.

15 (Whereupon, the jury left the courtroom at
16 approximately 11:09 a.m.)

17 THE COURT: All right. The parties, then that will
18 conclude this case so far as this portion. Before we
19 begin with deliberations, it's been a very enjoyable case.
20 I thought you all did well on both sides. You were very
21 pleasant to work with. You were very cordial, but you
22 also fought hard for your clients in terms of the
23 objections and all the legal issues that we had to go
24 over. I appreciate that. You did really good, as well as
25 representation.

1 If you would check the exhibits, and then we will
2 send those into the jury room.

3 (Pause).

4 THE BAILIFF: Okay. Are you happy?

5 MS. LAFAVE: Thank you, Your Honor.

6 MS. FENT: Thank you.

7 THE COURT: Thank you all.

8 (WHEREUPON, the jury began their deliberations at
9 11:13 a.m.)

10 (There was a short recess).

11 THE COURT: Let me just go ahead and tell you all
12 what has happened. I have gotten a question from the
13 jurors. It says, "Could we have the boards that were
14 presented in closing statements that indicate the laws on
15 first, second, and third degree?" I kind of anticipated
16 that would come out.

17 They also said, "We also need a new notepad." Of
18 course, I can go ahead and give them that. Some judges
19 actually give jurors the jury charges for this very
20 reason. I just did not, but you know, I kind of think
21 it's my call.

22 You do have them listening to this particular charge.
23 I wouldn't suggest giving them all of the charges, but if
24 they wanted to just know those three, I just need your
25 statements with respect to how you want to handle it.

1 MS. LEE: I would think we could just recharge them
2 on it. Would that not cure it?

3 THE COURT: It would cure it. There's no doubt, but
4 I just still think that question will come back again. I
5 can always, you know, bring them out and recharge them on
6 first, second, third.

7 MS. LEE: I mean, that would be our preference.

8 MR. CATHCART: Your Honor, I don't have a problem
9 with you sending the charge back to them. That's what we
10 did last week. I think that's what they've asked for.

11 You have read those charges verbatim. It's not like
12 it's anything different. I just would ask that the "or"
13 be added to the written.

14 THE COURT: And it is on there.

15 MR. CATHCART: But I don't have a problem with that.

16 THE COURT: What is the reason you all would -- you
17 all wouldn't want them recharged?

18 MS. LEE: I think I would add undue influence back in
19 the jury room for them to have those three charges to look
20 at, but they don't have the lack of consent, the
21 credibility charge. They have that in writing, staring
22 them in the face. They might start considering that they
23 have three options, not four.

24 THE COURT: What about the earlier one that I
25 suggested about sending all of it back, too? That's an

1 option, as well. Because most of the other ones speak to
2 just your general rule of --

3 MS. LEE: Yes, ma'am. If -- if --

4 THE COURT: That's okay.

5 MS. LEE: If it's between sending the three back or
6 all of them, we would certainly request all of them. I
7 think that would more fairly address whatever questions
8 they're going to have.

9 MR. CATHCART: Well, Your Honor, the problem is with
10 that is that, I believe the case law is clear that they
11 have to agree with that. If they don't agree, then we'll
12 have to charge on the record.

13 THE COURT: Right. Because I -- the case law is
14 clear that I can give them no more than what they've asked
15 for unless you all agree.

16 MS. LEE: We would agree to send the entire charge
17 back.

18 THE COURT: I know, but they don't agree to that.
19 What I'm saying is the law says I can only give the jury
20 what they ask for, nothing more.

21 MS. LEE: Yes, Your Honor.

22 THE COURT: Unless you all agree for me to send the
23 entire part back, I believe.

24 MS. LEE: Then, Judge, we would ask you to recharge
25 on the record.

1 THE COURT: Okay. All right. Since there's not an
2 agreement on that, then they'll need to come back to be
3 recharged on those three.

4 Okay. Bring the jury.

5 (Pause).

6 Hold on.

7 MR. CATHCART: Can I wait for my counsel and
8 witnesses to show up?

9 THE COURT: Sure. Hold on. Hold on. Hold on one
10 moment, yes.

11 (Pause).

12 And you explain to her the jury wants -- Ms. Fent is
13 now in the room. They wanted the board under first,
14 second and third, and that my interpretation of the law is
15 that I can't give them anything more than what they have
16 asked.

17 You all would have to be in agreement about sending
18 the entire charge back. They either get just that
19 question, which is -- that's going to end up being the
20 same thing, essentially. It's just that I'm reading it
21 without sending it back.

22 MS. LEE: Yes, ma'am.

23 THE COURT: So you all tell me what you want to do.

24 MS. LEE: We would prefer it be read on the record.

25 THE COURT: Okay.

1 MS. LEE: Just so they will continue to have that.

2 THE COURT: All right. Jurors, please.

3 THE BAILIFF: Yes, ma'am.

4 (WHEREUPON, the jury came into open court at
5 approximately 11:35 a.m.)

6 THE COURT: Okay. Ladies and gentlemen of the jury,
7 I've been presented with a question about needing a new
8 notepad. Of course, you can have any materials that are
9 necessary for your deliberations.

10 Then the other one was about being presented the
11 boards that have the first, second, and third degree on
12 them. These boards that the attorneys make up, they only
13 summarize things, so I cannot just give you pieces and
14 parts of things.

15 I would have to actually recharge you orally all
16 together just on those particular questions that you have
17 asked me.

18 So if you would kindly just listen up again, and I
19 will only recharge you on criminal sexual conduct first,
20 second, and third degree.

21 The defendant is charged with first degree criminal
22 sexual conduct. The first element which the State must
23 prove beyond a reasonable doubt is that the defendant
24 engaged in a sexual battery with the victim.

25 A sexual battery is sexual intercourse, cunnilingus,

1 fellatio, anal intercourse, or any intrusion, how ever
2 slight, of any part of a person's body or of any object
3 into the genital or anal openings of another person's body
4 except when the intrusion is accomplished for medically
5 recognized treatment or diagnostic purposes.

6 If you find that the State has not shown beyond a
7 reasonable doubt that a sexual battery occurred, you
8 should stop deliberating, and your verdict would have to
9 be not guilty.

10 If you find that a sexual battery did occur, you must
11 then decide whether the State has proven beyond a
12 reasonable doubt that the defendant used aggravated force
13 to accomplish the sexual battery.

14 Aggravated force means the use of physical force or
15 physical violence of a high and aggravated nature to
16 overcome the victim. This includes the threat of using a
17 deadly weapon or the victim submitted to sexual battery
18 while the victim was also the victim of forcible
19 confinement, kidnapping, robbery, extortion, burglary,
20 house breaking, or any other similar act or offense.

21 Second degree criminal sexual conduct contains all of
22 the elements of first degree criminal sexual conduct
23 except the circumstances of aggravation.

24 Instead, the State must prove beyond a reasonable
25 doubt the defendant used aggravated coercion to accomplish

1 the sexual battery.

2 Aggravated coercion means that the defendant
3 threatened to use force or violence of a high and
4 aggravated nature to overcome the victim or another person
5 if the victim reasonably believed the defendant had the
6 present ability to carry out the threat.

7 Aggravated coercion may also exist if the defendant
8 threatened to retaliate in the future by the infliction of
9 physical harm, kidnapping, or extortion under
10 circumstances of aggravation against the victim or any
11 other person.

12 Third degree criminal sexual conduct includes all of
13 the elements of second degree criminal sexual conduct
14 except that instead of proving aggravated coercion, the
15 State must prove beyond a reasonable doubt that the
16 defendant used force or coercion without aggravating
17 circumstances.

18 If you find that the State has failed to prove beyond
19 a reasonable doubt that the defendant is guilty of
20 criminal sexual conduct in the third degree, you must find
21 the defendant not guilty.

22 All right. Anything further from the State or the
23 defense?

24 MR. CATHCART: Nothing further from the State, Your
25 Honor.

1 MS. LEE: No.

2 THE COURT: Thank you all. You can continue with
3 your deliberations.

4 (WHEREUPON, the jury left open court at approximately
5 11:40 a.m.)

6 (There was a brief recess).

7 (The jury sent a question).

8 THE COURT: Ms. LaFave, if you can approach.

9 (Whereupon, there was a bench conference.)

10 THE COURT: I received a note from the foreperson
11 saying, "We need to hear the description of the charges
12 for the degrees one more time slowly, or can we see the
13 document from the judge with the charges, please?"

14 All right. Of course, the choices would be, in my
15 opinion, to let them have what they asked for, which is
16 the charges, and then make sure that specifically the word
17 "or" is inserted between the choices under criminal sexual
18 conduct first degree.

19 The other option being to do as they've asked, to
20 come back and have them read slowly, or they come back and
21 read them with a notepad just on that issue. So let me
22 hear your request or desires.

23 MS. LEE: What's the State's position?

24 MS. FENT: The State would like the charge sent back
25 to them. I think having them take notes, there's a lot of

1 information to get down. Having them take the C.S.C.
2 first, second, and third out of the Court's complete
3 charge and giving them those elements of first, second,
4 and third is fine.

5 MS. LEE: We would concur, Your Honor. We would
6 just, again, for the record request that the entire charge
7 be sent back.

8 THE COURT: Okay. And the Court would respectfully
9 deny that request just simply because I need to send back
10 when they're asking for.

11 MS. LEE: Yes.

12 THE COURT: But I understand why they want that.
13 Okay. I am only sending back first degree criminal sexual
14 conduct, which were pages 17 and 18 of the charge that
15 went in; page 20, second degree sexual conduct; and page
16 22, third degree sexual conduct.

17 I have made sure that I have revised my document to
18 make it clear that the word "or" comes right before the
19 number two.

20 MS. LEE: Yes, ma'am.

21 THE COURT: Okay.

22 (WHEREUPON, Court's Exhibits Nos. 7, 8 were marked
23 for identification only.)

24 (Whereupon, that portion of the charge was sent to
25 the jury).

1 THE COURT: Thank you. Be at ease.

2 (The jury continued deliberations. Other matters not
3 related to this case were heard.)

4 THE COURT: All right. For the matter of State v.
5 Gilmore, Mr. Bailiff, it's my understanding the jurors
6 have reached a verdict.

7

8 THE BAILIFF: Yes, ma'am.

9 THE COURT: I would request that you bring the jurors
10 in.

11 THE BAILIFF: Yes, ma'am.

12 (WHEREUPON, the jury returned to open court with the
13 verdict at 2:40 p.m.)

14 THE BAILIFF: Your Honor, the jury is present.

15 THE COURT: Okay. Mr. Foreperson, it's my
16 understanding that you and your fellow jurors have reached
17 a verdict.

18 THE FOREMAN: Yes, Your Honor, we have.

19 THE COURT: Okay. If you would please hand your
20 verdict form to the bailiff who shall hand it to the
21 clerk.

22 (The witness complies.)

23 THE COURT: Thank you.

24 Okay. Madam clerk, if you would publish the verdict.

25 THE CLERK: Indictment number 2006-GS-40-2809, the

1 State vs. Willie Gilmore, as to the charge of criminal
2 sexual conduct, first degree, we the jury unanimously find
3 the defendant guilty, signed by the foreman, Tamerat
4 Worku, on June 19th, 2008.

5 MS. LEE: Request to poll the jury, Your Honor.

6 THE COURT: Okay.

7 THE CLERK: Do you want me to call name and number or
8 just juror number?

9 THE COURT: Both.

10 THE CLERK: Both.

11 When I -- I'm going to ask each of you two questions.
12 When I call your name and juror number, if you would just
13 respond to my two questions.

14 THE CLERK: Tamerat Worku, was this your verdict?

15 JUROR: Yes, it was.

16 THE CLERK: Is it still your verdict?

17 JUROR: Yes, it is.

18 THE CLERK: Eileen Welsh, juror 225, was this your
19 verdict?

20 JUROR: Yes, it was.

21 THE CLERK: Is it still your verdict?

22 JUROR: Yes, it is.

23 THE CLERK: Tracy Etu, number 62, was this your
24 verdict?

25 JUROR: Yes.

1 THE CLERK: Is it still your verdict?

2 JUROR: Yes, it is.

3 THE CLERK: Kellie Balko, number 9, was this your
4 verdict?

5 JUROR: Yes, it was.

6 THE CLERK: Is this still your verdict?

7 JUROR: Yes, it is.

8 THE CLERK: Wilbur Hosely, number 112, was this your
9 verdict?

10 JUROR: Yes, it was.

11 THE CLERK: Is it still your verdict?

12 JUROR: Yes, it is.

13 THE CLERK: John McGee, number 149, was this your
14 verdict?

15 JUROR: Yes.

16 THE CLERK: Is this still your verdict?

17 JUROR: Yes.

18 THE CLERK: Casilda Murphy, number 158, was this your
19 verdict?

20 JUROR: Yes, it was.

21 THE CLERK: Is it still your verdict?

22 JUROR: Yes.

23 THE CLERK: Anthony Garmon, number 76, was this your
24 verdict?

25 JUROR: Yes.

1 THE CLERK: Is this still your verdict?

2 JUROR: Yes.

3 THE CLERK: Frederick Gambrell, number 75, was this
4 your verdict?

5 JUROR: Yes.

6 THE CLERK: Is it still your verdict?

7 JUROR: Yes.

8 THE CLERK: Ayanna Whitesides, number 226, was this
9 your verdict?

10 JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 JUROR: Yes.

13 THE CLERK: Courtney Hansberry, number 102, was this
14 your verdict?

15 JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 JUROR: Yes.

18 THE CLERK: Cherie Snyder, number 199, was this your
19 verdict?

20 JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 JUROR: Yes.

23 THE CLERK: The jury has been polled, Your Honor.

24 THE COURT: Okay. Anything further from counsel at
25 this time?

1 MS. LEE: Your Honor, at this time I would make a
2 motion for a new trial, and I would also renew any and all
3 objections and motions that were previously made and
4 denied.

5 THE COURT: Okay. The State, please?

6 MS. FENT: Your Honor, the evidence was presented.
7 The jury considered all of that evidence, and the Court
8 heard all of the objections, rulings during the trial, and
9 we stand on our arguments for all of those.

10 THE COURT: Okay. The Court, as well as the jurors,
11 obviously, were here throughout the proceedings. This was
12 a very difficult task, in my opinion for the jurors, but
13 the State has amply put forth the sufficient evidence on
14 the grounds of the criminal sexual conduct, first degree,
15 and the jury's verdict, in my opinion, is supported by the
16 evidence that we have here.

17 So that motion is respectfully denied, and I will
18 stand by my prior rulings, which I did read the case law
19 and took time away from the jury to actually go over in
20 detail the Court's reasoning with respect to each of those
21 decisions.

22 To be clear, because this matter is quite serious, as
23 is all matters, but this one particularly, as counsel are
24 aware. So the Court would stand by its ruling and uphold
25 the jury's verdict.

1 Ladies and gentlemen, thank you all for your time.
2 As I indicated to you at the beginning of the trial, we
3 are always appreciative of your service as jurors because
4 it's one of the highest callings to public service you can
5 have.

6 We know that what you have done has been a very
7 difficult decision. I feel that you have been extremely
8 attentive throughout the trial, and you gave all the
9 parties the benefit of the doubt by taking the time to
10 listen carefully to the evidence, really give each side
11 the opportunity to be heard on direct examination and
12 cross-examination.

13 By your questions, it tells me that you were very
14 deliberative in your process by having me to reread
15 instructions and then still coming back even a couple of
16 hours later making sure that you didn't come to a quick
17 decision, but that you still understood what your charge
18 was with respect to the law and your role as jurors to
19 apply those facts to the law.

20 No one can ask you to do anything more than what you
21 have done. You listened carefully, and you came to your
22 decisions without any prompting or any issues with respect
23 to anyone, so thank you so much for that service.

24 This will conclude your jury service for the week.
25 In that regard, I would also let you know that there are

1 times, as you saw yesterday, that no one knows what's in
2 the minds of a jury. No one is in that room, and anybody
3 would love to be a fly on the wall sometimes.

4 You may get a call after the case or be approached,
5 and it's quite appropriate because you have already come
6 to your verdict. It is up to you as to whether or not you
7 wish to respond.

8 Most people will just want to know what were you
9 thinking, what was effective or not effective, things of
10 that nature, just to be better prepared and equipped for
11 any other trials, but that's quite appropriate, but again,
12 that's your move in terms of your response.

13 I don't expect any of these lawyers -- they will be
14 very professional, or anyone acting on their behalf, in
15 that regard.

16 If you find that anyone is harassing you, just call
17 our Clerk of Court's office, and they'll report that
18 information to the Court, and we'll deal with that
19 appropriately.

20 I just wanted you to know that's not improper if
21 anyone calls you in that regard. Thank you for your
22 service. You can step to your jury room, or if any of you
23 wish to stay around with respect to waiting on the
24 sentencing, you're free to do that, as well, but you're
25 also free to leave.

1 Thank you so much for your service.

2 THE CLERK: They can turn their tags in and get
3 excuses downstairs.

4 (WHEREUPON, the jury left open court at approximately
5 2:47 p.m.)

6 THE COURT: Okay. Let's go ahead and proceed in this
7 regard with the sentencing.

8 SENTENCING:

9 THE COURT: Actually, I need to wait on the clerk to
10 come back. I apologize. I'll need the paperwork.

11 (Pause).

12 (WHEREUPON, Court's Exhibit No. 9 was marked for
13 identification only.)

14 THE COURT: We're ready to the proceed with the
15 sentencing in the State vs. Willie Gilmore.

16 MS. FENT: Your Honor, I will start with the
17 defendant's prior criminal history: Starting in 1968, he
18 has a disorderly conduct; in 1976, possession of
19 marijuana; 1987, a shoplifting; 1988, shoplifting; 1991,
20 shoplifting; 1999, shoplifting; 2000, shoplifting; 2002, a
21 burglary in the second degree.

22 It was then in January of 2004, the year that this
23 occurred to Ms. McCullough, January of 2004, that the
24 defendant was released from the Department of Corrections.
25 So it was only a few months after being released from the

1 Department of Corrections that he sexually assaulted
2 Ms. Rosa McCullough.

3 While the case has been pending, he's picked up two
4 criminal domestic violence charges and now has a pending
5 C.D.V. and a pending burglary with my office.

6 As the Court has been previously aware, the defendant
7 was convicted of a voluntary manslaughter in 1969. I have
8 marked the certified conviction as Court's exhibit number
9 nine and would like to make it a part of the record. A
10 copy of the certified conviction was provided to defense
11 counsel previously.

12 The voluntary manslaughter, where he shot a young
13 woman in the head, is a most serious conviction. Now,
14 upon this conviction, it being a second most serious
15 conviction, it is a mandatory life without parole
16 sentence.

17 As we also previously put on the record, the
18 defendant was served with notice that we would be seeking
19 that life without the possibility of parole sentence today
20 under that mandatory statute.

21 THE COURT: Thank you.

22 MS. FENT: Ms. McCullough does not wish to address
23 the Court directly but has asked that I speak on her
24 behalf at the appropriate time.

25 THE COURT: Okay. You may do so now.

1 MS. FENT: Okay. First of all, I want to say thank
2 you very much to Ms. McCullough for having the -- just
3 extreme patience while this case has been pending for four
4 years, not only with, you know, initially having, you
5 know, the charges come forward, but it has been my case
6 the entire time.

7 She has, you know, kept in contact with me throughout
8 the entire four years with just unbelievable patience in
9 terms of when this case was going to trial and that, you
10 know, she was here for me.

11 It was just in contacting her about this actual --
12 this trial date this week that her son told me that she
13 had just read a passage from the Bible saying do not be in
14 a rush to go to court and then I called with the court
15 date, so she has just had extreme patience.

16 She wants to say a thank you to the jury for their
17 deliberations and their thoughtfulness in this case, and
18 this is Ms. McCullough's son, Brian, who would also like
19 to address the Court.

20 THE COURT: All right.

21 VICTIM'S SON: I just want to thank you, Judge, for
22 being a great judge. I want to thank the jury personally
23 for giving my mother justice, not only for her but a lot
24 of other women who are afraid to speak up, as for several
25 things, as they read the previous charges, you guys did

1 the right thing. Thank you.

2 MS. FENT: That's all, Your Honor.

3 THE COURT: Okay. Thank you.

4 On behalf of the defense?

5 MS. LEE: Judge, I understand the situation. There's
6 not much to say. It's my understanding that all ex post
7 facto issues have been resolved with convictions this old
8 which are used to enhance to a life without parole
9 sentence.

10 Obviously, it was a 1969 conviction that enhances
11 this. It was a voluntary manslaughter. From reading the
12 grand jury inquest, such that it is from the '60s, I
13 understand it to have been a situation where a bunch of
14 young people, ages 19 to about 22 were playing Russian
15 roulette, and I think that would certainly explain a
16 six-year sentence for something that is, as Ms. Fent
17 describes, a young woman being shot between the eyes.

18 Judge, it is that 1967 conviction resulting in a
19 six-year sentence that leads us to the life without parole
20 sentence today.

21 Ms. LaFave?

22 MS. LAFAVE: Your Honor, as Ms. Lee said, there is
23 nothing that really needs to be said at this point in
24 time.

25 I will say that it has been my pleasure to represent

1 Mr. Gilmore. He has been one of the most courteous and
2 thoughtful clients I have ever encountered in my time at
3 the Public Defender's office. I know that Ms. Lee feels
4 the same way.

5 Your Honor, I would like to say that Mary, who is
6 Mr. Gilmore's cousin, has been here throughout the course
7 of this trial, and she is without words to comment.

8 She loves her cousin and is having a hard time
9 understanding the implications of all of this, but she did
10 want Your Honor to know that she has been here to support
11 him this entire time.

12 Your Honor, that's all we have.

13 THE COURT: Okay. All right. And as I indicated
14 earlier, the parties did an outstanding job on behalf of
15 each other, and as to the defense, I thought your
16 attorneys did an outstanding job.

17 They did not miss any issues, in my opinion, with
18 respect to trying the case and fought zealously. The
19 Court stood by its decisions because I was reading the
20 case law along the way with respect to making my rulings
21 in the case.

22 Of course, I can have no comment on the case. I can
23 have no opinion. I have no opinion about the case, but
24 the sentencing, as they've indicated based on your prior
25 record, our statute requires under section 17-25-45, which

1 is entitled "life sentence for a person convicted for
2 certain crimes notwithstanding any other provision of law
3 except in cases in which the death penalty is imposed upon
4 a conviction for a most serious offense as defined by this
5 section, a person must be sentenced to a term of
6 imprisonment for life without the possibility of parole if
7 that person has one or more prior convictions for a most
8 serious offense, a federal or out-of-state conviction for
9 an offense that would be classified as a most serious
10 offense under this section or any combination of the
11 offenses listed as indicated above."

12 The State has presented me with the offense for the
13 voluntary manslaughter which would carry the most serious
14 category, and for that reason, under indictment number
15 06-GS-40-2809, for the matter of State of South Carolina,
16 County of Richland, State vs. Willie Gilmore, for the
17 charge and indictment of criminal sexual conduct, first
18 degree, the Court hereby sentences you to the State
19 Department of Corrections under the statute of 17-25-40 to
20 life without the possibility of parole.

21 MR. CATHCART: Thank you, Your Honor.

22 MS. FENT: Thank you, Your Honor.

23 THE VICTIM: Thank you, Your Honor.

24

25 (Whereupon, the proceedings were concluded.)

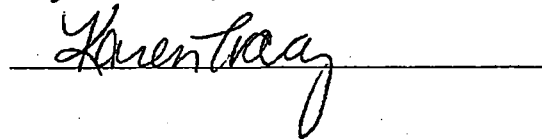
CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Karen Tracy, Official Court Reporter for the 5th
Judicial Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate and partial
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of General Sessions for Richland
County, South Carolina, on the 17 - 19 day of June, 2008.

August 18th, 2008



Karen Tracy, Court Reporter

My Commission Expires: 04/01/14

STATE OF SOUTH CAROLINA

County of RichlandWillie Albert Gilmore # 281735

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2012 CP4000599
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2012 JAN 23 PM 2:29
JEANNETTE W. MCBRIDE
C.C.P. & G.S.**INSTRUCTIONS B READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Corr. Inst. 386 Redemption Way
McCormick, SC 29844
2. Name and location of Court which imposed sentence Court of General
Sessions / Richland Co
3. Name(s) of co-defendant(s) (if any) N
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2006 GS-40-2809 / CSC

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 19, 2008 / LOWP
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? YES
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed / Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Heard May 3, 2011 - Filed November 2, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Op. # 4903
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) N
- (c) A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of trial counsel
- (b) Ineffective Assistance of Appellate Counsel
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See attached sheet
- (b) See attached sheet
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? None

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____

- iv. _____
- (c) the disposition thereof:
- i. Affirmed / Denied
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. Heard May 3, 2011 - Filed November 2, 2011
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Op # 4903
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. N
- ii. |
- iii. A

- (b) the proceedings in which each ground was raised:

- i. N
- ii. |
- iii. A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) See 10 (a) Applicant first time presenting grounds
 (b) See 10 (b) " " " " "
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Megan Lee Assistant Public Defender -
Richland Co. Bar.
 ii. Breen R. Stevens - Appellate Defender
1330 Lady St. Suit 401 Columbia, SC 29201-3332
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial and Sentence.
 ii. Appeal / oral argument
 iii. _____

19. State clearly the relief you seek in filing this application:

New trial and any other relief that I may be entitled to

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, Willie A. Gilmore, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Willie A. Gilmore

SWORN to and subscribed before me this 19
day of Dec, 2011.

Jay L Young (L.S.)
Notary Public

My Commission Expires: 10/11 2021

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Willie H. Gilmore, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Willie H. Gilmore
Applicant

SWORN or affirmed to and subscribed before me this
19 day of Dec., 2011.

Joyle L. Young
Notary Public

My Commission Expires: 10-11-2021

RICHLAND COUNTY
FILED
2012 JAN 23 PM 2:29
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

GILMORE Willie A -
00281735,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012CP400599

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 23, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Megan Lee, Esquire. On June 19, 2008, following a trial, the Applicant was sentenced by The Honorable J. Michelle Childs. The

1

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2012CP400599&CourtType=G&CaseType=Civil&CourtAgency=40002>

GILMORE Willie A - State's Return - (2012CP400599)

Page 1 of 7

Applicant had been indicted and/or convicted of the following: CSC 1st Degree - (2006-GS-40-2809).²

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

Direct Appeal

The Applicant appealed his conviction and/or sentence. The appeal was unsuccessful and the Remittitur was dated November 18, 2011.

The application for post conviction relief (PCR) was filed January 23, 2012. In it, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel.
 - a. Failure to attack Grand Jury empanelment for errors.
 - b. Failure to attach indictments where the Grand Jury convened on August 16, 2006, and true billed on August 17, 2006. Although, on the very same charge - another indictment - where the Grand Jury convened on August 16, 2006, but this indictment was not true billed until February 16, 2007, although not the same elements of the first indictment.

² <https://sword.doc.state.sc.us/scdo-public/inmateDetails.do?id=+00281735>

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

- c. Counsel failed to investigate or subpoena witnesses on my behalf to attach Brian and Rose McCullough, Alberta Goins and "Dooley" Bruce Gene Hunter character or credibility.

2. Ineffective Assistance of Appellate Counsel.

- a. Breen R. Stevens...argu[ed] issues that were not preserved for appeal review even argued same issue on oral argument.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

IV.

Respondent submits the allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1)

deficient; and (2) that there was prejudice from the appellate counsel's deficiency. *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. *Id.* Appellate counsel has a professional duty to choose among potential issues according to their merit. *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. *Griffin v. Aiken*, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.*

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the

record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test in either allegation. However, the two allegations of ineffective assistance of counsel probably raise questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve these issues. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issues of ineffective assistance of trial and appellate counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, TBT, Esquire regarding when the hearing should be set.⁴

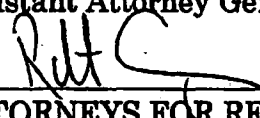
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
rcorney@scag.gov

January 25, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>
GILMORE Willie A - State's Return - (2012CP400599)
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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

GILMORE Willie A -
00281735,

Applicant,

v.

State of South Carolina,

Respondent.

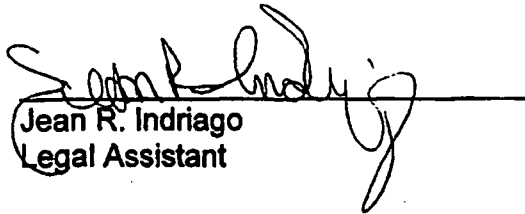
IN THE COURT OF COMMON PLEAS

2012CP400599

CERTIFICATE OF SERVICE

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

**GILMORE Willie A, 281735 – McCormick Correctional Institution, 386
Redemption Way, McCormick, SC 29899**

DATED January 27, 2012.

 Jean R. Indriago
 Legal Assistant

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
3) 2012-CP-40-00599

4 Willie Gilmore,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 State of South Carolina,)
8 Defendant.)

9 September 13, 2012
10 Columbia, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE J. ERNEST KINARD, JR., JUDGE.
15

16
17 A P P E A R A N C E S:

18 MARK E. SCHNEE, ESQ.
19 Attorney for the Plaintiff

20 ROBERT D. CORNEY, ASSISTANT ATTORNEY GENERAL
21 Attorney for the Defendant

22
23
24 DEBORAH M. McCURDY, RPR
25 Official Court Reporter

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SEPTEMBER 13, 2012

MR. CORNEY: If I may approach with a packet for the last PCR we will do today, Willie Gilmore.

THE COURT: All right.

MR. CORNEY: May it please the Court, Your Honor?

THE COURT: Okay.

MR. CORNEY: Your Honor, this is a PCR of Willie Gilmore. It is Docket Number 2012-CP-40-0599.

Mr. Gilmore was true-bill indicted at the August 2006 term of the Richland County Grand Jury for criminal sexual conduct in the first degree.

That indictment was amended February 16th, 2007, on that charge, Your Honor. He was represented by Megan Lee and Mary LaFave on the charge.

He proceeded to jury trial June 16th, 2008, before Judge Childs, and after a three-day trial on June 19th, 2008, was convicted as indicted and sentenced to life without parole.

And a notice of appeal was filed and perfected and handled by Appellate Defender Ray Stevens.

The Court of Appeals dismissed the appeal. And I believe it was -- the published opinion that

1 was issued from that, Your Honor --

2 THE COURT: Yes, I just read the 11-page
3 opinion.

4 MR. CORNEY: Okay. Perfect. That was issued
5 November 2nd, 2011, by the South Carolina Court of
6 Appeals.

7 He filed a timely PCR application thereafter,
8 and is represented today by Mr. Mark Schnee.

9 THE COURT: Okay.

10 MR. SCHNEE: May it please the Court, Your
11 Honor? I call Willie Gilmore to the stand.

12 THE COURT: Mr. Gilmore, come around.

13 (Witness complies.)

14 THE BAILIFF: Place your left hand on the
15 Bible, and face the judge.

16 (Witness complies.)

17 THE COURT: Mr. Gilmore?

18 THE WITNESS: Yes, sir.

19 THE COURT: Do you swear or affirm you are
20 going to truthfully testify?

21 THE WITNESS: Yes, sir.

22 THE COURT: Then take the stand.

23 (Witness complies.)

24 WILLIE GILMORE,
25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MR. SCHNEE:

3 Q Mr. Gilmore, how are you doing this morning?

4 A Good. Good.

5 Q Before we get into the actual trial itself, the
6 most important question is, did you rape Rosa on
7 that day?

8 A No.

9 Q During the trial there was a point when the State
10 finished their case and you had the option of
11 testifying.

12 Explain a little bit about what happened with
13 that. Why didn't you testify?

14 A I had told Megan Lee I wanted to testify, but she
15 told me not to testify. She was more concerned
16 with the judge ruling on my second degree burglary
17 conviction.

18 Q Okay. And that ruling was that if you testified
19 they could use it to impeach your credibility?

20 A Right.

21 Q Okay. But you told her you wanted to testify?

22 A Yes, sir.

23 Q Okay. Did she tell you that it was your decision?

24 A No, she didn't.

25 Q Okay. Had you testified, I'd like to go through

WILLIE GILMORE -- DIRECT BY MR. SCHNEE

6

1 exactly what you would have said about it.

2 Tell me a little about that day when you first
3 saw Rosa.

4 THE COURT: I haven't of course read the
5 transcript. The judge didn't tell him -- go over
6 all that with him?

7 MR. SCHNEE: No, sir.

8 MR. CORNEY: Your Honor, it is not on the
9 record.

10 Your Honor, at this point I think I am going
11 to object to that testimony. I think that the case
12 law holds that if he doesn't testify at trial, no
13 prejudice can be proven. I don't know if his
14 testimony here today would prove the prejudice
15 prong. I think that --

16 THE COURT: What he would have testified to I
17 can't really consider.

18 MR. CORNEY: Absolutely.

19 THE COURT: I can consider whether he
20 knowingly waived it or not, that's all.

21 MR. CORNEY: Whether he was denied --
22 absolutely. So I think any testimony that he would
23 have testified to is irrelevant to what is now
24 before the Court.

25 MR. SCHNEE: Judge, out of the abundance of

1 caution, I want to proffer the testimony he would
2 have put up just in the sense of to show exactly
3 how --

4 THE COURT: You can proffer it, but it is not
5 going to be part of any ruling that I make, you
6 know.

7 MR. SCHNEE: Well, I understand that.

8 THE COURT: All right.

9 BY MR.. SCHNEE:

10 Q What happened when you saw Rosa that day? Explain
11 that.

12 A I came in my -- I wasn't at home the -- I wasn't at
13 home the day Rosa came to my house.

14 Q Okay.

15 A But I had a friend girl already there.

16 Once I came back to the house, Rosa was
17 sitting up in my house.

18 Q Okay. Do you know how long she was there before
19 you got there?

20 A Not really.

21 Q Okay. When you got there and started talking to
22 her, what happened?

23 A She sat there and she wouldn't leave. Just --
24 just -- well, see, I -- like I say, I already had a
25 friend girl in there. And the three of us sat down

WILLIE GILMORE -- DIRECT BY MR. SCHNEE

8

1 and we was drinking because I had went to the store
2 and I bought a half a pint of gin and drunk a
3 little gin.

4 Q Okay. Continue.

5 A And I shared some with Rosa. And she just sat
6 around a while there. And then finally the other
7 girl left. Rosa just sat there.

8 Q What happened after that?

9 A I kind of like got to look. It been a long time.

10 MR. CORNEY: Your Honor, if I could just -- I
11 don't know what he is reading off of up there. I
12 don't know if that is something that -- I don't
13 know if he is refreshing his memory from it, if he
14 is reading off it, I don't know if it is
15 handwritten notes or something else prepared before
16 trial. If that is something we can just, I guess,
17 ask him about. I don't know if he is looking at it
18 or reading off of it.

19 THE COURT: Just ask him what he is doing.

20 BY MR. SCHNEE:

21 Q Are you reading off of notes that you took in your
22 hands right now?

23 A Yeah, some of it.

24 Q Okay. When did you write all that down?

25 A Well, this is something right here I never did -- I

1 just wrote this here yesterday. But I got some
2 issues. I got where my lawyer was ineffective at,
3 but --

4 Q No, I understand. We're talking about just the
5 testimony itself. Are you looking at notes from
6 what happened back then?

7 A Not really, huh-uh.

8 Q Okay.

9 MR. CORNEY: Your Honor, and just to make the
10 record clear, and I'm sorry to interrupt you, just
11 to make the record clear, I just want to make sure
12 he is not reading off of it. He can testify from
13 memory. If he wants to look down to refresh his
14 memory on certain --

15 A No, I'm not reading off of nothing.

16 MR. CORNEY: Thank you, Your Honor. I
17 apologize, I just wanted to make the record clear.

18 BY MR. SCHNEE:

19 Q All right. When you and Rosa were alone that day,
20 after your other person left, what happened between
21 you and Rosa?

22 A She said that -- we were sitting down in my living
23 room, and she said that her foot was hurting, and
24 asked me to rub her foot.

25 Q Okay.

WILLIE GILMORE -- DIRECT BY MR. SCHNEE

10

1 A I gave her a foot rub. Then we went to the store.
2 She gave me some money to go to the store to get
3 some gin. Went to the store. Came back. We
4 drunk. We sat down and talked. She asked me to
5 rub her feet. I rubbed her feet.

6 She put her foot up in my lap. And she took
7 her foot and kept playing with my private parts,
8 you know.

9 So the first thing -- so she said, if we going
10 to do something, you might as well come on and do
11 it, she said, because it feel like my period might
12 be coming on anytime.

13 Well, I wasn't even interested in it, because
14 she had done been gone from my house. We was
15 common law husband and wife. And she had left my
16 house. And she had been gone for a week.

17 But that wasn't the first time that she had
18 ran off. I gave her a chance the first time, but
19 then she ran off a second time. The first time I
20 told her next time she do it she couldn't stay in
21 my house no more. But the second time when she ran
22 off and came back, she came back without calling me
23 and saying that she was coming to my house.

24 But once I had gone to the liquor -- now,
25 where the abrasion come from, when I left and went

1 to the store and came back, my cell phone wasn't
2 where it was supposed to be at. Well, she had done
3 gone through my cell phone and stuff, you know.

4 So --

5 Q Okay. How long did she stay after that point in
6 your house?

7 A About three or four hours.

8 Q Okay. At some point did you ask her to leave?
9 How -- why did she leave the house at any point?

10 A I --

11 THE COURT: Now, he is still -- you can't even
12 ask him anything. He wants to say what he would
13 have said. You can't lead him. You can't do
14 anything. This is just proffer.

15 MR. SCHNEE: Okay. Yes, sir.

16 THE COURT: If you want to testify, you can
17 probably do a better job than him, but you can't do
18 it.

19 A Okay. So she stayed to my house about four or five
20 hours. And we had a couple more drinks. But,
21 anyway -- oh, at about 6:00 o'clock in the evening
22 I had told her, I said, Rosa, you got to leave.

23 At this time she walked out, went down the
24 street, called the police and told the police I had
25 raped her.

WILLIE GILMORE -- DIRECT BY MR. SCHNEE

12

1 Q Why did you tell her she had to leave?

2 A I had told her the first time she wasn't going to
3 keep running in and out my house. So --

4 Q Did the police talk to you that day?

5 A Yes, sir. They came by, I think it was like two or
6 three car loads came by. And they came to the
7 door. And I went -- I met them on the porch.

8 And they asked me was I Skip Gilmore. That's
9 what she called me.

10 I said, yeah. And I said, what's the problem?

11 They said, Rosa called us and said you raped
12 her. And they said, we going to take her to the
13 emergency room, and if we find your semen, we were
14 going to have to come back and arrest you.

15 Well, she went to the emergency room -- well,
16 they took her to the emergency room. And I got the
17 doctor's examination over there. But -- if you
18 don't mind, can I see that?

19 Q We can't present that evidence.

20 A Okay. But, anyway, they never came back to my
21 house, period, for about -- I know -- as a matter
22 of fact, while I was staying there, they never came
23 back to my house, period.

24 Q Okay. Did the police ever ask to search your
25 house?

1 A Never did.

2 THE COURT: All right. Now, you asked for
3 permission to proffer what he would testify to, and
4 now you are trying to put him up there and ask him
5 the whole defense that he might have.

6 He can say what he would testify to, period.
7 You proffered it.

8 MR. SCHNEE: Yes, sir. That was the last
9 question I had on that issue.

10 THE COURT: All right.

11 BY MR. SCHNEE:

12 Q After the judge ruled that you -- that the burglary
13 conviction was going to be used against you, did
14 you have any discussions with Ms. Lee or Ms. LaFave
15 about your testifying?

16 A Say that again?

17 Q After the judge finally ruled -- I know there are
18 multiple spots in the transcript they were arguing
19 about the burglary conviction -- she finally ruled.
20 Did you -- was there any point after that that you
21 talked with Ms. Lee or Ms. LaFave about testifying?

22 A No.

23 Q When did Ms. Lee tell you you shouldn't testify?

24 A At trial. When my trial was started. It had
25 already started.

WILLIE GILMORE -- DIRECT BY MR. SCHNEE

14

1 Q Okay. Was it the first day? Was it -- do you
2 remember when?

3 A During the time I was getting ready to be tried.
4 It was the last day. I had like a three- or
5 four-day trial, and it was like on the third or
6 fourth day.

7 Q Okay. Did she tell you why you couldn't testify?

8 A Yes. She was -- it was about -- I had a second
9 degree burglary in 2002. And she said I could be
10 impeached with the prior -- with the prior second
11 degree burglary conviction if I was to testify.

12 Q Okay. Did she ask you specifically if you wanted
13 to testify?

14 A No, she didn't.

15 Q Did she tell you it is your decision and your
16 decision alone?

17 A No, sir.

18 Q Other than the issues of that burglary conviction,
19 your not testifying, what other issues do you have
20 that you think Ms. Lee did not do properly?

21 A I'd like to make that -- say that again?

22 THE COURT: He can't testify for you. He
23 asked you, what do you think she didn't do that she
24 should have done? That is a pretty simple
25 question.

- 1 A Oh, she should have allowed -- well, she should
2 have informed me that I needed to testify.
- 3 Q Other than that, what other issues do you want to
4 raise to this Court for PCR?
- 5 A I had the lesser included offense.
- 6 Q Okay, those are legal issues --
- 7 A She never --
- 8 Q -- that were raised -- that the Court of Appeals
9 ruled on. We're talking about legal issues. We
10 are talking about factual things or strategy things
11 that you disagree with with Megan Lee.
- 12 A I disagree with the fact that she didn't let me
13 testify, period, because I wanted to testify. If I
14 had knew that I was facing --
- 15 Q Mr. Gilmore, other than that -- other than that
16 issue -- we've covered that issue -- are there any
17 other issues you wish to raise about ineffective
18 assistance of counsel, of trial counsel, to this
19 Court right now?
- 20 A I'm still ain't understanding. I need to get some
21 understanding.
- 22 Q We've discussed the lack of testimony. What other
23 issues do you have with the representation of
24 Ms. Lee or Ms. LaFave?
- 25 A Right now?

WILLIE GILMORE -- CROSS BY MR. CORNEY

16

1 Q Yes? In terms of ineffective assistance of
2 counsel?

3 A Oh, she didn't -- well, the case with Bruce Gene
4 Hunter, that we never had -- I never knew he
5 existed.

6 Q Okay.

7 A My prior burglary conviction and right to testify
8 argument. I got ineffective assistance of counsel
9 and -- ineffective assistance of counsel. Bruce
10 Gene Hunter.

11 Q Okay. Ms. Lee didn't tell you about Mr. Hunter's
12 potential testimony?

13 A Not until the last minute. She didn't know.

14 Q She didn't know about it either?

15 A Huh-uh.

16 Q Okay.

17 MR. SCHNEE: Judge, I think that is all the
18 questions I have.

19 THE COURT: Okay.

20 CROSS-EXAMINATION

21 BY MR. CORNEY:

22 Q Mr. Gilmore, you also had a shoplifting charge that
23 was discussed at trial as coming out for
24 impeachment purposes?

25 A Yes.

1 Q So it wasn't just a burglary second, it was a
2 shoplifting as well that Ms. Lee was concerned
3 about if you testified?

4 A No, it was just -- just the burglary conviction.

5 MR. CORNEY: That's all the questions I have
6 at this point, Your Honor.

7 THE COURT: You can step down.

8 (Witness steps down.)

9 MR. SCHNEE: May it please the Court, Your
10 Honor? I call Mary LaFave to the stand.

11 THE COURT: All right.

12 (Witness approaches.)

13 THE BAILIFF: Place your left hand on the
14 Bible, and face the judge.

15 (Witness complies.)

16 THE COURT: Do you swear or affirm you are
17 going to truthfully testify?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: Take the stand.

20 THE WITNESS: Thank you.

21 (Witness complies.)

22 MARY D. LAFAVE, ESQ.,
23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SCHNEE: