

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
L. Casey Manning, Circuit Court Judge

RECEIVED

SEP 19 2012

S.C. Supreme Court

BOBBY SHEY RATHBURN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No 2011-199414

A P P E N D I X

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VOLUME ONE
PAGES 1-500

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND

2005-GS-40-2997

2005-GS-40-2998

2005-GS-40-2999

2005-GS-40-3000

THE STATE OF SOUTH CAROLINA :

-VS- :

TRANSCRIPT OF RECORD

BOBBY SHEY RATHBURN :

APRIL 2 - 4, 2007

COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. FEW, JUDGE, AND JURY.

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

MARGARET FENT, ESQUIRE
VANESSA SHIPLEY, ESQUIRE
TODD WAGGONER, ESQUIRE
ATTORNEYS FOR THE STATE

STACY OWINGS, ESQUIRE
DANIELLE PAYNE, ESQUIRE
DOUGLAS STRICKLER, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DAPHNE D. HELMS

CIRCUIT COURT REPORTER

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County: Rockland
 Date: 4-2-07

VOIR DIRE

Case No: 2005-65-40-2997-3000

Judge: John Fent

Pl. / State: State

State/Pl's. Atty: Margaret Fent

Vanessa Shipley

Defendant: Bobby Shay Rathburn

Defense Atty: Stacy Owens

Danielle Payne

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes Plaintiff	Defense	Accept
187	Bonnie Rohrer	F	W		✓		
60	Stephen Dryden	M	W				✓
191	Tina Sanders	F	W			✓	
196	Samueltha Summers	F	W			✓	
18	Coker Bonaparte	M	B		✓		
204	Jaymia Stevens	F	B				✓
80	Sammie Laines	M	B		✓		
127	Arthur Kennedy	M	B				✓
115	John Husband	M	W			✓	
227	Sharon White	F	W				✓
124	James Jones	M	B				✓
203	Christin Steen	M	W			✓	
215	Alvin Trapp	M	B		✓		
34	Carrie Carter	F	B			✓	
93	Katherine Goodson	F	B				✓
32	Willie Byrd	F	B			✓	

* For the Court column, indicate who made the motion to strike the jurors "for cause"

C-Court, P-Plaintiff, D-Defense

County: Richland
 Date: 4-2-07

Case No: 05-65-40-2997-3000 VOIR DIRE Judge: Few
 Pl. / State: State State/Pl's. Atty: Fent / Shipley
 Defendant: Bobby Shay Rathbun Defense Atty: Quings / Payne

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes Plaintiff	Defense	Accept
78	Richard Fritts	M	W				✓
138	Simmie Lyles	M	B		✓		
55	Vicky Denderain	F	W			✓	
137	Kristina Lugo Blacklock	F	W			✓	
207	John Super	M	W				✓
103	Les Harris	M	B				✓
45	Charles Cox	M	W			✓	
40	Beverly Childs	F	W			✓	
164	Thomas Newbent	M	W				✓
178	Berlah Ranch	F	B				✓
159	Jamie Morrison	F	W				✓
Alternate #1:							
2	Lashonda Addison	F	B			✓	
47	Brian Cronin	M	W			✓	
142	Hattie Martin	F	B				✓

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

1 (STATE'S EXHIBITS 1 THROUGH 42 WERE MARKED FOR
2 IDENTIFICATION ONLY.)

3 THE COURT: BE SEATED. LADIES AND GENTLEMEN, GOOD
4 MORNING. MY NAME IS JOHN FEW AND I AM FROM GREENVILLE, AND
5 I'M DOWN HERE THIS WEEK AND NEXT WEEK TO HOLD COURT IN
6 COLUMBIA AND I'M VERY GLAD TO BE HERE. I ALWAYS ENJOY COMING
7 DOWN TO COLUMBIA. IT'S BEEN SEVERAL YEARS SINCE I GOT TO
8 COME DOWN HERE TO HOLD COURT, AND I'M JUST PLEASED TO BE
9 HERE.

10 WE'RE GOING TO STRIKE A JURY NOW IN THE FIRST CASE FOR
11 TRIAL, AND I'M GOING TO GO OVER A FEW THINGS WITH YOU AS WE
12 GET READY TO DO THAT. THE CASE IS THE STATE OF SOUTH
13 CAROLINA VERSUS BOBBY SHEY RATHBURN. MR. RATHBURN HAS BEEN
14 INDICTED IN FOUR INDICTMENTS. IN INDICTMENT NUMBER
15 2005-GS-40-2999 MR. RATHBURN HAS BEEN INDICTED FOR BURGLARY
16 IN THE FIRST DEGREE, AND IN THAT INDICTMENT IT IS ALLEGED
17 THAT BOBBY SHEY RATHBURN DID IN RICHLAND COUNTY ON OR ABOUT
18 APRIL 3RD, 2005, UNLAWFULLY ENTER THE DWELLING OF TABITHA
19 BRAZELL WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME
20 THEREIN AND WHILE EFFECTING ENTRY AND/OR WHILE IN THE
21 DWELLING OR IN IMMEDIATE FLIGHT THE DEFENDANT OR ANOTHER
22 PARTICIPANT IN THE CRIME DID CAUSE PHYSICAL INJURY TO ANOTHER
23 PERSON WHO WAS NOT A PARTICIPANT IN THE CRIME, TO WIT,
24 TABITHA BRAZELL AND/OR THE DEFENDANT DID ENTER OR REMAIN IN
25 THE NIGHTTIME, ALL IN VIOLATION OF SECTION 16-11-311 OF THE

1 SOUTH CAROLINA CODE.

2 IN INDICTMENT NUMBER 2005-GS-40-2998, MR. RATHBURN HAS
3 BEEN INDICTED FOR CRIMINAL SEXUAL CONDUCT IN THE FIRST
4 DEGREE, AND IN THAT INDICTMENT IT IS ALLEGED THAT BOBBY SHEY
5 RATHBURN DID IN RICHLAND COUNTY ON OR ABOUT APRIL 3RD, 2005,
6 ENGAGE IN SEXUAL BATTERY, TO WIT, SEXUAL INTERCOURSE AND/OR
7 FELLATIO UPON AND WITH THE BODY OF TABITHA BRAZELL WITHOUT
8 HER CONSENT. SUCH SEXUAL BATTERY WAS ACCOMPLISHED BY THE USE
9 OF AGGRAVATED FORCE AND/OR THE VICTIM SUBMITTED TO SUCH
10 BATTERY UNDER CIRCUMSTANCES WHERE THE VICTIM WAS ALSO THE
11 VICTIM OF A KIDNAPPING AND/OR FORCIBLE CONFINEMENT AND/OR A
12 BURGLARY, ALL IN VIOLATION OF SOUTH CAROLINA CODE SECTION
13 16-3-652.

14 IN INDICTMENT NUMBER 2005-GS-40-3000 MR. RATHBURN HAS
15 BEEN INDICTED FOR KIDNAPPING, AND IN THAT INDICTMENT IT IS
16 ALLEGED THAT BOBBY SHEY RATHBURN DID IN RICHLAND COUNTY ON OR
17 ABOUT APRIL 3RD, 2005, UNLAWFULLY SEIZE, CONFINED, INVEIGLE,
18 DECOY, KIDNAP, ABDUCT, OR CARRY AWAY THE VICTIM, TABITHA
19 BRAZELL, BY MEANS OF -- BY ANY MEANS WHATSOEVER, WITHOUT
20 AUTHORITY OF LAW, ALL IN VIOLATION OF SECTION 16-3-910 OF THE
21 SOUTH CAROLINA CODE OF LAWS.

22 AND LAST, IN INDICTMENT NUMBER 2005-GS-40-2997, MR.
23 RATHBURN HAS BEEN INDICTED FOR CRIMINAL DOMESTIC VIOLENCE
24 HIGH AND AGGRAVATED NATURE, AND IN THAT INDICTMENT IT IS
25 ALLEGED THAT BOBBY SHEY RATHBURN DID IN RICHLAND COUNTY ON OR

1 ABOUT APRIL 3RD, 2005, UNLAWFULLY CAUSE PHYSICAL HARM OR
2 INJURY TO HIS OWN HOUSEHOLD MEMBER, TABITHA BRAZELL, OR DID
3 OFFER OR ATTEMPT TO CAUSE PHYSICAL HARM OR INJURY TO HIS OWN
4 HOUSEHOLD MEMBER, TABITHA BRAZELL, WITH APPARENT ABILITY
5 UNDER CIRCUMSTANCES REASONABLY CREATING FEAR OF IMMINENT
6 PERIL, ACCOMPANIED BY CIRCUMSTANCES OF AGGRAVATION, TO WIT,
7 THE DEFENDANT DID INTENTIONALLY COMMIT AN ASSAULT AND BATTERY
8 WHICH INVOLVED THE USE OF A DEADLY WEAPON OR RESULTED IN
9 SERIOUS BODILY INJURY TO AND/OR THE DEFENDANT DID
10 INTENTIONALLY COMMIT AN ASSAULT WITH OR WITHOUT A BATTERY
11 WHICH WOULD REASONABLY CAUSE A PERSON TO FEAR IMMINENT
12 SERIOUS BODILY INJURY OR DEATH, IN VIOLATION OF SECTION
13 16-25-65 OF THE SOUTH CAROLINA CODE OF LAWS.

14 NOW, FOR THOSE OF YOU WHO WILL BE SELECTED TO SERVE ON
15 THIS JURY, I AM GOING TO GIVE YOU SOME DETAILED INSTRUCTIONS
16 ABOUT THE INDICTMENTS THAT I JUST READ TO YOU, WHAT THEY MEAN
17 AND WHAT THEY DON'T MEAN. BEFORE WE GO ANY FURTHER THOUGH, I
18 WANT TO MAKE SURE YOU UNDERSTAND THAT THE INDICTMENTS THAT I
19 JUST READ TO YOU ARE NOT IN ANY SENSE EVIDENCE OF THE
20 ALLEGATIONS THAT ARE CONTAINED WITHIN THOSE INDICTMENTS. THE
21 INDICTMENTS ARE SIMPLY THE FORMAL DOCUMENTS THAT SERVE TO
22 PROCESS THESE CASES AND BRING THEM INTO THIS COURT FOR TRIAL.

23 THE DEFENDANT HAS PLED NOT GUILTY TO EACH OF THE FOUR
24 INDICTMENTS THAT I JUST READ TO YOU, AND THE PLEA OF NOT
25 GUILTY CASTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT

VOIR DIRE AND IMPANELING OF THE JURY

15

1 GUILTY BEYOND A REASONABLE DOUBT. AND FOR THOSE OF YOU WHO
2 ARE SELECTED TO SERVE ON THE JURY IN THIS CASE, THAT WILL BE
3 YOUR JOB: TO DETERMINE WHETHER OR NOT THE STATE HAS PROVEN
4 THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

5 NOW, WE ARE ABOUT TO GO THROUGH A PROCESS OF QUESTIONS
6 AND ANSWERS THAT ARE SOMEWHAT SIMILAR TO THE QUESTIONS THAT I
7 THINK JUDGE MANNING ASKED YOU EARLIER TODAY UP ON THE THIRD
8 FLOOR. PLEASE LISTEN VERY CAREFULLY TO THESE QUESTIONS, AND
9 IF YOU HAVE ANY INFORMATION THAT IS RESPONSIVE TO A QUESTION
10 THAT I ASK, THEN I WOULD LIKE FOR YOU TO STAND AND THEN TELL
11 ME YOUR NAME AND THEN TELL ME YOUR INFORMATION. JUST AS I'M
12 SURE JUDGE MANNING TOLD YOU UPSTAIRS, IF YOU DON'T WANT TO
13 ANSWER THE QUESTION OUT LOUD IN FRONT OF THE OTHER PEOPLE
14 HERE IN THE COURTROOM, THEN YOU CAN JUST TELL ME THAT YOU
15 WOULD LIKE TO COME DOWN FRONT AND I'LL GET YOU DOWN HERE AND
16 LET YOU ANSWER THE QUESTION PRIVATELY WITH ME AND WITH THE
17 LAWYERS.

18 NOW, IF YOU KNOW ANYTHING ABOUT THIS CASE OR IF YOU KNOW
19 ANY OF THE PEOPLE WHO ARE GOING TO BE INVOLVED IN THIS CASE
20 AND IF YOU THINK THAT GIVING YOUR INFORMATION OUT LOUD IN
21 FRONT OF THE OTHER MEMBERS OF THE JURY PANEL MIGHT EXPOSE THE
22 OTHER POTENTIAL JURORS TO INFORMATION THAT THEY SHOULD NOT BE
23 EXPOSED TO, THEN IN THAT EVENT YOU MUST COME DOWN FRONT AND
24 ANSWER THE QUESTION PRIVATELY WITH ME AND WITH THE ATTORNEYS.

25 I -- WERE YOU UPSTAIRS WHEN THE JURY WAS QUALIFIED, JIM?

1 THE CLERK: NO, YOUR HONOR, I WAS NOT.

2 THE COURT: WERE YOU ALL PUT UNDER OATH UPSTAIRS? ALL
3 RIGHT. SWEAR THE JURY, PLEASE.

4 THE CLERK: YES, YOUR HONOR.

5 (WHEREUPON, THE JURY PANEL WAS SWORN AT 11:49 A.M.)

6 THE COURT: ALL RIGHT. EVERYONE IS SEATED AND HAS
7 ACCEPTED THE OATH. MS. FENT, WOULD YOU PLEASE INTRODUCE
8 YOURSELF AND YOUR CO-COUNSEL TO THE JURY?

9 MS. FENT: THANK YOU, YOUR HONOR. MY NAME IS MARGARET
10 FENT. I'M WITH THE RICHLAND COUNTY SOLICITOR'S OFFICE, AND
11 THIS IS MY COLLEAGUE AND CO-COUNSEL, VANESSA SHIPLEY.

12 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
13 RELATED BY BLOOD OR BY MARRIAGE TO MS. FENT OR TO MS. SHIPLEY
14 OR DO YOU KNOW EITHER OF THESE LADIES IN ANY WAY? IF SO,
15 PLEASE STAND. NOW, BOTH MS. FENT AND MS. SHIPLEY ARE
16 EMPLOYEES OF THE FIFTH CIRCUIT SOLICITOR'S OFFICE. THE
17 CIRCUIT SOLICITOR FOR THIS CIRCUIT IS BARNEY GIESE.
18 SOLICITOR GIESE HAS A STAFF OF LAWYERS AND NON-LAWYERS WHO
19 PROSECUTE CRIMINAL CASES BOTH HERE IN RICHLAND COUNTY AND
20 ALSO IN KERSHAW COUNTY.

21 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS RELATED BY
22 BLOOD OR BY MARRIAGE TO SOLICITOR GIESE OR DO YOU KNOW HIM IN
23 ANY WAY OR DO -- OR ARE YOU RELATED BY BLOOD OR MARRIAGE TO
24 ANYONE WHO WORKS FOR SOLICITOR GIESE OR DO YOU KNOW ANYONE
25 WHO WORKS FOR SOLICITOR GIESE IN ANY WAY? IF SO, PLEASE

1 STAND.

2 ALL RIGHT. MS. OWINGS, WOULD YOU PLEASE INTRODUCE
3 YOURSELF AND YOUR CO-COUNSEL AND YOUR CLIENT TO THE JURY?

4 MS. OWINGS: THANK YOU, SIR. MY NAME IS STACY OWINGS.
5 I'D LIKE TO INTRODUCE MY CO-COUNSEL, DANIELLE PAYNE, MY
6 CLIENT, MR. SHEY RATHBURN, AND SEATED AT THE END OF THE TABLE
7 IS MY LAW CLERK, MR. CHRIS SHARPA. THANK YOU.

8 THE COURT: HIS NAME WAS WHAT?

9 MS. OWINGS: CHRIS.

10 THE COURT: HARPER.

11 MS. OWINGS: SHARPA. S-H-A-R-P-A.

12 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
13 RELATED BY BLOOD OR BY MARRIAGE TO MS. OWINGS, TO MS. PAYNE,
14 TO MR. RATHBURN, OR TO CHRIS SHARPA OR DO YOU KNOW EITHER OF
15 THESE LADIES OR GENTLEMEN IN ANY WAY? IF SO, PLEASE STAND.
16 NOW, LADIES AND GENTLEMEN, I'M GOING TO READ YOU A LIST OF
17 POTENTIAL WITNESSES, AND THEN AFTER I'VE DONE THAT I'M GOING
18 TO ASK YOU WHETHER YOU KNOW OR ARE RELATED TO ANY OF THESE
19 POTENTIAL WITNESSES.

20 IF THE WITNESS IS IN THE COURTROOM WHEN I CALL YOUR
21 NAME, PLEASE STAND AND FACE THE JURY. TABITHA BRAZELL.
22 LAURA WEIDMAN. TIMOTHY BRAZELL. DONALD BRAZELL. JIMMY
23 MARTIN FORMERLY WITH -- IS THAT THE FOREST ACRES POLICE
24 DEPARTMENT?

25 MS. FENT: YES, SIR.

1 THE COURT: TERRY CASTO, REGISTERED NURSE AT RICHLAND
2 MEMORIAL HOSPITAL. ALLYSON BAGLEY OR BAGLEY (DIFFERENT
3 PRONUNCIATION), REGISTERED NURSE AT RICHLAND MEMORIAL
4 HOSPITAL. LIEUTENANT BRYANT HINSON WITH THE FOREST ACRES
5 POLICE DEPARTMENT. RUSSELL SHUMARD, FOREST ACRES POLICE
6 DEPARTMENT. CHRYSTIE VARN, FORMERLY WITH THE FOREST ACRES
7 POLICE DEPARTMENT. J.H. LEWIS WITH THE FOREST ACRES POLICE
8 DEPARTMENT. TONY HENSON WITH THE FOREST ACRES POLICE
9 DEPARTMENT. MARY JANE SCOTT, FOREST ACRES POLICE DEPARTMENT.
10 CHARLES MORRISON WITH THE FOREST ACRES POLICE DEPARTMENT.
11 JOHNNY RAY MARSHALL ALSO WITH THE FOREST ACRES POLICE
12 DEPARTMENT. TINA JOHNSON -- I'M SORRY. LET ME BACK UP.
13 ADRIENNE N. RILEY WITH THE STATE LAW ENFORCEMENT DIVISION.
14 TINA JOHNSON WITH FOREST ACRES POLICE DEPARTMENT.
15 BETTY BUTLER WITH THE STATE LAW ENFORCEMENT DIVISION.
16 DENISE EARGLE WITH THE STATE LAW ENFORCEMENT DIVISION. EMILY
17 NORRIS, STATE LAW ENFORCEMENT DIVISION. STEPHANIE STUTTS
18 THAT -- WE ALSO REFER TO THAT AS S.L.E.D., THE STATE LAW
19 ENFORCEMENT DIVISION AS S.L.E.D., AND MS. STUTTS IS WITH
20 S.L.E.D. JANICE BRYSON WITH S.L.E.D. TAMMEY BANNISTER WITH
21 S.L.E.D. SERGEANT STEPHEN DUDLEY, FOREST ACRES POLICE
22 DEPARTMENT. KARONDA WILLIAMS, S.L.E.D. RAY WEISS. ELAINE
23 BUCHANAN. ANY ADDITIONAL WITNESSES?

24 MS. FENT: NO, YOUR HONOR.

25 MS. OWINGS: NONE FROM THE DEFENSE, YOUR HONOR.

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19

1 THE COURT: ALL RIGHT. IS THERE ANY MEMBER OF THE JURY
2 PANEL WHO IS RELATED BY BLOOD OR BY MARRIAGE TO ANY OF THOSE
3 POTENTIAL WITNESSES OR DO YOU KNOW ANY OF THEM IN ANY WAY?
4 AND YOU HEARD A LOT OF NAMES. IF YOU HEARD A NAME YOU THINK
5 YOU MIGHT KNOW BUT YOU WANT SOME MORE INFORMATION SO YOU CAN
6 DETERMINE IF THAT'S WHO YOU KNOW, THEN TELL ME THAT AND WE'LL
7 GET YOU SOME MORE INFORMATION ABOUT THAT POTENTIAL WITNESS.
8 PLEASE STAND IF YOU KNOW OR ARE RELATED TO ANY OF THESE
9 POTENTIAL WITNESSES. ALL RIGHT, SIR. YOUR NAME?

10 JUROR SUBER: JOHN SUBER.

11 THE COURT: MR. SUBER?

12 JUROR SUBER: RAY WHITE. I KNOW A RAY WHITE.

13 THE COURT: RAY WHITE? ALL RIGHT. THAT WAS A RAY
14 WEISS, W-E-I-S-S.

15 JUROR SUBER: OH.

16 THE COURT: ALL RIGHT. THANK YOU.

17 JUROR SUBER: I DON'T KNOW HIM.

18 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL OR ANY
19 MEMBER OF YOUR IMMEDIATE FAMILY WHO IS NOW OR WHO HAS EVER
20 BEEN INVOLVED IN LAW ENFORCEMENT OR PROSECUTION? PERHAPS YOU
21 WORKED FOR A POLICE DEPARTMENT OR A SHERIFF'S DEPARTMENT, FOR
22 THE MILITARY POLICE, FOR MUNICIPAL POLICE, WHATEVER, OR
23 PERHAPS YOU OR A FAMILY MEMBER WERE INVOLVED IN WORKING FOR A
24 PROSECUTOR. IF SO, PLEASE STAND.

25 JUROR CARTER: WHAT ABOUT THE DEPARTMENT OF CORRECTIONS?

1 THE COURT: THAT WOULD BE FINE. YOU CAN TELL ME ABOUT
2 THAT. TELL ME YOUR NAME, PLEASE, MA'AM.

3 JUROR CARTER: CARRIE CARTER.

4 THE COURT: MS. CARTER.

5 JUROR CARTER: I WORKED FOR THE DEPARTMENT OF
6 CORRECTIONS SLASH DEPARTMENT OF PAROLE, PARDON, AND PROBATION
7 FOR 12 YEARS.

8 THE COURT: AND HOW LONG AGO DID YOU LEAVE THAT JOB?

9 JUROR CARTER: I LEFT IN '98.

10 THE COURT: '98. ALL RIGHT. THANK YOU, MA'AM. YES,
11 SIR.

12 JUROR CRONIN: MY BROTHER WAS WITH THE BORDER PATROL FOR
13 FIVE YEARS.

14 THE COURT: YOUR BROTHER WAS WITH THE BORDER PATROL?

15 JUROR CRONIN: YES, SIR.

16 THE COURT: AND HE -- THAT WAS IN TEXAS?

17 JUROR CRONIN: NO, IN NEW YORK.

18 THE COURT: IN NEW YORK. OKAY. AND HE IS -- IS HE
19 STILL WITH THE BORDER PATROL?

20 JUROR CRONIN: HE IS NOT.

21 THE COURT: TELL ME YOUR NAME.

22 JUROR CRONIN: BRIAN CRONIN.

23 THE COURT: CRONY?

24 JUROR CRONIN: CRONIN.

25 THE COURT: CRONIN. OKAY. THANK YOU, SIR. YES, SIR.

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21

1 JUROR MCKINSTRY: I'M PRESTON MCKINSTRY. I RETIRED FROM
2 THE DEPARTMENT OF CORRECTIONS 11 YEARS AGO.

3 THE COURT: ALL RIGHT. MR. MCKINSTRY, YOU -- YOU
4 ACTUALLY WORKED FOR THE DEPARTMENT OF CORRECTIONS?

5 JUROR MCKINSTRY: YES.

6 THE COURT: AND YOU RETIRED HOW LONG AGO?

7 JUROR MCKINSTRY: '96.

8 THE COURT: ALL RIGHT. WERE YOU A GUARD?

9 JUROR MCKINSTRY: I WAS A CHIEF SUPERVISOR.

10 THE COURT: A WHAT?

11 JUROR MCKINSTRY: CHIEF SUPERVISOR.

12 THE COURT: SUPERVISING GUARDS?

13 JUROR MCKINSTRY: YES.

14 THE COURT: ALL RIGHT, SIR. MS. CARTER, DID YOU WORK AS
15 A GUARD?

16 JUROR CARTER: AS AN OFFICER, YES, SIR.

17 THE COURT: ALL RIGHT. THANK YOU, MA'AM. THANK YOU,
18 MR. MCKINSTRY. YES, MA'AM.

19 JUROR CHILDS: I'M BEVERLY CHILDS, AND MY SON-IN-LAW IS
20 AN M.P. IN THE ARMY.

21 THE COURT: ALL RIGHT. THANK YOU, MS. CHILDS.

22 JUROR STEVENS: I'M JAYMIA STEVENS, AND MY STEPFATHER
23 WORKS FOR THE DEPARTMENT OF CORRECTIONS.

24 THE COURT: DOES HE -- DOES HE WORK AS AN OFFICER OR AS
25 A GUARD?

1 JUROR STEVENS: HE'S AN OFFICER I WANT TO SAY; I'M NOT
2 FOR SURE.

3 THE COURT: OKAY. ALL RIGHT. WHERE DOES HE WORK,
4 MA'AM?

5 JUROR STEVENS: ON BROAD RIVER ROAD.

6 THE COURT: OKAY. ALL RIGHT. THANK YOU. YES, MA'AM.

7 JUROR CAULK: I WORK FOR NELSON MULLINS. WE WORK WITH
8 ATTORNEYS, AND MY BROTHER-IN-LAW AND HIS FAMILY --
9 EVERYBODY'S PARALEGALS OR LAWYERS.

10 THE COURT: TELL ME YOUR NAME.

11 JUROR CAULK: ELIZABETH CAULK.

12 THE COURT: ELIZABETH CAULK?

13 JUROR CAULK: YES.

14 THE COURT: ALL RIGHT. YOU WORK AS -- DO YOU WORK AS A
15 PARALEGAL AT NELSON MULLINS?

16 JUROR CAULK: NO, AS A MARKETING ASSISTANT.

17 THE COURT: OKAY. ALL RIGHT. AND WHAT DID YOU SAY
18 ABOUT YOUR BROTHER?

19 JUROR CAULK: YEAH, HE'S ALSO AN ATTORNEY AT NELSON
20 MULLINS.

21 THE COURT: WHAT'S HIS NAME?

22 JUROR CAULK: GLEN CAULK.

23 THE COURT: OKAY. ALL RIGHT. THANK YOU.

24 JUROR CAULK: UH-HUH.

25 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL OR ANY

1 MEMBER OF YOUR IMMEDIATE FAMILY WHO IS INVOLVED IN ANY WAY
2 WITH ANY ORGANIZATION WHO HAS AS ONE OF ITS PRIMARY PURPOSES
3 THE STUDY OF OR THE CHANGE OF CRIMINAL LAWS OR THE
4 ENHANCEMENT OF PENALTIES FOR VIOLATION OF CRIMINAL LAWS?
5 SOME OF THESE ORGANIZATIONS MIGHT INCLUDE MOTHERS AGAINST
6 DRUNK DRIVING WHICH YOU COMMONLY KNOW AS M.A.D.D., CITIZENS
7 AGAINST VIOLENCE WHICH IS REFERRED TO AS C.A.V.E., AND THERE
8 ARE OTHERS. SO IF YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY
9 HAS EVER BEEN INVOLVED AS A CONTRIBUTOR, AS A MEMBER, AS A
10 VOLUNTEER OR IN ANY OTHER WAY WITH ANY OF THESE
11 ORGANIZATIONS, PLEASE STAND.

12 NOW, I FIND AS I GO AROUND THE STATE TRYING CASES LIKE
13 THIS THAT MEMBERS OF THE JURY OR MEMBERS OF THEIR FAMILIES
14 HAVE SOMETIMES BEEN INVOLVED IN CRIMES THAT MIGHT BE SIMILAR
15 IN NATURE TO THE ONES THAT ARE ALLEGED HERE. SO I'M GOING TO
16 REPEAT THE TITLES OF THE CRIMES THE DEFENDANT IS CHARGED WITH
17 COMMITTING: BURGLARY IN THE FIRST DEGREE, CRIMINAL SEXUAL
18 CONDUCT IN THE FIRST DEGREE, KIDNAPPING, AND CRIMINAL
19 DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE.

20 SO NOW IS THERE ANY MEMBER OF THE JURY PANEL OR ANY
21 MEMBER OF YOUR IMMEDIATE FAMILY WHO HAS EVER BEEN INVOLVED IN
22 A CASE THAT YOU THINK IS SIMILAR TO THE ONES THAT I JUST READ
23 TO YOU FROM THIS INDICTMENT? NOW, THERE ARE MANY WAYS THAT
24 YOU OR YOUR FAMILY MEMBERS COULD HAVE BEEN INVOLVED. YOU
25 MIGHT HAVE BEEN A WITNESS. YOU MIGHT HAVE HAD A FAMILY

1 MEMBER WHO WAS A VICTIM OR YOU MIGHT HAVE BEEN A VICTIM. YOU
2 MIGHT HAVE HAD A FAMILY MEMBER WHO WAS ACCUSED OF COMMITTING
3 SUCH A CRIME OR CONVICTED OF COMMITTING SUCH A CRIME. SOME
4 OF YOU MAY HAVE BEEN INVOLVED IN THE INVESTIGATION OR HAVE
5 FAMILY MEMBERS WHO WERE INVOLVED IN THE INVESTIGATION OF SUCH
6 CRIMES. IF YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY HAS
7 EVER BEEN INVOLVED IN A CRIME THAT YOU BELIEVE IS SIMILAR IN
8 NATURE TO THE ONES THAT ARE ALLEGED HERE, PLEASE STAND. AND
9 I WILL REMIND YOU THAT YOU ARE FREE TO COME DOWN FRONT AND
10 SPEAK TO ME PRIVATELY IF YOU WOULD LIKE TO DO THAT. YES,
11 SIR.

12 JUROR COXE: I'M A PHYSICIAN. I'VE HAD TO EXAMINE
13 PEOPLE WHO HAVE BEEN SEXUALLY ABUSED OR SEXUALLY ASSAULTED.
14 I'VE TESTIFIED IN A COUPLE OF CASES RELATED TO THAT.

15 THE COURT: TELL ME YOUR NAME, PLEASE.

16 JUROR COXE: CHARLES COXE.

17 THE COURT: MR. COXE. DR. COXE. YOU -- WHAT IS YOUR
18 SPECIALTY?

19 JUROR COXE: I WORKED IN THE EMERGENCY ROOM AT THAT
20 TIME, AND FAMILY PRACTICE IS MY BOARD SPECIALTY.

21 THE COURT: YOU'RE IN FAMILY PRACTICE NOW?

22 JUROR COXE: YES, SIR.

23 THE COURT: SO IN RECENT YEARS HAVE YOU BEEN INVOLVED IN
24 THESE TYPE OF CASES?

25 JUROR COXE: NOT IN ABOUT THREE OR FOUR YEARS. I'VE

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1 BEEN OUT OF THE EMERGENCY ROOM FOR TWO AND A HALF YEARS NOW.

2 THE COURT: WAS ALL THAT WORK HERE IN RICHLAND COUNTY?

3 JUROR COXE: YES, SIR.

4 THE COURT: AND SO YOU CAME TO THIS COURTHOUSE FROM TIME
5 TO TIME TO TESTIFY---

6 JUROR COXE: YES, SIR.

7 THE COURT: ---ABOUT YOUR WORK IN THE EMERGENCY ROOM.

8 JUROR COXE: YES, SIR.

9 THE COURT: DO YOU HAVE ANY SPECIAL EXPERTISE IN SEXUAL
10 ASSAULT CASES OTHER THAN JUST THE NORMAL MEDICAL EXPERTISE
11 THAT YOU WOULD BRING INTO THE EMERGENCY ROOM?

12 JUROR COXE: JUST -- NOT EXPERTISE FOR THE EMERGENCY
13 ROOM.

14 THE COURT: OKAY. SO DO YOU HAVE -- YOU DON'T HAVE ANY
15 SPECIAL TRAINING---

16 JUROR COXE: NO, SIR.

17 THE COURT: ---REGARDING SEXUAL ASSAULTS.

18 JUROR COXE: I'VE READ MATERIAL ON IT BUT NO FORMAL
19 TRAINING OR ANYTHING.

20 THE COURT: ALL RIGHT, SIR. DR. COXE, DO YOU THINK THAT
21 YOUR EXPERIENCE THAT YOU JUST DESCRIBED WOULD INTERFERE IN
22 ANY WAY WITH EITHER YOUR WILLINGNESS OR YOUR ABILITY TO GIVE
23 BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL
24 IN THIS CASE?

25 JUROR COXE: NO, SIR.

1 THE COURT: ALL RIGHT, SIR. THANK YOU. MR. CRONIN.

2 JUROR CRONIN: YES. WE HAD A BURGLARY IN OUR HOUSE. WE
3 CAUGHT TWO INDIVIDUALS INSIDE OUR HOUSE, AND WE ACTUALLY WENT
4 AND PROSECUTED FOR IT.

5 THE COURT: WAS THAT HERE IN RICHLAND COUNTY?

6 JUROR CRONIN: YES, IT WAS.

7 THE COURT: HOW LONG AGO DID THAT HAPPEN?

8 JUROR CRONIN: SEVEN OR EIGHT YEARS AGO.

9 THE COURT: AND WAS THE -- YOU DID CATCH THE PERSON.

10 JUROR CRONIN: YES, WE DID.

11 THE COURT: AND THEY WERE PROSECUTED.

12 JUROR CRONIN: YES.

13 THE COURT: DID THE CASE ACTUALLY GO TO TRIAL?

14 JUROR CRONIN: WENT TO THE GRAND JURY AND THEN THEY
15 PLED.

16 THE COURT: ALL RIGHT, SIR. ALL RIGHT. WOULD THE FACT
17 THAT YOU AND YOUR FAMILY WERE INVOLVED IN THAT SITUATION,
18 WOULD THAT INTERFERE IN ANY WAY WITH EITHER YOUR WILLINGNESS
19 OR YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A
20 FAIR AND IMPARTIAL TRIAL?

21 JUROR CRONIN: NO, SIR.

22 THE COURT: ALL RIGHT, SIR. THANK YOU. YES, MA'AM.

23 JUROR SIMMONS: MY MOTHER WAS INVOLVED IN A DOMESTIC
24 VIOLENCE.

25 THE COURT: TELL ME YOUR NAME, PLEASE.

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1 JUROR SIMMONS: SAMANTHA SIMMONS.

2 THE COURT: MS. SIMMONS, YOUR MOTHER WAS INVOLVED?

3 JUROR SIMMONS: YEAH.

4 THE COURT: HOW LONG AGO?

5 JUROR SIMMONS: SIX YEARS AGO.

6 THE COURT: ALL RIGHT. DO YOU MIND -- YOU'RE WELCOME TO
7 COME DOWN FRONT. I DO HAVE A FEW FOLLOW-UP QUESTIONS I WANT
8 TO ASK YOU. WHO WAS THE PERSON WHO WAS ACCUSED OF COMMITTING
9 THE SEXUAL VIOLENCE -- I MEAN THE DOMESTIC VIOLENCE?

10 JUROR SIMMONS: HER EX-HUSBAND.

11 THE COURT: ALL RIGHT. AND THAT WAS -- THAT WOULD HAVE
12 BEEN YOUR EX-STEPFATHER?

13 JUROR SIMMONS: UH-HUH.

14 THE COURT: WAS HE PROSECUTED FOR THAT?

15 JUROR SIMMONS: HE PLED GUILTY.

16 THE COURT: ALL RIGHT. ALL RIGHT. AND TELL ME YOUR
17 NAME AGAIN, PLEASE.

18 JUROR SIMMONS: SAMANTHA SIMMONS. .

19 THE COURT: MS. SIMMONS. ALL RIGHT. YES, MA'AM.

20 JUROR SANDERS: IN FLORIDA MY HOUSE WAS BROKEN INTO. NO
21 ONE WAS EVER CAUGHT BUT...

22 THE COURT: TELL ME YOUR NAME, PLEASE, MA'AM.

23 JUROR SANDERS: TINA SANDERS.

24 THE COURT: SANDERS?

25 JUROR SANDERS: YES.

1 THE COURT: HOW LONG AGO DID THAT HAPPEN, MA'AM?

2 JUROR SANDERS: ABOUT 11 YEARS AGO.

3 THE COURT: AND NO ONE WAS EVER CAUGHT.

4 JUROR SANDERS: NO.

5 THE COURT: ALL RIGHT. THANK YOU, MS. SANDERS. YES,
6 SIR.

7 JUROR WICKSTROM: FIVE YEARS AGO MY DAUGHTER WAS
8 SEXUALLY ASSAULTED.

9 THE COURT: TELL ME YOUR NAME, SIR.

10 JUROR WICKSTROM: DAVE WICKSTROM.

11 THE COURT: NOW, I'M GOING TO HAVE SOME FOLLOW-UP
12 QUESTIONS FOR YOU, MR. WICKSTROM. WOULD YOU LIKE TO COME
13 DOWN FRONT AND TALK ABOUT IT WITH ME?

14 JUROR WICKSTROM: YES, SIR.

15 THE COURT: ALL RIGHT, SIR. AND I'D LIKE TO SEE THE
16 LAWYERS, PLEASE.

17 (THE FOLLOWING BENCH CONFERENCE TOOK PLACE IN THE
18 HEARING OF THE COURT, THE ATTORNEYS INVOLVED IN THE TRIAL,
19 THE COURT REPORTER, AND JUROR WICKSTROM.)

20 THE COURT: ALL RIGHT. CAN Y'ALL -- CAN Y'ALL HEAR?
21 ALL RIGHT. GO AHEAD. LET ME ASK YOU THIS: HOW OLD WAS YOUR
22 DAUGHTER WHEN THIS HAPPENED?

23 JUROR WICKSTROM: SHE WAS 28.

24 THE COURT: AND HOW LONG AGO DID IT HAPPEN?

25 JUROR WICKSTROM: FIVE YEARS AGO.

1 THE COURT: TELL ME IF YOU DON'T MIND -- I KNOW YOU
2 DON'T LIKE HAVING TO TALK ABOUT IT, BUT TELL ME JUST
3 BASICALLY WHAT HAD HAPPENED.

4 JUROR WICKSTROM: SHE HAD GONE OUT ON A DATE WITH THIS
5 GUY AND ACTUALLY WENT TO CHURCH WITH HIM, AND SHE WENT TO
6 PICK SOMETHING UP IN HER HOUSE. HE FOLLOWED HER IN AND RAPED
7 HER THERE.

8 THE COURT: WAS HE PROSECUTED FOR THAT?

9 JUROR WICKSTROM: YES.

10 THE COURT: WAS HE---

11 JUROR WICKSTROM: ACTUALLY HE WAS -- HE WAS PROSECUTED
12 FOR SOME OTHER CASES, THE SAME KIND OF SITUATION. HE WAS
13 CONVICTED. I WAS AT THE SENTENCING TO THAT.

14 THE COURT: SO WAS HE -- DID HE PLEAD GUILTY OR DID HE
15 GO TO TRIAL?

16 JUROR WICKSTROM: HE WAS TRIED.

17 THE COURT: ALL RIGHT. SO YOU ALSO ATTENDED THE TRIAL.

18 JUROR WICKSTROM: YES, I DID.

19 THE COURT: WAS HE TRIED FOR THE ONE WHERE YOUR DAUGHTER
20 WAS THE VICTIM OR WAS HE TRIED JUST FOR OTHERS?

21 JUROR WICKSTROM: HE WAS TRIED FOR OTHER ONES.

22 THE COURT: BUT HE WAS NOT TRIED---

23 JUROR WICKSTROM: THEY ASKED IF THERE WAS -- IF THERE
24 WAS ANYBODY IN THE COURTROOM WHO HAD ALSO BEEN ASSAULTED BY
25 HIM AND THE JUDGE ASKED ANYONE TO STAND.

1 THE COURT: WAS THERE ACTUALLY A CHARGE MADE IN THE CASE
2 WHERE YOUR DAUGHTER WAS THE VICTIM?

3 JUROR WICKSTROM: YES.

4 THE COURT: WAS HE CHARGED WITH THAT? WHAT HAPPENED
5 WITH IT? DO YOU KNOW?

6 JUROR WICKSTROM: IT JUST GOT DROPPED BECAUSE OF THE
7 OTHER...

8 THE COURT: ALL RIGHT. ALL RIGHT. WOULD THE FACT THAT
9 YOU AND YOUR FAMILY WERE INVOLVED IN THAT SITUATION, WOULD
10 THAT INTERFERE IN ANY WAY WITH EITHER YOUR WILLINGNESS OR
11 YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A FAIR
12 AND IMPARTIAL TRIAL?

13 JUROR WICKSTROM: I THINK SO. FOR ONE THING, HE LOOKS
14 QUITE A BIT LIKE THE DEFENDANT THAT WAS TRIED AND CONVICTED.

15 THE COURT: OKAY. ALL RIGHT. THANK YOU. I'M GOING TO
16 LET YOU GO AND JUST SIT BACK BEHIND WHERE THE OTHER JURORS
17 ARE, AND OBVIOUSLY DON'T SAY ANYTHING ABOUT WHAT YOU AND I
18 HAVE TALKED ABOUT TO THEM.

19 JUROR WICKSTROM: RIGHT.

20 THE COURT: ALL RIGHT. THANK YOU.

21 (JUROR WICKSTROM LEAVES THE BENCH CONFERENCE.)

22 THE COURT: Y'ALL, I'M EXCUSING HIM FOR CAUSE.

23 MS. SHIPLEY: I DON'T THINK MS. OWINGS IDENTIFIED THAT
24 SHE WORKS FOR THE PUBLIC DEFENDER'S OFFICE. IF YOU COULD
25 JUST ASK THEM IF ANYONE HAS BEEN REPRESENTED BY THEIR OFFICE.

1 MS. OWINGS: I DON'T WANT THEM TO KNOW THAT MY CLIENT
2 HAS A PUBLIC DEFENDER; THAT'S WHY.

3 MS. SHIPLEY: OKAY.

4 MS. OWINGS: THAT THE DEFENSE ATTORNEY IS FROM THE
5 PUBLIC DEFENDER'S OFFICE BECAUSE I OFTEN DON'T WANT THEM TO
6 KNOW I'M A PUBLIC DEFENDER, ESPECIALLY IN THIS CASE.

7 THE COURT: I'LL PROBABLY JUST NOT ADDRESS THAT.

8 MS. SHIPLEY: YEAH. THAT'S FINE.

9 MS. OWINGS: THANK YOU, SIR.

10 (WHEREUPON, THE BENCH CONFERENCE WAS CONCLUDED.)

11 THE COURT: LET ME -- LET ME SEE Y'ALL JUST FOR A
12 SECOND, PLEASE, THE ATTORNEYS.

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

14 THE COURT: NOW, LADIES AND GENTLEMEN, DURING THE TRIAL
15 OF THIS CASE YOU ARE LIKELY TO HEAR TESTIMONY ABOUT THE
16 CONSUMPTION OF ALCOHOL. IS THERE ANY MEMBER OF THE JURY
17 PANEL WHO HAS SUCH STRONG FEELINGS ABOUT OR AGAINST THE
18 CONSUMPTION OF ALCOHOL THAT YOU FEEL THOSE FEELINGS MIGHT
19 INTERFERE WITH YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR
20 IN THE TRIAL OF THIS CASE? IF SO, PLEASE STAND. IS THERE
21 ANY MEMBER OF THE JURY PANEL WHO HAS EVER HEARD OR SEEN OR
22 READ ANYTHING ABOUT THIS CASE OR ABOUT THE PEOPLE WHO ARE
23 GOING TO BE INVOLVED IN THIS CASE OR DO YOU KNOW ANYTHING AT
24 ALL ABOUT WHAT IS ALLEGED TO HAVE OCCURRED IN THIS CASE? IF
25 SO, PLEASE STAND.

1 DOES ANY MEMBER OF THE JURY PANEL HAVE ANY PARTICULAR
2 INTEREST IN THE OUTCOME OF THIS CASE? IF SO, PLEASE STAND.
3 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS FORMED OR
4 EXPRESSED ANY OPINION AS TO THE GUILT OR INNOCENCE OF THIS
5 DEFENDANT? IF SO, PLEASE STAND. DOES ANY MEMBER OF THE JURY
6 PANEL HAVE ANY BIAS OR PREJUDICE EITHER TOWARDS OR AGAINST
7 THE STATE OR THE DEFENDANT IN CONNECTION WITH THIS CASE? IF
8 SO, PLEASE STAND. IS THERE ANY MEMBER OF THE JURY PANEL WHO
9 KNOWS OF ANY REASON WHY YOU COULD NOT GIVE BOTH THE STATE AND
10 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL IN THIS CASE? IF
11 SO, PLEASE STAND. ANY ADDITIONAL VOIR DIRE FROM THE STATE?

12 MS. FENT: NO, YOUR HONOR.

13 THE COURT: FROM THE DEFENSE?

14 MS. OWINGS: NO, SIR.

15 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
16 GOING TO STRIKE THE JURY NOW. YOUR NAMES HAVE BEEN SORTED
17 PREVIOUSLY RANDOMLY BY A COMPUTER, AND WE ALL HAVE A SHEET
18 THAT HAS YOUR NAMES LISTED IN A RANDOM ORDER. THE CLERK IS
19 GOING TO CALL YOUR NAME, AND WHEN YOUR NAME IS CALLED, PLEASE
20 COME AROUND DOWN HERE TO THE CENTER OF THE COURTROOM RIGHT
21 WHERE THIS MICROPHONE IS, AND THE CLERK WILL DIRECT YOU AS TO
22 WHAT YOU NEED TO SAY OR DO, BUT THEN AS EACH JUROR COMES DOWN
23 HERE WE WILL HEAR FROM THE LAWYERS. THE LAWYERS FOR THE
24 STATE WILL EITHER ASK THAT YOU BE SEATED -- I MEAN ASK THAT
25 YOU BE EXCUSED IN WHICH CASE YOU CAN RETURN TO YOUR SEAT OR

1 THEY'LL ASK THAT YOU BE PRESENTED TO THE DEFENSE. IF YOU ARE
2 PRESENTED TO THE DEFENSE, THEN THE ATTORNEYS FOR THE DEFENSE
3 WILL EITHER ASK THAT YOU BE EXCUSED IN WHICH CASE YOU CAN
4 RETURN TO YOUR SEAT OR THAT YOU BE SWORN AND PUT INTO THE
5 JURY BOX. WE WILL CONTINUE WITH THAT PROCESS UNTIL WE HAVE A
6 JURY. MR. CLERK?

7 THE CLERK: YES, YOUR HONOR. LADIES AND GENTLEMEN, ALSO
8 IF YOU HAVE ANY BOOKS, COATS, UMBRELLAS, ET CETERA, PERSONAL
9 ITEMS, BRING THOSE FORWARD WHEN I CALL OUT YOUR NAME. THE
10 FIRST JUROR, NUMBER 187, BONNIE ROHRER, R-O-H-R-E-R, NUMBER
11 187. NAME AND OCCUPATION, PLEASE.

12 JUROR ROHRER: BONNIE ROHRER. I'M AN ACCOUNTANT.

13 THE CLERK: WHAT SAYS THE STATE?

14 MS. FENT: PLEASE EXCUSE THE JUROR.

15 THE CLERK: MA'AM, IF YOU WOULD PLEASE RETURN TO THE
16 BACK OF THE COURTROOM RIGHT THERE WHERE YOU SEE THAT BAILIFF
17 STANDING. NUMBER 60, STEVEN DRYDEN. 60. NAME AND
18 OCCUPATION, PLEASE.

19 JUROR DRYDEN: STEVE DRYDEN. I'M THE CHIEF EXECUTIVE OF
20 THE MARINER GROUP.

21 THE CLERK: WHAT SAYS THE STATE?

22 MS. FENT: PLEASE PRESENT THE JUROR.

23 THE CLERK: WHAT SAYS THE DEFENSE?

24 MS. OWINGS: PLEASE SEAT THE JUROR.

25 THE CLERK: SIR, IF YOU WOULD, PLEASE HAVE A SEAT OVER

1 HERE IN THE JURY BOX AS DIRECTED BY THE BAILIFF. NUMBER 191,
2 TINA SANDERS. 191.

3 JUROR SANDERS: OCCUPATION---

4 THE CLERK: NAME AND OCCUPATION.

5 JUROR SANDERS: TINA SANDERS, RETAIL MANAGER.

6 THE CLERK: WHAT SAYS THE STATE?

7 MS. FENT: PLEASE PRESENT THE JUROR.

8 THE CLERK: WHAT SAYS THE DEFENSE?

9 MS. OWINGS: PLEASE EXCUSE THE JUROR.

10 THE CLERK: MA'AM, IF YOU WOULD, PLEASE RETURN BACK TO
11 THE BACK OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF.

12 NUMBER 196, SAMANTHA SIMMONS. 196. NAME AND OCCUPATION.

13 JUROR SIMMONS: SAMANTHA SIMMONS, SELF-EMPLOYED.

14 THE CLERK: WHAT SAYS THE STATE?

15 MS. FENT: PLEASE PRESENT THE JUROR.

16 THE CLERK: WHAT SAYS THE DEFENSE?

17 MS. OWINGS: PLEASE EXCUSE THE JUROR.

18 THE CLERK: MA'AM, IF YOU WOULD, PLEASE RETURN TO THE
19 BACK OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF.

20 NUMBER 18, COKER BONAPARTE. 18.

21 JUROR BONAPARTE: COKER BONAPARTE. FORKLIFT DRIVER.

22 THE CLERK: WHAT SAYS THE STATE?

23 MS. FENT: PLEASE EXCUSE THE JUROR.

24 THE CLERK: SIR, IF YOU WOULD, PLEASE RETURN TO THE BACK
25 OF THE COURTROOM THERE WHERE YOU SEE THAT BAILIFF. 204,

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1 JAYMIA STEVENS. 204.

2 JUROR STEVENS: JAYMIA STEVENS, BANK TELLER, WACHOVIA
3 BANK.

4 THE CLERK: WHAT SAYS THE STATE?

5 MS. FENT: PLEASE PRESENT THE JUROR.

6 THE CLERK: WHAT SAYS THE DEFENSE?

7 MS. OWINGS: PLEASE SEAT THE JUROR.

8 THE CLERK: MA'AM, IF YOU WOULD, PLEASE HAVE A SEAT OVER
9 HERE IN THE JURY BOX AS DIRECTED BY THE BAILIFF. NUMBER 80,
10 SAMMIE GAINES. 80.

11 JUROR GAINES: I WORK WITH SOUTH CAROLINA BLACK MEDIA
12 WITH THE NEWSPAPER.

13 THE CLERK: WHAT SAYS THE STATE?

14 MS. FENT: PLEASE EXCUSE THE JUROR.

15 THE CLERK: SIR, IF YOU WOULD, PLEASE RETURN TO THE BACK
16 OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF. NUMBER
17 127, ARTHUR KENNEDY. 127.

18 JUROR KENNEDY: ARTHUR KENNEDY. SPECIAL EDUCATION,
19 RICHLAND SCHOOL DISTRICT NUMBER ONE, RETIRED.

20 THE CLERK: WHAT SAYS THE STATE?

21 MS. FENT: PLEASE PRESENT THE JUROR.

22 THE CLERK: WHAT SAYS THE DEFENSE?

23 MS. OWINGS: PLEASE SEAT THE JUROR.

24 THE CLERK: SIR, IF YOU WOULD, PLEASE HAVE A SEAT HERE
25 IN THE JURY BOX. 115, JOHN HUSBAND. 115.

1 JUROR HUSBAND: JOHN HUSBAND, DIRECTOR WITH COMPUTER
2 SCIENCES CORPORATION.

3 THE COURT: WHAT SAYS THE STATE?

4 MS. FENT: PLEASE PRESENT THE JUROR.

5 THE CLERK: WHAT SAYS THE DEFENSE?

6 MS. OWINGS: PLEASE EXCUSE THE JUROR.

7 THE CLERK: SIR, IF YOU WOULD, PLEASE RETURN TO THE BACK
8 OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF. 227. 227,
9 SHARON WHITE.

10 JUROR WHITE: SHARON WHITE, PRINCIPAL, LEXINGTON SCHOOL
11 DISTRICT TWO.

12 THE CLERK: WHAT SAYS THE STATE?

13 MS. FENT: PLEASE PRESENT THE JUROR.

14 THE CLERK: WHAT SAYS THE DEFENSE?

15 MS. OWINGS: PLEASE SEAT THE JUROR.

16 THE CLERK: MA'AM, IF YOU WOULD, PLEASE HAVE A SEAT
17 THERE IN THE JURY BOX. 124, JAMES JONES. 124.

18 JUROR JONES: JAMES JONES, U.S. POSTAL SERVICE.

19 THE CLERK: WHAT SAYS THE STATE?

20 MS. FENT: PLEASE PRESENT THE JUROR.

21 THE CLERK: WHAT SAYS THE DEFENSE?

22 MS. OWINGS: PLEASE SEAT THE JUROR.

23 THE CLERK: SIR, PLEASE HAVE A SEAT HERE IN THE JURY BOX
24 AS DIRECTED BY THE BAILIFF. 203, CHRISTIAN STEEN. 203.

25 JUROR STEEN: CHRISTIAN STEEN, PHYSICIAN.

VOIR DIRE AND IMPANELING OF THE JURY

37

1 THE COURT: WHAT SAYS THE STATE?

2 MS. FENT: PLEASE PRESENT THE JUROR.

3 THE CLERK: WHAT SAYS THE DEFENSE?

4 MS. OWINGS: PLEASE EXCUSE THE JUROR.

5 THE CLERK: SIR, IF YOU WOULD, PLEASE RETURN TO THE BACK
6 OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF. 215, ALVIN
7 TRAPP. 215.

8 JUROR TRAPP: MY NAME IS ALVIN TRAPP. I'M A TRUCK
9 DRIVER.

10 THE COURT: WHAT SAYS THE STATE?

11 MS. FENT: PLEASE EXCUSE THE JUROR.

12 THE CLERK: SIR, IF YOU'D PLEASE RETURN TO THE BACK OF
13 THE COURTROOM THERE WHERE YOU SEE THE BAILIFF. I HAVE FOUR
14 FOR THE STATE, MS. FENT, AND FOUR FOR THE DEFENSE, MS.
15 OWINGS.

16 MS. OWINGS: THANK YOU.

17 THE CLERK: 34, CARRIE CARTER. 34.

18 JUROR CARTER: MY NAME IS CARRIE CARTER. I'M A TEAM
19 LEADER FOR HOLOPACK INTERNATIONAL.

20 THE CLERK: WHAT SAYS THE STATE?

21 MS. FENT: PLEASE PRESENT THE JUROR.

22 THE CLERK: WHAT SAYS THE DEFENSE?

23 MS. OWINGS: PLEASE EXCUSE THE JUROR.

24 THE CLERK: MA'AM, IF YOU WOULD, PLEASE RETURN TO THE
25 BACK OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF. 230,

1 DAVID WICKSTROM. 230. OH, I'M SORRY. MY MISTAKE, YOUR
2 HONOR. NUMBER 93, KATHERINE GOODSON. 93.

3 JUROR GOODSON: KATHERINE GOODSON, ASSISTANT SUPPLY
4 MANAGER.

5 THE COURT: WHAT SAYS THE STATE?

6 MS. FENT: PLEASE PRESENT THE JUROR.

7 THE CLERK: WHAT SAYS THE DEFENSE?

8 MS. OWINGS: PLEASE SEAT THE JUROR.

9 THE CLERK: MA'AM, IF YOU WOULD, PLEASE HAVE A SEAT HERE
10 IN THE JURY BOX. 93 -- I'M SORRY. 32, WILLIE BYRD. 32.

11 JUROR BYRD: YES. I'M WILLIE MAE BYRD, AND I'M RETIRED
12 FROM SCHOOL DISTRICT ONE.

13 THE CLERK: WHAT SAYS THE STATE?

14 MS. FENT: PLEASE PRESENT THE JUROR.

15 THE CLERK: WHAT SAYS THE DEFENSE?

16 MS. OWINGS: PLEASE EXCUSE THE JUROR.

17 THE CLERK: MA'AM, IF YOU WOULD, PLEASE RETURN TO THE
18 BACK OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF.

19 NUMBER 78, RICHARD FRITTS. 78.

20 JUROR FRITTS: RICHARD FRITTS, PARAMEDIC, FORT JACKSON.

21 THE COURT: WHAT SAYS THE STATE?

22 MS. FENT: PLEASE PRESENT THE JUROR.

23 THE CLERK: WHAT SAYS THE DEFENSE?

24 MS. OWINGS: PLEASE SEAT THE JUROR.

25 THE CLERK: SIR, IF YOU WOULD, PLEASE HAVE A SEAT HERE

VOIR DIRE AND IMPANELING OF THE JURY

39

1 IN THE JURY BOX. NUMBER 138, SIMMIE LYLES. 138.

2 JUROR LYLES: HELLO. MY NAME IS SIMMIE LYLES: DROSSEL
3 (PHONETIC) AT THE NIGHT WAREHOUSE.

4 THE CLERK: WHAT SAYS THE STATE?

5 MS. FENT: PLEASE EXCUSE THE JUROR.

6 THE CLERK: SIR, IF YOU WOULD, PLEASE RETURN TO THE BACK
7 OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF. 55, VICKY
8 DERDERIAN? D-E-R-D-E-R-I-A-N. 55.

9 JUROR DERDERIAN: VICKY DERDERIAN. I'M A REGISTERED
10 NURSE.

11 THE COURT: WHAT SAYS THE STATE?

12 MS. FENT: PLEASE PRESENT THE JUROR.

13 THE CLERK: WHAT SAYS THE DEFENSE?

14 MS. OWINGS: PLEASE EXCUSE THE JUROR.

15 THE CLERK: MA'AM, IF YOU WOULD, PLEASE RETURN TO THE
16 BACK OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF. 137,
17 KRISTINA BLACKLOCKE. 137.

18 JUROR LUQUE BLACKLOCKE: KRISTINA LUQUE BLACKLOCKE, NEWS
19 DIRECTOR OF W.I.S.

20 THE CLERK: WHAT SAYS THE STATE?

21 MS. FENT: PLEASE PRESENT THE JUROR.

22 THE CLERK: WHAT SAYS THE DEFENSE?

23 MS. OWINGS: PLEASE EXCUSE THE JUROR.

24 THE CLERK: MA'AM, IF YOU WOULD, PLEASE RETURN TO THE
25 BACK OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF. 207,

1 JOHN SUBER. 207.

2 JUROR SUBER: JOHN SUBER, DEPARTMENT OF EDUCATION, SOUTH
3 CAROLINA.

4 THE CLERK: WHAT SAYS THE STATE?

5 MS. FENT: PLEASE PRESENT THE JUROR.

6 THE CLERK: WHAT SAYS THE DEFENSE?

7 MS. PAYNE: PLEASE SEAT THE JUROR.

8 THE CLERK: PLEASE HAVE A SEAT HERE IN THE JURY BOX,

9 SIR. 103, LEO HARRIS. 103.

10 JUROR HARRIS: LEO HARRIS, LOCKSMITH.

11 THE CLERK: WHAT SAYS THE STATE?

12 MS. FENT: PLEASE PRESENT THE JUROR.

13 THE CLERK: WHAT SAYS THE DEFENSE?

14 MS. PAYNE: PLEASE SEAT THE JUROR.

15 THE CLERK: PLEASE HAVE A SEAT HERE IN THE JURY BOX,

16 SIR. 45, CHARLES COXE. 45.

17 JUROR COXE: CHARLES COXE, PHYSICIAN.

18 THE CLERK: STATE CHALLENGE FOR CAUSE?

19 MS. FENT: NO.

20 THE CLERK: WHAT SAYS THE DEFENSE?

21 MS. PAYNE: PLEASE STRIKE THE JUROR.

22 THE CLERK: SIR, IF YOU WOULD, PLEASE RETURN TO THE BACK

23 OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF. 40,

24 BEVERLY CHILDS. 40.

25 JUROR CHILDS: BEVERLY CHILDS, RETIRED NURSE FROM RED

VOIR DIRE AND IMPANELING OF THE JURY

41

1 CROSS.

2 THE CLERK: STATE CHALLENGE FOR CAUSE?

3 MS. FENT: NO, SIR.

4 THE CLERK: WHAT SAYS THE DEFENSE?

5 MS. PAYNE: PLEASE STRIKE THE JUROR.

6 THE CLERK: MA'AM, IF YOU'D PLEASE RETURN TO THE BACK OF
7 THE COURTROOM THERE WHERE YOU SEE THE BAILIFF. 164, THOMAS
8 NEWBOULT. 164.

9 JUROR NEWBOULT: TOM NEWBOULT, HOSPICE CHAPLAIN.

10 THE CLERK: STATE CHALLENGE FOR CAUSE?

11 MS. FENT: NO, SIR.

12 THE CLERK: DEFENSE CHALLENGE FOR CAUSE?

13 MS. PAYNE: NO.

14 THE CLERK: PLEASE HAVE A SEAT HERE IN THE JURY BOX,
15 SIR. 178, BEULAH RAUCH. 178.

16 JUROR RAUCH: BEULAH RAUCH, A RETIRED CERTIFIED NURSE'S
17 AIDE.

18 THE CLERK: STATE CHALLENGE FOR CAUSE?

19 MS. FENT: NO, SIR.

20 THE CLERK: DEFENSE CHALLENGE FOR CAUSE?

21 MS. PAYNE: NO, SIR.

22 THE CLERK: PLEASE HAVE A SEAT HERE IN THE JURY BOX,
23 MA'AM. 159, JANIE MORRISON. 159.

24 JUROR MORRISON: MY NAME IS JANIE MORRISON. I WORK FOR
25 LEXINGTON/RICHLAND SCHOOL DISTRICT FIVE WHERE I TEACH

1 PRESCHOOL NEEDS -- PRESCHOOL CHILDREN WITH SPECIAL NEEDS.

2 THE CLERK: STATE CHALLENGE FOR CAUSE?

3 MS. FENT: NO, SIR.

4 THE CLERK: DEFENSE CHALLENGE FOR CAUSE?

5 MS. PAYNE: NO, SIR.

6 THE CLERK: PLEASE HAVE A SEAT HERE IN THE JURY BOX,

7 MA'AM. ALTERNATES, YOUR HONOR?

8 THE COURT: WE'LL GET -- ALTERNATE STRIKES ARE ONE AND

9 TWO.

10 THE CLERK: YES, SIR. NUMBER 2, LASHONDA ADDISON.

11 NUMBER 2.

12 JUROR ADDISON: LASHONDA ADDISON, STAY-AT-HOME MOM.

13 THE CLERK: WHAT SAYS THE STATE?

14 MS. FENT: PLEASE PRESENT THE WITNESS -- OR JUROR.

15 EXCUSE ME.

16 THE CLERK: WHAT SAYS THE DEFENSE?

17 MS. PAYNE: PLEASE EXCUSE THE JUROR.

18 THE CLERK: MA'AM, IF YOU WOULD, PLEASE RETURN TO THE

19 BACK OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF. 47,

20 BRIAN CRONIN. 47.

21 JUROR CRONIN: BRIAN CRONIN, MANAGER, INTERNATIONAL

22 PAPER.

23 THE CLERK: WHAT SAYS THE STATE?

24 MS. FENT: PLEASE PRESENT THE JUROR.

25 THE CLERK: WHAT SAYS THE DEFENSE?

VOIR DIRE AND IMPANELING OF THE JURY

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1 MS. PAYNE: PLEASE EXCUSE THE JUROR.

2 THE CLERK: SIR, IF YOU WOULD, PLEASE RETURN TO THE BACK
3 OF THE COURTROOM THERE WHERE YOU SEE THE BAILIFF. 142,
4 HATTIE MARTIN. 142.

5 JUROR MARTIN: HATTIE MARTIN (UNINTELLIGIBLE WORDS
6 SPOKEN).

7 THE CLERK: WHAT SAYS THE STATE?

8 MS. FENT: PLEASE PRESENT THE JUROR.

9 THE CLERK: DOES THE DEFENSE CHALLENGE FOR CAUSE?

10 MS. PAYNE: WE DO NOT.

11 THE CLERK: PLEASE HAVE A SEAT HERE IN THE JURY BOX,
12 MA'AM. THIRTEEN, YOUR HONOR.

13 THE COURT: LET'S GO AHEAD AND PICK ONE MORE ALTERNATE.

14 THE CLERK: YES, SIR. NUMBER 87, ANTOINETTE GATHERS.
15 87.

16 JUROR GATHERS: ANTOINETTE GATHERS, LEGAL ASSISTANT,
17 GEORGE SINK INJURY LAWYERS.

18 THE CLERK: WHAT SAYS THE STATE?

19 MS. FENT: PLEASE PRESENT THE JUROR.

20 THE CLERK: WHAT SAYS THE DEFENSE?

21 MS. OWINGS: PLEASE SEAT THE JUROR.

22 THE CLERK: PLEASE HAVE A SEAT HERE IN THE JURY BOX,
23 MA'AM.

24 (WHEREUPON, THE JURY WAS IMPANELED AT 12:33 P.M.)

25 THE COURT: ANY OBJECTION TO THE COMPOSITION OR THE

1 MANNER OF SELECTION OF THE JURY?

2 MS. FENT: NO OBJECTION FROM THE STATE, YOUR HONOR.

3 MS. PAYNE: NO OBJECTION FROM THE DEFENSE.

4 THE COURT: LET ME SEE THE LAWYERS REAL QUICKLY, PLEASE.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

6 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M GOING
7 TO GO AHEAD AND SEND YOU ALL TO LUNCH IN JUST A FEW MINUTES.
8 YOUR LUNCH BREAK TODAY WILL BE A LITTLE BIT LONGER THAN IT
9 NORMALLY WOULD BE BECAUSE I HAVE SOME MATTERS OF LAW THAT I
10 NEED TO ADDRESS WITH THE ATTORNEYS THAT WILL RELATE TO THIS
11 CASE. I'M EXPECTING THAT THAT'S GOING TO TAKE ME AN HOUR AND
12 15 MINUTES MAYBE, PLUS LUNCH. SO I'M GOING TO ASK YOU ALL TO
13 BE BACK IN THE JURY ROOM THAT THE BAILIFFS WILL SHOW YOU AT
14 2:45.

15 NOW, I AM MAKING A PREDICTION THERE AS TO HOW LONG IT'S
16 GOING TO TAKE ME TO GET ALL THIS DONE, AND I'M HOPEFUL THAT
17 BY THE TIME YOU GET HERE AT 2:45 I'LL BE READY TO BEGIN. IF
18 YOU END UP SITTING BACK THERE FOR A FEW MINUTES, IT WILL BE
19 BECAUSE IT JUST TOOK LONGER THAN I WAS ABLE TO PREDICT
20 ACCURATELY AND I WILL BE OUT HERE WORKING VERY HARD TO GET
21 READY TO HAVE YOU ALL BROUGHT OUT HERE INTO THE COURTROOM.

22 NOW, WHEN YOU COME BACK, I'M GOING TO GIVE YOU SOME
23 DETAILED INSTRUCTIONS ABOUT WHAT SOME OF YOUR
24 RESPONSIBILITIES ARE AND WHAT SOME OF THE RULES THAT GOVERN
25 YOUR SERVICE AS JURORS ARE. BUT BEFORE I LET YOU GO TO

1 LUNCH, I WANT TO MAKE SURE YOU UNDERSTAND ONE VERY IMPORTANT
2 RULE AND THAT IS THAT YOU MAY NOT DISCUSS THE CASE OR ANY
3 ASPECT OF THE CASE UNTIL I HAVE GIVEN YOU PERMISSION TO BEGIN
4 YOUR DELIBERATIONS NEAR THE -- AT THE END OF THE TRIAL. SO
5 WHEN YOU GO TO LUNCH TODAY, IF YOU -- IF YOU SEE EACH OTHER
6 OR IF YOU SEE PEOPLE WHO ASK YOU WHAT YOU'RE DOING AT THE
7 COURTHOUSE, YOU MAY NOT DISCUSS THE CASE AT ALL. OF COURSE,
8 ALL YOU KNOW AT THIS POINT ARE THE ALLEGATIONS THAT HAVE BEEN
9 MADE AGAINST THE DEFENDANT AND THE WITNESSES WHO ARE GOING TO
10 BE CALLED ON TO TESTIFY. YOU DON'T KNOW ANY OF THE FACTS
11 YET. BUT, NEVERTHELESS, DO NOT DISCUSS THIS CASE IN ANY
12 MANNER UNTIL I HAVE GIVEN YOU PERMISSION TO BEGIN YOUR
13 DELIBERATIONS.

14 NOW, THEY'RE GOING TO TAKE YOU OUT THIS WAY AND SHOW YOU
15 THE JURY ROOM AND HOW TO GET BACK TO THAT JURY ROOM AFTER
16 LUNCH. WE'LL SEE YOU AT 2:45. HAVE A NICE LUNCH.

17 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO GO
18 TO LUNCH AT 12:37 P.M.)

19 THE COURT: ALL RIGHT. WELL, LET'S -- LET'S DO WHAT WE
20 CAN FOR THE NEXT 15 OR 20 MINUTES, AND THEN WE'LL GO EAT SOME
21 LUNCH.

22 MS. SHIPLEY: THANK YOU, YOUR HONOR. WE'LL START WITH
23 THE JACKSON VERSUS DENNO HEARING.

24 THE COURT: OKAY.

25 MS. SHIPLEY: AT THIS TIME THE STATE CALLS CHRYSTIE VARN

1 TO THE STAND.

2 CHRYSTAL L. VARN, AFTER BEING DULY SWORN, TESTIFIED
3 AS FOLLOWS IN CAMERA:

4 THE CLERK: PLEASE HAVE A SEAT THERE AND STATE YOUR FULL
5 NAME FOR THE RECORD.

6 THE WITNESS: IT'S ACTUALLY CHRYSTAL L. VARN,
7 C-H-R-Y-S-T-A-L.

8 DIRECT EXAMINATION

9 BY MS. SHIPLEY:

10 Q. MS. VARN, CAN YOU TELL THE COURT WHERE YOU WERE EMPLOYED
11 BACK IN APRIL OF 2005?

12 A. FOREST ACRES POLICE DEPARTMENT.

13 Q. AND WHERE ARE YOU EMPLOYED NOW?

14 A. NATIONWIDE.

15 Q. AND IN ANOTHER STATE?

16 A. YEAH, NORTH CAROLINA.

17 Q. BACK WHEN YOU WERE EMPLOYED WITH THE FOREST ACRES POLICE
18 DEPARTMENT IN APRIL OF '05, WHERE WERE YOUR -- WHAT WAS YOUR
19 TITLE AND WHAT WERE YOUR DUTIES?

20 A. INVESTIGATOR, TO INVESTIGATE CRIMES THAT CAME INTO THE
21 DEPARTMENT.

22 Q. DID YOU SPECIFICALLY RESPOND TO A CASE INVOLVING THE
23 DEFENDANT, BOBBY SHEY RATHBURN?

24 A. YES, I DID.

25 Q. AND WHAT DATE WAS THAT?

1 A. THAT WAS APRIL THE 3RD.

2 Q. OKAY. AND EXPLAIN HOW YOU BECAME INVOLVED IN THE CASE.

3 A. AS AN INVESTIGATOR, YOU'RE ON AN ON-CALL LIST, SO ANY
4 TIME THERE'S A CRIME OR A MAJOR CRIME, THEN YOU'RE CALLED OUT
5 TO THE SCENE, AND THE OFFICERS THAT ARRIVE TO THE SCENE
6 CALLED ME OUT TO THE SCENE.

7 Q. OKAY. AND WHERE WAS THAT SCENE?

8 A. IT WAS AT EDGEFIELD OR, I'M SORRY,

9 Q. OKAY. AND IF YOU HAD YOUR NOTES, WOULD THAT HELP YOU?

10 A. THAT WOULD BE -- YEAH. I'M SORRY.

11 Q. APPROXIMATELY WHAT TIME DID YOU RESPOND TO THAT LOCATION
12 ON

13 A. APPROXIMATELY AROUND 3 OR 4. I KNOW THE TIME OF THE
14 DISPATCH TO THE OFFICERS WERE AT 2, 2:20 OR 2:25, SO IT HAD
15 TO BE AROUND 3 OR 3:30 OR 4.

16 Q. WHEN YOU GOT TO THE SCENE, WERE YOU BRIEFED BY ANYBODY
17 ABOUT WHAT HAD HAPPENED THERE?

18 A. YES. OFFICER SHUMARD AND INVESTIGATOR HINSON WERE ON
19 THE SCENE. THE VICTIM HAD ALREADY BEEN TAKEN TO THE
20 HOSPITAL.

21 Q. AND WHAT DID YOU DO AS A RESULT OF BEING AT THE SCENE?
22 DID YOU DO ANY INVESTIGATIVE WORK THERE?

23 A. YES. I WENT THROUGH THE HOUSE, TOOK PICTURES OF THE
24 HOUSE, COLLECTED EVIDENCE. THE OFFICERS BRIEFED ME ON WHAT
25 HAD HAPPENED AND WHAT THE VICTIM HAD SAID. I COLLECTED ALL

1 THE EVIDENCE AND THEN I WENT DOWN TO THE HOSPITAL AND MET THE
2 VICTIM.

3 Q. AND WHEN YOU WERE AT THE HOSPITAL, DID YOU OBTAIN A
4 WRITTEN STATEMENT FROM THE VICTIM?

5 A. YES, I DID. I RETAINED A WRITTEN STATEMENT AND WENT
6 OVER IT VERBALLY WITH THE VICTIM.

7 Q. ALSO, WAS THERE A WITNESS AT THE HOSPITAL THAT YOU SPOKE
8 TO?

9 A. YES, I TALKED TO LAURA.

10 Q. IS IT WEIDMAN?

11 A. YES, LAURA WEIDMAN.

12 Q. AFTER THAT, DID YOU THEN DRAFT A WARRANT FOR THE ARREST
13 OF BOBBY SHEY RATHBURN?

14 A. YES, I DID.

15 Q. THE INDICTMENTS THAT JUDGE FEW ALREADY DISCUSSED
16 EARLIER?

17 A. YES, I DID.

18 Q. AND THOSE WARRANTS, WHAT DATE DID YOU OBTAIN THEM?

19 A. I GOT THE WARRANTS THE NEXT DAY WHICH WAS ON A MONDAY.
20 APRIL THE 3RD WAS ON A SUNDAY, SO APRIL THE 4TH WAS ON THAT
21 FOLLOWING MONDAY. SO I GOT THE WARRANTS THAT MONDAY.

22 Q. AND WHEN YOU HAD SPOKEN TO THE VICTIM ON SUNDAY,
23 APRIL THE 3RD, WERE YOU ABLE TO GATHER SOME INFORMATION ON
24 HOW TO LOCATE THE DEFENDANT, MR. RATHBURN?

25 A. YES, I DID.

1 Q. AND WHAT INFORMATION DID YOU LEARN WHERE HE WAS LIVING
2 OR EMPLOYED?

3 A. SHE DOESN'T -- SHE DIDN'T KNOW THE ADDRESS, SAID IT WAS
4 WITH A FRIEND SOMEWHERE DOWNTOWN SHANDON WHERE HE WAS LIVING.
5 HOWEVER, SHE WAS ABLE TO GIVE ME THE NAME AND ADDRESS OF THE
6 WORK THAT HE WAS DOING.

7 Q. OKAY. AND WHAT -- WHO WAS HIS EMPLOYER?

8 A. THAT WAS, I BELIEVE, PENHALL ON SHOP ROAD. LET ME MAKE
9 SURE THAT'S CORRECT. I'M SORRY. PENHALL ON BLUFF ROAD.

10 Q. OKAY. DID YOU MAKE CONTACT WITH ANYBODY AT THAT
11 LOCATION TO FIND MR. RATHBURN'S WHEREABOUTS?

12 A. I DID ON THE -- LET'S SEE. IT WASN'T 'TIL THE FOLLOWING
13 TUESDAY; I BELIEVE THAT WAS THE 5TH. MYSELF AND ANOTHER
14 INVESTIGATOR WENT THERE THE FIRST THING IN THE MORNING TO SEE
15 IF BOBBY SHOWED UP FOR WORK THAT MORNING. HE DID NOT SHOW
16 UP, SO WE WENT IN AND TALKED TO THE MANAGER, BRUCE.

17 Q. BRUCE SEAWRIGHT?

18 A. YES. THAT'S CORRECT.

19 Q. AND DID YOU THEN FIND OUT WHERE YOU COULD LOCATE THE
20 DEFENDANT---

21 A. YES.

22 Q. ---TO SERVE HIM WITH THE ARREST WARRANTS?

23 A. YEAH. MR. SEAWRIGHT STATED THAT HE THOUGHT THAT BOBBY
24 WAS ON -- IN ORANGEBURG ON A WORKING ASSIGNMENT. SO MYSELF
25 AND INVESTIGATOR MARTIN LEFT THAT SCENE. BY THE TIME WE GOT

1 BACK TO THE OFFICE, BRUCE HAD CALLED AND SAID HE WAS NOT
2 ACTUALLY WORKING IN ORANGEBURG. HE WAS AT THE
3 ADDRESS. HE'D HAD PROBLEMS WITH THE WORK TRUCK AND WAS
4 REQUESTING A TOW TRUCK. SO BRUCE GAVE US THE ADDRESS TO
5 WHERE BOBBY WAS AT.

6 Q. AND DID YOU THEN RESPOND TO STREET?

7 A. YES.

8 Q. AND DID YOU HAVE TO NOTIFY ANY OTHER LAW ENFORCEMENT
9 AGENCIES AS TO THAT CALL?

10 A. YEAH. WE CALLED C.P.D. FOR ASSISTANCE, BUT THEY NEVER
11 ARRIVED OUT THERE BY THE TIME BOBBY CAME OUT.

12 Q. OKAY. THAT'S THE COLUMBIA POLICE DEPARTMENT?

13 A. YES.

14 Q. AND DID YOU -- WHY DID YOU NOTIFY THEM ABOUT YOUR
15 WHEREABOUTS?

16 A. JUST BECAUSE THAT'S THEIR JURISDICTION.

17 Q. OKAY. WHEN YOU GOT THERE, EXPLAIN HOW LONG YOU HAD TO
18 WAIT UNTIL THE DEFENDANT CAME OUT OF THE RESIDENCE?

19 A. WE GOT THERE AND WE SAW THE TRUCK AND WE FOUND THE
20 ADDRESS. THE DOOR WAS -- THE FRONT DOOR WAS OPEN, BUT THE
21 GLASS DOOR WAS STILL SHUT. I BELIEVE THE TRUCK WAS ACTUALLY
22 RUNNING AT THAT TIME. MYSELF AND INVESTIGATOR MARTIN WALKED
23 TO THE SIDE OF THE HOUSE WHERE SOME BUSHES WERE. WE WERE
24 JUST WAITING FOR C.P.D. TO ARRIVE. AT THAT TIME WE SAW BOBBY
25 COMING OUT OF THE HOUSE AND WALKING TOWARD THE TRUCK, AND

1 THAT'S WHERE WE APPREHENDED HIM THEN.

2 Q. AND DID YOU HAVE A PHOTOGRAPH TO COMPARE HIS---

3 A. YES, I DID.

4 Q. ---APPEARANCE?

5 A. YES, I DID.

6 Q. OKAY. AND PLEASE TELL THE COURT HOW -- EXACTLY WHAT
7 TOOK PLACE WHEN YOU APPROACHED THE DEFENDANT AT
8 STREET.

9 A. WE APPROACHED THE DEFENDANT, ADVISED HIM THAT HE WAS
10 UNDER ARREST. INVESTIGATOR MARTIN READ THE WARRANTS TO THE
11 DEFENDANT. I READ THE DEFENDANT HIS RIGHTS. AT THAT TIME HE
12 SAID THAT -- HE ADMITTED TO CHOKING THE DEFENDANT (SIC) BUT
13 THEN---

14 Q. THE VICTIM?

15 A. I'M SORRY. YEAH, CHOKING THE VICTIM BUT THEN SAID THAT
16 THE SEX WAS CONSENSUAL.

17 Q. OKAY. AND SO YOU WERE PRESENT WHEN INVESTIGATOR MARTIN
18 READ HIM THE WARRANTS?

19 A. YES.

20 Q. SO HE WAS AWARE OF WHAT HE WAS BEING ACCUSED OF.

21 A. YES, HE WAS.

22 Q. WHAT CHARGES HE WAS FACING.

23 A. YES.

24 Q. AND I'M GOING TO SHOW YOU WHAT'S BEEN MARKED FOR
25 IDENTIFICATION PURPOSES STATE'S NUMBER 40. DO YOU RECOGNIZE

1 THAT DOCUMENT?

2 A. YES, I DO.

3 Q. AND WHAT IS IT?

4 A. THAT'S THE ADVICE OF RIGHTS THAT I READ TO THE
5 DEFENDANT.

6 Q. AND HOW DO YOU KNOW THAT'S THE SAME FORM THAT YOU USED
7 THAT DAY?

8 A. I FILLED THIS OUT AND MY SIGNATURE IS ON THE BOTTOM, AND
9 I HAVE ON HERE, "READ ON THE SCENE," AND THAT HE WAS
10 HANDCUFFED AT THE TIME.

11 Q. OKAY. AND WHAT TIME WAS THAT ON APRIL THE 5TH?

12 A. APRIL THE 5TH AT 8:45 IN THE MORNING.

13 Q. ALL RIGHT. AND DID YOU GO OVER THIS FORM WITH HIM OR
14 JUST READ IT TO HIM AND DOCUMENTED THAT YOU READ IT?

15 A. I GOT ALL OF HIS INFORMATION FROM HIM, YOU KNOW,
16 ADDRESS, DATE OF BIRTH, SOCIAL SECURITY NUMBER, AND THEN I
17 READ THE WHOLE FORM AND THE WAIVER OF RIGHTS.

18 Q. OKAY. AND AFTER YOU READ HIM THE MIRANDA WARNINGS AND
19 HIS WAIVER OF RIGHTS, IS THAT WHEN HE MADE THE COMMENT---

20 A. THAT'S WHEN HE MADE THE COMMENT, YES.

21 Q. AND, AGAIN, FOR THE JUDGE'S BENEFIT, EXACTLY WHAT DID HE
22 RELAY TO YOU ORALLY?

23 A. THAT, YEAH, HE WAS -- HE CHOKED THE VICTIM BUT THAT THE
24 SEX WAS CONSENSUAL, AND I DIDN'T GO ANY FURTHER WITH HIM
25 THERE.

1 Q. AND AFTER YOU ADVISED HIM OF HIS RIGHTS AND HE MADE THAT
2 COMMENT, WHERE WAS HE TAKEN?

3 A. HE WAS TAKEN TO FOREST ACRES HEADQUARTERS.

4 Q. AND WHO WAS HE SUPPOSED TO MEET THERE?

5 A. HE MET WITH BRYANT HINSON.

6 Q. AND INVESTIGATOR HINSON---

7 A. YES.

8 Q. ---IS YOUR SUPERVISOR AT THE FOREST ACRES POLICE
9 DEPARTMENT?

10 A. THAT'S CORRECT.

11 Q. AND WHY DID YOU HAVE TO REMAIN AT THE SCENE OF HIS
12 ARREST?

13 A. I STAYED AT THE SCENE. INVESTIGATOR MARTIN AND I RODE
14 TOGETHER, AND THE MANAGER OF THE SHOP WAS CONCERNED ABOUT HIS
15 TRUCK, SO HE WANTED TO MAKE SURE THAT SOMEBODY FROM THE
16 OFFICE CAME OVER AND GOT THE TRUCK BEFORE WE LEFT. SO WE
17 JUST STAYED THERE WITH THE TRUCK TO MAKE SURE HE WAS ABLE TO
18 GET HIS TRUCK, AND WE HAD AN OFFICER COME AND PICK BOBBY SHEY
19 UP AND TAKE HIM BACK TO FOREST ACRES.

20 MS. SHIPLEY: THANK YOU. NO FURTHER QUESTIONS.

21 MS. OWINGS: JUST A FEW, YOUR HONOR.

22 CROSS-EXAMINATION

23 BY MS. OWINGS:

24 Q. I WANT TO MAKE SURE I HAVE MY DATES CORRECT.

25 A. OKAY.

1 Q. SO YOU ARRIVED ON THE SCENE ON THE 3RD. IS THAT RIGHT?

2 A. ON THE 3RD, YES.

3 Q. ON THE 3RD. OKAY. AND YOU GOT THE WARRANTS ON THE 4TH.

4 A. THE WARRANTS ON THE 4TH.

5 Q. AND SHEY WAS ARRESTED ON THE 5TH.

6 A. THAT'S CORRECT.

7 Q. OKAY. AND YOU SAID THAT HE WAS ARRESTED COMING OUT OF

8 HIS HOUSE. THERE WAS -- IT WAS YOU AND WHO ELSE WAS WITH

9 YOU?

10 A. INVESTIGATOR MARTIN. JIMMY MARTIN.

11 Q. AND Y'ALL APPROACHED HIM AND EXPLAINED TO HIM HE WAS

12 UNDER ARREST?

13 A. THAT'S CORRECT.

14 Q. AND HE WAS CUFFED?

15 A. YES, HANDCUFFED.

16 Q. AND INVESTIGATOR MARTIN READ THE WARRANTS.

17 A. UH-HUH.

18 Q. AND YOU READ THE RIGHTS?

19 A. YES. THAT'S CORRECT.

20 Q. SO DID YOU DOCUMENT THE ADVICE OF RIGHTS FORMS ON THE

21 SCENE?

22 A. YES, I DID.

23 Q. YOU HAD THEM WITH YOU ON THE SCENE?

24 A. YES, I DID.

25 Q. AND YOU READ THEM FROM HERE. YOU DIDN'T USE A CARD OR

1 ANYTHING LIKE THAT.

2 A. NO, I READ THEM FROM THAT SHEET RIGHT THERE.

3 MS. OWINGS: OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

4 MS. SHIPLEY: THAT'S ALL FROM THIS WITNESS, YOUR HONOR.

5 THE COURT: YOU CAN STEP DOWN, MA'AM.

6 MS. FENT: THE STATE CALLS LIEUTENANT BRYANT HINSON.

7 BRYANT W. HINSON, JR., AFTER BEING DULY SWORN,

8 TESTIFIED AS FOLLOWS IN CAMERA:

9 THE CLERK: PLEASE HAVE A SEAT THERE, SIR. STATE YOUR
10 FULL NAME FOR THE RECORD.

11 THE WITNESS: MY NAME IS BRYANT WILLIAM HINSON, JR.

12 DIRECT EXAMINATION

13 BY MS. FENT:

14 Q. AND WITH WHOM ARE YOU EMPLOYED?

15 A. FOREST ACRES POLICE DEPARTMENT.

16 Q. AND HOW LONG HAVE YOU BEEN WITH THEM?

17 A. SIXTEEN YEARS.

18 Q. OKAY. ON THE MORNING OF APRIL 5TH, 2005, DID YOU ALSO
19 HAVE INVOLVEMENT IN THIS CASE INVOLVING BOBBY SHEY RATHBURN?

20 A. YES, I DID.

21 Q. OKAY. AND BASICALLY WHAT WAS YOUR INVOLVEMENT?

22 A. MR. RATHBURN WAS BROUGHT TO THE FOREST ACRES POLICE
23 DEPARTMENT. HE WAS BROUGHT TO MY OFFICE WITH OFFICER JOHNNY
24 RAY MARSHALL. I ADVISED HIM OF HIS RIGHTS AND QUESTIONED HIM
25 CONCERNING THIS INCIDENT AND TOOK A STATEMENT FROM HIM.

1 Q. OKAY. DID YOU ACTUALLY GET A WRITTEN STATEMENT FROM THE
2 DEFENDANT?

3 A. YES, I DID.

4 Q. AND YOU SEE THAT DEFENDANT SITTING IN THE COURTROOM HERE
5 TODAY?

6 A. YES, I DO.

7 Q. OKAY. CAN YOU BASICALLY -- I'M GOING TO SHOW YOU WHAT'S
8 BEEN MARKED AS STATE'S EXHIBITS 41 AND 42 FOR THE PURPOSES OF
9 THIS HEARING. CAN YOU EXPLAIN TO THE JUDGE THEN STEP BY STEP
10 HOW YOU WALKED THROUGH THOSE RIGHTS AND OBTAINED THAT WRITTEN
11 STATEMENT?

12 A. YES. FIRST, I ADVISED MR. RATHBURN OF HIS RIGHTS WITH
13 THE RIGHTS FORM WHICH HAS BEEN MARKED EXHIBIT 41. WE FILLED
14 IT OUT BASED ON THE INFORMATION HE WOULD HAVE GIVEN ME. IT
15 WAS APPROXIMATELY 9:40 A.M. ON THE 5TH. I WOULD HAVE GONE
16 OVER EACH RIGHT AS WELL AS THE WAIVER OF RIGHTS. AT THE
17 CONCLUSION I WOULD ASK HIM IF HE HAD ANY QUESTIONS PERTAINING
18 TO THESE RIGHTS AND IF HE UNDERSTOOD THEM, AND IF HE DID, IN
19 FACT, UNDERSTAND THEM, I WOULD ASK HIM TO INITIAL EACH RIGHT
20 THAT HE DID UNDERSTAND THEM AND THEN SIGN IT AT THE BOTTOM
21 INDICATING THAT HE UNDERSTOOD HIS RIGHTS AS WELL AS THE
22 WAIVER OF RIGHTS.

23 Q. OKAY. WHEN YOU SAY YOU GO OVER THAT FORM, HOW DO YOU GO
24 OVER THAT FORM?

25 A. I READ THE FORM OUT LOUD---

1 Q. OKAY.

2 A. ---TO HIM AS WELL AS ALLOW HIM TO LOOK IT OVER AS WELL.

3 Q. OKAY. DO YOU READ THE FORM FIRST AND THEN HAVE HIM LOOK
4 IT OVER OR WHICH ORDER DO YOU DO THAT IN?

5 A. I WOULD READ THE FORM TO HIM, ALLOW HIM TO LOOK IT OVER,
6 AND IF HE HAD ANY QUESTIONS -- OF COURSE, I ASKED HIM IF HE
7 HAD ANY QUESTIONS. IF SO, I WOULD TRY TO EXPLAIN THEM TO
8 HIM. IF NOT, THEN I WOULD ASK HIM TO INITIAL EACH RIGHT AND
9 THEN SIGN IT AT THE BOTTOM.

10 Q. OKAY. AND LOOKING AT STATE'S EXHIBIT 41, DID HE INITIAL
11 EACH AND EVERY RIGHT?

12 A. HE DID INITIAL THEM. THEN HE SIGNED IT AND THEN IT WAS
13 WITNESSED BY JOHNNY RAY MARSHALL WHO WAS PRESENT.

14 Q. OKAY. WELL, FIRST JUST THE FIRST PART IN TERMS OF
15 READING HIM THE RIGHTS AND THAT HE UNDERSTOOD THEM, HE DID --
16 THOSE ARE HIS INITIALS, HIS HANDWRITING, THAT HE UNDERSTOOD
17 THE RIGHTS THAT YOU READ TO HIM; CORRECT?

18 A. THAT'S CORRECT.

19 Q. OKAY. AND THEN THE SECOND PART OF IT IS WHAT? AFTER
20 THEY UNDERSTAND THEIR RIGHTS, THEN WHAT'S THE NEXT STEP?

21 A. THE WAIVER OF RIGHTS.

22 Q. OKAY. AND HOW DO YOU GO OVER THEN THAT WAIVER OF
23 RIGHTS?

24 A. AGAIN, I WILL READ THAT TO HIM AND THEN ALLOW HIM TO
25 LOOK AT IT AGAIN, ASK HIM IF HE HAD ANY QUESTIONS AND THEN

1 ASK HIM IF HE UNDERSTOOD IT AND WAS WILLING TO SPEAK WITH US
2 IF HE'D BE WILLING TO SIGN.

3 Q. OKAY. AND DID HE SIGN THAT WAIVER OF RIGHTS?

4 A. YES, HE DID.

5 Q. AND YOU SAID WHO WAS THAT WITNESSED BY?

6 A. OFFICER JOHNNY RAY MARSHALL.

7 Q. BUT YOU ARE THE PERSON IN THERE ACTUALLY READING THE
8 FORM AND TALKING TO THE DEFENDANT; CORRECT?

9 A. THAT'S CORRECT.

10 Q. OKAY. DID YOU IN ANY WAY FORCE HIM TO SIGN STATE'S
11 EXHIBIT 41?

12 A. NO, MA'AM.

13 Q. DID YOU COERCE HIM IN ANY WAY TO GET HIM TO SIGN?

14 A. NO, MA'AM.

15 Q. DID YOU THREATEN HIM, MAKE ANY PROMISES TO HIM IF HE
16 WOULD SIGN THAT STATEMENT---

17 A. NO, MA'AM.

18 Q. ---OR SIGN THAT RIGHTS FORM?

19 A. NO, MA'AM.

20 Q. DID HE APPEAR TO BE UNDER THE INFLUENCE OF ANY DRUGS OR
21 ALCOHOL?

22 A. NOT AT ALL.

23 Q. AND WERE ALL OF HIS RESPONSES APPROPRIATE TO THE
24 QUESTIONS THAT YOU WERE ASKING?

25 A. YES, THEY WERE.

1 Q. AFTER THEN YOU GET HIS WAIVER OF RIGHTS THAT HE HAD
2 SIGNED SAYING HE WANTS TO TALK. WHAT'S THE NEXT THING YOU DO
3 THEN?

4 A. I WAS ON THE COMPUTER. I ASKED A SERIES OF QUESTIONS,
5 AND AS HE WOULD ANSWER THEM, I WOULD TYPE THEM INTO THE
6 COMPUTER, AND THEN UPON CONCLUSION, I WOULD PRINT THAT OUT,
7 GO OVER EACH QUESTION AND ANSWER, ALLOW HIM TO LOOK AT IT,
8 AND WHILE IT'S STILL ON THE COMPUTER TELL HIM THAT IF THERE'S
9 ANYTHING WE NEED TO CHANGE WHILE IT'S ON THE COMPUTER, PLEASE
10 LET ME KNOW SO I CAN GO BACK AND CHANGE IT AND WE CAN PRINT
11 OUT ANOTHER COPY, IF THERE IS ANYTHING WE NEED TO CHANGE, AT
12 WHICH POINT WHEN HE INDICATES THAT THAT IS CORRECT THAT
13 THERE'S NOTHING TO CHANGE, THEN, OF COURSE, I WOULD ASK HIM
14 TO SIGN IT IF IT IS, IN FACT, THE TRUTH.

15 Q. OKAY. LET'S START BACK TO -- YOU SAID YOU SIT DOWN AND
16 START ASKING HIM QUESTIONS.

17 A. CORRECT.

18 Q. IS THERE ANY DIALOGUE OR CONVERSATION TAKING PLACE
19 BEFORE YOU ASKED THAT FIRST QUESTION?

20 A. SURE. I MEAN, WE WERE TALKING ABOUT VARIOUS THINGS; I
21 DON'T REALLY RECALL EXACTLY WHAT. IT WOULDN'T NECESSARILY
22 EVEN BE PERTAINING SPECIFICALLY TO THIS. WE WOULD JUST BE
23 HAVING A CONVERSATION, AND THEN, OF COURSE, I WOULD LEAD UP
24 INTO GETTING INTO THE QUESTIONS.

25 Q. OKAY. AND WHAT IS THAT LEAD UP INTO GETTING INTO THE

1 QUESTIONS?

2 A. WELL, BASICALLY, YOU KNOW, DO YOU UNDERSTAND WHY YOU'RE
3 HERE? OKAY. I NEED TO ASK YOU SOME QUESTIONS PERTAINING TO
4 THAT, MAYBE SOMETHING TO THE EFFECT THAT; YOU KNOW, I KNOW
5 ONE SIDE OF IT; I NEED TO HEAR YOUR SIDE OF IT. AND THEN
6 BASICALLY START ASKING QUESTIONS PERTAINING TO THE CASE...

7 Q. OKAY. AND AS YOU WERE ASKING QUESTIONS, WAS HE
8 ANSWERING THOSE QUESTIONS?

9 A. YES, HE WAS.

10 Q. OKAY. AND YOU WERE THEN DOCUMENTING THOSE ON STATE'S
11 EXHIBIT---

12 A. RIGHT, ON THIS STATEMENT, FORM 42.

13 Q. OKAY. WHEN YOU GET DOWN TO THE END OF THAT STATEMENT,
14 DO YOU HAVE HIM READ THAT STATEMENT OVER?

15 A. YES.

16 Q. OKAY. AND DOES HE MAKE ANY CHANGES OR ADDITIONS OR
17 DELETIONS TO THAT STATEMENT?

18 A. NO, HE DID NOT.

19 Q. AND THEN HOW DO YOU HAVE HIM ACKNOWLEDGE THAT THIS IS
20 THE STATEMENT HE WANTS TO GIVE?

21 A. AFTER WE GO OVER THE STATEMENT, MY QUESTIONS AND THE
22 ANSWERS, I WOULD ASK HIM, "IF THAT IS THE CORRECT STATEMENT,
23 I WOULD ASK YOU TO SIGN IT STATING BASICALLY THAT THAT IS A
24 TRUE STATEMENT," AND HE SIGNED THE STATEMENT AND THEN IT WAS
25 WITNESSED BY JOHNNY RAY MARSHALL AS WELL AS MYSELF AND

1 INVESTIGATOR MARTIN WHO WAS BACK AT MY OFFICE BY THEN WHO
2 NOTARIZED IT.

3 Q. OKAY. SO THAT SIGNATURE IS SHEY RATHBURN'S, THAT IT'S
4 HIS SIGNATURE. HE PUT THAT SIGNATURE ON THERE.

5 A. THAT'S CORRECT.

6 Q. OKAY. AT ANY TIME WHILE HE GAVE THAT STATEMENT DID HE
7 SAY HE WANTED TO STOP TALKING TO YOU?

8 A. NO, HE DID NOT.

9 Q. AT ANY TIME DURING THAT STATEMENT DID HE SAY, "I WANT A
10 LAWYER"?

11 A. NO, HE DID NOT.

12 Q. YOU SAID THE INFORMATION AT THE TOP OF THE ADVICE OF
13 RIGHTS FORM -- IS THAT YOUR HANDWRITING YOU'RE FILLING OUT?

14 A. THAT IS MY HANDWRITING.

15 Q. OKAY. SO YOU'RE PUTTING BOBBY RATHBURN, FOREST ACRES
16 POLICE DEPARTMENT, THE DATE - APRIL 5TH, 2005, AND THIS WAS
17 AT 9:40 A.M.?

18 A. APPROXIMATELY. RIGHT.

19 Q. OKAY. AND 9:40 A.M. WOULD BE -- INDICATE THE TIME OF
20 WHAT?

21 A. THAT WOULD HAVE BEEN THE TIME OF FILLING OUT THIS FORM.

22 Q. OKAY. THAT YOU START YOUR CONVERSATION WITH THE
23 DEFENDANT---

24 A. RIGHT.

25 Q. ---BASICALLY. NO FURTHER QUESTIONS AT THIS TIME.

1 MS. PAYNE: NO QUESTIONS, YOUR HONOR.

2 MS. FENT: THAT IS THE EXTENT OF OUR WITNESSES WITH
3 REGARD TO THE STATEMENTS, THE ORAL STATEMENT TO INVESTIGATOR
4 VARN AND THE WRITTEN STATEMENT TO---

5 THE COURT: ALL RIGHT. LET ME SEE THE -- LET ME SEE THE
6 WRITTEN STATEMENT, PLEASE. DOES THE DEFENSE HAVE ANY
7 EVIDENCE TO OFFER?

8 MS. PAYNE: NO, YOUR HONOR.

9 (MS. FENT HANDS UP A DOCUMENT TO THE COURT.)

10 THE COURT: OKAY. ANY ARGUMENT?

11 MS. FENT: YOUR HONOR, BASICALLY THE EVIDENCE IN TERMS
12 OF THE INVESTIGATORS IS CLEAR. HE WAS ADVISED INITIALLY OF
13 HIS RIGHTS AT THE SCENE, READ THE WARRANTS, AND IT DIDN'T
14 EVEN INDICATE THAT IT WAS REALLY IN RESPONSE TO ANY
15 QUESTIONS. IT WAS, "HERE ARE YOUR RIGHTS. HERE'S THE FOUR
16 WARRANTS YOU'RE CHARGED WITH," AND HE SAID, "I CHOKED HER BUT
17 THE SEX WAS CONSENSUAL." NO EVIDENCE THAT -- IN ANY WAY THAT
18 IT WAS FORCED OR COERCED OR IN ANY MANNER ILLEGALLY OBTAINED
19 FROM HIM.

20 THEN HE'S BROUGHT DOWN TO THE POLICE STATION AND YET
21 AGAIN A SECOND TIME HE'S READ HIS RIGHTS, SIGNED, INDICATES
22 THAT'S HIS SIGNATURE ON THE ADVICE OF RIGHTS FORM AS WELL AS
23 THE WAIVER THAT HE WANTS TO GIVE HIS RIGHTS UP AND GIVE HIS
24 STATEMENT. NO EVIDENCE THAT HE IN ANY WAY WAS FORCED,
25 COERCED, INTIMIDATED, PROMISED ANYTHING, AND THAT IT WAS

COLLOQUY

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1 FREELY AND VOLUNTARILY GIVEN WITH THE KNOWLEDGE OF HIS
2 RIGHTS.

3 THE COURT: THANK YOU.

4 MS. PAYNE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
5 COURT? WE WOULD JUST ARGUE THAT WITH THE ORAL STATEMENT HE
6 WAS HANDCUFFED. THEY WERE -- READ HIS WARRANTS, AND AT THAT
7 TIME HE -- THEY COULD HAVE WENT LINE THROUGH LINE THROUGH THE
8 RIGHTS AND HAD HIM INITIAL IT. IT'S COMMON SENSE, EVEN WITH
9 THE HANDCUFFS ON, THAT THEY CAN STILL INITIAL THOSE. WE
10 SUBMIT THEY DID NOT DO THAT IN THIS CASE.

11 THEY DID IT PROPERLY WITH THE WRITTEN STATEMENT. WE ARE
12 NOT CONTESTING THE WRITTEN STATEMENT. WE ARE CONTESTING THE
13 ORAL STATEMENT, AND THERE'S NO DIRECT QUOTES THAT HE SAID
14 CHOKED -- THAT I CHOKED HER OR THAT THE SEX WAS CONSENSUAL.
15 FURTHER, THERE WAS NO WITNESSES TO SAY THAT HE SAID THIS OR
16 THAT HE UNDERSTOOD HIS RIGHTS. WE WOULD JUST ARGUE THAT THAT
17 ORAL STATEMENT SHOULD STAY OUT.

18 THE COURT: WELL, WAS THE ORAL STATEMENT -- THE ORAL
19 STATEMENT WAS MADE SPONTANEOUSLY. IS THAT CORRECT?

20 MS. SHIPLEY: YES, SIR.

21 MS. PAYNE: THEY SAID IT WAS AFTER HIS RIGHTS WERE
22 ALLEGEDLY---

23 THE COURT: IS THERE ANY EVIDENCE THAT HE WAS QUESTIONED
24 BY LAW ENFORCEMENT BEFORE HE MADE THAT STATEMENT?

25 MS. PAYNE: NOT THAT WAS PRESENTED, YOUR HONOR.

1 MS. SHIPLEY: YOUR HONOR, I BELIEVE THE TESTIMONY WAS
2 SHE WASN'T EVEN GOING TO QUESTION HIM. SHE HAD HIM
3 TRANSPORTED TO HEADQUARTERS FOR LIEUTENANT HINSON TO
4 INTERROGATE. AT THE SCENE SHE SIMPLY SERVES HIM WITH THE
5 ARREST WARRANTS AND ANOTHER INVESTIGATOR MIRANDIZES HIM, AND
6 THERE'S NO EVIDENCE THAT SHE ASKED HIM ANYTHING ABOUT HIS
7 GUILT OR INNOCENCE FOR THESE CHARGES. HE VOLUNTEERED THAT HE
8 CHOKED HER BUT IT WAS CONSENSUAL SEX. THAT WAS HIS
9 TESTIMONY.

10 MS. PAYNE: YOUR HONOR, WE WOULD JUST RESPOND THAT SHE
11 TOOK A MIRANDA FORM TO THE SCENE. I THINK THAT DOES INDICATE
12 THERE MIGHT HAVE BEEN SOME QUESTIONING OR SOME INTENT TO GET
13 SOME STATEMENT FROM MR. RATHBURN.

14 THE COURT: WELL, THERE MAY HAVE BEEN, BUT THERE'S GOT
15 TO BE EVIDENCE IN THE RECORD THAT HE WAS QUESTIONED EITHER
16 EXPLICITLY OR IMPLICITLY BEFORE THE WAIVER OF MIRANDA COMES
17 INTO PLAY, AND I DON'T -- THAT'S WHY I ASKED THAT QUESTION.
18 ARE YOU AWARE OF ANY EVIDENCE THAT SUGGESTS THAT THERE WAS
19 EXPLICIT OR IMPLICIT QUESTIONING OF THE DEFENDANT BEFORE HE
20 MADE THAT STATEMENT?

21 MS. PAYNE: YOUR HONOR, I WOULD JUST SAY THAT THE LINE
22 OF QUESTIONING COULD HAVE BEEN IMPLICITLY OR EXPLICITLY IN
23 THE FACT THAT HE SUPPOSEDLY SAID, "I DID CHOKE HER, BUT WE
24 HAD CONSENSUAL SEX." WHO JUST SPONTANEOUSLY SAYS THAT?
25 THERE'S USUALLY MORE TO THE STATEMENT AND MORE THAT'S GOING

1 ON THAN JUST SAYING THAT.

2 THE COURT: WELL, THAT'S SOMETHING THAT Y'ALL WILL GET
3 INTO IN CLOSING ARGUMENTS, I SUPPOSE, BUT THE STATE'S
4 POSITION WOULD CERTAINLY BE THAT THE ONLY PERSON WHO
5 SPONTANEOUSLY SAYS THAT IS SOMEBODY WHO IS TRYING TO DENY
6 WHAT THEY JUST DID, BUT THAT'S NOT FOR ME TO DECIDE. I'M
7 SIMPLY TO LOOK AT THE EVIDENCE IN THIS HEARING, AND I WANT TO
8 BE CLEAR THOUGH THAT IF THERE IS ANY EVIDENCE THAT HE WAS
9 QUESTIONED, THEN I WANT TO KNOW WHAT THAT IS, AND I'VE ASKED
10 YOU THAT AND YOU'VE NOT TOLD ME ANY.

11 MS. PAYNE: BEG THE COURT'S INDULGENCE.

12 (WHEREUPON, AN OFF-THE-RECORD DISCUSSION TAKES PLACE
13 BETWEEN MS. OWINGS, MS. PAYNE, AND MR. RATHBURN.)

14 MS. PAYNE: YOUR HONOR, IF WE MAY CALL OUR CLIENT, SHEY
15 RATHBURN.

16 THE COURT: ALL RIGHT. I'LL ALLOW IT.

17 BOBBY SHEY RATHBURN, AFTER BEING DULY SWORN,
18 TESTIFIED AS FOLLOWS IN CAMERA:

19 THE CLERK: PLEASE HAVE A SEAT THERE, SIR. STATE YOUR
20 FULL NAME FOR THE RECORD.

21 THE WITNESS: MY NAME IS BOBBY SHEY RATHBURN.

22 DIRECT EXAMINATION

23 BY MS. PAYNE:

24 Q. MR. RATHBURN, WHAT DO YOU GO BY?

25 A. SHEY. MY MIDDLE NAME.

1 Q. ON APRIL 5TH, 2005, WHAT HAPPENED?

2 A. WELL, I WAS UP IN MY ROOM. I STAY ON THE SECOND -- IN A
3 TWO-STORY HOUSE. I WAS IN MY ROOM. I LOOKED DOWN AND SEEN
4 TWO PEOPLE LOOKING IN MY TRUCK. IT WAS OUTSIDE RUNNING. AND
5 I NOTICED THE DETECTIVE THERE AND I BELIEVE A BLONDE-HEADED
6 GENTLEMAN THAT WAS A DETECTIVE, WORE GLASSES, I THINK. SO I
7 WENT DOWN TO SEE WHO THAT WAS, AND BY THE TIME I WALKED
8 OUTSIDE I DIDN'T SEE ANYBODY 'TIL I GOT RIGHT TO MY TRUCK
9 BECAUSE I THOUGHT SOMEBODY HAD BEEN MESSING WITH SOMETHING.
10 THEY CAME AROUND THE BUSHES AND BASICALLY DETAINED ME THEN.
11 SITTING IN THE CAR, I DON'T REMEMBER ANY QUESTIONS, BUT THERE
12 WAS STATEMENTS.

13 Q. LET ME STOP YOU.

14 A. SURE.

15 Q. SO THE POLICE CAME OUT OF THE BUSHES?

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

17 Q. AND WHAT HAPPENED THEN?

18 A. THEY PRESENTED THAT THEY WERE FROM FOREST ACRES -- ASKED
19 WHO I WAS FIRST. "ARE YOU SHEY RATHBURN, BOBBY SHEY
20 RATHBURN?" I SAID, "YES." "WELL, YOU'RE UNDER ARREST," AND
21 HANDCUFFED ME AT THAT TIME.

22 Q. OKAY. SO THEY HANDCUFFED YOU AT THAT TIME.

23 A. YES, MA'AM.

24 Q. WHAT HAPPENED AFTER THAT?

25 A. STANDING THERE I THINK THIS WAS ABOUT -- I BELIEVE THEY

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1 -- I BELIEVE THEY SENT ME IN THEIR SQUAD CAR. I KNOW IT WAS
2 A FOREST ACRES POLICE CAR THAT TOOK ME TO THE COURTHOUSE --
3 TO THEIR HEADQUARTERS. BUT THEY PUT ME IN THE BACK SEAT OF
4 THEIR CAR. THE DOOR WAS STILL OPEN. AND THE GENTLEMAN - I
5 DON'T KNOW HIS NAME - STARTED READING OFF MY CHARGES, AND AS
6 SOON AS HE READ MY CHARGES, OF COURSE, I WAS CAUGHT OFF
7 GUARD. I WAS JUST ABSOLUTELY SHOCKED AT THIS, AND THAT'S
8 BASICALLY WHAT I WAS TELLING HER: THIS IS CRAZY.

9 Q. LET ME STOP YOU. SO HE READ YOUR WARRANTS.

10 A. UH-HUH.

11 Q. AND THEN WHEN WERE YOU READ YOUR RIGHTS?

12 A. I BELIEVE IT WAS---

13 Q. DO YOU RECALL YOUR RIGHTS BEING READ TO YOU?

14 A. I DON'T REMEMBER EXACTLY, BUT I THINK THAT IT WAS BEFORE
15 I HAD MY CHARGES READ TO ME.

16 Q. OKAY. DID YOU INITIAL ANYTHING?

17 A. ON THE SCENE, NO.

18 Q. OKAY. DID YOU SEE A FORM WITH YOUR RIGHTS ON IT?

19 A. NO, I DIDN'T SEE THAT FORM.

20 Q. OKAY. AND THEN ONCE YOUR WARRANTS WERE READ TO YOU,
21 THEN WHAT HAPPENED?

22 A. THAT'S WHEN I WAS, YOU KNOW, LIKE I SAID, SHOCKED ABOUT
23 IT AND I WAS JUST MAKING MY COMMENTS ABOUT THIS IS CRAZY.

24 Q. DID ANYONE QUESTION YOU AT THAT TIME?

25 A. NO, THERE WAS NO QUESTIONS. THERE WAS A STATEMENT MADE

1 TO ME: "WELL, I SPENT -- I SPENT SIX HOURS AT THE HOSPITAL
2 WITH HER YESTERDAY."

3 Q. AND WHO MADE THAT STATEMENT TO YOU?

4 A. THE LADY DETECTIVE RIGHT THERE.

5 Q. OKAY. MS. VARN?

6 A. YES. I DON'T KNOW HER LAST NAME.

7 Q. BEG THE COURT'S INDULGENCE. DO YOU RECALL SAYING THAT
8 YOU CHOKED MS. BRAZELL?

9 A. I NEVER SAID I CHOKED HER. I NEVER SAID THAT. I'LL
10 JUST LEAVE IT AT THAT.

11 Q. ANSWER ANY QUESTIONS THE STATE MAY HAVE, PLEASE.

12 A. SURE.

13 CROSS-EXAMINATION

14 BY MS. FENT:

15 Q. OKAY. SO YOU DO NOT REMEMBER ANY SPECIFIC QUESTIONS
16 THAT THE INVESTIGATORS ASKED YOU.

17 A. NO, MA'AM.

18 Q. OKAY. THEY HANDCUFFED YOU. YOU SAID THAT YOU BELIEVE
19 THAT THEY READ YOU YOUR RIGHTS FIRST---

20 A. YES, MA'AM, I DO BELIEVE THAT.

21 Q. CORRECT? THE RIGHTS THAT WE JUST -- WE JUST TALKED
22 ABOUT, THE SAME ONES THAT LIEUTENANT HINSON DID AT THE
23 STATION.

24 A. YES.

25 Q. OKAY. THEY READ THOSE TO YOU FIRST, AND THEN THE OTHER

1 INVESTIGATOR READ YOU THE WARRANTS.

2 A. I BELIEVE THAT'S HOW IT WENT.

3 Q. TELLING YOU WHAT YOU WERE CHARGED WITH.

4 A. YES.

5 Q. THE BURGLARY FIRST DEGREE, C.S.C. FIRST, C.D.V. HAN, AND
6 KIDNAPPING.

7 A. YES, MA'AM.

8 Q. AND YOU ARE SHOCKED AND YOU JUST IMMEDIATELY -- THIS IS
9 JUST CRAZY AND ANSWERED YOU'RE SHOCKED.

10 A. NO, IT WAS SHOCKED LIKE EXCITED LIKE, "I CAN'T BELIEVE
11 THIS. ARE YOU SERIOUS?" EXACTLY IS WHAT I SAID. THAT WAS MY
12 STATEMENTS.

13 Q. OKAY. BUT THAT THEY NEVER ASKED YOU ANY QUESTIONS AND
14 THE RIGHTS WERE READ TO YOU PRIOR TO THE CHARGES BEING READ
15 TO YOU.

16 A. I BELIEVE THAT'S HOW IT WENT; YES, MA'AM.

17 MS. FENT: NO FURTHER QUESTIONS.

18 THE COURT: ALL RIGHT. YOU CAN STEP DOWN, SIR. ALL
19 RIGHT. WE'RE GOING TO BREAK FOR LUNCH HERE, AND I'LL RULE
20 RIGHT AFTER LUNCH.

21 MS. OWINGS: THANK YOU, YOUR HONOR.

22 (WHEREUPON, A LUNCH BREAK WAS TAKEN. STATE'S EXHIBITS
23 43 THROUGH 54 WERE MARKED FOR IDENTIFICATION ONLY.)

24 THE COURT: BE SEATED. ALL RIGHT.

25 MS. FENT: THANK YOU, YOUR HONOR. BASICALLY THE NEXT

1 REAL PRETRIAL MOTION THAT WE HAVE IS IN REGARDS TO SOME PRIOR
2 INSTANCES BETWEEN THE VICTIM AND THE DEFENDANT. BEFORE I PUT
3 THE VICTIM ON THE STAND, I JUST KIND OF WANTED TO GIVE YOU AN
4 OVERVIEW OF WHERE WE'RE KIND OF GOING WITH THIS. IT'S --
5 BASICALLY IT'S -- WE'RE NOT PRESENTING IT AS A LYLE ISSUE.
6 WE BELIEVE THAT IT IS RES GESTAE, THAT BASICALLY THIS
7 RELATIONSHIP HAD BEEN GOING ON FOR APPROXIMATELY FIVE YEARS
8 PRIOR TO WHAT HE'S CHARGED WITH TODAY.

9 THE COURT: I'M SORRY.

10 MS. FENT: THE VICTIM AND THE DEFENDANT HAD BEEN IN A
11 RELATIONSHIP FOR APPROXIMATELY FIVE YEARS PRIOR TO THESE
12 CRIMES OCCURRING, WHAT HE'S CHARGED WITH TODAY. THEY -- SHE
13 DESCRIBES IT BASICALLY ABOUT SIX MONTHS INTO THE RELATIONSHIP
14 IS WHEN HIS PHYSICAL ABUSE BY THE DEFENDANT BEGAN ON HER.
15 THEY LIVED TOGETHER ON AND OFF THIS FIVE YEARS, AND AT ONE
16 POINT THE VICTIM HAD A CHILD AND THE DEFENDANT IS THE FATHER
17 OF THAT CHILD.

18 ONE PARTICULAR INCIDENT IS IN DECEMBER OF 2003 HE, THE
19 DEFENDANT -- THEY GO OUT TO A CHRISTMAS PARTY. SOMETHING
20 UPSETS THE DEFENDANT ABOUT HER BEHAVIOR. HE TELLS HER TO GO
21 TO THE CAR. SHE STANDS OUTSIDE WAITING FOR HIM AT THE CAR.
22 HE COMES OUTSIDE AND BASICALLY BEGINS BEATING HER AT THE CAR,
23 THROWS HER INTO THE CAR, IS CHOKING HER, THROWING HER UP
24 AGAINST THE WINDOW, GRABS HER HEAD AND IS PULLING HER HAIR,
25 FORCING HER TO PERFORM ORAL SEX ON HIM. SHE'S TRYING TO

1 FIGHT IT OFF ALL THE WAY HOME IN THE CAR. ONCE THEY GET
2 HOME, SHE JUMPS OUT OF THE CAR, RUNS INSIDE AND ASKS FOR
3 HELP, AND THE POLICE ARE CALLED. THE DEFENDANT IS CHARGED
4 WITH CRIMINAL DOMESTIC VIOLENCE OUT OF THAT INCIDENT AND
5 SUBSEQUENTLY PLEADS GUILTY TO AN ASSAULT AND BATTERY, SO A
6 REDUCED CHARGE, AND IS GIVEN THE DOMESTIC ABUSE CENTER AS HIS
7 SENTENCE. SO THAT'S ONE OF THE INCIDENTS.

8 THERE ARE MANY OTHER INCIDENTS THAT THE VICTIM WILL
9 TESTIFY TO IN THIS PRETRIAL HEARING, AND BASICALLY WHERE WE
10 ARE GOING WITH THIS IS THAT TWO WEEKS PRIOR TO THIS INCIDENT
11 HAPPENING THE VICTIM DECIDES: I AM TERMINATING MY
12 RELATIONSHIP WITH HIM. IT IS VIOLENT. IT IS ABUSIVE, AND
13 I'M TIRED OF IT. THE DEFENDANT MOVES OUT OF THE HOUSE. THE
14 VICTIM HAS CHANGED HER NUMBER, HAS CHANGED HER EMPLOYMENT SO
15 HE DOESN'T KNOW HOW TO FIND HER AND IS CUTTING OFF ALL TIES
16 WITH HER. THEN BASICALLY THE WEEK BEFORE THIS HAPPENED---

17 THE COURT: WAIT. THE DEFENDANT IS DOING THIS?

18 MS. FENT: NO, THE VICTIM HAD KICKED THE DEFENDANT OUT
19 OF THE HOUSE. THE DEFENDANT HAS MOVED OUT OF THE HOUSE.

20 THE COURT: SHE HAS CUT OFF ALL TIES WITH HIM.

21 MS. FENT: CORRECT. SHE'S CUT OFF ALL TIES WITH HIM.
22 SHE'S CHANGED HER CELL PHONE. SHE'S CHANGED HER EMPLOYMENT.
23 AND SHE'S TRYING TO BASICALLY, YOU KNOW, CUT ALL TIES AND
24 QUICKLY MOVE BEFORE HE'S ABLE TO FIGURE OUT THAT SHE'S
25 MOVING, THAT SHE HAS A NEW JOB, THAT SHE HAS A NEW CELL

1 PHONE. SO SHE'S ACTING FAST, TRYING TO GET OUT OF THE HOUSE.

2 HE STARTS SHOWING UP THE WEEK BEFORE THIS HAPPENS ABOUT
3 3:00 IN THE MORNING, 4:00 IN THE MORNING SHOW, STARTS SHOWING
4 UP JUST ABOUT EVERY OTHER NIGHT, BANGING ON THE DOORS, "LET
5 ME IN. LET ME IN." YOU KNOW, SHE'S CRAWLING ON THE FLOOR
6 TRYING FOR HIM NOT TO SEE HER, AND ONE PARTICULAR NIGHT SHE
7 CALLS HER FATHER AND SAYS, YOU KNOW, "COME OVER AND HELP ME.
8 HE'S TRYING TO BREAK INTO THE HOUSE," AND EVENTUALLY
9 CULMINATING TO THE FACTS THAT WE'RE HERE ON TONIGHT IS THAT
10 HE COMES OVER TO THE HOUSE. SHE OPENS THE DOOR THINKING THAT
11 THE GLASS DOOR IS LOCKED AND SHE -- IT'S AT 3:00 IN THE
12 MORNING. SHE OPENS THE DOORS AND TELLS HIM TO GO AWAY. THE
13 GLASS DOOR IS OPEN. HE'S ABLE TO OPEN IT AND SHOVE HIS WAY
14 INSIDE, AND THEN WE HAVE WHAT HAPPENS HERE IS THE C.D.V. HAN
15 AND A CRIMINAL SEXUAL CONDUCT.

16 PART OF WHAT WE ARE OFFERING WITH THE VICTIM'S TESTIMONY
17 IS THAT IT IS BECAUSE OF THIS VIOLENT RELATIONSHIP, IT IS
18 BECAUSE HE HAS ABUSED HER REPEATEDLY, ESPECIALLY WITH THE --
19 YOU KNOW, WE KNOW THE CONVICTION OF THE ASSAULT AND BATTERY.
20 SHE KNOWS IF SHE DOES NOT SUBMIT HOW BAD IT'S GOING TO BE FOR
21 HER IF SHE DOESN'T, YOU KNOW, NOT FIGHT HIM AND JUST SUBMIT
22 TO THE SEXUAL ASSAULT. SO THAT'S BASICALLY IN TERMS OF THE
23 RES GESTAE THAT IT DOESN'T MAKE -- EVERYTHING THAT SHE DOES
24 THAT NIGHT IN HER -- IN HER HOUSE AS SHE'S WALKING AROUND AND
25 TRYING TO KEEP FROM GETTING BEATEN BY HIM, HIDING HER CELL

1 PHONE, ALL OF THESE DECISIONS THAT SHE'S MAKING THAT NIGHT
2 ARE BECAUSE SHE KNOWS HIS PATTERN OF ABUSE. SHE KNOWS WHAT
3 SHE NEEDS TO DO TO KEEP HIM CALM AND TO JUST BASICALLY
4 SURVIVE THE INCIDENT WITHOUT GETTING BEATEN WORSE THAN --
5 WORSE THAN WHAT DOES HAPPEN TO HER. SO IT IS THE ENTIRETY OF
6 THE CONTEXT OF THIS RELATIONSHIP THAT EXPLAINS TO THE JURY
7 AND WOULD EXPLAIN TO THEM FULLY WHAT LED UP TO THIS NIGHT AND
8 HOW IT HAPPENED AND EVERY DECISION THAT SHE MADE.

9 THE COURT: SO YOU -- YOU ARE OFFERING THESE OTHER
10 INCIDENTS AS PART OF THE RES GESTAE OF THIS CRIME.

11 MS. FENT: CORRECT. THAT IT GOES TO EXPLAIN THE
12 REASONABLENESS OF WHY SHE WOULD NOT HAVE LET HIM INTO THE
13 HOUSE, WHY SHE DID NOT -- THE ENTRY INTO THIS HOME WAS NOT
14 WITH CONSENT AND WHY SHE WOULD NOT---

15 THE COURT: I THINK YOU'RE GOING TO HAVE TO WORK ON YOUR
16 ARGUMENT A LITTLE BIT BECAUSE THAT'S -- THAT'S -- THAT'S NOT
17 MAKING ANY SENSE.

18 MS. FENT: OKAY.

19 THE COURT: NOW YOU'RE ARGUING THAT YOU'RE OFFERING IT
20 TO PROVE INTENT UNDER RULE 404(B).

21 MS. FENT: NO. HER LACK OF CONSENT, NOT CONSENTING TO
22 LET HIM INTO THE HOME, THAT SHE WAS AFRAID OF HIM, THAT THESE
23 TWO WEEKS -- AT THE VERY LEAST THESE TWO WEEKS PREVIOUS -- I
24 MEAN, SHE HAS NOT TOLD HIM SHE'S MOVING. SHE'S NOT TOLD HIM
25 THAT SHE'S CHANGED HER CELL PHONE. SHE'S NOT TOLD HIM THAT

1 SHE'S CHANGED HER EMPLOYMENT. SHE'S DOING ALL OF THESE
2 THINGS, SO THAT SHE CAN GET OUT OF THE HOUSE QUICKLY BEFORE
3 HE STARTS COMING BACK AROUND, TO CUT ALL TIES AND THAT IT IS
4 JUST ABOUT THIS TIME SHE'S NOT ABLE TO GET OUT OF THE HOUSE
5 QUICK ENOUGH THAT HE DOES. HE STARTS COMING AROUND ABOUT 3
6 OR 4:00 IN THE MORNING DRUNK, BANGING ON THE DOORS, BANGING
7 ON THE WINDOWS. SHE WAS SCARED OF HIM. SHE WAS SCARED OF
8 HIM BECAUSE OF THIS FIVE-YEAR RELATIONSHIP WHERE HE
9 PHYSICALLY ABUSED HER ON AND OFF THROUGHOUT THAT
10 RELATIONSHIP, AND SHE KNEW, "IF I LET HIM IN DRUNK, YOU KNOW,
11 THIS IS GOING TO BE BAD FOR ME." AND HE'S YELLING AND
12 SCREAMING. SO SHE WOULD NOT HAVE OPENED THAT DOOR TO LET HIM
13 IN. THAT'S, YOU KNOW, ONE OF THE REASONS WHY HE IS -- WHILE
14 HE IS SEXUALLY ASSAULTING HER AFTER HE CHOKES HER THAT SHE
15 BASICALLY DOESN'T FIGHT BACK.

16 IN ADDITION, THE VICTIM MENTIONED IN HER STATEMENT THAT
17 DURING THIS INCIDENT WHILE THIS IS HAPPENING, WHAT HE'S
18 CHARGED WITH, SHE TRIES TO GET HIM OUT OF THE HOUSE. HE'S
19 TRYING TO FIND HER CELL PHONE. HE SAID, "WHERE'S YOUR CELL
20 PHONE? WHERE ARE YOU MOVING? PROVE TO ME WHERE YOU'RE
21 MOVING." THEY CAN'T FIND THE CELL PHONE. SHE SAID, "OH, IT
22 MUST BE IN MY CAR," TO TRY TO GET HIM OUT OF THE HOUSE. HE
23 GOES TO TURN AROUND TO LEAVE, AND BEFORE HE GETS TO THE DOOR
24 HE TURNS AROUND AND HE SAYS, "NO, I'M NOT LEAVING. YOU'RE
25 JUST TRYING TO GET ME OUT OF THE HOUSE SO THAT YOU CAN CALL

COLLOQUY

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1 THE COPS." AND THEN HE TELLS HER, "GO AHEAD AND CALL THE
2 COPS," HANDS HER A CELL PHONE. "GO AHEAD AND CALL THE COPS.
3 ALL I'LL GET IS A SLAP ON THE HAND AND HAVE TO GO TO THOSE
4 BULLSHIT CLASSES," WHICH ARE THE DOMESTIC ABUSE CLASSES HE
5 HAD TO GO TO FOR THE CONVICTION FOR ASSAULT AND BATTERY ON
6 HER WHEN HE BEAT HER BEFORE.

7 THE COURT: LET'S GET REAL SPECIFIC ABOUT WHAT THE
8 PREVIOUS INCIDENTS ARE, WHEN THEY OCCURRED AND WHAT HAPPENED.
9 GIVE ME DATES AND SPECIFIC---

10 MS. FENT: WOULD YOU LIKE THAT IN THE FORM OF THE
11 VICTIM'S TESTIMONY?

12 THE COURT: WELL...

13 MS. FENT: THE PROBLEM IS THAT IN -- YOU KNOW, IT'S A
14 FIVE-YEAR RELATIONSHIP AND, YOU KNOW, DOMESTIC ABUSE -- THE
15 ABUSE IS HAPPENING FREQUENTLY. SHE MAY NOT BE ABLE TO GIVE A
16 DATE, BUT SHE CAN SAY, YOU KNOW, I KNOW THAT IT WAS -- THE
17 FIRST INCIDENT THAT HAPPENED, YOU KNOW, WHEN HE DID THIS. I
18 KNOW THAT IT WAS -- BEFORE THE CONVICTION THAT HE GOT FOR THE
19 ASSAULT AND BATTERY.

20 THE COURT: WELL, YOU CAN PUT HER UP. YOU CAN PUT HER
21 UP, BUT I CAN TELL YOU THAT ALL OF THIS SOUNDS -- IT JUST --
22 IT SOUNDS LIKE YOU'RE OFFERING IT TO PROVE HIS CHARACTER AND
23 TO SHOW THAT HE ACTED ON THIS OCCASION IN CONFORMITY WITH HIS
24 CHARACTER WHICH IS WHAT YOU CAN'T DO AND, I MEAN, I'LL HAVE
25 TO LISTEN TO IT BUT, YOU KNOW, IN ORDER -- YOU NEED TO HAVE

1 -- YOU NEED TO BE ZEROED IN ON WHAT IT IS UNDER 404(B) THAT
2 YOU'RE TRYING TO SHOW.

3 MS. FENT: WELL, I'M NOT OFFERING IT UNDER 404(B). I'M
4 OFFERING IT UNDER RES GESTAE WHICH IS A TOTALLY DIFFERENT
5 THEORY. IT'S NOT---

6 THE COURT: ALL RIGHT. I UNDERSTAND THAT THEORY, BUT
7 HOW LONG HAD IT BEEN SINCE THE LAST TIME SHE SAW HIM?

8 MS. FENT: HE MOVED OUT TWO WEEKS PRIOR TO THIS. ON
9 MARCH 19TH HE MOVED OUT OF THE HOME, AND THIS HAPPENED ON
10 APRIL 3RD. SO SHE KNEW SHE HAD ABOUT---

11 THE COURT: I DON'T THINK -- I DON'T THINK THAT THE
12 CONCEPT OF RES GESTAE INCLUDES A PATTERN OF CRIMINAL ACTIVITY
13 OVER A LONG PERIOD OF TIME. THE CONCEPT OF RES GESTAE IS:
14 ONE CRIME CAN EXTEND PAST ONE SPECIFIC POINT IN TIME. FOR
15 EXAMPLE, IF YOU HAVE -- IF YOU HAVE -- IF YOU HAVE SOMEBODY
16 WHO COMMITS AN ARMED ROBBERY AND THEY GOT THERE IN A STOLEN
17 CAR, THEN THE THEFT OF THE CAR IS PART OF THE RES GESTAE OF
18 THE ARMED ROBBERY. BUT YOU'RE BASICALLY TELLING ME THAT THIS
19 HAPPENED REPEATEDLY OVER AND OVER, OVER THE YEARS, AND THAT
20 THAT MAKES IT ALL ONE CONTINUOUS CRIME AND---

21 MS. FENT: NO. WHAT I'M SAYING---

22 THE COURT: I REALLY DON'T THINK -- THAT DOES NOT -- I
23 HAVEN'T FIGURED OUT A WAY TO MAKE SENSE OUT OF THAT JUST YET,
24 BUT IF YOU WANT TO GO AHEAD AND PUT HER ON THE STAND, YOU'RE
25 CERTAINLY WELCOME TO DO SO. THE OTHER THING ABOUT IT IS

1 THOUGH THAT A LOT OF WHAT YOU'RE TELLING ME, EVEN THOUGH IT
2 MAY NOT BE ADMISSIBLE AT FIRST, COULD POSSIBLY BECOME
3 ADMISSIBLE LATER. BUT YOU -- IF YOU WANT TO GO AHEAD AND
4 PROFFER THIS, THEN GO RIGHT AHEAD. I'LL LISTEN VERY
5 CAREFULLY AND THEN I'LL RULE.

6 MS. FENT: AND THE DIFFICULTY -- I GUESS WHY WE'RE
7 OFFERING THIS IS BECAUSE MANY OF HER ACTIONS AND HER
8 DECISIONS THAT NIGHT IN TERMS OF WHY TO HIDE THE CELL PHONE
9 AND WHY TO DO ALL THIS ARE INTRICATELY TIED TO THE FACT THAT
10 SHE KNOWS THIS IS GOING TO MAKE HIM MAD AND I MAY GET BEAT
11 VERSUS YOU KNOW... SO IT'S JUST A DIFFICULT THING TO KIND OF
12 EXCISE OUT WHY SHE IS MAKING CERTAIN DECISIONS AND WHY SHE'S,
13 YOU KNOW, GOING ABOUT HANDLING THE SITUATION THAT SHE IS.

14 THE COURT: I CAN -- I CAN SEE THAT. I'M JUST NOT SURE
15 THAT YOU'RE ENTITLED TO PROVE THAT AS YOU PROPOSE TO DO IT,
16 BUT GO AHEAD AND PUT HER UP.

17 MS. OWINGS: YOUR HONOR, IF I MAY, BEFORE WE CALL ANY
18 OTHER WITNESSES, I SHOULD HAVE MADE THIS MOTION EARLIER.
19 WE'D LIKE TO SEQUESTER ALL WITNESSES IN THIS CASE EXCEPT THE
20 LEAD INVESTIGATOR AND THE VICTIM.

21 THE COURT: ALL RIGHT. ON WHAT BASIS?

22 MS. OWINGS: WELL, YOUR HONOR, THERE'S A LOT OF
23 STATEMENTS -- THERE'S A LOT OF WITNESSES ON THIS LIST WHO
24 DON'T GIVE STATEMENTS, AND I DON'T KNOW WHAT THEY'RE GOING TO
25 SAY. I DON'T WANT ANY OF THEIR TESTIMONY TO BE INFLUENCED BY

1 WHAT THEY HEAR SOMEONE ELSE SAY SO THEY CAN HELP TRY TO
2 CORROBORATE IT. IF ANY OF MINE ARE HERE, WHICH ONE OF THEM
3 INCLUDES MR. RATHBURN'S MOTHER, I WOULD, OF COURSE, SEND THEM
4 OUT, TOO. I MEAN, I JUST THINK IT'S...

5 THE COURT: OKAY.

6 MS. OWINGS: I DON'T WANT ANYONE'S TESTIMONY INFLUENCED
7 BY ANYONE ELSE'S.

8 THE COURT: ALL RIGHT. YOU KNOW, THERE ARE CASES THAT
9 SAY THAT JUST THAT IS NOT ENOUGH TO SEQUESTER THE WITNESSES
10 AND SO---

11 MS. OWINGS: YES, SIR, I UNDERSTAND THAT.

12 THE COURT: UNLESS YOU HAVE SOMETHING MORE ON THAT, I
13 WON'T -- I WON'T REQUIRE THE WITNESSES TO BE SEQUESTERED. IS
14 THERE SOMETHING MORE?

15 MS. OWINGS: NO, SIR.

16 THE COURT: ALL RIGHT. ALL RIGHT. YOU CAN PROCEED.
17 HOW LONG DO YOU THINK IT'S GOING TO TAKE YOU TO DO THIS?

18 MS. FENT: ABOUT A HALF AN HOUR MAYBE.

19 THE COURT: AND IF YOU WERE TO PRESENT THIS AT TRIAL,
20 YOU WOULD PRESENT IT THROUGH THE VICTIM?

21 MS. FENT: CORRECT.

22 THE COURT: AT WHAT POINT DURING YOUR PRESENTATION OF
23 EVIDENCE BEFORE THE JURY IS THE VICTIM GOING TO TESTIFY?

24 MS. FENT: FIRST.

25 THE COURT: ALL RIGHT. GO AHEAD.

1 MS. FENT: THE STATE CALLS TABITHA WEISS.

2 TABITHA BRAZELL WEISS, AFTER BEING DULY SWORN,
3 TESTIFIED AS FOLLOWS IN CAMERA:

4 THE CLERK: PLEASE HAVE A SEAT HERE. SPEAK INTO THE
5 MICROPHONE. STATE YOUR FULL NAME FOR THE RECORD.

6 THE WITNESS: IT'S TABITHA RUTH WEISS.

7 DIRECT EXAMINATION

8 BY MS. FENT:

9 Q. AND WHAT'S YOUR MAIDEN NAME?

10 A. TABITHA RUTH BRAZELL.

11 Q. OKAY. TABITHA, HOW DO YOU KNOW THE DEFENDANT?

12 A. I WAS IN A RELATIONSHIP WITH HIM FOR AROUND FIVE YEARS.

13 Q. OKAY. AND APPROXIMATELY WHEN DID THIS RELATIONSHIP
14 START? WHAT YEAR?

15 A. IT WAS IN 2000 I THINK AROUND APRIL. MARCH OR APRIL OF
16 2000.

17 Q. OKAY. AND THROUGHOUT YOUR FIVE-YEAR RELATIONSHIP, DID
18 YOU ALL LIVE TOGETHER?

19 A. OFF AND ON, YES.

20 Q. OKAY. AND DID YOU ALL HAVE ANY CHILDREN TOGETHER?

21 A. WE DO. WE HAVE A LITTLE GIRL.

22 Q. OKAY. CAN YOU -- I GUESS YOU'VE HEARD KIND OF THE
23 PURPOSE FOR THIS HEARING.

24 A. RIGHT.

25 Q. WHAT I'D LIKE YOU TO DO IF I -- WE'LL START WITH THE

1 DECEMBER OF 2003 INCIDENT.

2 A. OKAY.

3 Q. CAN YOU TELL THE JUDGE BASICALLY WHAT HAPPENED THAT
4 NIGHT LEADING UP TO THE ASSAULT AND BATTERY CONVICTION?

5 A. UH-HUH. BASICALLY WE WERE AT A CHRISTMAS PARTY FOR MY
6 COMPANY THAT I WORKED FOR AT THE TIME, SOUTHLAND SANITATION,
7 AND IT WAS GETTING LATE. AND WE WERE DANCING AND I BELIEVE I
8 HAD TAKEN OFF MY SHOES TO DANCE, AND FOR WHATEVER REASON IT
9 JUST TRIGGERED SOMETHING WITH HIM, JEALOUSY ISSUES OR
10 WHATEVER, AND HE GRABBED ME BY THE BACK OF MY NECK, THE NAPE,
11 WHERE MY HAIRLINE IS AND KIND OF FORCED ME OFF THE DANCE
12 FLOOR AND, YOU KNOW, TOLD ME WE WERE LEAVING, THAT IT WAS
13 TIME TO GO.

14 SO I PUT MY SHOES ON, AND HASTILY I WAS TRYING TO LEAVE,
15 YOU KNOW, HOPING NO ONE SAW THAT OCCURRENCE BECAUSE IT WAS
16 WITH ALL MY CO-WORKERS. WENT OUT TO THE PARKING LOT. AS WE
17 WERE WALKING OUT THE DOOR, I KNOW THAT ONE OF MY CO-WORKERS,
18 YOU KNOW, SAID BYE TO ME AND I JUST KEPT GOING TO MY CAR, AND
19 I WAS STANDING OUT THERE PROBABLY 15 OR 20 MINUTES. SHEY
20 NEVER CAME OUT. WHEN HE FINALLY CAME OUT, HE WAS YELLING AT
21 ME BECAUSE APPARENTLY HIM AND MY CO-WORKER HAD HAD WORDS AND
22 MAYBE A TUSSELE, AND I BELIEVE THAT THE BOUNCER ESCORTED HIM
23 OUT. AND HE CAME OUT YELLING AT ME BECAUSE I DIDN'T GO BACK
24 AND I GUESS DEFEND HIM AGAINST MY COWORKER.

25 HE PUSHED ME DOWN IN THE PARKING LOT, KICKED ME IN THE

1 SIDE, YOU KNOW, HITTING ME, PUNCHING ME, FINALLY PULLED ME
2 BACK UP. THERE WAS ALSO PEOPLE WALKING BY THAT WERE
3 WITNESSING IT. AND I GUESS IT'S 3:00 IN THE MORNING AT A
4 BAR; NO ONE IS GOING TO GET INVOLVED IN THAT.

5 HE PUT ME IN THE CAR AND I THINK HE STARTED HITTING ME
6 AND STUFF, AND FOR A BRIEF WHILE I BLACKED OUT, BUT I
7 REMEMBER WHEN I FINALLY CAME TO WE WERE PULLED OVER ON THE
8 SIDE OF THE ROAD AND HE, YOU KNOW, JUST KEPT GOING ON ABOUT I
9 DIDN'T, YOU KNOW, DEFEND HIM WITH MY CO-WORKER, INSINUATING
10 THAT MAYBE ME AND THE CO-WORKER HAD SOMETHING GOING ON AND
11 THAT'S WHY I DIDN'T RUN BACK INSIDE, AND I'M SAYING I DIDN'T
12 KNOW WHAT WAS GOING ON. YOU TOLD ME TO GO TO THE CAR. YOU
13 HUMILIATED ME, EMBARRASSED ME.

14 Q. LET ME BACK UP TO WHEN YOU SAID THAT YOU BLACKED OUT.
15 WAS THAT -- WHAT WAS THAT AS A RESULT OF?

16 A. FROM HIM LIKE PUSHING ME. HE KEPT TAKING MY HEAD LIKE
17 THIS IS -- I'M IN THE PASSENGER SEAT, OF COURSE, BECAUSE HE'S
18 DRIVING AND HE'S JUST BANGING MY HEAD AGAINST THE WINDOW, THE
19 GLASS WINDOW. SO I DON'T REMEMBER ANYTHING AFTER THAT. SO
20 I'M UNDER THE ASSUMPTION THAT I BLACKED OUT BECAUSE WHEN I
21 CAME TO WE WERE ON THE SIDE OF THE ROAD, AND IT TOOK ME
22 AWHILE TO KIND OF LOOK AROUND TO FIGURE OUT WE WERE ONLY
23 WITHIN LIKE TWO MINUTES OF OUR RESIDENCE.

24 Q. OKAY.

25 A. AND HE JUST KEPT PUNCHING ME IN THE SIDE, YOU KNOW,

1 SLAPPING ME IN THE MOUTH. HE TRIED TO HAVE ME PERFORM ORAL
2 SEX ON HIM.

3 Q. HOW DID HE DO THAT?

4 A. GRABBED ME BY MY HAIR, PULLING MY HEAD DOWN TOWARDS HIS
5 AREA. OF COURSE, I'M SOBBING AND CRYING AND PLEADING. AND
6 WE WERE ON A STREET THAT'S OFF OF BELTLINE AND SO I'M JUST --
7 I'M KIND OF LOOKING, WAITING FOR FOREST ACRES TO DRIVE BY
8 BECAUSE THEY ALWAYS DO, BUT I NEVER SAW THEM. AND FINALLY I
9 GUESS HE -- IT WASN'T GETTING ANYWHERE IN THE CAR, SO WE
10 DROVE BACK TO MY HOME. AT THE TIME WE WERE LIVING WITH MY
11 BROTHER AND HIS GIRLFRIEND, AND WHEN WE PULLED UP, THE CAR
12 THAT THEY TOOK TO JILLIAN'S, BECAUSE THEY WERE AT THE PARTY
13 AS WELL, WAS NOT THERE. SO I REALLY BECAME TERRIFIED BECAUSE
14 I KNEW THAT THERE WAS NO ONE INSIDE THE HOME TO PROTECT ME.

15 Q. FROM THE TIME THAT YOU'RE PARKED ON THE SIDE OF THE ROAD
16 TO WHEN YOU GET TO YOUR RESIDENCE, IS THERE ANY MORE ASSAULT
17 HAPPENING---

18 A. OH, YEAH.

19 Q. ---AT THAT POINT?

20 A. YES. IT WAS JUST ALL ASSAULT. IT WAS EITHER HIM TRYING
21 TO FORCE ME TO GIVE HIM ORAL SEX OR HIM PUSHING ME, SLAPPING
22 ME, CALLING ME NAMES, YOU KNOW, I WAS A WHORE AND, YOU KNOW,
23 50 MILLION OTHER NAMES FOR WHATEVER REASON. AND THEN ONCE WE
24 GOT TO THE HOUSE, WE PULLED -- LIKE THE DRIVEWAY WENT UP INTO
25 A CARPORT, AND WE WERE SITTING UNDERNEATH THE CARPORT AND I

1 GUESS DURING THE STRUGGLING I SCRATCHED HIS FACE. WELL, THEN
2 THAT JUST INFURIATED HIM. OH, LOOK WHAT YOU DID, YOU KNOW.
3 YOU SCRATCHED MY FACE KIND OF THING AND AS HE---

4 Q. YOU MADE HIM MAD BECAUSE YOU SCRATCHED HIM. DID
5 ANYTHING CHANGE ABOUT THE ASSAULT THAT HE WAS---

6 A. AT THAT POINT THERE WAS NO ASSAULT. HE WAS -- JUST
7 PULLED INTO THE DRIVEWAY AND I THINK HE JUST KIND OF LIKE GOT
8 A GLIMPSE OF HIMSELF IN THE REAR-VIEW MIRROR, AND WHEN HE SAW
9 THAT HIS FACE WAS SCRATCHED, HE STARTED GETTING WOUND UP
10 AGAIN. OH, YOU SCRATCHED ME. LOOK WHAT YOU DID TO MY FACE
11 KIND OF THING. AND AS HE WAS RANTING AND RAVING, I JUST -- I
12 STARTED TO FEAR FOR MY LIFE AT THAT POINT, AND I KNEW THAT HE
13 COULD POSSIBLY HURT ME AND THERE WAS NO ONE ELSE IN THE
14 HOUSE. SO I GRABBED THE KEYS OUT OF THE IGNITION AND I RAN
15 INSIDE, LOCKED THE FRONT DOOR, AND ACTUALLY MY BROTHER WAS AT
16 HOME. I GUESS LAURA HAD DROPPED HIM OFF, AND HE WAS AT HOME
17 AND HE CAME DOWN, I GUESS HEARING ME COME IN. AND IT WAS
18 DARK, SO HE COULDN'T SEE ME. AND I GRABBED HIS CELL PHONE
19 AND I JUST WAS SCREAMING, "DON'T LET HIM IN. DON'T LET HIM
20 IN. HE'S BEAT ME. DON'T LET HIM IN." AND I RAN INTO MY
21 BROTHER'S BEDROOM - THEY HAD A BATHROOM - AND CALLED 9-1-1.

22 Q. OKAY. AND DID THE POLICE SHOW UP?

23 A. THEY DID.

24 Q. AND DID YOU MAKE AN INCIDENT REPORT?

25 A. I DID.

1 Q. OKAY.

2 THE COURT: WHAT WAS THE DATE OF ALL THIS? THIS IS...

3 THE WITNESS: IT WAS DECEMBER 13TH, I THINK, OF 2003,
4 THE 13TH OR THE 14TH.

5 BY MS. FENT:

6 Q. I'M GOING TO SHOW YOU WHAT'S MARKED AS EXHIBITS 43, 44,
7 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, AND TAKE A LOOK AT
8 THOSE PHOTOGRAPHS AND TELL ME IF YOU RECOGNIZE THOSE
9 PHOTOGRAPHS.

10 A. I DO.

11 Q. OKAY. TAKE A LOOK THROUGH THE STACK. OKAY?

12 A. (WITNESS NODDED HEAD UP AND DOWN. THE WITNESS LOOKED AT
13 THE PHOTOGRAPHS.)

14 Q. DO YOU REMEMBER WHEN THESE PHOTOGRAPHS WERE TAKEN?

15 A. THEY WERE TAKEN THE -- IT WAS IN THE EARLY MORNING, SO
16 IT WOULD HAVE BEEN THE MORNING THAT IT OCCURRED.

17 Q. OKAY. THAT NIGHT THAT THIS -- THAT YOU JUST TESTIFIED
18 IT HAPPENED.

19 A. YES.

20 Q. OKAY. AND DO THEY ACCURATELY SHOW THE INJURIES THAT YOU
21 RECEIVED THAT NIGHT AS A RESULT OF HIS BEATING?

22 A. YES, MA'AM.

23 Q. EXHIBIT NUMBER 54, DO YOU KNOW WHEN THOSE PHOTOGRAPHS
24 WERE TAKEN?

25 A. THOSE WERE TAKEN I BELIEVE THE NEXT DAY OR MAYBE THE

1 NEXT DAY, TWO DAYS -- TWO DAYS AFTER THE INCIDENT OCCURRED.

2 Q. OKAY. AND DO YOU REMEMBER WHO TOOK THOSE PHOTOGRAPHS?

3 A. IT WAS THE VICTIM ADVOCATE FOR FOREST ACRES, MARY JANE
4 SCOTT.

5 Q. OKAY. AND DO THOSE ACCURATELY SHOW BASICALLY HOW THE
6 INJURIES DEVELOPED TWO DAYS LATER?

7 A. RIGHT. AND THIS BOTTOM ONE HERE SHOWS WHERE HE TRIED TO
8 BREAK IN THROUGH THE DOOR BECAUSE I LOCKED HIM OUT, AND IT
9 SHOWS THE DOOR IS CRACKED WHERE HE WAS TRYING TO FORCE
10 HIMSELF INTO THE HOUSE TO GET TO ME.

11 Q. OKAY. NOW, AS A RESULT OF MAKING A REPORT WITH FOREST
12 ACRES FOR THIS DECEMBER 13TH, 14TH -- YOU SAID IT WAS
13 BASICALLY THAT NIGHT, THE 13TH OVER INTO THE 14TH?

14 A. YEAH. IT WAS A SATURDAY NIGHT. I THINK IT WAS THE 13TH
15 AND IT JUST KIND OF ROLLED INTO THE 14TH, YOU KNOW, AFTER
16 MIDNIGHT.

17 Q. OKAY.

18 A. OR THE OTHER WAY AROUND. THE 13TH...

19 Q. AS A RESULT OF THAT, DID THE DEFENDANT PLEAD GUILTY TO
20 THIS CHARGE?

21 A. HE DID.

22 Q. OKAY. AND DID YOU ACTUALLY GO TO THAT HEARING AND SEE
23 HIM PLEAD GUILTY?

24 A. YES, MA'AM, I DID.

25 Q. AND DO YOU RECALL WHAT CHARGE HE PLED GUILTY TO?

1 A. SIMPLE ASSAULT I THINK MAYBE.

2 Q. OKAY. AND WHAT WAS REQUIRED OF HIM FOR HIS SENTENCE?

3 A. HE JUST HAD TO GO TO CRIMINAL DOMESTIC VIOLENCE CLASSES.

4 Q. LET'S BACK UP THEN. THIS IS DECEMBER OF '03 THAT YOU'RE
5 TALKING ABOUT.

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

7 Q. SO Y'ALL HAD HAD A RELATIONSHIP FOR ABOUT THREE YEARS
8 PRIOR TO THIS?

9 A. YES, MA'AM.

10 Q. OKAY. CAN YOU RECALL BASICALLY THE FIRST INCIDENT OF
11 VIOLENCE THAT OCCURRED?

12 A. YES, MA'AM.

13 Q. OKAY.

14 A. WE HAD -- I DON'T KNOW THE DATE, BUT IT WAS---

15 Q. DO YOU REMEMBER ABOUT HOW LONG Y'ALL HAD BEEN IN A
16 RELATIONSHIP?

17 A. YEAH. ACTUALLY WE HAD JUST MOVED INTO OUR APARTMENT AND
18 THAT WAS IN JUNE OR JULY OF THE YEAR 2000.

19 Q. OKAY.

20 A. SO IT WAS AROUND THAT TIME. WE HAD BEEN OUT BOWLING
21 WITH SOME MUTUAL FRIENDS AND AGAIN HE WAS DRUNK, AND WHEN WE
22 GOT HOME I'M NOT EVEN SURE WHAT OFFSET THE ARGUMENT. IT JUST
23 -- IT WAS JUST TYPICAL, YOU KNOW, WHEN HE DRANK TO BECOME
24 VIOLENT. AND I WAS STANDING IN OUR BATHROOM IN THE APARTMENT
25 AND HE SLAPPED ME, AND THAT WAS THE FIRST OCCURRENCE.

1 Q. KIND OF I GUESS USING THIS JUNE/JULY 2000 DATE AND THE
2 2003 DATE AS KIND OF A GUIDE---

3 A. UH-HUH.

4 Q. ---COULD YOU TELL THE COURT ABOUT ANY OTHER INSTANCES OF
5 VIOLENCE BETWEEN THESE TWO DATES?

6 A. YEAH. THERE WAS OCCURRENCES AT HIS MOTHER'S HOUSE. SHE
7 LIVED IN NORTH CAROLINA, AND WE WOULD FREQUENTLY GO TO VISIT
8 HER. THERE WAS ONE WHERE HE PUSHED ME THROUGH A GLASS
9 WINDOW. I DIDN'T ACTUALLY FALL THROUGH THE WINDOW, BUT HE
10 PUSHED ME HARD ENOUGH THAT THE WINDOW BROKE. THERE WAS ONE
11 TIME THAT WE HAD RENTED A MUSTANG TO GO UP, AND I REMEMBER
12 THAT HE WAS CHOKING ME ON TOP OF THE MUSTANG WHICH KIND OF
13 SCUFFLED INTO UNDERNEATH THE CARPORT. HE SLAPPED ME THERE.

14 Q. OKAY. LET'S TALK ABOUT THAT INCIDENT. YOU SAID THAT
15 WAS UP AT HIS MOTHER'S HOUSE?

16 A. CORRECT.

17 THE COURT: LET ME ASK YOU A QUESTION. THE CHRISTMAS
18 PARTY NOW, THAT WAS 2003?

19 MS. FENT: CORRECT. I USED THAT KIND OF AS OUR GUIDE TO
20 START FROM, AND THEN NOW WE'RE GOING BACK TO EARLIER.

21 BY MS. FENT:

22 Q. DO YOU KNOW ABOUT WHEN THIS WAS WHEN HE PINNED YOU ON
23 THE CAR?

24 A. I WOULD SAY THAT THAT WAS IN 2005, MAYBE LATE 2004,
25 BECAUSE WE DIDN'T HAVE A CAR. IT HAD BEEN INVOLVED IN AN

1 ACCIDENT, AND SO THE FACT THAT WE WERE IN A RENTAL CAR, I'M
2 THINKING THAT IT WAS LATE 2004, EARLY 2005.

3 Q. OKAY. SO YOU WERE AT HIS MOM'S HOUSE, AND YOU SAY THAT
4 HE PINNED YOU ON THE CAR. CAN YOU BE MORE SPECIFIC?
5 DESCRIBE TO US WHAT HAPPENED.

6 A. LIKE IF I'M STANDING AGAINST THE CAR AND WE ARE HAVING A
7 CONFRONTATION, HE CAME AT ME TO WHERE MY BACK WAS LEANING
8 AGAINST THE HOOD OF THE CAR AND BEGAN CHOKING ME.

9 Q. OKAY.

10 A. AND THEN...

11 Q. DESCRIBE THE CHOKE. HOW LONG DID THIS LAST? COULD YOU
12 BREATHE?

13 A. I MEAN, I COULD BREATHE. HE WAS -- HE WAS APPLYING
14 ENOUGH PRESSURE TO WHERE I WAS LIKE GASPING. IT DIDN'T LAST
15 TOO LONG, PROBABLY NO MORE THAN 30 OR 45 SECONDS, AND THEN
16 AFTER HE STOPPED, I STARTED MAKING MY WAY TOWARDS UNDERNEATH
17 THE CARPORT BECAUSE THE DOOR TO GET INTO THEIR HOME -- ONE OF
18 THE DOORS WAS A SIDE DOOR, AND THAT'S THE ONE THAT WE
19 FREQUENTLY WOULD USE. AND WHEN I WAS UNDERNEATH THE CARPORT
20 HE SLAPPED ME.

21 Q. AND YOU SAID HE CHOKED YOU ALSO?

22 A. YES, MA'AM.

23 Q. OKAY. ANYTHING ELSE THAT HE DID TO YOU?

24 A. THERE WAS AN OCCURRENCE WHEN I WAS PREGNANT. HE WAS
25 VERY JEALOUS AND POSSESSIVE. I COULD ONLY WEAR CERTAIN

1 THINGS. I COULDN'T WEAR MAKE-UP---

2 Q. COULD YOU---

3 A. THAT KIND OF THING.

4 Q. ---KIND OF GIVE ME A TIME FRAME OF WHEN ARE YOU
5 PREGNANT?

6 A. I WAS PREGNANT IN LATE 2000 AND THEN I HAD L B IN
7 AUGUST OF 2001. SO THIS WAS AROUND THE TIME I HAD -- IT WAS
8 ACTUALLY THE DAY OF MY BABY SHOWER BECAUSE IT WAS SOMETHING
9 SILLY, THAT THE OUTFIT THAT I WAS WEARING THAT HE DIDN'T LIKE
10 IT AND -- OR WHATNOT.

11 Q. DO YOU REMEMBER IF IT WAS THE DATE OF YOUR BABY SHOWER?

12 A. IT WAS. IT WAS.

13 Q. OKAY. WHAT I'M ASKING IS: CAN YOU KIND OF BE A LITTLE
14 MORE SPECIFIC ABOUT WHEN IT WOULD BE THEN DURING YOUR
15 PREGNANCY? WAS IT LATE IN YOUR PREGNANCY?

16 A. OH, YEAH. THE BABY SHOWER WAS ABOUT A MONTH AND A HALF
17 PRIOR. SO THE BABY SHOWER WAS IN JUNE, I BELIEVE.

18 Q. OKAY.

19 A. AND SHE WAS -- SHE WAS DUE AT THE END OF JULY, BUT WE
20 WENT UNTIL AUGUST.

21 Q. OKAY. AND WHAT DOES HE SPECIFICALLY DO TO YOU AT THIS
22 TIME?

23 THE COURT: I THINK I CAN SHORT-CIRCUIT THIS. I'M NOT
24 GOING TO LET IT IN.

25 MS. OWINGS: THANK YOU, SIR.

1 THE COURT: THE -- YOU'RE OFFERING THIS, AS I UNDERSTAND
2 WHAT YOU'RE SAYING, TO EXPLAIN WHY SHE DID CERTAIN THINGS
3 DURING THE COURSE OF THE NIGHT COVERED BY THE INDICTMENT.

4 MS. FENT: CORRECT. WHY IS IT THAT SHE, YOU KNOW, DOES
5 NOT FIGHT BACK OR DOES NOT, YOU KNOW...

6 THE COURT: WELL, IF -- IF IN THE COURSE OF THIS CASE
7 THAT EVER REALLY BECOMES RELEVANT -- AS IT STANDS RIGHT NOW,
8 YOU -- WHY SHE DID A CERTAIN THING IS NOT -- I MEAN, I WON'T
9 SAY IT'S NOT RELEVANT, BUT IT'S NOT -- IT'S NOT PART OF WHAT
10 YOU HAVE TO PROVE BUT -- AND IT'S NOT -- IT'S NOT REALLY --
11 THERE'S REALLY NOT A WHOLE LOT OF PROBATIVE VALUE AT THIS
12 POINT IN THE TRIAL OF PROVING, FOR EXAMPLE, WHY SHE HID THE
13 CELL PHONE OR WHY SHE MIGHT HAVE ACTED PASSIVE. AND I DON'T
14 KNOW THE FACTS YET, BUT YOU SUGGESTED THAT SHE ACTED PASSIVE
15 WHEN HE COMMENCED THE SEXUAL ASSAULT. ALL RIGHT. AT THIS
16 PARTICULAR POINT THAT'S NOT PART OF YOUR -- OF WHAT YOU HAVE
17 TO PROVE. I MEAN, I CAN -- I CAN SEE THESE LAWYERS ARE GOING
18 TO BE WALKING A VERY THIN LINE OVER HERE DURING CROSS-
19 EXAMINATION AND DURING THE PRESENTATION OF EVIDENCE, IF THEY
20 CHOOSE TO PUT UP ANY, NOT TO OPEN THE DOOR TO THAT, BUT YOUR
21 PROPOSAL OF THIS EVIDENCE STARTS OFF AS RES GESTAE. IT'S NOT
22 RES GESTAE.

23 SOMETHING THAT HAPPENED IN 2001 OR 2003 IS NOT SO
24 CLOSELY CONNECTED TO THIS CRIME THAT YOU CAN'T PROVE THIS
25 CRIME WITHOUT PROVING WHAT HAPPENED IN 2001 AND 2003. THAT'S

1 WHAT RES GESTAE IS. HOWEVER, IT MAY BECOME RELEVANT OR
2 PERMISSIBLE UNDER 404(B) TO PROVE SOME OF THESE THINGS
3 DEPENDING ON WHAT HAPPENS DURING THE COURSE OF THE CASE. SO
4 I'M JUST -- I'M SAYING THAT I'M NOT ADMITTING THESE PRIOR
5 INCIDENTS AS PART OF THE RES GESTAE OF THE CRIME.

6 THERE ARE GOING TO BE OTHER OPPORTUNITIES, I SUPPOSE,
7 DURING THE COURSE OF THE TRIAL THAT THIS MIGHT COME UP, BUT
8 IF I -- I PROMISE YOU IF THIS CAME IN UNDER RES GESTAE, WE'D
9 -- Y'ALL WOULD BE TRYING THIS CASE AGAIN IN THREE OR FOUR
10 YEARS IF HE GETS CONVICTED. THERE IS -- THIS IS NOT RES
11 GESTAE.

12 MS. FENT: SOME OF THE THINGS THEN THAT WE ARE HOPING
13 THAT WE CAN CLEARLY GET INTO BECAUSE IT IS WHAT HE SAYS TO
14 HER THAT NIGHT IS, "GO AHEAD AND CALL THE COPS BECAUSE ALL
15 I'LL GET IS A SLAP ON THE HAND AND HAVE TO GO TO THOSE BULL-
16 SHIT CLASSES." HE ALSO SAYS, "GO AHEAD AND CALL THE COPS
17 BECAUSE AS SOON AS I GET OUT OF JAIL I'LL COME BACK AND
18 FINISH THE JOB." AND THEN HE---

19 THE COURT: THAT'S -- THAT'S -- THAT IS -- THAT FITS
20 INTO A COMPLETELY DIFFERENT CATEGORY OF EVIDENCE. THAT'S NOT
21 PRIOR BAD ACT EVIDENCE. YOU'RE SUBMITTING EVIDENCE THERE OF
22 WHAT THE DEFENDANT SAID DURING THE COURSE OF THE CRIME.
23 IT'S -- NOW IF HE -- IF IN SAYING SOMETHING HE ALLUDES TO A
24 PREVIOUS CRIME, YOU KNOW, TO BALANCE THAT, I HAVE TO WEIGH
25 THAT UNDER RULE 403, BUT UNLESS IT -- UNLESS ITS PROBATIVE

1 VALUE IS SUBSTANTIALLY OUTWEIGHED BY ITS POTENTIAL FOR UNFAIR
2 PREJUDICE, IT WOULD BE RES GESTAE OR THE TALKING ABOUT IT
3 WOULD BE RES GESTAE. SO I'M NOT RULING ON THAT. YOU HAVEN'T
4 ASKED ME TO RULE ON THAT. I MEAN, THAT WOULD JUST -- WE'LL
5 HAVE TO -- WE MIGHT HAVE TO DEAL WITH THAT RIGHT NOW, BUT
6 THAT'S NOT PART OF WHAT WE'VE ADDRESSED SO FAR.

7 MS. FENT: WELL, SINCE IT WAS REFERRING TO BASICALLY THE
8 -- YOU KNOW, THE SLAP ON THE HAND AND THE BULLSHIT CLASSES
9 BASICALLY REFERS TO HIS ASSAULT AND BATTERY CONVICTION.

10 THE COURT: THAT'S NOT -- THAT'S NOT IMMEDIATELY
11 APPARENT FROM THE COMMENT THAT YOU JUST QUOTED. I DON'T
12 SEE -- I DON'T SEE ANY PROBLEM WITH THAT STATEMENT. DO YOU
13 HAVE ANY OBJECTION TO THAT?

14 MS. OWINGS: IT DOESN'T SPECIFICALLY REFER TO ANY
15 CONVICTION. IT JUST BASICALLY REFERS TO HIM HAVING KNOWLEDGE
16 THAT HE WOULD HAVE TO TAKE SOME CLASSES. I MEAN, LET ME -- I
17 BEG THE COURT'S INDULGENCE FOR JUST A MOMENT BECAUSE...

18 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN MS.
19 OWINGS AND MS. PAYNE.)

20 MS. FENT: I GUESS WHILE THEY'RE LOOKING AT THAT, THE
21 OTHER BASICALLY HADN'T GOTTEN TO THIS -- TO THIS PORTION YET,
22 BUT THE WEEK BEFORE THIS HAPPENS---

23 THE COURT: OKAY. YOU CAN -- YOU CAN -- THEN I DIDN'T
24 MEAN TO EXCLUDE YOU PRESENTING THAT. YOU GO AHEAD AND
25 PRESENT THAT.

1 MS. OWINGS: THE STATEMENT SHE'S ACTUALLY READING IS HE
2 SAYS, "JUST LIKE LAST TIME, ALL I'LL GET IS A SMACK ON THE
3 HEAD AND I'LL HAVE TO TAKE THOSE BULLSHIT CLASSES." YEAH, I
4 WOULD OBJECT TO THAT BECAUSE THAT'S BRINGING IN A PRIOR
5 RECORD. IF HE TESTIFIES, THAT'S ANOTHER ISSUE, BUT I WOULD
6 ARGUE IF HE TESTIFIED IT WOULDN'T COME IN BECAUSE ASSAULT AND
7 BATTERY DOESN'T CARRY -- IT'S NOT A CRIME OF MORAL TURPITUDE,
8 AND IT DOESN'T CARRY OVER A YEAR. SO MY ARGUMENT IS WHETHER
9 HE TESTIFIES OR NOT, THAT SHOULDN'T COME IN AGAINST HIM.

10 MS. FENT: WHICH IS ALL WHY, YOU KNOW, WE'RE TRYING TO
11 COVER THIS, THAT IT IS THE CONTEXT OF WHAT IS HAPPENING THIS
12 NIGHT THAT GIVES A FULL PRESENTATION TO THE JURY AS TO WHAT'S
13 GOING ON THAT, YOU KNOW, SHE'S NOT FIGHTING BACK BECAUSE HE'S
14 SAYING, YOU KNOW, JUST LIKE LAST TIME -- YOU KNOW WHAT
15 HAPPENED LAST TIME IS, YOU KNOW, I DIDN'T GET LOCKED UP.
16 NOTHING HAPPENED. I HAD TO TAKE THOSE CLASSES AND, YOU KNOW,
17 YOU JUST BETTER SUBMIT TO THIS BECAUSE THAT'S ALL THAT
18 HAPPENED. WHEN I GET OUT OF THE JAIL, I'M GOING TO COME BACK
19 AND I'M GOING TO FINISH THE JOB AND THEN---

20 THE COURT: OKAY. WELL, LET ME THINK ABOUT THAT. I'M
21 INCLINED TO SAY THAT THAT IS ADMISSIBLE; THE STATEMENT IS
22 ADMISSIBLE.

23 MS. OWINGS: WHICH STATEMENT? THAT WHEN HE GETS OUT OF
24 JAIL HE'LL COME BACK AND FINISH THE JOB OR THE FIRST
25 STATEMENT, YOUR HONOR---

1 THE COURT: WELL, I DON'T SEE ANY---

2 MS. OWINGS: ---ABOUT JUST LIKE THE LAST TIME?

3 THE COURT: WELL, "WHEN I GET OUT OF JAIL, I'LL COME
4 BACK AND FINISH THE JOB," THAT DOESN'T -- I DON'T SEE -- I
5 DON'T SEE AN EVIDENTIARY ISSUE REGARDING THAT STATEMENT.

6 MS. OWINGS: NO, SIR.

7 THE COURT: THE OTHER ONE IS: JUST LIKE LAST TIME, I'LL
8 GET A SLAP ON THE WRIST AND HAVE TO TAKE THOSE BLANK BLANK
9 CLASSES. I THINK THAT'S ADMISSIBLE. WHAT'S YOUR OBJECTION
10 TO IT?

11 MS. OWINGS: IT'S LETTING IN A PRIOR RECORD. IT'S
12 LETTING IN A PRIOR RECORD, SOMETHING THAT WOULDN'T BE
13 ADMISSIBLE IF HE TESTIFIED.

14 THE COURT: WELL, IT---

15 MS. OWINGS: AND I DON'T UNDERSTAND WHY IT'S PROBATIVE
16 EITHER, YOUR HONOR.

17 THE COURT: WELL, IT'S NOT HARD TO UNDERSTAND WHY IT'S
18 PROBATIVE. TO THE EXTENT IT ALLOWS IN A REFERENCE TO A PRIOR
19 CRIME, THEN IT IS INADMISSIBLE UNDER 404(A) UNLESS IT FITS IN
20 UNDER ONE OF THE EXCEPTIONS UNDER RULE 404(B).

21 MS. OWINGS: RIGHT.

22 THE COURT: HER POSITION IS THAT -- IS THAT -- OR THE
23 STATE'S POSITION IS THAT THE SEXUAL ACT WAS NON-CONSENSUAL.

24 MS. OWINGS: BUT, YOUR HONOR, HE WASN'T -- IN THIS
25 INCIDENT THAT TOOK PLACE WITH HER, HE WASN'T CHARGED WITH ANY

1 SEXUAL ACT. HE WAS ONLY CHARGED WITH SIMPLE C.D.V. SO
2 THERE'S NO -- HE WASN'T CHARGED WITH ANY SEXUAL ACT, AND THIS
3 WOULD BE -- HE WOULD BE FACING A PENALTY -- WHAT HE'S TALKING
4 ABOUT IS FOR A BEATING, NOT FOR A SEX ACT, AND THAT'S WHAT
5 THIS... I BEG THE COURT'S INDULGENCE.

6 MS. FENT: WHICH IS EXACTLY -- ACTUALLY SHE RELATES THAT
7 HE WAS TRYING TO MAKE HER PERFORM THE ORAL SEX ON HIM IN THAT
8 CAR. SO WHAT HE'S DOING THERE IN THIS HOUSE WITH HER THIS
9 NIGHT THAT THESE CHARGES STEM OUT OF IS THE EXACT SAME THING,
10 AND HE WAS SAYING: GO AHEAD. YOU KNOW, JUST LIKE LAST TIME,
11 THIS IS THE ONLY THING THAT'S GOING TO HAPPEN TO ME, AND WHEN
12 I GET OUT OF JAIL I'M GOING TO COME BACK AND MAKE IT WORSE ON
13 YOU.

14 AND THE OTHER THING HE SAID TO HER WAS -- WHEN SHE SAID
15 NO TO GIVING HIM ORAL SEX, HE SAID THAT THE MORE SHE REFUSED,
16 THE WORSE IT WAS GOING TO GET ON HER. AND ALL OF THAT IS THE
17 CONTEXT OF WHAT IS GOING THROUGH HER MIND AT THAT MOMENT AS
18 SHE IS IN THIS HOUSE WITH HIM IS, YOU KNOW, HOW DO I SURVIVE
19 THIS? AND YOU'RE EXACTLY RIGHT: THAT'S WHAT HAPPENED WITH
20 THIS PREVIOUS, YOU KNOW, C.D.V. IS IT GOT REDUCED TO AN
21 ASSAULT AND BATTERY, YOU KNOW, THE CLASSES AND THIS IS ALL
22 JUST RUNNING THROUGH HER MIND AS SHE IS IN THAT HOUSE.

23 MS. OWINGS: WELL, YOUR HONOR, CAN WE TAKE OUT "JUST
24 LIKE LAST TIME"? LET THE STATEMENT IN: "BUT THEN HE SAID,
25 'GO AHEAD. CALL THE COPS, AND ALL I'LL GET IS A SMACK ON THE

1 HAND AND I'LL HAVE TO GO TO THOSE BULLSHIT CLASSES.'" TAKE
2 OUT THE "JUST LIKE LAST TIME" AND LET IN THE WHOLE REST OF
3 THE STATEMENT. I HAVE NO OBJECTION TO THAT. THAT WOULD BE
4 FINE.

5 THE COURT: SO YOUR ONLY OBJECTION IS TO THE "JUST LIKE
6 LAST TIME."

7 MS. OWINGS: YES, SIR. THAT'S MY ONLY OBJECTION TO THAT
8 STATEMENT.

9 THE COURT: WELL, ACTUALLY I THINK WHAT WE BETTER DO IS
10 LET'S GO AHEAD AND MOVE YOUR -- YOUR TESTIMONY TO WHERE YOU
11 WANT TO GO. I NEED TO HEAR HER TESTIMONY ABOUT THESE
12 STATEMENTS AND THEN I'LL BE IN A POSITION TO RULE.

13 MS. OWINGS: YES, SIR.

14 THE COURT: Y'ALL HAVE BEEN QUOTING WHAT YOU THINK THE
15 TESTIMONY IS GOING TO BE. I NEED TO HEAR THAT TESTIMONY. I
16 ALSO NEED TO -- YOU ALSO WANT TO PRESENT SOME EVIDENCE ABOUT
17 WHAT HAPPENED ABOUT TWO WEEKS BEFORE THIS. ALL RIGHT. LET'S
18 TAKE ABOUT A THREE OR FOUR-MINUTE BREAK AND WE'LL COME BACK
19 AND HEAR THAT.

20 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

21 THE COURT: BE SEATED, PLEASE.

22 THE CLERK: WOULD YOU LIKE HER BACK ON THE STAND, YOUR
23 HONOR?

24 THE COURT: (NODDED HEAD AFFIRMATIVELY.)

25 (THE WITNESS RESUMES THE WITNESS STAND.)

1 MS. FENT: MAY I PROCEED?

2 DIRECT EXAMINATION (RESUMED)

3 BY MS. FENT:

4 Q. OKAY. TABITHA, WHEN WAS IT THEN -- WHAT ADDRESS WERE
5 Y'ALL LIVING AT, BASICALLY BEEN BEFORE THIS HAPPENED? WHAT
6 WAS THE LAST RESIDENCE Y'ALL SHARED?

7 A. BEFORE THIS INCIDENT?

8 Q. WHEN THIS HAPPENED, WHAT WAS THE LAST INCIDENT---

9 A. THE INCIDENT UP ON

10 Q. OKAY.

11 A. WE ARE AT 1616 ON UPLAND (PHONETIC).

12 Q. OKAY. AND THIS ONE WAS THE WHEN THIS
13 HAPPENED, THIS INCIDENT THAT WE'RE HERE FOR.

14 A. YES, IT WAS AT

15 Q. WHEN WAS THE LAST TIME THAT HE HAD LIVED
16 IN THAT HOME WITH YOU?

17 A. I THINK IT WAS MARCH 19TH OR MARCH 18TH. IT WAS ABOUT
18 TWO WEEKENDS PRIOR TO THE OCCURRENCE WHERE HE -- WHEN HE
19 MOVED OUT.

20 Q. OKAY. AND BASICALLY HOW -- YOU KNOW, HOW WAS IT THAT HE
21 COMPLETELY LEFT THE HOUSE?

22 A. WE HAD JUST BEEN ARGUING AND JUST -- HE HAD STARTED
23 DRINKING AGAIN AND GOING OUT ALL NIGHT DRINKING.

24 Q. WELL -- I'M SORRY. ON THAT DAY WHEN HE MOVED OUT---

25 A. OKAY.

1 Q. ---DID HE TAKE ALL OF HIS BELONGINGS?

2 A. HE DID.

3 Q. DID HE TURN THE KEY OVER TO YOU?

4 A. YES, HE DID.

5 Q. OKAY. AND WAS IT YOUR UNDERSTANDING THAT HE WAS NO
6 LONGER LIVING IN THAT HOME?

7 A. YES, IT WAS VERY UNDERSTOOD HE WAS NO LONGER LIVING IN
8 THE HOME.

9 Q. OKAY. THEN -- SO THIS IS TWO WEEKS BEFORE APRIL 3RD
10 WHEN THIS HAPPENED TO YOU.

11 A. CORRECT.

12 Q. OKAY. WHEN WAS IT THEN THAT YOU SAW HIM NEXT AND IN
13 WHAT CONTEXT? WHERE DID YOU SEE HIM?

14 A. HE HAD COME BY THE HOUSE.

15 Q. OKAY.

16 A. I DON'T RECALL THE TIME, JUST ROUGHLY BETWEEN PROBABLY
17 2:30 AND 3 OR 4:00 IN THE MORNING.

18 Q. OKAY. AND IN CONTEXT OF THE DATE THAT THIS HAPPENED ON
19 APRIL 3RD, WHEN WAS IT THAT HE CAME TO THE HOUSE, I GUESS,
20 FIRST?

21 A. WHAT DAY?

22 Q. YEAH. WAS IT LIKE THE DAY BEFORE? WAS IT A WEEK
23 BEFORE? WAS IT---

24 A. OH. BEFORE THE APRIL THE 3RD OCCURRENCE WHEN WAS THE
25 LAST TIME HE WAS AT THE HOUSE?

1 Q. (MS. FENT NODDED HER HEAD UP AND DOWN.)

2 A. I THINK IT WAS EITHER THURSDAY OR FRIDAY LIKE AROUND
3 3:00 IN THE MORNING.

4 Q. OKAY. THAT WAS THE LAST TIME HE WAS AT THE HOUSE. HE
5 MOVES OUT ON MARCH 19TH. WHAT PERIOD OF TIME DO YOU SEE HIM
6 NEXT? DO YOU SEE HIM A COUPLE OF DAYS LATER OR A WEEK LATER?

7 A. IT WAS ABOUT -- IT WAS AROUND A WEEK LATER WHEN HE FIRST
8 CAME BY THE HOUSE AT 2 OR 3:00 IN THE MORNING.

9 Q. OKAY. WHEN HE COMES TO THE HOUSE AT 2 OR 3:00 IN THE
10 MORNING, WHAT IS HE DOING? HOW DO YOU KNOW HE'S THERE?

11 A. HE'S BANGING ON THE FRONT DOOR. THERE WAS A GLASS DOOR.
12 HE WAS BANGING ON THE GLASS DOOR, AND THEN IN THAT OCCURRENCE
13 HE ACTUALLY WENT AROUND TO THE SIDE. THERE WAS A DECK WHERE
14 THE BEDROOM WINDOW WAS. THERE WAS THE BEDROOM WINDOW AND
15 THERE WAS THE DECK, AND HE WAS TRYING TO FORCE HIS WAY INTO
16 THE WINDOW WITH SOME TYPE OF TOOL. I DON'T KNOW IF IT WAS A
17 CROWBAR; I DIDN'T SEE IT. BUT YOU COULD HEAR THE TOOL, YOU
18 KNOW, THE METAL AGAINST METAL ON THE WINDOW.

19 Q. AND HOW DID YOU KNOW IT WAS HIM?

20 A. BECAUSE HE WAS YELLING. LIKE I COULD HEAR HIM, "I WANT
21 TO SEE L B LET ME SEE MY DAUGHTER. OPEN THE DOOR."
22 AND THEN HE WAS DRIVING HIS WORK TRUCK AND IT WAS A DIESEL
23 TRUCK, SO IT WAS VERY LOUD AND HE DIDN'T TURN IT OFF. IT WAS
24 ON.

25 Q. OKAY. BUT YOU COULD RECOGNIZE HIS VOICE.

1 A. YES.

2 Q. DO YOU EVER LET HIM IN?

3 A. NO.

4 Q. OKAY. AND HOW MANY TIMES OR DOES HE -- DOES HE COME
5 BACK MORE OFTEN THAT WEEK?

6 A. YEAH, IT'S LIKE EVERY OTHER NIGHT OR MAYBE HE SKIPPED
7 TWO NIGHTS, BUT IT WAS THREE OR FOUR INSTANCES WITHIN THE
8 WEEK BEFORE THE INCIDENT.

9 Q. OKAY. AND BASICALLY DESCRIBE WHAT IS THE MANNER THAT
10 HE'S COMING OVER, THE TIME THAT HE'S COMING OVER.

11 A. HE'S COMING OVER -- LIKE I SAID, IT'S ALWAYS AT 2 OR
12 3:00 IN THE MORNING WHEN HE'S -- YOU KNOW, HE'S SLURRING HIS
13 WORDS, SCREAMING, "I'M TRYING TO SEE L B SO I'M UNDER
14 THE ASSUMPTION THAT HE'S INTOXICATED, AND HE'S JUST BANGING
15 ON THE WINDOWS, BANGING ON THE DOORS, ANYTHING TO DO, I
16 GUESS, TO TRY TO GET INSIDE THE HOUSE, TO GET ME TO OPEN THE
17 DOOR TO LET HIM INSIDE.

18 Q. OKAY. AT THIS POINT ARE YOU PLANNING ON STAYING IN THIS
19 HOME---

20 A. OH, NO.

21 Q. ---OR LIVING IN THIS HOUSE?

22 A. HUH-UH.

23 Q. WHAT ARE YOUR PLANS?

24 A. THE DAY -- HE LEFT ON A SATURDAY, AND THEN SATURDAY
25 NIGHT I DIDN'T STAY AT THE HOUSE. I STAYED WITH MY PARENTS.

1 ON SUNDAY I WENT OVER AND JUST STARTED PACKING UP STUFF. ON
2 MONDAY I WENT AND HAD MY CELL PHONE NUMBER CHANGED. AND I
3 CALLED INTO MY JOB -- I WAS WORKING AT COLONIAL MAKING FAIRLY
4 DECENT MONEY AND I CALLED IN AND RESIGNED BECAUSE I DIDN'T
5 WANT HIM TO BE ABLE TO TRACK ME DOWN, AND I STARTED A NEW JOB
6 ON A WEDNESDAY, TWO DAYS AFTER -- THREE DAYS AFTER HE LEFT.

7 Q. OKAY. AND YOU SAID YOU CHANGED YOUR CELL PHONE. SO DID
8 YOU GIVE HIM YOUR NEW CELL PHONE NUMBER?

9 A. NO, I DID NOT.

10 Q. AND DID YOU TELL HIM IN ANY WAY WHERE YOU WERE GOING TO
11 MOVE TO?

12 A. I DID NOT.

13 Q. AND WHY IS THAT THAT YOU DIDN'T GIVE HIM A CELL PHONE OR
14 YOU DIDN'T TELL HIM WHERE YOU CHANGED JOBS AND YOU'RE MOVING
15 OUT OF THE RESIDENCE? WHY?

16 A. JUST BECAUSE WE WERE IN THAT JUST FIVE-YEAR RELATIONSHIP
17 AND IT JUST STARTED -- IT WAS LIKE CLOCKWORK. LIKE WE WOULD
18 BREAK UP AND THEN FOR TWO WEEKS I WOULDN'T HEAR ANYTHING FROM
19 HIM, AND THEN HE WOULD START -- EVEN MY PARENTS -- HE WOULD
20 COME BY MY PARENTS' HOUSE WHEN I WAS LIVING WITH THEM AT 2 OR
21 3:00 IN THE MORNING, BANGING ON THE DOOR, TRYING TO SEE

22 L B SO IT WAS JUST IN MY MIND, I KNEW, OKAY, WELL---

23 Q. DID YOU WANT HIM TO KNOW WHERE YOU WERE GOING?

24 A. NO. NO. NO.

25 Q. OKAY. THEN THE NIGHT THAT THIS HAPPENED---

1 A. UH-HUH.

2 Q. ---WE'RE NOT GOING TO GO THROUGH ALL THE FACTS OF WHAT
3 HAPPENED.

4 A. OKAY.

5 Q. BUT CAN YOU TELL THE JUDGE: ONCE HE GETS INTO THE
6 HOUSE, WHAT ARE THE THINGS THAT HE IS SAYING TO YOU WHILE
7 HE'S IN THE HOME?

8 A. JUST SPECIFICALLY SAYING THINGS REFERRING TO WHAT HE HAD
9 DONE BEFORE, YOU KNOW, I'D LIKE -- DO YOU WANT ME TO REPEAT
10 WHAT YOU'VE ALREADY SAID OR JUST---

11 Q. YEAH. WE NEED TO KNOW SPECIFICALLY AND YOU NEED -- DID
12 YOU GIVE A WRITTEN STATEMENT?

13 A. I DID.

14 Q. AND DID YOU GIVE THE STATEMENT ON BASICALLY THE DAY THAT
15 IT HAPPENED?

16 A. YEAH.

17 Q. LATER THAT DAY?

18 A. RIGHT. I MEAN, I DON'T WANT TO MISQUOTE HIM, BUT I MEAN
19 HE WAS JUST SAYING, YOU KNOW, KIND OF LIKE Y'ALL WERE SAYING:
20 IF YOU WANT TO, YOU KNOW, CALL THE COPS, GO AHEAD. YOU KNOW,
21 YOU KNOW WHAT'S GOING TO HAPPEN. I'M JUST GOING TO HAVE TO
22 GO BACK TO THOSE CLASSES AND, YOU KNOW, IF I DO GO BACK TO
23 JAIL, THEN, YOU KNOW, YOU BETTER WATCH OUT BECAUSE WHEN I GET
24 OUT, YOU KNOW, I'M GOING TO COME AND FIND YOU AND FINISH THE
25 JOB.

1 Q. WHEN YOU GAVE THIS STATEMENT, DO YOU REMEMBER WHERE YOU
2 WERE? WERE YOU STILL AT THE HOSPITAL OR WERE YOU---

3 A. I WAS AT -- I WAS AT THE HOUSE,

4 Q. OKAY. WAS YOUR MEMORY FRESHER ON THE DAY THAT THIS
5 HAPPENED---

6 A. YEAH.

7 Q. ---THAN IT IS TODAY?

8 A. YES, MA'AM.

9 Q. OKAY. AND I NOTICED IN YOUR STATEMENT A LOT OF TIMES
10 YOU PUT THINGS IN QUOTES. WERE YOU -- WERE YOU QUOTING HIM?

11 A. YEAH.

12 Q. OKAY.

13 A. DO YOU WANT ME TO READ IT?

14 Q. IF WE CAN LOOK THROUGH TO THE THINGS THAT YOU ACTUALLY
15 WROTE DOWN AS QUOTES OF WHAT THE DEFENDANT SAID TO YOU, ON
16 THE FIRST PAGE---

17 A. WHEN I BEGAN SCREAMING, HE COVERED MY MOUTH AND
18 THREATENED TO PUNCH ME IF I DIDN'T -- AND THEN IN QUOTES:
19 SHUT THE F. UP.

20 Q. OKAY.

21 A. AND SOME STUFF... AT ONE POINT I ASKED HIM TO STOP. HE
22 SAID HE DIDN'T CARE.

23 Q. AND YOU HAVE ANOTHER QUOTE DOWN HERE ABOUT HE TOLD YOU
24 TO GO AHEAD AND CALL THE COPS.

25 A. GO AHEAD AND CALL THE COPS.

1 Q. AND WHAT DID HE SPECIFICALLY SAY TO YOU ABOUT GOING
2 AHEAD AND CALL THE COPS?

3 A. BECAUSE JUST LIKE LAST TIME - AND THIS IS IN THE QUOTES
4 - ALL I'LL GET IS A SMACK ON THE HAND AND I'LL HAVE TO GO TO
5 THOSE B.S. CLASSES.

6 Q. AND DID HE SAY THE INITIALS B.S. OR ACTUALLY THE---

7 A. NO. HE SAID THE WORDS. I'M JUST TRYING TO BE...

8 Q. OKAY. THAT'S OKAY.

9 A. THEN DOWN HERE I DON'T KNOW IF THAT'S -- I DON'T KNOW IF
10 THAT'S IRRELEVANT BUT THAT'S IN THE...

11 Q. OKAY.

12 A. AND THEN AT ONE POINT HE, NOT QUOTELY (SIC), BUT
13 INFERRED THAT THE MORE I REFUSED, THE WORSE THAT IT WOULD GET
14 AND THAT THIS WAS -- QUOTE, "I WOULDN'T WANT ILB TO COME
15 IN AND GET UPSET," BECAUSE SHE WAS ACTUALLY -- WHILE THIS WAS
16 GOING ON, SHE WAS LAYING DOWN IN THE BEDROOM.

17 Q. OKAY.

18 A. SHE WAS AWAKE.

19 Q. THEN HERE YOU SAID THAT HE SAID -- "HE SAID THE MORE I
20 REFUSED, THE WORSE IT WILL GET."

21 A. YEAH.

22 Q. OKAY. AT SOME POINT HE GIVES YOU HIS CELL PHONE. HE
23 PULLS HIS CELL PHONE OUT---

24 A. RIGHT.

25 Q. ---AND HE TELLS YOU WHAT?

1 A. WELL, HE DID NOT PHYSICALLY PUT IT IN MY HAND, JUST
2 ALMOST LIKE TAUNTING ME. HE PULLS IT OUT, AND WHEN I WAS
3 TRYING TO GET HIM OUT OF THE HOUSE AND HE PULLED OUT THE CELL
4 PHONE, HE TOLD ME TO GO AHEAD AND CALL THE COPS BECAUSE JUST
5 LIKE THE LAST TIME - AND THIS IS IN QUOTES - ALL I'LL GET IS
6 A SMACK ON THE HAND AND I'LL HAVE TO GO TO THOSE B.S.
7 CLASSES.

8 Q. OKAY. BUT THE NEXT THING THAT HE SAYS TO YOU...

9 A. HE THEN PULLED THE CELL PHONE OUT AND TOLD ME TO CALL
10 THE COPS, BUT AS SOON AS HE GOT OUT OF THE JAIL HE'D COME
11 BACK AND FINISH THE JOB.

12 Q. OKAY. AND YOU PUT THAT IN QUOTES ALSO?

13 A. QUOTES. RIGHT.

14 MS. FENT: I HAVE NO FURTHER QUESTIONS.

15 THE COURT: DO YOU HAVE ANY CROSS THAT RELATES
16 SPECIFICALLY TO THE...

17 MS. OWINGS: TO THE STATEMENTS? NO, SIR.

18 THE COURT: ALL RIGHT. YOU CAN -- YOU CAN COME DOWN,
19 MA'AM.

20 THE WITNESS: OKAY. THANK YOU.

21 THE COURT: ALL RIGHT. I THINK THAT THE -- THE ONLY
22 THING THAT WE'RE DEALING WITH RIGHT NOW IS -- WELL, THERE ARE
23 TWO THINGS. ONE IS WHAT HAPPENED IN THE TWO-WEEK -- IN THE
24 PERIOD OF TWO WEEKS RIGHT BEFORE THIS INCIDENT. NOW, YOU
25 CAN -- SHE CAN TESTIFY AS TO EVERYTHING SHE DID. SHE CAN

1 TESTIFY THAT SHE QUIT HER JOB. SHE CAN TESTIFY -- AND THAT
2 SHE DID SO IN ORDER TO KEEP HIM FROM BEING ABLE TO FIND HER.
3 SHE CAN TESTIFY THAT SHE CHANGED HER CELL PHONE NUMBER IN
4 ORDER TO KEEP HIM FROM BEING ABLE TO CALL HER. SHE CAN
5 TESTIFY THAT -- WHATEVER ELSE SHE DID.

6 THE ONE THING THAT SHE CAN'T DO THOUGH, RIGHT NOW AT
7 LEAST, IS EXPLAIN THAT THE REASON SHE DID NOT WANT HIM TO BE
8 ABLE TO FIND HER OR FEARED THAT HE MIGHT TRY TO FIND HER IS
9 BECAUSE HE HAD BEAT HER UP IN THE PAST.

10 MS. FENT: OKAY. SO SHE CAN CLEARLY TESTIFY THAT HE WAS
11 TRYING -- COMING OVER AND TRYING TO BREAK IN THAT WEEK
12 BEFORE---

13 THE COURT: WELL...

14 MS. FENT: ---AND HOW SHE WAS REACTING TO THAT. THAT, I
15 TRULY BELIEVE, IS, YOU KNOW -- I UNDERSTAND THE COURT'S
16 CONCERN REGARDING THE FIVE YEARS PREVIOUS, BUT THIS IS TWO
17 WEEKS, YOU KNOW, OR IT'S ACTUALLY THE WEEK -- IT'S NARROWED
18 DOWN TO A WEEK PRIOR TO THIS HAPPENING THAT SHE IS TRYING TO
19 GET AWAY FROM HIM; SHE'S TRYING TO CUT TIES. HE'S COMING
20 OVER. HE DOESN'T HAVE A KEY; HE CAN'T GET IN. IT'S NOT HIS
21 RESIDENCE. HE'S BANGING ON THE DOORS. HER FATHER -- SHE
22 ACTUALLY CALLS HER DAD ONE OF THE NIGHTS AT 3 A.M. OR 2:30 IN
23 THE MORNING AND SAYS, YOU KNOW, "DAD, HE'S OVER HERE. HELP
24 ME. COME OVER HERE," WHICH IT'S ALL GOING TO GO TO, YOU
25 KNOW, THAT SHE'S -- HE IS NOT ALLOWED IN THAT HOUSE. SHE'S

1 NOT GIVING HIM CONSENT TO COME INTO THAT HOME. SHE IS AFRAID
2 OF HIM. SHE IS TRYING TO CUT ALL TIES, AND THAT, I TRULY
3 BELIEVE UNDER RES GESTAE, IS, YOU KNOW, A FULL PRESENTATION
4 OF THE CASE AND WHAT IS HAPPENING BETWEEN THEM AT THIS TIME.

5 YOUR HONOR, I PULLED A NUMBER OF CASES THAT DEAL WITH
6 RES GESTAE, AND THEY ALL TALK ABOUT HOW THE FACT THAT IT IS A
7 COMPLETELY DIFFERENT THEORY AS TO LYLE AND THAT ADMISSIBILITY
8 OF EVIDENCE OF OTHER CRIMES OR BAD ACTS, TRYING TO BREAK INTO
9 THE HOME THE WEEK BEFORE, ARISES WHEN EVIDENCE FURNISHES PART
10 OF THE CONTEXT OF THE CRIME OR IS NECESSARY TO A FULL
11 PRESENTATION OF THE CASE OR IS SO INTIMATELY CONNECTED
12 WITH---

13 THE COURT: I REALIZE ALL THAT.

14 MS. FENT: OKAY.

15 THE COURT: I'VE BEEN READING IT WHILE Y'ALL HAVE BEEN
16 TALKING.

17 MS. FENT: AS A KIND OF A RELATED MATTER IS IN OUR -- IN
18 OUR CASE IN CHIEF WE ARE OFFERING THE DEFENDANT'S STATEMENT,
19 AND IN THE DEFENDANT'S STATEMENT HE SAYS SHE -- YOU KNOW, SHE
20 LET ME IN AND I WENT OVER THERE TWO NIGHTS BEFORE AND SHE LET
21 ME IN, AND THAT IS CLEARLY, YOU KNOW, INCONSISTENT WITH THE
22 FACT THAT SHE WAS FEARFUL OF HIM, THAT SHE CALLS HER DAD.
23 "DAD, COME OVER AND HELP ME. YOU KNOW, HE'S OUTSIDE BANGING
24 ON THE DOOR TRYING TO GET IN," AND ALL OF THAT IS A -- GOES
25 TO A FULL PRESENTATION OF THE CASE AND THE CONTEXT THAT

1 EVERYTHING IS HAPPENING IN THIS TWO WEEKS PRIOR TO WHAT IT
2 CULMINATES IN.

3 THE COURT: IT'S -- I THINK IT'S A -- I THINK THAT IT IS
4 INCORRECT TO LOOK AT IT -- TO LOOK AT RES GESTAE AS
5 EXPLAINING WHAT SHE DID WHICH IS -- WHICH IS -- WHICH IS SORT
6 OF HOW YOU'RE ARGUING. I HAVE TO LOOK AT THE INCIDENTS THE
7 NIGHT BEFORE IN THE CONTEXT OF PROVING WHAT HE DID, AND AS
8 I...

9 MS. FENT: COULD I PRESENT TO THE COURT ONE CASE, STATE
10 V. SWEAT, THAT BASICALLY IS A DOMESTIC VIOLENCE CASE TALKING
11 ABOUT---

12 THE COURT: LET ME SEE IT.

13 (MS. FENT HANDS A DOCUMENT TO THE COURT.)

14 MS. FENT: AND BASICALLY THIS---

15 THE COURT: LET ME READ IT FIRST.

16 MS. FENT: I'M SORRY.

17 THE COURT: WAS THERE ANY KIND OF -- NOW, THIS IS HIS
18 CHILD; RIGHT?

19 MS. SHIPLEY: YES, SIR.

20 THE COURT: WAS THERE ANY KIND OF VISITATION ARRANGEMENT
21 IN PLACE?

22 MS. FENT: NO.

23 THE COURT: SO FROM THE TIME THAT HE SUPPOSEDLY CAME
24 OVER THERE A WEEK OR SO BEFORE AND TRIED TO GET IN UNTIL THE
25 NIGHT THIS HAPPENED, HE HAD NOT SEEN THE CHILD?

1 MS. FENT: NO.

2 THE COURT: NOW, REGARDING THE INCIDENTS THAT OCCURRED
3 ON THE NIGHTS BEFORE AND WHAT I JUST HEARD THE TESTIMONY HAS
4 BEEN AND THE DESCRIPTION OF WHAT -- OF WHAT HAPPENED, IS
5 THERE ANYTHING CRIMINAL THAT THE DEFENDANT DID IN THE COURSE
6 OF ANY OF THAT?

7 MS. OWINGS: YOUR HONOR, THE STATE'S GOING TO ARGUE THAT
8 IT IS---

9 THE COURT: WAIT A MINUTE NOW. I DIDN'T CHOOSE MY
10 QUESTION RANDOMLY.

11 MS. OWINGS: YES, SIR.

12 THE COURT: IS THERE ANYTHING CRIMINAL IN WHAT THE
13 DEFENDANT DID ON THOSE NIGHTS?

14 MS. OWINGS: OUR POSITION AS IN HIM TRYING TO COMMIT A
15 BURGLARY, I WOULD SAY NO, THAT HE -- I'M NOT SURE I
16 UNDERSTAND---

17 THE COURT: ATTEMPTED BURGLARY. HE'S TRYING TO GET IN
18 THE HOUSE USING SOMETHING LIKE A CROWBAR.

19 MS. OWINGS: I MEAN, THAT'S ATTEMPTED BURGLARY. I MEAN,
20 THE STATE'S THEORY IS ATTEMPTED BURGLARY, AND THEY'RE ALSO
21 BASICALLY ACCUSING HIM OF STALKING HER. I MEAN -- AND, YOUR
22 HONOR, AS FAR AS THIS CASE, THE SWEAT CASE, GOES, THIS IS A
23 RETALIATION CASE. THIS DEFENDANT WAS LOCKED UP FOR C.D.V.
24 HAN. ELEVEN DAYS LATER HE COMES OUT AND RETALIATES, AND IT'S
25 SHOWING WHY THAT DEFENDANT DID WHAT HE DID, AND THEY'RE

1 TRYING TO GET THE STUFF IN TO SHOW WHY SHE DID WHAT SHE DID
2 AND IT'S TOTALLY DIFFERENT. THEY'RE TRYING -- THIS CASE WAS
3 TO USE THE RES GESTAE TO SHOW THE DEFENDANT'S MOTIVE, BUT
4 THEY'RE TRYING TO USE THIS TO SHOW THE VICTIM'S MOTIVE.

5 MS. FENT: IT ACTUALLY COULD BE ARGUED, FIRST OF ALL,
6 THE CASES ARE NOT ONLY USED -- YOU KNOW, YOU DON'T HAVE TO
7 FIND A CASE THAT'S EXACTLY ON POINT TO YOUR CASE AND SAY, OH,
8 HERE IT IS. IT'S NOT. IT'S THE DISCUSSION IN THE LAW THAT'S
9 IMPORTANT. WHAT THEY'RE TALKING ABOUT IS THAT -- IS THAT
10 THIS SITUATION PROVIDES THE CONTEXT, BUT ACTUALLY IN TERMS OF
11 THAT TWO-WEEK PERIOD OF TIME, THAT ACTUALLY DOES FIT THAT IT
12 REALLY IS THE DEFENDANT'S MOTIVE OF WHY HE'S ANGRY, WHY HE'S
13 GOING OVER THERE. SHE'S BROKEN IT UP. HE'S IN HIS TWO-WEEK
14 CYCLE WHERE HE WANTS TO COME BACK AND -- YOU KNOW, LET ME IN.
15 I -- YOU KNOW, "I WANT TO SEE THE KID," IF YOU WANT TO SAY
16 THAT. BUT, YEAH, HE'S ANGRY; HE'S MAD. HE'S GOING OVER
17 THERE EVERY MORNING 3 A.M., DRUNK, BANGING ON THE DOORS,
18 BANGING ON THE WINDOWS SAYING, "LET ME IN. LET ME IN."

19 HE NO LONGER LIVES THERE. SHE'S TAKING THIS AS AN
20 OPPORTUNITY TO TERMINATE THE RELATIONSHIP. I'VE GOTTEN HIM
21 OUT OF THE HOUSE. HE DOESN'T HAVE ANY REASON TO BE HERE. HE
22 DOESN'T HAVE ANY BELONGINGS HERE. HE'S GIVEN ME THE KEY.
23 FINALLY THIS IS MY -- THIS IS MY OPPORTUNITY TO CUT ALL TIES,
24 AND THEN HE STARTS SHOWING UP AGAIN 3:45, YOU KNOW, BANGING,
25 MAD, ANGRY, LET ME IN, AND ULTIMATELY GETS IN THIS PARTICULAR

1 NIGHT AND BEATS HER AND SEXUALLY ASSAULTS HER OR CHOKES HER.

2 THE COURT: THE ONLY THING IN ANY OF THESE INCIDENTS
3 BEFORE, IN THE WEEK OR TWO BEFORE, THAT WOULD NOT BE
4 ADMISSIBLE IS THE ATTEMPT TO BREAK IN AFTER BEING TOLD HE
5 CAN'T COME IN OR AFTER BEING DISALLOWED TO BE IN. THE FACT
6 THAT HE CAME OVER THERE AND WAS NOT ALLOWED IN, THERE'S NO
7 PROBLEM WITH THAT. THERE'S NOTHING -- THERE'S NO EVIDENTIARY
8 ISSUE THERE. SO WHAT WE'RE FOCUSED IN ON IS SIMPLY WHAT HE
9 DID AFTER BEING -- AFTER FIGURING OUT THAT HE WAS NOT GOING
10 TO BE ALLOWED IN.

11 NOW, THERE WERE COMMENTS MADE -- THE TESTIMONY IS THAT
12 THERE WERE COMMENTS. HE WAS SCREAMING FROM THE OUTSIDE, "LET
13 ME IN TO SEE MY DAUGHTER." ALL RIGHT. IN THE CONTEXT OF
14 THIS SITUATION WHERE THEY'VE JUST BROKEN UP A -- HOW OLD WAS
15 THE CHILD AT THE TIME?

16 MS. FENT: THREE.

17 THE COURT: THREE. THEY'VE JUST BROKEN UP AFTER A
18 RELATIONSHIP THAT IS AT LEAST THAT LONG AND -- AND ON SEVERAL
19 PREVIOUS OCCASIONS HE HAD TRIED TO GET IN, ANNOUNCING HIS
20 INTENTION THAT HE WANTED TO SEE THE CHILD, WAS NOT ALLOWED
21 IN. I DON'T -- I DON'T SO MUCH LIKE THE RES GESTAE ARGUMENT
22 AS THE SHOWING WHAT HIS -- WHAT HIS MOTIVES WERE AND WHAT HIS
23 INTENTIONS WERE AND SHOWING... IT'S NOT -- IT'S NOT SO MUCH
24 -- THE RULE USES ACCIDENT OR MISTAKE, BUT IN MY VIEW IT COULD
25 ALSO -- IT ALSO RELATES TO A SHOWING OF LACK OF CONSENT WHICH

1 IS THE -- WHICH IS, IN FACT, INTENT WHICH IS USED AS THE LAST
2 WORD OF THE RULE.

3 SO I THINK THAT THE ATTEMPT TO GET IN ON PREVIOUS NIGHTS
4 AFTER BEING -- AFTER BEING EITHER SHOWN OR TOLD THAT HE WAS
5 NOT GOING TO GET IN DOES, IN FACT -- WHETHER YOU LOOK AT IT
6 AS RES GESTAE OR LOOK AT IT AS MOTIVE OR LOOK AT IT AS
7 INTENT, IT DOES, IN FACT, SUFFICIENTLY OR IS SUFFICIENTLY
8 CONNECTED WITH WHAT HAPPENED ON THIS PARTICULAR NIGHT THAT IT
9 SHOULD BE ADMISSIBLE. AND SO I'M -- THE INCIDENT -- THAT'S
10 GOING TO BE MY RULING ON THESE INCIDENTS THAT ARE RIGHT
11 BEFOREHAND. NOW, OBVIOUSLY I'VE GOT TO LOOK AT THIS IN THE
12 CONTEXT OF RULE 403 AND YOU'VE ASKED ME TO DO THAT.

13 MS. FENT: YES, SIR.

14 THE COURT: AND THAT'S WHY I WAS ASKING THE QUESTION
15 ABOUT WHETHER OR NOT THERE WAS ANYTHING CRIMINAL, AND THAT'S
16 ALSO -- WHEN I -- WHEN I BREAK IT DOWN IN TERMS OF HIM TRYING
17 TO GET IN, THERE'S CERTAINLY NOTHING CRIMINAL ABOUT HIM
18 COMING OVER THERE AND TRYING TO SEE HIS CHILD. THERE'S
19 NOTHING CRIMINAL ABOUT HIM GETTING MAD AND STANDING OUT IN
20 THE YARD YELLING AND SAYING, "I WANT TO SEE MY CHILD," AND
21 THERE'S REALLY NOT EVEN A BAD ACT. I MEAN, IT'S A -- YOU
22 KNOW, MAYBE IT'S A BAD ACT, BUT IT'S NOT SOMETHING THAT
23 REALLY SHOWS THE TYPE OF CHARACTER THAT WOULD LEAD A FACT
24 FINDER TO CONCLUDE THAT BECAUSE HE STOOD OUTSIDE AND HOLLERED
25 THAT HE WANTED TO SEE HIS CHILD THE WEEK BEFORE THIS

1 INCIDENT, HE IS, THEREFORE, LIKELY TO BE THE KIND OF PERSON
2 WHO WOULD GET INTO THE HOUSE A WEEK LATER, BEAT THIS WOMAN UP
3 AND RAPE HER. THAT CHARACTER CONNECTION DOESN'T -- DOESN'T
4 MEET.

5 SO I'M NOT REALLY LOOKING AT THE -- AT THE STANDING
6 OUTSIDE HOLLERING TO TRY TO GET IN TO SEE HIS CHILD AS
7 CHARACTER EVIDENCE. AND SO THAT DOESN'T EVEN HAVE A 404
8 COMPONENT, BUT THE ATTEMPT TO GET IN DOES. AND SO
9 AFTERWARDS... BUT WHEN I TAKE -- AND I'VE -- I'VE JUST
10 DESCRIBED HOW I THINK THE ATTEMPT TO GET IN RELATES TO AND IS
11 PROBATIVE TO WHAT HAPPENED ON THE NIGHT IN QUESTION. WHEN I
12 COMPARE THAT PROBATIVE VALUE TO THE POTENTIAL FOR UNFAIR
13 PREJUDICE OF HIM USING SOME TYPE OF CROWBAR TO TRY TO GET IN,
14 I DON'T -- I DON'T -- I DON'T THINK THAT THE POTENTIAL FOR
15 UNFAIR PREJUDICE SUBSTANTIALLY OUTWEIGHS THE PROBATIVE VALUE.

16 AND, AGAIN, I GO BACK TO THIS THING THAT THE CONNECTION
17 BETWEEN -- BETWEEN A LOT OF WHAT HAPPENED ON THOSE NIGHTS
18 DOES NOT TRANSLATE OVER INTO AN INFERENCE THAT HE IS
19 THEREFORE THE TYPE OF PERSON WHO RAPED HER. NOW, IT MIGHT --
20 AND, IN FACT -- WELL, I JUST -- I THINK I'VE -- I THINK I'VE
21 THOUGHT THROUGH THE POTENTIAL FOR UNFAIR PREJUDICE AND I
22 DON'T THINK THAT IT SUBSTANTIALLY OUTWEIGHS THE PROBATIVE
23 VALUE. SO UNDER RULE 403 I WOULD ALSO LET IN -- I MEAN, I
24 WOULD DENY OR OVERRULE THE OBJECTION UNDER RULE 403. NOW,
25 HAVE I RULED ON EVERYTHING?

1 MS. SHIPLEY: YOUR HONOR, JUST -- I'M GIVING THE OPENING
2 STATEMENT. IS THE ORAL STATEMENT MADE BY THE DEFENDANT TO
3 INVESTIGATOR VARN AT THE SCENE OF HIS ARREST ADMISSIBLE?

4 THE COURT: HOLD ON. ALL RIGHT. LET ME GET BACK TO
5 THAT. DID I RULE ON THE STATEMENTS THAT SHE -- THAT SHE
6 TESTIFIED THAT HE MADE WHILE HE WAS INSIDE?

7 MS. OWINGS: NO, SIR.

8 MS. FENT: NO, SIR.

9 THE COURT: AND YOUR OBJECTION TO THAT IS THE PHRASE,
10 "JUST LIKE LAST TIME."

11 MS. OWINGS: YES, SIR.

12 THE COURT: WELL, TO THE EXTENT -- I DON'T REALLY SEE
13 THAT AS WHEN -- IF IT WERE -- IF SHE -- I'M NOT GOING TO
14 ALLOW HER TO GET UP ON THE STAND AND SAY, "WHAT HE MEANT BY
15 'JUST LIKE LAST TIME' WAS ON SUCH AND SUCH A DAY HE BEAT ME
16 UP AND WENT TO COURT AND PLED GUILTY TO CRIMINAL DOMESTIC
17 VIOLENCE." THAT'S NOT GOING TO HAPPEN. SO HE'S THE ONE WHO
18 CHOSE THE WORDS "JUST LIKE LAST TIME," AND IT'S NOT REALLY --
19 I MEAN, THAT COULD MEAN ANYTHING. I MEAN, I CONCEDE IT
20 PROBABLY MEANS THAT THERE'S SOME -- A FACT FINDER IS PROBABLY
21 GOING TO LOOK AT THAT AND SAY HE'S REFERRING TO SOME PREVIOUS
22 ARREST OR SOME PREVIOUS LEGAL DIFFICULTY THAT THEY HAD
23 BETWEEN EACH OTHER WHERE HE RECEIVED A SLAP ON THE WRIST TYPE
24 OF PUNISHMENT. BUT HE'S THE ONE WHO CHOSE THAT -- HE'S THE
25 ONE WHO CHOSE THAT LANGUAGE.

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1 MS. OWINGS: RIGHT.

2 THE COURT: NOW, TO THE EXTENT THAT IS OR IS NOT WHAT HE
3 SAID, THAT'S A CREDIBILITY ISSUE FOR THE JURY.

4 MS. OWINGS: SO THE PROSECUTOR IS NOT GOING TO BE ABLE
5 TO ASK HER, "OH, WELL, WHAT HAPPENED LAST TIME?" THEY'RE NOT
6 GOING TO BE ABLE TO ASK HER---

7 THE COURT: NO, THEY'RE NOT GOING TO BE ABLE TO DO THAT.
8 THEY'RE NOT GOING TO BE ABLE TO DO THAT.

9 MS. OWINGS: OKAY.

10 THE COURT: BUT THE STATEMENT, "JUST LAST LIKE TIME, I'M
11 GOING TO GET A SLAP ON THE WRIST AND HAVE TO TAKE THOSE B.S.
12 CLASSES," IS A STATEMENT THAT, IN MY OPINION, HAS FAIRLY HIGH
13 PROBATIVE VALUE. TO THE EXTENT THAT IT INCLUDES A REFERENCE
14 TO CHARACTER EVIDENCE UNDER RULE 404, I BELIEVE THAT IT'S
15 ALSO ADMISSIBLE AS A STATEMENT, AS AN INDICATION OF INTENT
16 AND MOTIVE UNDER 404(B), AND SO, THEREFORE, I WOULD ALLOW IT
17 IN. AND SO -- AND, AGAIN, LOOKING AT THAT COMPONENT "JUST
18 LIKE LAST TIME" UNDER RULE 404(B) -- I MEAN, UNDER RULE 403,
19 I DON'T THINK THAT THERE IS A WHOLE LOT OF UNFAIR PREJUDICE
20 TO THAT BECAUSE IT'S NOT REAL CLEAR AS TO EXACTLY WHAT IT
21 REFERS TO. SO I AM -- I DON'T THINK THE POTENTIAL FOR UNFAIR
22 PREJUDICE OUTWEIGHS ITS PROBATIVE VALUE. AND LET ME SAY
23 SOMETHING ABOUT THE PROBATIVE VALUE. IT'S A -- THE "JUST
24 LIKE LAST TIME" COMMENT HAS A SORT OF A SPITEFUL, VENGEFUL
25 COMPONENT TO IT THAT IN THE CONTEXT OF THIS ALLEGED EVENT HAS

1 HIGH PROBATIVE VALUE AND -- IN OTHER WORDS, THE DISPUTE HERE
2 REGARDING THE C.S.C. AND THE DISPUTE HERE REGARDING THE
3 KIDNAPPING AND THE DISPUTE HERE REGARDING THE BURGLARY IS
4 WHETHER OR NOT SHE CONSENTED TO WHAT HAPPENED, AND IN MY
5 OPINION THIS -- A STATEMENT LIKE -- THE STATEMENT, IF THE
6 JURY CONCLUDES IT WAS MADE, HAS VERY HIGH PROBATIVE VALUE.
7 SO I DON'T THINK THE POTENTIAL FOR UNFAIR PREJUDICE OUTWEIGHS
8 ITS PROBATIVE VALUE. I WILL LET IT IN.

9 NOW, AS FAR AS THE ORAL STATEMENT, I FIND THAT THE
10 STATEMENT WAS MADE, THAT IT WAS MADE VOLUNTARILY. I FIND
11 THAT THE DEFENDANT WAS IN CUSTODY. HOWEVER, THE STATEMENT
12 WAS NOT MADE IN RESPONSE TO ANY POLICE OR LAW ENFORCEMENT
13 INTERROGATION OR QUESTIONING. THEREFORE, MIRANDA DOES NOT
14 COME INTO PLAY AND IT IS NOT NECESSARY FOR ME TO FIND THAT HE
15 WAIVED HIS MIRANDA RIGHTS BEFORE MAKING THAT STATEMENT.

16 AS FAR AS THE WRITTEN STATEMENT IS CONCERNED, HE DID
17 MAKE THE STATEMENT. HE MADE THE STATEMENT VOLUNTARILY. HE
18 WAS IN CUSTODY. HE HAD BEEN EXPLAINED HIS MIRANDA RIGHTS.
19 HE UNDERSTOOD THE MIRANDA RIGHTS, AND HE VOLUNTARILY WAIVED
20 THE MIRANDA RIGHTS BEFORE HE MADE THE STATEMENT. AND SO BOTH
21 STATEMENTS ARE ADMISSIBLE. IS THERE ANYTHING FURTHER I NEED
22 TO RULE ON BEFORE WE BEGIN?

23 MS. FENT: NO, YOUR HONOR.

24 THE COURT: ALL RIGHT. NOW, I'M GOING TO -- LET'S MAKE
25 SURE THAT EVERYBODY UNDERSTANDS WHAT SHE CAN AND PARTICULARLY

1 WHAT -- THAT SHE UNDERSTANDS WHAT SHE CAN AND CAN'T SAY.
2 WE'RE NOT -- AT THIS POINT THERE'S NO DISCUSSION OF ANYTHING
3 THAT HAPPENED BETWEEN THEM UP UNTIL THIS TWO-WEEK PERIOD OF
4 TIME WHEN -- BEFORE THIS -- BEFORE THIS ALLEGED CRIME. SHE
5 CAN TESTIFY AS TO WHAT SHE DID DURING THAT TWO-WEEK PERIOD OF
6 TIME OR MAYBE IT WAS THREE WEEKS, WHATEVER IT WAS, IN TERMS
7 OF TERMINATING HER EMPLOYMENT AND WHY SHE TERMINATED THE
8 EMPLOYMENT, IN OTHER WORDS, THAT SHE WANTED TO MAKE IT SO
9 THAT HE COULDN'T CONTACT HER.

10 SHE CAN TESTIFY THAT SHE CHANGED HER CELL PHONE AND WHY,
11 BECAUSE SHE DIDN'T WANT HIM TO CONTACT HER. SHE CAN'T THEN
12 SAY, "THE REASON I WAS WORRIED ABOUT THIS IS BECAUSE HE BEAT
13 ME UP TWO WEEKS AGO OR HE HAD BEEN BEATING ME UP FOR FOUR
14 YEARS." CAN'T DO THAT. NOW, THEN IN TERMS OF -- IN TERMS OF
15 WHAT HAPPENED ON THOSE NIGHTS BEFORE, I'VE PLACED NO
16 LIMITATIONS ON WHAT SHE CAN TESTIFY TO ABOUT WHAT HAPPENED ON
17 THE SEVERAL NIGHTS AFTER HE MOVED OUT BUT BEFORE THIS ALLEGED
18 -- BEFORE THIS CRIME ALLEGEDLY OCCURRED.

19 I'VE ALSO PLACED NO LIMITATIONS ON WHAT SHE CAN SAY
20 ABOUT WHAT HE SAID ON THE NIGHT THAT THIS ALLEGEDLY HAPPENED.
21 ALL RIGHT. WE'LL TAKE A SHORT BREAK.

22 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

23 THE COURT: ALL RIGHT. ARE WE READY FOR THE JURY?

24 MS. SHIPLEY: YES, SIR, YOUR HONOR.

25 MS. FENT: YES, SIR.

1 THE COURT: BRING THEM IN.

2 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 3:42
3 P.M.)

4 THE COURT: SWEAR THE JURY, PLEASE.

5 (WHEREUPON, THE JURY WAS SWORN AT 3:43 P.M.)

6 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, LET ME --
7 I'LL TELL YOU THIS, THAT ONE OF THE MOST TROUBLING THINGS TO
8 ME IS MAKING A JURY WAIT. I CAN'T STAND TO DO IT. IT IS
9 SOMETHING THAT IS SORT OF PART OF THE CRIMINAL COURT. IT'S
10 VERY DIFFICULT MANY TIMES TO PREDICT HOW LONG IT'S GOING TO
11 TAKE US TO DO A CERTAIN THING. I MISSED THIS PREDICTION
12 FAIRLY SUBSTANTIALLY, AND I APOLOGIZE THAT YOU ALL HAD TO SIT
13 BACK THERE IN THE JURY ROOM AS LONG AS YOU DID.

14 WE ARE NOW READY TO BEGIN THE TRIAL IN THIS CASE. AS
15 YOU KNOW, THIS IS THE STATE OF SOUTH CAROLINA VERSUS BOBBY
16 SHEY RATHBURN. MR. RATHBURN HAS BEEN INDICTED IN FOUR
17 INDICTMENTS. THE FIRST OF THOSE IS 2005-GS-40-2999 FOR
18 BURGLARY IN THE FIRST DEGREE, AND IN THAT INDICTMENT IT IS
19 ALLEGED THAT BOBBY SHEY RATHBURN DID IN RICHLAND COUNTY ON OR
20 ABOUT APRIL 3RD, 2005, UNLAWFULLY ENTER THE DWELLING OF
21 TABITHA BRAZELL WITHOUT CONSENT AND WITH THE INTENT TO COMMIT
22 A CRIME THEREIN AND WHILE EFFECTING ENTRY AND/OR WHILE IN THE
23 DWELLING OR IN IMMEDIATE FLIGHT THE DEFENDANT OR ANOTHER
24 PARTICIPANT IN THE CRIME DID CAUSE PHYSICAL INJURY TO ANOTHER
25 PERSON WHO WAS NOT A PARTICIPANT IN THE CRIME, TO WIT,

PRELIMINARY REMARKS TO THE JURY BY THE COURT

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1 TABITHA BRAZELL, AND/OR THE DEFENDANT DID ENTER OR REMAIN IN
2 THE NIGHTTIME, ALL IN VIOLATION OF CODE SECTION 16-11-311 OF
3 THE SOUTH CAROLINA CODE OF LAWS.

4 IN INDICTMENT NUMBER 2005-GS-40-2998, MR. RATHBURN HAS
5 BEEN INDICTED FOR CRIMINAL SEXUAL CONDUCT IN THE FIRST
6 DEGREE, AND IN THAT INDICTMENT IT IS ALLEGED THAT BOBBY SHEY
7 RATHBURN DID IN RICHLAND COUNTY ON OR ABOUT APRIL 3RD, 2005,
8 ENGAGE IN SEXUAL BATTERY, TO WIT, SEXUAL INTERCOURSE AND/OR
9 FELLATIO UPON AND WITH THE BODY OF TABITHA BRAZELL WITHOUT
10 HER CONSENT. SUCH SEXUAL BATTERY WAS ACCOMPLISHED BY THE USE
11 OF AGGRAVATED FORCE AND/OR THE VICTIM SUBMITTED TO SUCH
12 BATTERY UNDER CIRCUMSTANCES WHERE THE VICTIM WAS ALSO THE
13 VICTIM OF A KIDNAPPING AND/OR FORCIBLE CONFINEMENT AND/OR A
14 BURGLARY, ALL IN VIOLATION OF SOUTH CAROLINA CODE SECTION
15 16-3-652.

16 IN INDICTMENT NUMBER 2005-GS-40-3000, MR. RATHBURN HAS
17 BEEN INDICTED FOR KIDNAPPING, AND IN THAT INDICTMENT IT IS
18 ALLEGED THAT BOBBY SHEY RATHBURN DID IN RICHLAND COUNTY ON OR
19 ABOUT APRIL 3RD, 2005, UNLAWFULLY SEIZE, CONFINED, INVEIGLE,
20 DECOY, KIDNAP, ABDUCT, OR CARRY AWAY THE VICTIM, TABITHA
21 BRAZELL, BY ANY MEANS WHATSOEVER WITHOUT AUTHORITY OF LAW,
22 ALL IN VIOLATION OF SECTION 16-3-910 OF THE CODE OF LAWS OF
23 SOUTH CAROLINA.

24 AND LASTLY, IN INDICTMENT NUMBER 2005-GS-40-2997, MR.
25 RATHBURN HAD BEEN INDICTED FOR CRIMINAL DOMESTIC VIOLENCE OF

1 A HIGH AND AGGRAVATED NATURE, AND IN THAT INDICTMENT IT IS
2 ALLEGED THAT BOBBY SHEY RATHBURN DID IN RICHLAND COUNTY ON OR
3 ABOUT APRIL 3RD, 2005, UNLAWFULLY CAUSE PHYSICAL HARM OR
4 INJURY TO HIS OWN HOUSEHOLD MEMBER, TABITHA BRAZELL, OR DID
5 OFFER OR ATTEMPT TO CAUSE PHYSICAL HARM OR INJURY TO HIS OWN
6 HOUSEHOLD MEMBER, TABITHA BRAZELL, WITH APPARENT PRESENT
7 ABILITY UNDER CIRCUMSTANCES REASONABLY CREATING FEAR OF
8 IMMINENT PERIL ACCOMPANIED BY CIRCUMSTANCES OF AGGRAVATION;
9 TO WIT, THE DEFENDANT DID INTENTIONALLY COMMIT AN ASSAULT AND
10 BATTERY WHICH INVOLVED THE USE OF A DEADLY WEAPON OR RESULTED
11 IN SERIOUS BODILY INJURY AND/OR THE DEFENDANT DID
12 INTENTIONALLY COMMIT AN ASSAULT WITH OR WITHOUT A BATTERY
13 WHICH WOULD REASONABLY CAUSE A PERSON TO FEAR IMMINENT
14 SERIOUS BODILY INJURY OR DEATH, ALL IN VIOLATION OF SECTION
15 16-25-65 OF THE SOUTH CAROLINA CODE.

16 NOW, LADIES AND GENTLEMEN, AS I EXPLAINED TO YOU DURING
17 THE VOIR DIRE PROCESS IN EARLIER -- EARLIER TODAY, THE
18 INDICTMENTS THAT I JUST READ TO YOU ARE NOT IN ANY SENSE
19 EVIDENCE OF THE ALLEGATIONS THAT ARE CONTAINED WITHIN THOSE
20 INDICTMENTS. THE INDICTMENTS ARE SIMPLY THE FORMAL DOCUMENTS
21 THAT CONTAIN THE ALLEGATIONS THAT HAVE BEEN MADE AGAINST THE
22 DEFENDANT, AND THEY SERVE TO PROCESS THIS CASE AND BRING IT
23 INTO THIS COURT FOR TRIAL.

24 THE DEFENDANT HAS PLED NOT GUILTY TO EACH OF THESE FOUR
25 INDICTMENTS, AND THE PLEA OF NOT GUILTY CASTS THE BURDEN ON

1 THE STATE TO PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE
2 DOUBT. THAT IS YOUR JOB, LADIES AND GENTLEMEN, AND AT THE
3 END OF THIS CASE I'LL EXPLAIN TO YOU THE LAW AND THEN YOU
4 WILL GO BACK INTO THE JURY ROOM TO DETERMINE WHETHER OR NOT
5 THE STATE HAS MET THAT BURDEN OF PROOF.

6 NOW, IT IS A VERY IMPORTANT RULE OF LAW IN OUR COUNTRY
7 THAT A DEFENDANT IN A CRIMINAL TRIAL WILL ALWAYS BE PRESUMED
8 TO BE INNOCENT OF THE CRIMES WITH WHICH HE HAS BEEN CHARGED
9 UNLESS AND UNTIL HIS GUILT HAS BEEN PROVEN BY EVIDENCE THAT
10 SATISFIES YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.
11 OBVIOUSLY THIS IS THE PRESUMPTION OF INNOCENCE, BUT THE
12 PRESUMPTION OF INNOCENCE IS NOT MERELY A LEGAL THEORY. IT'S
13 NOT JUST A LEGAL PHRASE THAT WE USE. IT IS A SUBSTANTIAL
14 CONSTITUTIONAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED.
15 THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANT FROM
16 THE TIME HE IS CHARGED, THROUGHOUT THE TRIAL, AND INTO THE
17 JURY ROOM UNTIL YOU REACH A VERDICT OF GUILT THAT'S BASED ON
18 EVIDENCE THAT SATISFIES YOU OF THAT GUILT BEYOND A REASONABLE
19 DOUBT.

20 NOW, THE TRIAL OF THIS CASE, JUST LIKE ANY OTHER CASE
21 THAT WE TRY, CAN BE DIVIDED UP INTO FIVE BASIC PHASES. I'M
22 GOING TO GO OVER THOSE WITH YOU NOW. THE FIRST PHASE IS THE
23 OPENING STATEMENTS WHICH WE'LL HEAR IN JUST A SECOND WHEN THE
24 LAWYERS WILL STAND BEFORE YOU AND THEY WILL EXPLAIN TO YOU
25 WHAT THIS CASE IS ABOUT THEY'LL TELL YOU WHAT THE ISSUES

1 ARE IN THE CASE AND HOW EACH SIDE STANDS ON THOSE ISSUES, AND
2 THEY WILL ALSO DISCUSS FOR YOU SOME OF THE EVIDENCE THAT YOU
3 CAN EXPECT TO SEE AND HEAR DURING THE COURSE OF THIS TRIAL.

4 AFTER THE OPENING STATEMENTS, WE'LL HAVE THE SECOND
5 PHASE OR THE EVIDENTIARY PHASE WHEN WITNESSES WILL COME THERE
6 TO THAT WITNESS BOX. YOU WILL HEAR THEIR TESTIMONY, AND
7 THERE WILL ALSO BE, I AM SURE, SOME OTHER EVIDENCE SUCH AS
8 PHOTOGRAPHS AND DOCUMENTS THAT YOU WILL HAVE AS PART OF THE
9 EVIDENCE IN THE CASE.

10 AFTER ALL OF THE EVIDENCE HAS BEEN ADMITTED, WE WILL
11 MOVE INTO THE THIRD PHASE WHICH IS THE CLOSING ARGUMENTS WHEN
12 THE LAWYERS WILL STAND BEFORE YOU AGAIN. THIS TIME THEY WILL
13 ARGUE TO YOU AS TO WHETHER OR NOT THE STATE HAS MET THAT
14 BURDEN OF PROOF. AND THEN THE FOURTH PHASE IS WHAT WE CALL
15 THE JURY CHARGE WHEN I WILL EXPLAIN THE LAW THAT IS
16 APPLICABLE IN THIS CASE, AND THEN THE FIFTH PHASE IS WHEN YOU
17 WILL GO BACK INTO THE JURY ROOM AND YOU WILL DELIBERATE.

18 NOW, LADIES AND GENTLEMEN, IT IS VERY IMPORTANT THAT YOU
19 NOT BEGIN TO MAKE UP YOUR MIND ABOUT THE FACTS IN THE CASE
20 UNTIL YOU'VE BEEN THROUGH ALL FIVE OF THOSE PHASES, EVEN THE
21 FIFTH PHASE, WHEN YOU'VE HAD A CHANCE TO LISTEN TO EACH OTHER
22 DISCUSS THE EVIDENCE BECAUSE ONLY THEN WILL YOU BE IN THE
23 RIGHT POSITION TO BEGIN TO MAKE UP YOUR MIND ABOUT THE FACTS,
24 ABOUT WHETHER OR NOT THE STATE HAS MET ITS BURDEN OF PROOF.
25 I'VE ALREADY TOLD YOU THAT YOU MAY NOT DISCUSS THIS CASE IN

1 ANY MANNER UNTIL I'VE GIVEN YOU PERMISSION TO BEGIN YOUR
2 DELIBERATIONS, AND YOU WILL HEAR ME REPEAT THAT SEVERAL MORE
3 TIMES DURING THE COURSE OF THIS TRIAL.

4 AS MEMBERS OF THE JURY, YOU ARE THE EXCLUSIVE JUDGES OF
5 THE FACTS IN THE CASE, AND I AM NOT PERMITTED TO INDICATE TO
6 YOU HOW I MIGHT FEEL ABOUT THE FACTS. SO IF I SAY ANYTHING
7 OR IF I DO ANYTHING DURING THE COURSE OF THIS TRIAL THAT
8 LEADS YOU TO BELIEVE THAT I HAVE AN OPINION ABOUT THE FACTS,
9 THEN YOU MUST DISREGARD THAT. BUT ON THE OTHER HAND, I AM
10 THE EXCLUSIVE JUDGE OF THE LAW, AND SO IF YOU HAVE ANY IDEA
11 AS TO WHAT THE LAW IS OR WHAT THE LAW SHOULD BE AND IF THAT
12 DIFFERS FROM WHAT I WILL TELL YOU THE LAW IS, THEN YOU ARE
13 OBLIGATED UNDER THE OATH THAT YOU HAVE JUST TAKEN AS JURORS
14 TO SET YOUR NOTION OF THE LAW ASIDE AND TO ACCEPT AND APPLY
15 THE LAW PRECISELY AS I WILL EXPLAIN IT.

16 AND ONE OTHER ROLE THAT I PLAY IS TO DECIDE ON THE
17 ADMISSIBILITY OF EVIDENCE, AND FROM TIME TO TIME I EXPECT
18 DURING THE COURSE OF THIS TRIAL THAT YOU WILL HEAR THE
19 LAWYERS MAKING OBJECTIONS WHEN EVIDENCE IS OFFERED THAT THEY
20 BELIEVE DOES NOT COMPLY WITH OUR RULES OF EVIDENCE. WHEN
21 THAT HAPPENS, THAT'S NOT AN ATTEMPT ON THE PART OF THE LAWYER
22 TO HIDE ANYTHING FROM THE JURY. THAT'S THE WAY OUR SYSTEM
23 WORKS. IT IS THE LAWYER'S OBLIGATION NOT ONLY TO HER CLIENT
24 BUT ALSO TO THE COURT SYSTEM TO MAKE AN OBJECTION, AND THEN
25 WHEN AN OBJECTION IS MADE, IT BECOMES MY RESPONSIBILITY TO

1 RULE.

2 IF I SUSTAIN THE OBJECTION, THAT MEANS I BELIEVE THE
3 EVIDENCE IS NOT ADMISSIBLE AND I WILL NOT ALLOW IT IN. IF I
4 OVERRULE THE OBJECTION, THAT MEANS I BELIEVE THE EVIDENCE IS
5 ADMISSIBLE AND I WILL ALLOW IT IN AND YOU MAY CONSIDER IT.

6 NOW, MOST OF THE TIME I'LL BE ABLE TO DO THAT JUST AS
7 I'M SITTING HERE. YOU'LL HEAR THE LAWYERS SAY, "OBJECTION."
8 THEY MAY BRIEFLY STATE THE GROUNDS FOR THEIR OBJECTION, AND
9 THEN I'LL SAY EITHER "SUSTAINED" OR "OVERRULED." SOMETIMES
10 IT MIGHT BE NECESSARY FOR ME TO ASK THE LAWYERS TO STEP UP
11 HERE TO THE BENCH SO THAT I CAN BRIEFLY DISCUSS THE QUESTION
12 WITH THEM BEFORE I RULE. SOMETIMES IT'S NECESSARY THAT I
13 ACTUALLY LISTEN TO THE TESTIMONY BEFORE YOU CAN LISTEN TO IT
14 SO THAT I CAN DECIDE WHETHER OR NOT IT IS ADMISSIBLE AND, IN
15 FACT, THAT'S WHY YOU'VE BEEN SITTING BACK IN THE JURY ROOM
16 FOR A GOOD WHILE BECAUSE WE HAD TO DO SOME OF THAT JUST A FEW
17 MINUTES AGO. SOLICITOR?

18 MS. SHIPLEY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
19 COURT? GOOD AFTERNOON, LADIES AND GENTLEMEN. JUDGE FEW JUST
20 GOT DONE READING TO ALL OF YOU THE FOUR COUNTS THAT THE
21 DEFENDANT IS CURRENTLY FACING, AND THESE ARE, AS HE STATED,
22 NOT EVIDENCE OF THE ACTIONS OF THAT MAN, BOBBY SHEY RATHBURN.
23 THESE ARE THE ALLEGATIONS. AND I BRING THIS TO YOUR
24 ATTENTION BECAUSE THEY'RE VERY BLACK AND WHITE, VERY STERILE.
25 YOU'RE ABOUT TO HEAR FROM TABITHA BRAZELL THE NIGHT -- THE

OPENING STATEMENT BY MS. SHIPLEY

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1 NIGHTMARE SHE ENDURED IN THE EARLY MORNING HOURS OF
2 APRIL 3RD, 2005, AT HER HOUSE WHICH WAS LOCATED AT
3 ROAD.

4 LADIES AND GENTLEMEN, AT ABOUT 4 IN THE MORNING ON THAT
5 EARLY MORNING HOURS SHE BEGAN TO HEAR BANGING SOUNDS AROUND
6 HER HOUSE AS SHE HAD HEARD SEVERAL TIMES A WEEK PRECEDING
7 THAT NIGHT. SHE GOT UP AND HEARD HER EX-BOYFRIEND, BOBBY
8 SHEY RATHBURN, YELLING, WANTING TO COME INTO THE HOUSE. SHE
9 OPENED THE FRONT DOOR TO HER HOUSE THINKING THAT THE GLASS
10 DOOR, THE STORM DOOR, WAS LOCKED, AND SHE DID THAT TO TELL
11 HIM TO GO AWAY. BUT, LADIES AND GENTLEMEN, BECAUSE SHE WAS
12 IN THE PROCESS OF MOVING OUT OF THAT HOUSE, THE VERY HOUSE
13 THAT THEY HAD SHARED TOGETHER UP UNTIL TWO WEEKS PRIOR TO
14 THIS INCIDENT WHERE HE HAD MOVED OUT OF THE HOUSE AND HE WAS
15 NO LONGER WELCOME IN THAT HOUSE -- ONE OF HER FRIENDS HAD
16 COME IN AND SHE FORGOT TO LOCK THE GLASS DOOR. AND SO HE WAS
17 ABLE TO OPEN THE GLASS STORM DOOR, AND HE FORCED HIS WAY
18 INSIDE OF HER HOUSE ABOUT 4 IN THE MORNING AND SHE COULD TELL
19 THAT HE WAS DRINKING. HE SMELLED OF ALCOHOL. AND WHEN HE
20 CHARGED AT HER, SHE FELL BACKWARDS OVER SOME BOXES THAT SHE
21 HAD ALREADY PACKED HER BELONGINGS IN, AND SHE FELL BACKWARDS
22 INTO THE KITCHEN.

23 AND AT THAT POINT, LADIES AND GENTLEMEN, HE BEGAN TO
24 CHOKE HER. HE BEGAN PULLING HER HAIR, AND HE THEN WOKE UP
25 THE BABY. I FORGOT TO MENTION L B WAS IN THAT HOUSE

1 THAT NIGHT, THEIR THREE-YEAR-OLD DAUGHTER. SHE WAS ASLEEP
2 EARLIER IN THE BEDROOM THAT SHE SHARED WITH HER MOTHER. AND
3 L B STARTED CRYING. AND SO TABITHA WENT TO GO CHECK ON
4 HER DAUGHTER, AND AS SHE WENT TO GO CHECK ON HER DAUGHTER,
5 THE DEFENDANT PUSHED HER INTO THE NIGHTSTAND NEXT TO HER BED
6 AND CAUSED A HOLE IN THE WALL. AT THAT POINT HE THEN GRABS
7 TABITHA, GRABS A PILLOW AND A COMFORTER OFF OF THE BED AND
8 DRAGS HER INTO THE LIVING ROOM OF THE HOUSE WHERE HE BEGINS
9 TO SEXUALLY ASSAULT HER ON THE FLOOR.

10 THIS WHOLE NIGHT, LADIES AND GENTLEMEN, LASTED FOR ABOUT
11 SIX HOURS, FROM 4 'TIL ABOUT 11 THAT MORNING. SHE WAS
12 FINALLY ABLE TO -- HE FELL ASLEEP. HE PASSED OUT AFTER THE
13 SEXUAL ASSAULT, AND YOU'LL HEAR DETAILS ABOUT WHAT HAPPENED
14 AND WHAT HE SAID TO HER DURING THE SEXUAL ASSAULT. SHE NEVER
15 CONSENTED TO HAVE SEX WITH HIM, LADIES AND GENTLEMEN. SHE
16 NEVER CONSENTED FOR HIM TO COME INTO THE HOUSE.

17 SHE ENDS UP GOING TO GO CHECK ON HER DAUGHTER, AND WHEN
18 SHE GOES INTO HER BEDROOM, SHE LAYS DOWN NEXT TO HER DAUGHTER
19 FOR COMFORT AND HE THEN PASSES OUT ON TOP OF HER. ABOUT
20 11:00 THAT MORNING HE THEN FINALLY LEAVES THE HOUSE, AND THE
21 FIRST THING SHE DOES IS NOT SHOWER AND GET READY. SHE GETS
22 UP AND GOES TO HER BEST FRIEND'S HOUSE, LAURA WEIDMAN, AND
23 YOU'LL HEAR FROM LAURA. YOU'LL HEAR ABOUT HOW -- WHAT SHE
24 WAS DRESSED LIKE, WHAT SHE APPEARED TO BE LIKE, WHAT HER
25 DEMEANOR WAS, HOW SHE WAS ANGRY THAT HER THREE-YEAR-OLD

OPENING STATEMENT BY MS. SHIPLEY

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1 LITTLE DAUGHTER WAS IN THE HOME WHEN THIS HORRIBLE VIOLENCE
2 TOOK PLACE AND HOW SHE WANTED -- DIDN'T KNOW WHAT TO DO, AND
3 LAURA CONVINCED HER TO CALL THE POLICE.

4 AND SO THEY GO AND THEY CALL THE POLICE AND MEET THE
5 OFFICERS AT THE HOUSE, AND YOU'LL HEAR FROM OFFICER SHUMARD
6 AND ALSO INVESTIGATOR CHRYSTIE VARN WHO ENTERED THE HOME
7 AFTER THEY TALKED TO HER ABOUT WHAT HAD HAPPENED. AND SURE
8 ENOUGH, LADIES AND GENTLEMEN, THEY FIND PHYSICAL EVIDENCE
9 THAT MATCHES THE STORY OF TABITHA THAT WHOLE NIGHT. THEY
10 FIND CLUMPS OF HAIR IN THE KITCHEN. .THEY FIND SKID MARKS ON
11 THE FLOOR IN THE KITCHEN SHOWING SIGNS OF STRUGGLE. THEY
12 FIND A HOLE IN THE BEDROOM BY THE NIGHTSTAND, EVERYTHING THAT
13 SHE -- THE DETAILS THAT SHE PROVIDED ARE ALL CORROBORATED BY
14 THE PHYSICAL EVIDENCE FOUND AT THE SCENE.

15 BUT THAT'S NOT WHERE TABITHA'S DAY ENDED, LADIES AND
16 GENTLEMEN. HER LONG NIGHT DID NOT END THERE. IT THEN
17 CONTINUED TO THE RICHLAND MEMORIAL HOSPITAL WHERE SHE WAS
18 ESCORTED BY THE VICTIM ADVOCATE, MARY JANE SCOTT, WITH FOREST
19 ACRES POLICE DEPARTMENT WHO TOOK HER TO THE HOSPITAL TO MEET
20 WITH A SEXUAL ASSAULT NURSE EXAMINER. WE CALL THEM S.A.N.E.
21 NURSES. AND YOU'RE GOING TO HEAR FROM TERRY CASTO, HOW SHE
22 TOOK A DETAILED STATEMENT FROM THE VICTIM AT THE HOSPITAL
23 ASKING HER WHAT HAD HAPPENED JUST AS CHRYSTIE VARN HAD TAKEN
24 A DETAILED STATEMENT FROM THE VICTIM ASKING HER WHAT
25 HAPPENED.

1 LADIES AND GENTLEMEN, THE VICTIM HAD TO TELL HER STORY
2 TO OFFICER SHUMARD, HER BEST FRIEND LAURA, INVESTIGATOR
3 CHRYSTIE VARN, TERRY CASTO - THE S.A.N.E. NURSE, AND YOU'RE
4 GOING TO HEAR HOW EACH TIME SHE TOLD HER STORY IT WAS
5 CONSISTENT. AND KEEP THAT IN MIND WHEN YOU HEAR THE
6 TESTIMONY OF ALL THESE WITNESSES.

7 YOU'RE ALSO GOING TO HEAR HOW AFTER THE SEXUAL ASSAULT
8 EXAM WAS CONDUCTED THAT THEY COLLECTED CERTAIN ITEMS OF
9 EVIDENCE OFF OF HER BODY BECAUSE NOT ONLY DOES THE PHYSICAL
10 EVIDENCE AT THE SCENE SHOW THAT SHE'S TELLING THE TRUTH, THE
11 PHYSICAL EVIDENCE COLLECTED FROM HER BODY CORROBORATES WHAT
12 HAPPENED THAT NIGHT AND ARE CONSISTENT WITH WHAT SHE SAID
13 THAT HAPPENED THAT NIGHT.

14 LADIES AND GENTLEMEN, YOU'RE GOING TO HEAR FROM A D.N.A.
15 EXPERT THAT WILL GO INTO A LOT MORE DETAIL THAN I COULD EVER
16 IMAGINE OR PRETEND TO KNOW ABOUT THE EXAM THAT THEY CONDUCTED
17 ON THE EVIDENCE COLLECTED FROM TABITHA AND YOU'LL HEAR THOSE
18 RESULTS. YOU'RE ALSO GOING TO HEAR MOST IMPORTANTLY FROM
19 INVESTIGATOR HINSON WITH THE FOREST ACRES POLICE DEPARTMENT.

20 CHRYSTIE VARN, WHEN SHE WENT TO GO ARREST THE DEFENDANT
21 FOR THESE FOUR CHARGES, SHE WAS WITH ANOTHER INVESTIGATOR
22 WITH HER AND THEY MIRANDIZED HIM AND SERVED HIM WITH HIS
23 ARREST WARRANTS, AND WITHOUT EVEN ASKING QUESTIONS, THE
24 DEFENDANT VOLUNTEERS, "YEAH, I CHOKED HER BUT I -- YOU KNOW,
25 THE SEX WAS CONSENSUAL." AND YOU'RE ALSO GOING TO HEAR HOW

1 HE'S INTERVIEWED BY A TOTALLY SEPARATE WITNESS, INVESTIGATOR
2 HINSON, AT THE HEADQUARTERS AT THE FOREST ACRES POLICE
3 DEPARTMENT, AND YOU'RE GOING TO HEAR HOW THE DEFENDANT AGAIN
4 ADMITS TO PULLING HER HAIR AND TO CHOKING HER BUT CLAIMING
5 THAT SHE LET HIM IN AND THAT THEY ENDED UP HAVING -- MAKING
6 LOVE, I BELIEVE WERE THE WORDS HE USED, AFTER HE PULLED HER
7 HAIR OUT. THAT'S WHAT YOU'RE GOING TO HEAR, LADIES AND
8 GENTLEMEN.

9 AND HOW ARE WE GOING TO PRESENT ALL THIS EVIDENCE TO
10 YOU? WELL, AS JUDGE FEW MENTIONED, THROUGH THE TESTIMONY OF
11 WITNESSES AND THROUGH ITEMS SUCH AS PHOTOGRAPHS AND PHYSICAL
12 EVIDENCE COLLECTED AT THE SCENE. AND AS YOU LISTEN TO THE
13 TESTIMONY OF THESE WITNESSES, YOU ARE THE JUDGES OF THE FACTS
14 AND YOU DECIDE WHETHER OR NOT SOMEONE IS BEING FORTHRIGHT AND
15 TRUTHFUL TO YOU, AND SO YOU USE YOUR EVERYDAY COMMON SENSE TO
16 JUDGE THEIR BELIEVABILITY. ARE THEY BEING FORTHRIGHT? ARE
17 THEY HESITANT TO ANSWER QUESTIONS? DO THEY HAVE A STAKE IN
18 THIS CASE? DO THEY HAVE SOMETHING TO GAIN OR LOSE IN THIS
19 CASE?

20 ASK YOURSELVES THOSE QUESTIONS THAT YOU DO EVERY SINGLE
21 DAY OF YOUR LIVES WHEN YOU EVALUATE PEOPLE THAT YOU ENCOUNTER
22 ON THE STREET, IN BUSINESSES, WITH YOUR FAMILY MEMBERS,
23 PERHAPS YOUR CHILDREN. USE THE SAME TOOLS THAT YOU USE EVERY
24 SINGLE DAY TO JUDGE THE CREDIBILITY OF THE WITNESSES. AND
25 WHEN YOU APPLY THE FACTS AND THE TESTIMONY AND THE PHYSICAL

1 EVIDENCE TO THE LAW AS JUDGE FEW INSTRUCTS YOU THAT THE LAW
2 IS, THERE IS ONLY ONE POSSIBLE CONCLUSION TO REACH IN THIS
3 CASE AND THAT IS BOBBY SHEY RATHBURN IS GUILTY OF ALL THE
4 CRIMES CHARGED. THANK YOU.

5 MS. PAYNE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
6 COURT? FOLKS, THIS CASE IS NOT AN EASY, SIMPLE CASE. THE
7 ALLEGED FACTS ARE GRITTY AND THEY'RE JUST THAT: THEY'RE
8 ALLEGATIONS. TABITHA AND SHEY RATHBURN WERE IN A
9 RELATIONSHIP FOR FIVE YEARS, AND THEY SHARE A BEAUTIFUL BABY
10 DAUGHTER. THERE'S NOTHING EASY AND SIMPLE ABOUT THAT.

11 YOU WILL HEAR EVIDENCE THAT THEIR RELATIONSHIP WAS ON
12 THE ROCKS, AND YOU'LL HEAR EVIDENCE THAT SHEY WAS DISTRAUGHT
13 BECAUSE HE HAD NOT SEEN L B FOR SOME PERIOD OF TIME.
14 THIS CASE BOILS DOWN TO THOSE WITNESSES AND TO THEIR
15 CREDIBILITY AND TO THEIR BELIEVABILITY, AND AS THE SOLICITOR
16 JUST TOLD YOU, THAT'S WHERE YOU COME IN.

17 QUESTION THESE WITNESSES. QUESTION THEIR INVOLVEMENT IN
18 THIS CASE, THEIR INVOLVEMENT WITH EACH OTHER, AND THEIR
19 MOTIVE FOR WANTING TO SIT THERE AND TESTIFY. THE STATE JUST
20 ASKS YOU TO USE YOUR COMMON SENSE. MORE IMPORTANTLY, USE
21 YOUR OWN LIFE EXPERIENCES.

22 THE STATE OF SOUTH CAROLINA HAS PAINTED A HORRIFIC
23 PICTURE OF WHAT HAPPENED APRIL 3RD, 2005. THE STATE OF SOUTH
24 CAROLINA HAS THE SOLE BURDEN TO PROVE SHEY RATHBURN GUILTY
25 BEYOND A REASONABLE DOUBT, FOLKS, BEYOND A REASONABLE DOUBT.

OPENING STATEMENT BY MS. PAYNE

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1 THIS IS THE STRICTEST STANDARD OUR STATE HAS. IF YOU ARE NOT
2 SURE, THEN HE'S NOT GUILTY. SHEY RATHBURN SITS HERE TODAY
3 CLOAKED IN A ROBE OF INNOCENCE.

4 THINK ABOUT THIS, FOLKS. TABITHA BRAZELL HAS JUST BEEN
5 BURGLARIZED. SHE'S BEEN BEATEN, SHE'S BEEN RAPED, AND SHE'S
6 BEEN KIDNAPPED. WHY DOESN'T SHE CALL 9-1-1? WHY DOESN'T SHE
7 CALL THE POLICE? WHY DOESN'T SHE DRIVE HERSELF TO THE POLICE
8 STATION? WHY DOESN'T SHE DRIVE HERSELF TO THE E.R.? WHY?
9 WHY DOES SHE CHOOSE TO DRIVE HERSELF TO HER FRIEND LAURA'S
10 HOUSE? AND WHAT GOES ON AT LAURA'S HOUSE THAT THEN CONVINCES
11 HER TO CALL THE POLICE?

12 AFTER YOU HAVE HEARD ALL OF THE EVIDENCE AND ALL OF THE
13 TESTIMONY, I FEEL CONFIDENT YOU WILL FIND SHEY RATHBURN NOT
14 GUILTY OF BURGLARY IN THE FIRST DEGREE, CRIMINAL DOMESTIC
15 VIOLENCE OF A HIGH AND AGGRAVATED NATURE, KIDNAPPING, AND NOT
16 OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

17 THE COURT: CALL YOUR FIRST WITNESS.

18 MS. FENT: TABITHA BRAZELL.

19 TABITHA R. WEISS, AFTER BEING DULY SWORN, TESTIFIED
20 AS FOLLOWS:

21 THE CLERK: PLEASE HAVE A SEAT HERE. SPEAK INTO THE
22 MICROPHONE. STATE YOUR FULL NAME FOR THE RECORD.

23 THE WITNESS: TABITHA RUTH WEISS.
24
25

DIRECT EXAMINATION

1
2 BY MS. FENT:

3 Q. TABITHA, WHAT'S YOUR MAIDEN NAME?

4 A. I'M SORRY. IT'S TABITHA RUTH BRAZELL.

5 Q. OKAY. AND WHEN DID YOU GET MARRIED AND CHANGE YOUR NAME
6 TO WEISS?

7 A. IN SEPTEMBER OF 2006.

8 Q. OKAY. HOW DO YOU KNOW BOBBY SHEY RATHBURN, THE
9 DEFENDANT HERE?

10 A. WE WERE IN A RELATIONSHIP FOR FIVE YEARS.

11 Q. OKAY. CAN YOU TELL THE JURY BASICALLY WHEN THAT
12 RELATIONSHIP BEGAN? WHAT YEAR WAS THAT?

13 A. IT WAS AROUND MARCH OR APRIL OF 2000.

14 Q. OKAY. AND WHILE YOU WERE IN THIS RELATIONSHIP WITH
15 BOBBY RATHBURN, DID Y'ALL HAVE CHILDREN?

16 A. WE DID. WE HAVE A LITTLE GIRL, L B

17 Q. OKAY. AND WHEN WAS SHE BORN?

18 A. IN AUGUST OF 2001.

19 Q. OKAY. SO HOW OLD IS SHE NOW?

20 A. SHE'S FIVE.

21 Q. OKAY. DID YOU AND BOBBY RATHBURN LIVE TOGETHER?

22 A. THROUGHOUT THE RELATIONSHIP. IT WASN'T CONSISTENT, BUT
23 OFF AND ON WE DID RESIDE TOGETHER.

24 Q. OKAY. OKAY. WHEN THIS HAPPENED, WHAT WE'RE GOING TO
25 TALK ABOUT ON APRIL 3RD OF 2005, ON THAT DAY WERE YOU ALL

1 LIVING TOGETHER?

2 A. WE WERE NOT.

3 Q. OKAY. WHEN DID YOU ALL STOP LIVING TOGETHER?

4 A. I BELIEVE HE MOVED OUT ON A SATURDAY, MARCH THE 18TH OR
5 THE 19TH. I'M NOT SURE OF THE ACTUAL DATE.

6 Q. OKAY. SO TWO WEEKS PRIOR TO THIS.

7 A. CORRECT.

8 Q. OKAY. AND WHEN YOU SAY MOVED OUT, TO WHAT EXTENT HAD HE
9 MOVED OUT OF THE HOUSE? DID HE HAVE ANY PROPERTY STILL IN
10 THE HOUSE ON APRIL 3RD?

11 A. HE HAD NOTHING IN THE HOUSE ON APRIL 3RD. HE HAD TOOK
12 IT ALL ON THE DAY THAT HE MOVED.

13 Q. OKAY. DID HE STILL HAVE A KEY TO THE HOUSE?

14 A. NO, HE TURNED THE KEY OVER.

15 Q. OKAY. ON WHAT DAY DID HE GIVE YOU THE KEY TO THE HOUSE?

16 A. THE DAY THAT HE MOVED OUT.

17 Q. ON MARCH 18TH OR 19TH?

18 A. 18TH OR 19TH, YES, MA'AM.

19 Q. OKAY. THEN BETWEEN MARCH 18TH OR 19TH AND APRIL 3RD
20 WHEN THIS HAPPENED, DID YOU SEE BOBBY RATHBURN BETWEEN THOSE
21 TIMES?

22 A. YES, I DID.

23 Q. OKAY. AND WHEN DID YOU SEE HIM AND HOW DID YOU SEE HIM?

24 A. I BELIEVE THE FIRST OCCURRENCE OCCURRED A WEEK AFTER HE
25 LEFT. IT WAS ON SUNDAY NIGHT THAT HE CAME BY THE HOUSE. IT

1 WAS PROBABLY 2:30 OR 3:00 IN THE MORNING.

2 Q. OKAY. WAS THAT EASTER SUNDAY?

3 A. I BELIEVE IT WAS EASTER SUNDAY; YES, MA'AM.

4 Q. OKAY. AND HE CAME OVER TO YOUR HOUSE. YOU SAID ABOUT
5 WHAT TIME?

6 A. IT WAS 2:30 OR 3:00 IN THE MORNING.

7 Q. OKAY. DID HE COME INTO THE HOUSE ON THAT DAY?

8 A. HE DID NOT.

9 Q. OKAY. HOW DID YOU KNOW IT WAS HIM? WHAT WAS HE DOING?

10 A. INITIALLY THERE WAS BANGING ON THE FRONT GLASS DOOR
11 WHICH ALERTED ME TO WAKE UP. I WENT TO THE FRONT WINDOW AND
12 PEEKED OUT TO SEE THAT IT WAS -- HE WAS DRIVING HIS WORK
13 TRUCK, AND THEN HE STOPPED KNOCKING ON THE FRONT DOOR AND
14 THEN WENT AROUND TO THE SIDE WINDOW AND WAS BANGING AND
15 YELLING THROUGH THE WINDOW TO LET HIM IN. HE WANTED TO SEE
16 HIS DAUGHTER IN WHICH -- YOU KNOW, I WAS JUST LIKE, "YOU NEED
17 TO GO AWAY. IT'S 3:00 IN THE MORNING. YOU DON'T NEED TO SEE
18 YOUR DAUGHTER AT 3:00 IN THE MORNING. YOU KNOW, WE'RE
19 SLEEPING." AND---

20 Q. CAN YOU DESCRIBE FOR THE JURY BASICALLY WHAT WAS THE
21 TONE OF HIS VOICE? I MEAN, IS HE SAYING, YOU KNOW, TAP TAP
22 TAP---

23 A. OH, NO.

24 MS. OWINGS: OBJECTION, YOUR HONOR.

25 THE COURT: ON WHAT BASIS?

1 MS. OWINGS: SHE'S LEADING.

2 THE COURT: SUSTAINED.

3 BY MS. FENT:

4 Q. CAN YOU DESCRIBE THE TONE OF HIS VOICE WHEN HE'S
5 KNOCKING ON THESE WINDOWS AND DOORS?

6 A. WELL, HE'S USING PROFANITY AND JUST, YOU KNOW, "LET ME
7 IN. I WANT TO SEE MY DAUGHTER." BANGING LOUD ENOUGH TO --
8 IT EVEN AWOKE HER, YOU KNOW, AS IT AWOKE ME. BUT IT REALLY
9 -- IT INITIATED IN THE LIVING ROOM AT THE WOODEN DOOR, AND
10 THEN I WAS IN THE BEDROOM. SO IT WAS LOUD ENOUGH, THE
11 YELLING AND THE BANGING, FOR ME TO WAKE UP. AND THEN WHEN HE
12 WENT TO THE WINDOW, HE WOKE UP OUR DAUGHTER. AND THEN I
13 HEARD SOME TYPE OF METAL AGAINST METAL WHICH INDICATED TO ME
14 THAT HE WAS TRYING TO BREAK INTO THE WINDOW.

15 Q. AND THIS WAS A WINDOW IN YOUR BEDROOM?

16 A. CORRECT.

17 Q. OKAY.

18 A. HE COULD GET -- IF YOU WENT THROUGH THE SIDE GATE, THERE
19 WAS A DECK. SO HE WAS ABLE -- I MEAN, THE WINDOW SAT, YOU
20 KNOW, TWO OR THREE FEET OFF FROM THE DECK.

21 Q. OKAY. AND WHEN YOU SAY THAT HE'S -- HE'S SAYING THINGS
22 TO YOU; RIGHT?

23 A. YES, MA'AM.

24 Q. AND WHAT IS THE LEVEL OF HIS VOICE?

25 A. HE'S YELLING.

1 Q. ALL RIGHT.

2 A. "LET ME IN. I WANT TO SEE MY DAUGHTER. LET ME SEE

3 L B YOU CAN'T KEEP HER FROM ME. YOU KNOW, LET ME IN

4 THE HOUSE. I JUST WANT TO SEE L B "

5 Q. OKAY.

6 A. JUST OVER AND OVER AND OVER.

7 Q. COULD YOU TELL ANYTHING ELSE FROM HIS VOICE AS TO

8 WHETHER---

9 A. YEAH, HIS SPEECH WAS SLURRED. I MEAN, IT'S 3:00 IN THE
10 MORNING. HE'S IN HIS WORK TRUCK. I MEAN, HE DIDN'T HAVE ANY
11 OTHER VEHICLE, SO THAT WAS HIS ONLY MEANS OF GETTING AROUND.

12 Q. OKAY. WHAT DO YOU DO ON THIS PARTICULAR NIGHT THEN?

13 A. JUST YELLING AT HIM THROUGH THE DOOR, "PLEASE LEAVE."

14 YOU KNOW, AT ONE POINT WHEN L B WOKE UP SHE WAS CRYING,
15 AND AS HE HEARD HER CRYING, HE GOT EVEN LOUDER I GUESS TRYING
16 TO, YOU KNOW, "OH, LOOK. IT'S DADDY OUTSIDE THE WINDOW,"
17 KIND OF THING. I JUST KEPT YELLING AT HIM, YOU KNOW, "PLEASE
18 LEAVE. GO AWAY. THIS IS NOT -- YOU DON'T COME BY MY HOUSE
19 AT 3:00 IN THE MORNING TO SEE YOUR DAUGHTER. YOU'VE BEEN
20 GONE FOR A WEEK. YOU'VE HAD -- ANY TIME DURING THE DAY YOU
21 CAN STOP IN AND I WOULD NOT SAY YOU CAN'T SEE HER."

22 HE EVENTUALLY LEFT AND WHICH I GOT MY CELL PHONE AND I
23 MADE A CALL TO MY FATHER TO COME OVER TO THE HOUSE. I DIDN'T
24 GET A -- I DON'T HAVE A LAND LINE IN THE HOME, AND ON MY CELL
25 PHONE I DIDN'T GET A SIGNAL IN THE HOUSE.

1 Q. OKAY. SO WERE YOU ABLE TO USE YOUR CELL PHONE INSIDE
2 YOUR HOME?

3 A. NO.

4 Q. OKAY. SO ARE YOU -- YOU SAID THAT HE LEFT. THEN WHERE
5 DID YOU GO TO USE THE PHONE?

6 A. I STEPPED OUT ON THE FRONT PORCH, YOU KNOW, KIND OF
7 HALFWAY IN AND HALFWAY OUT. IN CASE HE RODE BACK BY, I COULD
8 GET IN QUICK. I JUST KIND OF HELD THE PHONE TO MY EAR AND I
9 JUST MADE A CALL TO MY DAD. YOU KNOW, "SHEY IS TRYING TO
10 BREAK INTO THE HOUSE, DAD. PLEASE COME," AND THEN WITHIN 10
11 MINUTES MY FATHER HAD ARRIVED.

12 Q. OKAY. AND THIS IS -- I THINK YOU SAID IT WAS AROUND
13 2:45 OR 3:00---

14 A. 3:00.

15 Q. ---WHEN HE SHOWED UP?

16 A. WHEN WHO SHOWED UP?

17 Q. WHEN BOBBY SHEY---

18 A. CORRECT.

19 Q. ---SHOWS UP.

20 A. YES.

21 Q. OKAY. SO ABOUT HOW LONG DO YOU THINK THIS LASTS BEFORE
22 YOU'RE ABLE TO GO OUT AND TRY TO CALL YOUR DAD?

23 A. PROBABLY 30 MINUTES OR SO, 20 OR 30 MINUTES.

24 Q. SO BY THE TIME YOU CALL YOUR DAD IT MAY BE ABOUT 3:30?

25 A. 3:30, 3:40, SOMEWHERE AROUND IN THERE.

1 Q. OKAY. AND THEN BASICALLY WHAT HAPPENS ONCE YOUR DAD
2 ARRIVES?

3 A. MY DAD COMES. HE TAKES A LOOK AT THE WINDOW, SAYS, "YOU
4 KNOW, YOU NEED TO GET OUT OF THIS HOUSE NOW, IMMEDIATELY."
5 HE TAKES LB AND I FOLLOW THEM BACK TO MY PARENTS'
6 HOME.

7 Q. OKAY. DID ANYBODY ELSE COME WITH YOUR DAD?

8 A. I BELIEVE MY MOM CAME.

9 Q. OKAY. AND THEN THAT NIGHT WHERE DID YOU STAY THE
10 REMAINING -- THE REMAINING NIGHT?

11 A. OH, I STAYED WITH MY PARENTS.

12 Q. OKAY. LET ME BACK UP TO MARCH 18TH OR 19TH WHEN THE
13 DEFENDANT MOVES OUT OF THE HOUSE. WHAT THEN IS YOUR PLAN OR
14 INTENTION WITH REGARD TO THIS HOME?

15 A. HE -- WELL, WHEN HE MOVED OUT I HAD -- I HAD PAID THE
16 RENT UP UNTIL THE END OF THE MONTH WHICH IS WHY HE LEFT WITH
17 THE TAX MONEY I RECEIVED. SO I KNEW AS SOON -- BEFORE HE
18 LEFT, I KNEW THAT I WAS GOING TO LEAVE, BUT HE LEFT ON A
19 SATURDAY. ON SUNDAY I JUST---

20 Q. WERE YOU PLANNING ON STAYING IN THIS HOME?

21 A. NO. NO. THAT'S WHAT I'M SAYING. ON SUNDAY I, YOU
22 KNOW, SAT DOWN AND KIND OF MADE THE DECISION THAT I NEEDED TO
23 GET OUT.

24 Q. OKAY. WHAT OTHER THINGS IN TERMS OF YOUR LIFE WERE YOU
25 CHANGING BESIDES YOUR RESIDENCE?

1 A. I WAS MOVING TO A PLACE WHERE HE WOULDN'T BE ABLE TO
2 FIND ME. IT WAS ACTUALLY ABOUT A 30 OR 40-MINUTE RIDE TO
3 LUGOFF, SOUTH CAROLINA, AND I WAS ACTUALLY STAYING IN FOREST
4 ACRES. I WAS WORKING AT COLONIAL LIFE MAKING PRETTY DECENT
5 MONEY. I QUIT MY JOB, JUST CALLED IN AND RESIGNED ON MONDAY
6 AFTER HE LEFT.

7 I MADE OTHER CALLS TO LINE UP JOB INTERVIEWS. SO I GOT
8 ANOTHER JOB MAKING A LOT LESS MONEY JUST SO I COULD CHANGE,
9 YOU KNOW, WHERE I WORKED SO HE WOULDN'T BE ABLE TO FIND ME.

10 Q. OKAY.

11 A. AND I CHANGED MY CELL PHONE NUMBER.

12 Q. OKAY. IN ANY OF THESE THINGS DID YOU TELL THE DEFENDANT
13 ANY OF THESE THINGS ABOUT YOUR NEW JOB, ABOUT THE CELL PHONE,
14 ABOUT A NEW HOME?

15 A. NO. HE HAD ALREADY LEFT, AND WE WEREN'T IN
16 COMMUNICATION.

17 Q. OKAY. SO THEN WHEN DID YOU START ACTUALLY PHYSICALLY
18 TRYING TO MOVE OUT OF THAT HOUSE?

19 A. IT WAS PROBABLY WITHIN -- HE LEFT ON A SATURDAY.
20 SUNDAY. PROBABLY MONDAY -- I STARTED MY JOB ON A WEDNESDAY,
21 AND I REMEMBER TAKING THE TUESDAY BEFORE I STARTED TO KIND OF
22 START PACKING UP THINGS. WE HAD A SHED IN THE BACK. AND IT
23 WAS A SMALL HOUSE, BUT I WAS MOVING EVERYTHING OUT OF IT BY
24 MYSELF.

25 Q. OKAY. SO THEN YOU'VE SAID THAT THE EASTER NIGHT HE

1 SHOWS UP.

2 A. CORRECT.

3 Q. WHEN IS THE NEXT TIME THAT YOU SEE THE DEFENDANT?

4 A. EASTER WAS SUNDAY. IT WAS TUESDAY---

5 Q. OKAY. BETWEEN---

6 A. ---NIGHT.

7 Q. BETWEEN THAT FIRST TIME HE COMES OVER TO THE HOUSE---

8 A. UH-HUH.

9 Q. ---AND WHAT HAPPENS ON APRIL 3RD, HOW MANY TIMES DID HE
10 COME OVER TO THE HOUSE?

11 A. I BELIEVE THAT IT WAS THREE TIMES, THREE DIFFERENT
12 OCCURRENCES, ALL AT AROUND 2:30, 3:00 IN THE MORNING.

13 Q. OKAY. AND BASICALLY THE OTHER TWO INCIDENTS, DESCRIBE
14 THOSE TO THE JURY IN TERMS OF WHAT TIME IT WAS, WHAT IS HE
15 SAYING, WHAT'S HE DOING.

16 A. IT'S THE SAME TIME. BY THEN THERE WERE BOXES ON THE
17 FRONT PORCH INDICATING THAT I WAS MOVING. THERE WAS STUFF
18 BESIDE THE ROAD INDICATING THAT I WAS MOVING. SO, YOU KNOW,
19 OBVIOUSLY HE FIGURED OUT THAT I WAS LEAVING. JUST THE SAME
20 KIND OF THINGS... HE WOULD BANG ON THE WINDOW BECAUSE THAT
21 WAS THE BEDROOM WINDOW, TRYING TO WAKE ME UP SO HE COULD SEE
22 L B BANG ON THE GLASS DOOR. I ALWAYS KEPT IT LOCKED,
23 AND THEN THERE WAS THE WOODEN DOOR.

24 SO ONE OF THE NIGHTS I ACTUALLY OPENED THE WOODEN DOOR
25 AND JUST LOOKED AT HIM AND SAID, "PLEASE, YOU NEED TO LEAVE.

1 YOU HAVE TO STOP THIS. YOU'RE GOING TO WAKE THE NEIGHBORS

2 UP." AND HE WOULD JUST GO ON, "WELL, I JUST WANT TO SEE

3 L B AND AGAIN I WOULD STATE, "YOU COULD HAVE BEEN HERE

4 12 HOURS AGO TO SEE L B WHY DO YOU HAVE TO COME AT

5 3:30 IN THE MORNING?"

6 Q. DID HE EVER COME -- THOSE TWO WEEKS AFTER HE MOVED OUT

7 TO WHEN THIS HAPPENED, DID HE EVER COME DURING DAYLIGHT

8 HOURS?

9 A. NEVER. NOT ONCE.

10 Q. AND DID YOU EVER LET HIM INTO THIS HOUSE THOSE TIMES

11 THAT HE CAME OVER?

12 A. NO, MA'AM.

13 Q. OKAY. WHEN DID YOU START YOUR NEW JOB THEN?

14 A. AGAIN, HE MOVED OUT ON SATURDAY. I WENT ON THE JOB

15 INTERVIEW ON MONDAY. I TOOK TUESDAY TO GET PACKED AND STUFF,

16 SO I WOULD HAVE STARTED WITH THEM ON WEDNESDAY.

17 Q. OKAY.

18 A. I THINK IT WAS THE 21ST OR 22ND.

19 Q. AND WHAT HOURS WERE YOU WORKING?

20 A. IT WAS MONDAY THROUGH FRIDAY 8 TO 5 AND THEN 9 TO 1 ON

21 SATURDAYS.

22 Q. OKAY. AT 5:00 WHEN YOU GOT OFF WORK, WHAT WERE YOU

23 GOING TO DO?

24 A. I WOULD GET OFF WORK AT 5. MY MOM WAS WATCHING MY

25 DAUGHTER. I WENT AND PICKED UP MY DAUGHTER. WE WOULD GO TO

1 THE HOUSE. SOMETIMES I WOULD CALL MY FRIEND LAURA TO COME
2 OVER TO HELP ME BOX UP STUFF, BUT I WAS CONSTANTLY JUST
3 PACKING UP STUFF, YOU KNOW, BOXING EVERYTHING UP IN THE
4 PROCESS OF MOVING OUT.

5 Q. AND WHEN WAS YOUR GOAL -- WHAT WAS YOUR DATE TO BE OUT
6 OF THE HOUSE BY?

7 A. I WAS PAID UP THROUGH APRIL LIKE 1ST, SO MY GOAL
8 ACTUALLY -- I THINK THE 1ST WAS A FRIDAY. I WAS TRYING TO BE
9 OUT NO LATER THAN SUNDAY THE 3RD BECAUSE I KNEW I WOULD NEED
10 SOME WEEKEND TIME BECAUSE AT NIGHT, TRYING TO GET L B IN
11 BED AND EVERYTHING, IT REALLY LIMITED ME TO ABOUT AN HOUR AND
12 A HALF AFTER I MADE DINNER OR I PICKED UP DINNER.

13 Q. OKAY. AND YOU SAID YOUR FRIEND LAURA WAS ALSO HELPING
14 YOU MOVE DURING THIS PERIOD OF TIME?

15 A. YES. SOMETIMES IN THE EVENING SHE WOULD COME OVER.

16 Q. OKAY. SO THEN LET'S GO TO SATURDAY-NIGHT, THE 2ND,
17 APRIL 3RD, SUNDAY, SUNDAY MORNING.

18 A. OKAY.

19 Q. WHAT HAPPENS THEN? WHAT TIME? ACTUALLY LET'S GO TO
20 THAT DAY. YOU'RE DOING WHAT AROUND THE HOUSE?

21 A. RIGHT. IT WAS SATURDAY, AND SO IT WAS THE DAY BEFORE
22 THAT I WAS SUPPOSED TO BE OUT. I HAD MADE ARRANGEMENTS FOR
23 MY COUCH AND MY LOVE SEAT TO -- INSTEAD OF PAYING STORAGE, I
24 HAD A FRIEND WHO WAS GOING TO TAKE IT AND USE IT UNTIL I
25 NEEDED IT BACK BECAUSE I WAS MOVING IN WITH MY AUNT AND I

1 DIDN'T NEED ANY FURNITURE.

2 I WAS WAITING ON HIM TO COME OVER. HE WAS SUPPOSED TO
3 BE OVER AT ONE TIME. IT JUST KIND OF KEPT GETTING PUSHED
4 OFF, SO I WAS JUST BOXING UP STUFF. FINALLY ABOUT 8:30 I
5 STEPPED OUT TO GIVE HIM A CALL. HE SAID HE WOULD BE THERE
6 WITHIN 30 OR 40 MINUTES.

7 Q. THIS IS 8:30 AT NIGHT.

8 A. AT NIGHT, YEAH.

9 Q. ALL RIGHT.

10 A. I TOOK LB THEN TO ARBY'S. WE GOT SOMETHING TO
11 EAT, YOU KNOW, BROUGHT IT BACK TO THE HOUSE, AND WE WAITED.
12 AND HE SHOWED UP WITH ANOTHER GENTLEMAN TO MOVE OUT THE COUCH
13 AND THE LOVE SEAT. HE ACTUALLY BORROWED MY BROTHER'S TRUCK.
14 SO HE WENT TO MY BROTHER'S HOUSE, AND THEN HE CAME TO MY
15 HOUSE. I HELPED HIM LOAD UP THE COUCH AND THE LOVE SEAT, AND
16 THEN HE LEFT AND IT WAS PROBABLY ABOUT 9:30. IT WAS LATE. I
17 WASN'T GOING TO TAKE LB TO MY MOM'S. SHE WAS GETTING
18 TIRED, SO I PUT HER IN THE BATH. AND AS I WAS---

19 Q. LET ME BACK UP THEN. YOU JUST MADE A COMMENT ABOUT YOU
20 WEREN'T GOING TO TAKE LB TO YOUR MOM'S. THAT WEEK
21 PRECEDING WERE YOU BOTH STAYING IN THE HOUSE?

22 A. I WOULD STAY SOME NIGHTS. I THINK AFTER THE SUNDAY WHEN
23 HE FIRST TRIED TO BREAK IN I DIDN'T STAY THE NEXT NIGHT. I
24 PROBABLY WENT BACK TUESDAY, BUT I TRIED TO JUST PICK HER UP
25 TO KIND OF SPEND TIME WITH HER IN THE AFTERNOON. MY PARENTS

1 ONLY LIVED 10 MINUTES WAY. I WOULD TAKE HER BACK TO MY
2 PARENTS BECAUSE MY MOM WATCHED HER IN THE DAY.

3 Q. OKAY.

4 A. SO SHE WAS STAYING AT MY PARENTS' ALMOST EVERY SINGLE
5 NIGHT AND I WOULD, YOU KNOW -- EVERY OTHER NIGHT MAYBE I
6 WOULD STAY AT MY PARENTS' HOME---

7 Q. OKAY.

8 A. ---AS I DO RECALL.

9 Q. SO THIS PARTICULAR NIGHT YOU WERE JUST SAYING THAT NOW
10 IT WAS LATE---

11 A. IT WAS LATE, SO I WASN'T GOING TO TAKE HER BACK TO MY
12 MOM'S. AND SO I PUT HER IN THE BATH, AND THEN AS I WAS
13 RUNNING THE BATH THERE WAS A KNOCK ON THE DOOR. I LEFT THE
14 BATH RUNNING BECAUSE THE HOUSE WAS SMALL. I RAN INTO THE
15 LIVING ROOM, KIND OF DID THE NUMBER ON THE WINDOW, AND IT WAS
16 CHRIS. HE HAD LEFT HIS CELL PHONE IN THE HOUSE. SO I---

17 Q. WHAT DO YOU MEAN BY DID THE NUMBER ON THE WINDOW?

18 A. WELL, YOU KNOW, YOU HAVE THE LITTLE WINDOW. I JUST KIND
19 OF PEEKED OUT AND I SAID, "OH, IT'S JUST CHRIS," AND I
20 UNLOCKED THE DOOR. AND HE SAID, "OH, I LEFT MY CELL PHONE
21 SOMEWHERE IN HERE. IT MUST HAVE FELL OFF." I JUST TOLD HIM
22 TO GO AHEAD AND, YOU KNOW, FIND THE CELL PHONE.

23 I WENT BACK IMMEDIATELY INTO THE BATHROOM. L B WAS
24 IN THE TUB AND THE WATER WAS RUNNING AND WAS FINISHING UP HER
25 BATH, AND HE STUCK HIS HEAD IN, FOUND THE PHONE, SAID, "SEE

1 YOU LATER." AND I SAID, YOU KNOW, "PLEASE LOCK THE DOORS ON
2 THE WAY OUT."

3 Q. OKAY. SO YOU WERE EARLIER DESCRIBING HOW THERE WERE TWO
4 DOORS---

5 A. CORRECT?

6 Q. ---AT YOUR FRONT DOOR?

7 A. UH-HUH.

8 Q. AND DESCRIBE THOSE FOR THE JURY.

9 A. THERE WAS AN ALL-GLASS -- I GUESS THEY CALL IT LIKE A
10 STORM DOOR. IT HAD LIKE THE BIG BRASS WITH THE LOCKS. YOU
11 WOULD NEED A KEY TO GET IN FROM THE OUTSIDE, AND IT HAD AN
12 INSIDE LOCK. THAT WAS ALWAYS LOCKED. AND THEN THERE WAS THE
13 WOODEN DOOR THAT HAD A BOLT AND JUST A REGULAR LOCK.

14 Q. OKAY.

15 A. AND THEY WERE ALWAYS LOCKED.

16 Q. AND WAS THAT A REGULAR THING EVEN PRIOR TO THE DEFENDANT
17 MOVING OUT THAT YOU ALWAYS LOCKED THE STORM DOOR?

18 A. I NEVER LOCKED THE GLASS DOOR UNTIL HE MOVED OUT.

19 Q. OKAY. AND SO THIS PARTICULAR NIGHT YOU SAID -- DID THE
20 FRIEND LET HIM OUT OR DID YOU FOLLOW HIM TO THE DOOR? WHAT
21 HAPPENED?

22 A. NO, BECAUSE I WAS -- HAD L B IN THE BATH. I JUST
23 -- YOU KNOW, HE KIND OF STUCK HIS HEAD IN AND SAID, "HEY, I
24 HAVE MY PHONE," AND I WAS LIKE, "GREAT. YOU KNOW, JUST KIND
25 OF LOCK THE DOORS." THEN I'M GETTING HER OUT OF THE BATH.

1 SHE'S IRRITABLE. IT'S PAST HER BEDTIME KIND OF THING, AND WE
2 JUST KIND OF LAID DOWN AND FELL ASLEEP AND I DIDN'T EVEN
3 THINK ABOUT GOING TO LOCK THE GLASS DOOR.

4 Q. OKAY. AND HOW OLD IS LB AT THIS POINT?

5 A. SHE'S GOING ON THREE, I BELIEVE.

6 Q. OKAY. SO Y'ALL FALL ASLEEP. I PRESUME THIS, BUT DID
7 LB HAVE HER OWN BEDROOM IN THE HOUSE?

8 A. SHE DID HAVE HER OWN BEDROOM AT THE HOUSE, BUT JUST FOR
9 COMFORT SHE WOULD SLEEP WITH ME.

10 Q. OKAY. SO Y'ALL LAY DOWN AND?

11 A. IT'S PROBABLY 10:00 OR SO, AND WE LAID DOWN TO GO TO
12 SLEEP.

13 Q. OKAY. WHAT'S THE NEXT THING THAT YOU REMEMBER HAPPENING
14 THEN?

15 A. IT WAS -- I BELIEVE -- IT WAS DAYLIGHT SAVINGS TIME, AND
16 I CAN'T REALLY REMEMBER IF I HAD ALREADY SET MY CLOCK. I
17 REMEMBER GLANCING AT THE CLOCK, AND IT WAS AROUND 4 A.M. WHEN
18 I AGAIN HEARD SHEY BANGING ON THE FRONT DOOR---

19 Q. OKAY.

20 A. ---THE GLASS DOOR.

21 Q. AND DESCRIBE FOR THE JURY AGAIN HOW -- WHAT'S THE TONE
22 OF HIS VOICE, THE LEVEL OF HIS VOICE, WHAT HE SAID.

23 A. ANGRY. HE WAS YELLING, BANGING ON THE, YOU KNOW -- YOU
24 KNOW, LET ME SEE MY DAUGHTER. YOU CAN'T DO THIS TO ME, JUST
25 OVER AND OVER. YOU KNOW, CALLING ME NAMES. YOU'RE A BITCH.

1 YOU KNOW, WHY DON'T YOU JUST LET ME SEE MY DAUGHTER AND
2 AGAIN, YOU KNOW, I'M JUST TRYING TO KIND OF MANEUVER AROUND
3 SO HE CAN'T -- I WAS ACTUALLY LIKE CRAWLING AROUND ON THE
4 FLOOR PAST THE WINDOWS SO HE COULDN'T SEE ME WALK PAST TO
5 KIND OF -- SO HE WOULDN'T KNOW WHERE I WAS.

6 Q. OKAY.

7 A. AND THEN I JUST GOT TIRED OF HIM JUST BANGING. HE WAS
8 JUST LIKE POUNDING ON THE GLASS TO THE POINT WHERE I WAS
9 LIKE, "WHY ISN'T THE NEIGHBORS WAKING UP? WHY ISN'T
10 SOMETHING GOING ON?" SO I OPENED THE WOODEN DOOR AGAIN TO
11 LOOK AT HIM AND SAY, "YOU NEED TO LEAVE. IF YOU DO NOT
12 LEAVE, I WILL CALL THE COPS."

13 Q. OKAY. AND WHAT HAPPENS WHEN YOU OPEN THAT WOODEN DOOR?

14 A. HE'S JUST, "OPEN THE DOOR. LET ME IN. YOU KNOW, I WANT
15 TO SEE MY DAUGHTER. YOU CAN'T KEEP HER AWAY FROM ME." AND
16 THEN AGAIN IT'S JUST THE SAME THING OVER. YOU KNOW, "WHY ARE
17 YOU COMING BY AT 4:00 IN THE MORNING TO SEE L B

18 Q. OKAY.

19 A. YOU KNOW, THAT KIND OF THING.

20 Q. OKAY. TAKE A BREATH AND JUST TAKE A -- DO YOU WANT A
21 GLASS OF WATER?

22 A. NO.

23 Q. YOU'RE OKAY?

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

25 Q. OKAY. OKAY. THEN WHAT HAPPENS -- ACTUALLY, LET ME BACK

1 UP. HOW DO YOU THINK -- HOW LONG DO YOU THINK THAT LASTED
2 WITH HIM BANGING AND YOU SAID YOU FINALLY GET TIRED OF IT
3 THAT YOU OPEN THE DOOR?

4 A. PROBABLY 20 MINUTES OR SO.

5 Q. OKAY. AND IS LB SLEEPING THROUGH THIS AND/OR WHAT
6 IS SHE DOING AT THIS POINT?

7 A. SHE HAD WOKEN UP---

8 Q. OKAY.

9 A. ---AS SHE DID EVERY -- YOU KNOW, WHEN SHE WAS THERE WHEN
10 HE WOULD COME BY, SHE WOULD ALWAYS WAKE UP BECAUSE IT WAS SO
11 LOUD. I MEAN, IT SHOOK THE -- YOU KNOW, IT ALMOST SHOOK THE
12 HOUSE BECAUSE IT WAS SO FORCEFUL.

13 Q. OKAY. SO NOW YOU STAND UP. YOU OPEN THE WOODEN DOOR.
14 HE'S ASKING TO COME IN?

15 A. YEAH.

16 Q. OKAY. OR DEMANDING? YOU TELL ME.

17 A. YEAH. OH, NO, HE WASN'T ASKING. HE WAS JUST, YOU KNOW,
18 "LET ME IN TO SEE LB AGAIN, I WANT TO SEE MY
19 DAUGHTER. I HAVE A RIGHT TO SEE MY DAUGHTER. YOU KNOW, YOU
20 CAN'T KEEP HER FROM ME," AND THEN AGAIN WITH ME, YOU KNOW,
21 GIVING HIM THE, "YOU NEED TO COME BY AT A DECENT HOUR," KIND
22 OF THING. AND, YOU KNOW, I WAS LIKE, "I'M GOING TO CALL THE
23 COPS IF YOU DO NOT LEAVE."

24 Q. OKAY.

25 A. "I'M GOING TO CALL THE COPS " AND AT THAT POINT I

1 TURNED TO GO, YOU KNOW, TO LEAVE THE SITUATION AND SHUT DOOR
2 AND THAT'S WHEN HE CAME IN THE DOOR.

3 Q. SO YOU WERE TRYING TO ACTUALLY SHUT THE DOOR AND WERE
4 TURNING---

5 A. SHUT THE DOOR.

6 Q. OKAY.

7 A. CORRECT.

8 Q. AND WHAT WAS YOUR BELIEF ABOUT THIS STORM DOOR, THE
9 SCREEN DOOR, THE GLASS DOOR?

10 A. I -- JUST WITH EVERYTHING THAT WAS GOING ON WITH
11 LB BEING IN THE BATHROOM, BECAUSE IT WAS LOCKED LIKE
12 CLOCKWORK EVERY SINGLE NIGHT, IT JUST DID NOT OCCUR TO ME,
13 YOU KNOW, WHEN I WAS LAYING DOWN, OH, YOU KNOW -- "OH, MY
14 GOSH. CHRIS CAME AND GOT HIS CELL PHONE AND NOW THE GLASS
15 DOOR IS NOT LOCKED." SO IT WAS ACTUALLY UNLOCKED.

16 Q. OKAY. DID YOU LET THE DEFENDANT INTO YOUR HOME?

17 A. I DID NOT.

18 Q. OKAY. SO WHAT HAPPENS THEN WHEN YOU TURN TO SHUT THAT
19 WOODEN DOOR?

20 A. I TURNED TO SHUT THE WOODEN DOOR, AND THEN HE JUST
21 OPENED THE GLASS DOOR AND CAME INTO THE LIVING ROOM. AND
22 THERE WERE SOME BOXES IN FRONT OF THE KITCHEN DOOR WHICH I'M,
23 YOU KNOW, SCUFFLING BACK, AND HE PUSHES ME OVER THE BOXES AND
24 I KIND OF JUST SLIDE ACROSS THE KITCHEN FLOOR.

25 Q. OKAY. WHEN YOU SAY HE CAME INTO THE HOUSE, CAN YOU

1 DESCRIBE THAT? DOES HE JUST WALK IN?

2 A. NOT WALKING IN. HE JUST KIND OF LIKE BUM-RUSHES INTO
3 THE DOOR.

4 Q. OKAY. AND WHICH DIRECTION DO YOU START HEADING THEN?

5 A. BECAUSE I WAS TRYING TO CLOSE THE DOOR, CLOSE THE DOOR
6 THIS WAY, WHEN HE CAME IN, I'M SCUFFLING BACK. SO I WENT
7 BACK THAT WAY AND THEN TRIPPED OVER THE BOXES WHEN HE WAS
8 BRUSHING ME INTO THE KITCHEN.

9 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
10 EXHIBIT NUMBER 3. DO YOU RECOGNIZE WHAT THIS IS A DIAGRAM
11 OF?

12 A. YES, MA'AM. IT'S -- EXCUSE ME. IT'S THE HOUSE.

13 Q. OKAY. AND WOULD THIS HELP YOU TO BE ABLE TO DESCRIBE TO
14 THE JURY---

15 A. YES, MA'AM.

16 Q. ----YOU KNOW, WHICH DIRECTION YOU WENT AND WHERE
17 EVERYTHING HAPPENED, TO BE ABLE TO REFER TO THIS?

18 A. YES, MA'AM.

19 MS. FENT: OKAY. MAY I ASK THAT THE WITNESS WOULD BE
20 ALLOWED TO COME DOWN TO THE DIAGRAM?

21 THE COURT: SURE.

22 BY MS. FENT:

23 Q. OKAY. NOW, IT'S VERY IMPORTANT THAT THIS COURT REPORTER
24 STILL BE ABLE TO HEAR YOU; OKAY?

25 A. OKAY.

1 Q. AND I DON'T KNOW IF THIS WILL HELP OR NOT, SO I WANT YOU
2 TO TALK AS LOUDLY AS POSSIBLE---

3 A. OKAY.

4 Q. ---SO ALL -- THEY CAN ALL HEAR YOU AND THE COURT
5 REPORTER CAN HEAR YOU. OKAY?

6 A. OKAY.

7 Q. BASICALLY SHOW US WHERE THE FRONT DOOR IS.

8 A.. THIS WOULD BE THE FRONT DOOR.

9 Q. OKAY. I GUESS JUST TELL US WHERE ALL THE ROOMS ARE.

10 A. IT WAS A VERY SMALL HOUSE, SO THIS BEING THE FRONT DOOR
11 AND THIS AREA WAS LIKE A LIVING AREA. WE HAD LIKE A COUCH
12 AND T.V. THIS WOULD HAVE BEEN L B ROOM. THIS WOULD
13 HAVE BEEN MY BEDROOM, AND THEN THERE WAS NO HALLWAYS. THIS
14 WAS JUST THE BATHROOM AND YOU COULD GET THROUGH EITHER DOOR.

15 Q. OKAY.

16 A. THIS BEING THE KITCHEN AND THEN THIS DOOR LED OUT TO A
17 LAUNDRY AREA WHICH THERE WAS ANOTHER DOOR RIGHT HERE WHICH
18 LED OUT ON TO THE DECK.

19 Q. OKAY. AND YOU EARLIER DESCRIBED A WINDOW IN THE BEDROOM
20 BY A DECK.

21 A. CORRECT.

22 Q. SHOW US WHERE THAT IS.

23 A. THIS WOULD HAVE BEEN THE WINDOW, AND THEN RIGHT OUTSIDE
24 THE WINDOW WAS THE DECK. SO THE WINDOW -- PROBABLY THE
25 BOTTOM OF THE WINDOW SAT THIS HIGH FROM THE DECK.

1 Q. OKAY. OKAY. AND WAS THAT THE DIRECTION THAT THE DOOR
2 OPENED? BECAUSE---

3 A. YEAH. YEAH, IT WOULD HAVE OPENED LIKE THIS WAY.

4 Q. TO THE RIGHT.

5 A. TO THE RIGHT.

6 Q. OKAY. TOWARDS THE LIVING ROOM, NOT TO THE KITCHEN.

7 A. NO, TOWARDS THE KITCHEN.

8 Q. OKAY. OKAY. SO YOU START RUNNING IN WHICH DIRECTION?

9 A. WHEN I'M GOING TO CLOSE THE DOOR AND THEN HE COMES IN
10 THROUGH THE GLASS IS I'M GOING -- I'M BACKING UP WITH THE
11 DOOR IN MY HAND, AND THEN WHEN I'M DOING THAT, THERE'S BOXES
12 HERE WHICH I TRIP OVER AND THEN KIND OF SCUFFLE DOWN AND THEN
13 HE KIND OF JUMPED ON ME IN THE KITCHEN BECAUSE I KIND OF SLID
14 ACROSS -- WE HAVE HARDWOODS IN THERE. I KIND OF SLID ACROSS
15 THE FLOORS.

16 Q. OKAY. AND WHERE DO YOU LAND?

17 A. ACTUALLY IN THE CORNER. IT WAS REALLY SMALL, BUT IT WAS
18 IN THE CORNER. IT WAS RIGHT HERE BY THE DOOR.

19 Q. OKAY. WHEN YOU LAND OVER HERE, WHAT DOES HE DO? WHERE
20 IS HE?

21 A. HE HAD ALREADY -- YOU KNOW, KIND OF WHEN I WAS SCUFFLING
22 BACK, HE GRABBED A HOLD OF ME, KIND OF PUSHED ME OFF. I WENT
23 BACK, AND THEN THAT'S WHEN HE CAME OVER AND HE BEGAN PULLING
24 MY HAIR, NOT LIKE THIS BUT KIND OF FROM THE SIDE, KIND OF
25 PULLING MY HEAD DOWN, YELLING AT ME ABOUT WHERE I WAS TAKING

1 OUR DAUGHTER AND SO FORTH, AND HE BEGAN CHOKING ME THERE AS
2 WELL.

3 Q. OKAY. I'M GOING TO SHOW YOU BASICALLY -- DO YOU
4 RECOGNIZE STATE'S EXHIBIT NUMBER 16?

5 A. CORRECT. THAT WAS OUR MAILBOX.

6 Q. OKAY. SO THAT'S THE ADDRESS OF YOUR HOME?

7 A. CORRECT.

8 Q. OKAY. EXHIBIT 17, DOES THAT ACCURATELY SHOW YOUR HOME?

9 A. CORRECT. THAT'S THE FRONT OF THE HOUSE.

10 Q. ALL RIGHT. AND BASICALLY WHAT I WANT YOU TO DO -- I'LL
11 HOLD THE POINTER REAL QUICK.

12 A. OKAY.

13 Q. I WANT YOU TO JUST LOOK THROUGH... IT'S EXHIBITS 18
14 THROUGH 32.

15 A. 32.

16 Q. AND JUST LOOK -- YOU DON'T NEED TO SAY ANYTHING. JUST
17 LOOK THROUGH THEM AND MAKE SURE YOU RECOGNIZE ALL THE
18 PHOTOGRAPHS.

19 A. OKAY. (THE WITNESS COMPLIES.) YES.

20 Q. OKAY. AND DO THESE PHOTOGRAPHS ACCURATELY SHOW WHAT
21 YOUR HOME LOOKED LIKE I GUESS DURING AND AS A RESULT OF THE
22 INCIDENT YOU'RE TESTIFYING ABOUT?

23 A. YES, IT DOES.

24 MS. FENT: OKAY. I OFFER INTO EVIDENCE EXHIBITS 16
25 THROUGH 30.

1 MS. OWINGS: WITHOUT OBJECTION, YOUR HONOR.

2 MS. FENT: AND FOR CORRECTION, IT WAS EXHIBITS 16
3 THROUGH 32.

4 THE COURT: THEY'RE ADMITTED.

5 (STATE'S EXHIBITS 16 THROUGH 32 WERE RECEIVED IN
6 EVIDENCE.)

7 BY MS. FENT:

8 Q. LOOKING AT EXHIBIT 24, WHAT IS THAT A VIEW FROM? WHAT
9 ARE WE LOOKING AT?

10 A. OKAY. THIS IS THE DOOR.

11 Q. THE WOODEN DOOR.

12 A. THE WOODEN DOOR.

13 Q. OKAY.

14 A. THIS IS THE KITCHEN, AND YOU CAN SEE HOW SMALL IT IS.
15 IT'S JUST FROM THERE TO THERE. AND THIS IS PART OF THE
16 LIVING AREA.

17 Q. OKAY.

18 A. AND THEN THIS BACK HERE WOULD BE THE BEDROOM.

19 Q. OKAY. AND WHAT IS THIS IN TERMS OF WHAT YOU JUST
20 DESCRIBED HAPPENING?

21 A. UH-HUH.

22 Q. GOING BACK IN THIS DIRECTION, WHERE IS THAT IN THIS
23 PHOTOGRAPH?

24 A. I'M SORRY. WHERE IS...

25 Q. WELL, YOU JUST DESCRIBED BEING AT THE FRONT DOOR.

1 A. FRONT DOOR RIGHT HERE.

2 Q. AND GOING OVER IN THIS DIRECTION.

3 A. GOING RIGHT -- WELL, OBVIOUSLY IT'S NOT TO SCALE BECAUSE
4 THERE WASN'T THAT MUCH ROOM BETWEEN.

5 Q. OKAY.

6 A. SO YOU CAN SEE FROM THE DOOR I WAS SCUFFLING BACK.
7 THERE WAS -- THESE BOXES WERE IN THE WAY OF SOME OTHER BOXES
8 ON THE OTHER SIDE THAT I TRIPPED OVER, FELL BACK INTO ON TO
9 THE KITCHEN FLOOR AND KIND OF JUST SLID ACROSS THE FLOOR FROM
10 THE FORCE.

11 Q. OKAY. AND WHAT ARE WE LOOKING AT THEN IN EXHIBIT 25?

12 A. THIS IS A DIFFERENT VIEW. I GUESS THAT ONE WAS YOU WERE
13 LOOKING INTO THE HOUSE. THIS ONE IS TAKEN: IF YOU'RE
14 STANDING AT THE DOOR LOOKING INTO THE KITCHEN, YOU CAN SEE
15 THE BOXES OVERTURNED WHERE THE SCUFFLE OCCURRED. THE LID TO
16 THE GARBAGE CAN IS DOWN, AND THESE ARE JUST STUFF, YOU KNOW,
17 MISCELLANEOUS THINGS. THERE'S BOXES WHERE I'M PACKING AND A
18 BASKET FULL OF OUR FOOD, SOME OF LB TOYS.

19 Q. OKAY. BUT THIS SCUFFLE THAT YOU JUST TESTIFIED TO IS
20 GOING TO BE BACK NEAR WHERE THE TRASH CAN IS?

21 A. RIGHT THERE BUT ON THE OTHER SIDE OF THE DOOR.

22 Q. OKAY. AND EXHIBIT 26 THEN.

23 A. THAT'S JUST A VIEW LOOKING INTO THE KITCHEN. THERE'S
24 THE TRASH CAN. SOMEHOW THE LID ENDED UP OVER HERE. THERE'S
25 ONE OF THE BOXES I TRIPPED OVER, AND THIS IS ACTUALLY WHERE I

1 ENDED UP ON -- IT WAS KIND OF IN THE CORNER.

2 Q. OKAY. AND DESCRIBE FOR THE JURY BASICALLY THEN WHAT ALL
3 HAPPENS ONCE YOU LAND AND YOU'RE SCUFFLING. HOW ARE YOU
4 PHYSICALLY ON THE GROUND?

5 A. I'M ACTUALLY SITTING IN THE CORNER RIGHT HERE. I'M IN
6 THE CORNER, YOU KNOW, NOT ON MY KNEES, JUST ACTUALLY ON MY
7 BOTTOM IN THE CORNER AND HE IS LIKE HOVERING DOWN OVER ME.

8 Q. OKAY.

9 A. PULLING MY HAIR AND...

10 Q. IS HE STANDING OR IS HE KNEELING DOWN OVER YOU?

11 A. HE WAS KIND OF HUNCHED OVER ME, PULLING MY HAIR, YELLING
12 WHERE AM I TAKING L B YOU KNOW, YOU'RE MOVING. WHERE
13 ARE YOU GOING? AND JUST VERBAL EXCHANGE AND THEN HE BEGAN
14 CHOKING ME.

15 Q. OKAY. WHEN HE IS INITIALLY WHAT YOU JUST DESCRIBED, HOW
16 ARE YOU REACTING?

17 A. I WAS JUST PANICKING, AND HONESTLY THERE WAS A KITCHEN
18 DRAWER THERE AND YOU CAN SEE IT'S KIND OF HALF-WAY OPEN.
19 THAT'S WHERE I KEPT LIKE KNIVES AND FORKS. I WAS -- KIND OF
20 HAD MY HAND BACK THERE TRYING TO GET INTO THE DRAWER TO
21 DEFEND MYSELF, AND THEN ONCE MY HAND KIND OF STARTED FEELING
22 IN THERE, I WAS LIKE, "CRAP. EVERYTHING IS PACKED IN BOXES."
23 SO...

24 Q. OKAY. THEN YOU SAID HE STARTED CHOKING YOU.

25 A. CHOKING ME.

1 Q. START AT THAT POINT THEN. WHAT HAPPENS?

2 A. HE'S JUST, YOU KNOW, DOWN OVER ME AND HE'S JUST CHOKING
3 ME. YOU KNOW, "WHERE ARE YOU TAKING MY DAUGHTER? WHERE ARE
4 YOU GOING? WHERE ARE YOU MOVING TO? YOUR CELL PHONE NUMBER
5 HAS BEEN CHANGED. YOU KNOW, YOU'RE GOING TO TELL ME WHERE
6 YOU'RE GOING," AND THEN I'M LIKE, "I'M NOT TELLING YOU WHERE
7 I'M GOING," THAT KIND OF THING. AND THEN WHEN -- YOU KNOW,
8 AS I STARTED TO NOT BE ABLE TO BREATHE, I KIND OF JUST
9 MOTIONED FOR HIM TO STOP AND I, YOU KNOW, TOLD HIM WHERE I
10 WAS GOING, BUT IT WASN'T REALLY WHERE I WAS GOING. I WAS
11 JUST...

12 Q. OKAY. LET'S BACK UP THEN. HOW -- YOU SAY HE'S CHOKING
13 YOU. I MEAN, WHAT IS THE STRENGTH OF THAT PRESSURE ON YOU?

14 A. I MEAN, YOU KNOW, IT'S ENOUGH TO WHERE I NOT TO SAY
15 TAPPED OUT, BUT I FINALLY WAS LIKE, "OKAY. I'LL TELL YOU,"
16 YOU KNOW. THE MORE HE JUST, "WHERE ARE YOU TAKING HER?
17 WHERE ARE YOU TAKING HER?" HE WOULD JUST GET TIGHTER AND
18 TIGHTER AND TIGHTER. AND THEN I'M CRYING AND I'M LOSING MY
19 BREATH. DURING ALL THIS L B STARTS CRYING IN THE
20 BEDROOM, AND THAT WAS ONE OF THE REASONS I WAS JUST KIND OF
21 LIKE, "OKAY, OKAY, OKAY," YOU KNOW.

22 Q. YOU ACTUALLY HAD TO PHYSICALLY MOTION FOR HIM TO STOP.

23 A. MOTION FOR HIM TO STOP.

24 Q. YOU COULDN'T---

25 A. AT THAT POINT BETWEEN THE CRYING AND JUST LOSING THE AIR

1 I COULDN'T BREATHE.

2 Q. OKAY. SO AFTER YOU MOTION TO HIM AND YOU SAY YOU TAP
3 OUT BASICALLY---

4 A. UH-HUH.

5 Q. ---WHAT HAPPENS AT THIS POINT?

6 A. YOU KNOW, "WELL, WHERE ARE YOU GOING?" AND I TOLD HIM
7 THAT I WAS MOVING TO ST. MATTHEWS WITH AN OLD FRIEND THAT HE
8 KNEW BUT I HADN'T BEEN IN CONTACT WITH FOR SOME WHILE -- FOR
9 SOME TIME, MAHTAB. SO...

10 Q. AND WERE YOU GOING TO LIVE WITH MAHTAB?

11 A. I WAS NOT.

12 Q. OKAY. WHY WERE YOU TELLING HIM THIS?

13 A. SO HE WOULDN'T BE ABLE TO KNOW WHERE I WAS GOING.

14 Q. OKAY. SO WHEN THIS WHOLE THING WAS OVER WITH, HE STILL
15 WOULDN'T KNOW WHERE TO FIND YOU.

16 A. CORRECT.

17 Q. OKAY. SO THEN YOU TELL HIM YOU'RE MOVING TO LIVE WITH
18 MAHTAB. WHAT HAPPENS NEXT?

19 A. LB IS CRYING, AND SO THEN HE'S, YOU KNOW, "WELL, I
20 WANT TO SEE YOUR CELL PHONE. WHERE IS YOUR CELL PHONE. I
21 WANT TO SEE, YOU KNOW, IF YOU'VE BEEN TALKING TO HER,
22 COMMUNICATING WITH HER," BECAUSE IT WAS SOMEONE THAT I HADN'T
23 SPOKE WITH IN PROBABLY TWO YEARS AND HE KNEW THAT BECAUSE WE
24 WERE ON AGAIN, OFF AGAIN IN OUR RELATIONSHIP. TO KIND OF
25 DELUDE FROM HIS QUESTIONING, I'M LIKE, "WELL, LET ME GO --

1 YOU KNOW, I'M GOING TO GO CHECK ON L B SHE'S CRYING
2 AND SHE'S UPSET."

3 Q. OKAY. DO YOU NEED ANY WATER OR ANYTHING?

4 A. YEAH.

5 Q. OKAY. COME BACK OVER TO THE OTHER SIDE OF THE DIAGRAM.

6 WHERE IS YOUR -- YOU SAID THAT HE'S ASKED FOR YOUR CELL

7 PHONE. WHAT HAD YOU DONE WITH YOUR CELL PHONE?

8 A. WHEN HE WAS BANGING ON THE DOOR, MY CELL PHONE WAS ON
9 THE NIGHTSTAND AND I PICKED IT UP AND I SLID IT UNDERNEATH MY
10 PILLOW.

11 Q. AND WHY DID YOU DO THAT?

12 A. TO PROTECT MY PHONE.

13 Q. OKAY. PROTECT IT FROM WHO?

14 A. FROM HIM.

15 Q. L B IS CRYING. HE'S ASKING FOR THE CELL PHONE. SO
16 WHERE DO YOU GO NEXT?

17 A. I WENT INTO THE BEDROOM.

18 Q. OKAY.

19 A. WITH L B

20 Q. WHICH BEDROOM THEN?

21 A. THIS WAS HER BEDROOM, BUT LIKE I SAID, SHE WAS ACTUALLY
22 SLEEPING IN MY ROOM.

23 Q. OKAY. EXHIBIT NUMBER 30.

24 A. ALL RIGHT.

25 Q. WHAT IS THAT?

1 A. THIS WOULD HAVE BEEN MY BEDROOM. THERE'S THE WINDOW
2 WHERE HE WAS TRYING TO GET INTO. THIS IS THE BED, SO

3 L B WOULD HAVE BEEN LAYING ON THE SIDE. I WAS ON THIS
4 SIDE. THERE'S THE NIGHTSTAND WHERE I HAD MY CELL PHONE, AND
5 THERE'S THE PILLOW THAT I ACTUALLY HID MY CELL PHONE UNDER.

6 Q. OKAY. SO YOU GO INTO THE BEDROOM TO CHECK ON L B
7 AND WHAT HAPPENS WHEN YOU GET IN THE BEDROOM THEN?

8 A. HE PUSHED ME INTO THE WALL, INTO THIS WALL. SHE WAS ON
9 THIS SIDE OF THE BED, SO I WALKED OVER TO THAT SIDE OF THE
10 BED. AND HE PUSHED ME, AND I WENT BACK INTO THE END TABLE.

11 Q. OKAY. I'M GOING TO SHOW YOU EXHIBITS 31 AND 32 AND ASK
12 YOU: WHAT DOES THAT SHOW?

13 A. THIS IS THE END TABLE AND THIS IS AGAIN WHERE L B
14 WAS SLEEPING, AND THIS IS THE END TABLE HE PUSHES ME INTO AND
15 THIS IS THE MARK THAT IT -- FROM THE FORCE OF ME FALLING INTO
16 THE END TABLE. AND THE CORNER CAUGHT IT AND PUT A HOLE IN
17 THE WALL.

18 Q. OKAY. AND WHAT'S L B DOING AT THIS POINT?

19 A. SHE'S CRYING.

20 Q. OKAY. WHAT HAPPENS NEXT THEN AFTER HE PUSHES YOU INTO
21 THE END TABLE?

22 A. HE PUSHES ME INTO THE END TABLE AND I'M JUST, YOU KNOW,
23 "PLEASE CALM DOWN," AND EVERYTHING AND HE'S JUST GOING ON:
24 HE WANTS THE CELL PHONE. HE WANTS THE CELL PHONE. ACTUALLY
25 BEFORE WE MADE IT INTO THE BEDROOM TO CHECK ON L B WE

1 HAD STOPPED IN THE LIVING AREA.

2 Q. OKAY.

3 A. COMING OUT INTO THE KITCHEN AND WE HAD -- WE HAD LIKE
4 NOT -- THERE WAS LIKE A CONFRONTATION THERE AND THEN WE
5 ACTUALLY WENT INTO THE BEDROOM AND HE PUSHED ME INTO THE
6 TABLE.

7 Q. OKAY. DO YOU REMEMBER ANYTHING ABOUT WHAT THIS
8 CONFRONTATION WAS ABOUT?

9 A. THE CELL PHONE.

10 Q. OKAY.

11 A. HIM JUST WANTING TO SEE THE CELL PHONE. AND I KNEW
12 WHERE IT WAS AND -- BUT I WASN'T GOING TO TELL HIM, SO I TOLD
13 HIM THAT IT WAS IN THE CAR, HOPING THAT IT WOULD COAX HIM OUT
14 OF THE HOUSE.

15 Q. OKAY.

16 A. SO I SAID, YOU KNOW, "IF YOU WANT TO GO GET THE CELL
17 PHONE, THEN YOU CAN GO GET IT." HE'S TELLING ME THAT I'M
18 GOING TO GO GET IT. I'M LIKE, "I'M BAREFOOTED. THERE'S
19 BROKEN GLASS OUTSIDE BECAUSE I DROPPED SOMETHING WHILE
20 MOVING," KIND OF THING. SO WE'RE JUST ARGUING BACK AND FORTH
21 OVER THAT, AND HE FINALLY TURNS TO EXIT THE DOOR TO LEAVE TO
22 GET THE CELL PHONE AND THEN HE STOPPED.

23 Q. OKAY.

24 A. AND TURNED AROUND AND SAID TO ME THAT HE WASN'T GOING TO
25 GO GET THE CELL PHONE BECAUSE HE KNEW THAT IF HE WALKED OUT

1 THAT I WOULD LOCK HIM OUT OF THE HOUSE AND TRY TO CALL THE
2 COPS.

3 Q. OKAY. AND THEN WHAT DID HE SAY ABOUT CALLING THE COPS?

4 A. BASICALLY HE TAUNTED ME WITH HIS CELL PHONE AND HE
5 PULLED OUT HIS CELL PHONE KIND OF, YOU KNOW, DOES LIKE THIS
6 LIKE: "HERE. YOU WANT TO CALL THE COPS? THEN YOU GO AHEAD
7 AND CALL THE COPS. YOU KNOW, I'LL JUST GET A SLAP ON THE
8 HAND LIKE I DID LAST TIME AND HAVE TO GO TO, YOU KNOW,
9 BULLSHIT CLASSES AND, YOU KNOW, IF I DO GO TO JAIL, I WILL
10 COME BACK AND FINISH THE JOB."

11 Q. OKAY. AND WHAT WAS -- WHEN YOU TOLD HIM THAT THE CELL
12 PHONE WAS IN THE CAR, WHAT WAS YOUR INTENTION IN TELLING
13 HIM---

14 A. TO GET HIM OUT OF THE HOUSE.

15 Q. OKAY. SO HE BASICALLY WAS KIND OF ON TO YOU ABOUT, "I'M
16 NOT GOING BECAUSE YOU'RE GOING TO LOCK THE DOOR."

17 MS. OWINGS: OBJECTION, YOUR HONOR.

18 THE COURT: SUSTAINED.

19 BY MS. FENT:

20 Q. OKAY. THEN AFTER THIS CONFRONTATION---

21 A. THAT'S WHEN I FINALLY MADE IT INTO THE BEDROOM TO CHECK
22 ON LB AND THEN HE PUSHED ME INTO THE END TABLE.

23 Q. OKAY. WHAT WE'VE ALREADY TOLD THE JURY.

24 A. RIGHT.

25 Q. I JUST WANTED TO GET THAT RIGHT. AFTER HE PUSHES YOU

1 INTO THE END TABLE, THEN WHAT HAPPENS NEXT?

2 A. AGAIN, JUST HIM YELLING, "WHERE ARE YOU GOING? WHERE
3 ARE YOU TAKING LB YOU KNOW, I'M LIKE, "JUST WILL YOU
4 PLEASE CALM DOWN? SHE'S RIGHT HERE. SHE'S CRYING." YOU
5 KNOW, HE DIDN'T EVEN STOP TO EVEN SAY ANYTHING TO HER, AND
6 THAT WAS THE WHOLE REASON THAT HE WANTED TO COME INSIDE WAS
7 TO SEE HER. AND THEN THERE SHE IS LAYING IN BED, AND THEN
8 ALL HE'S DOING IS YELLING AT ME ABOUT THE CELL PHONE. AND SO
9 I WAS JUST TRYING TO, YOU KNOW, CALM HIM DOWN. SHE WAS
10 GETTING UPSET. YOU KNOW, "MAMA, DADDY, WHAT ARE YOU DOING?"
11 AND THEN ALL OF A SUDDEN HE JUST PICKED UP A COMFORTER OFF OF
12 THE BED AND PILLOW AND GRABBED ME AND PULLED ME INTO THE
13 LIVING ROOM.

14 Q. OKAY. HAS LB CALMED DOWN AT ALL AT THIS POINT?

15 A. NO, NOT PARTICULARLY. I MEAN, SHE'S STILL CRYING AND
16 SCREAMING. YOU KNOW, SHE HAD BEEN WOKEN UP, AND THEN SHE
17 HEARS ME SCREAMING AND THE SCUFFLING IN HERE AND THE BOXES
18 BEING OVERTURNED AND AN ARGUMENT IN HERE. AND SO SHE WAS,
19 YOU KNOW, HALF AWAKE AND HALF ASLEEP AND SHE WAS -- SHE WAS
20 STILL, YOU KNOW, CRYING, "MOMMY, MOMMY, WHAT'S GOING ON?"

21 Q. OKAY. YOU SAID HE GRABS THE COMFORTER AND THE PILLOW
22 AND GOES INTO THE LIVING ROOM?

23 A. TO THE LIVING ROOM.

24 Q. OKAY. WHAT ABOUT YOU? WHERE ARE YOU?

25 A. HE PULLED ME IN WITH HIM.

1 Q. OKAY. PULLED YOU BY -- HOW?

2 A. I BELIEVE IT WAS LIKE RIGHT ABOUT HERE. I HAD A TEE
3 SHIRT ON. SO, YOU KNOW, HE GRABS THE STUFF AND THEN HE
4 ACTUALLY GRABS ME AND IS KIND OF PULLING ME INTO---

5 Q. INTO THE LIVING ROOM.

6 A. ---THE LIVING ROOM.

7 Q. OKAY. GO AHEAD AND HAVE A SEAT. OKAY. I'M GOING TO
8 SHOW YOU NOW SOME PHOTOGRAPHS MARKED 21 AND 22. WHAT ARE
9 THOSE?

10 A. THAT'S WHERE THE SEXUAL ASSAULT OCCURRED.

11 Q. OKAY. IS THIS THE COMFORTER AND THE PILLOW THAT HE
12 GRABBED?

13 A. CORRECT, AND THEN THERE'S THE TOWEL THAT HE USED
14 AFTERWARD.

15 Q. OKAY. SO I WANT TO BACK UP TO THE BEGINNING THEN. IT'S
16 IN THE LIVING ROOM. WHAT DOES HE FIRST DO I GUESS WITH THAT
17 COMFORTER AND THE PILLOW?

18 A. HE JUST KIND OF TOSSES IT ON THE FLOOR.

19 Q. OKAY.

20 A. AND PUSHES ME UP AGAINST THE WALL.

21 Q. OKAY.

22 A. HE STARTS KISSING ALL OVER MY FACE AND MY NECK.

23 Q. OKAY. AND WHAT ARE YOU DOING AT THIS POINT?

24 A. I WAS CRYING.

25 Q. OKAY. CAN YOU DESCRIBE KIND OF THE -- I GUESS THE LEVEL

1 OF CRYING? I GUESS THERE'S DIFFERENT -- A WEEP AND---

2 A. YEAH. IT WASN'T A WEEP. YOU KNOW, IT WAS CRYING

3 BECAUSE, YOU KNOW, WHERE HE HAD ME AGAINST -- I DON'T KNOW IF

4 THERE'S A PICTURE OF IT, BUT WHERE HE HAD ME AGAINST THE WALL

5 IT WAS IN A CLEAR VIEW BECAUSE THE BEDROOM DOOR WAS OPEN FROM

6 WHERE SHE WAS LAYING ON THE BED AND THEN SHE COULD LOOK RIGHT

7 AT THAT WALL BECAUSE IT WAS NEAR THE FRONT DOOR.

8 Q. OKAY. WAS---

9 A. BECAUSE IF YOU WALKED INTO THE HOUSE AND YOU'RE -- IF

10 YOU COULD WALK IN, YOU AUTOMATICALLY CAN SEE INTO THE

11 BEDROOM.

12 Q. OKAY.

13 A. SO IF THIS IS THE BEDROOM DOOR, HERE'S THE BED. SHE'S

14 LAYING HERE AND -- WELL, THE DOOR SHOULD BE OVER HERE. WE

15 WERE ON THIS SIDE OF THE DOOR, AND SHE IS JUST LOOKING. SO

16 AS I'M PINNED UP AGAINST THE WALL, HE'S -- THE BACK OF HIM IS

17 FACING HER AND THEN SO I CAN SEE HER.

18 Q. OKAY. SO YOU'RE ON THE OPPOSITE SIDE OF THE DOOR, NOT

19 CLOSER TO THE KITCHEN, BUT FURTHER AWAY FROM THE KITCHEN.

20 A. FURTHER AWAY, YEAH.

21 Q. OKAY. AND WHAT IS HE -- YOU SAY THAT HE HAS YOU UP

22 AGAINST THE WALL. WHAT IS HE DOING PHYSICALLY TO YOU?

23 A. HE HAS HIS LIKE ARMS -- MY ARMS ARE KIND OF PINNED UP

24 LIKE THIS, SO HE HAD BOTH HANDS RIGHT HERE AND HE IS JUST

25 KISSING ALL OVER MY FACE AND ALL OVER MY NECK.

1 Q. OKAY. WHAT HAPPENS THEN?

2 A. I OBVIOUSLY KNEW WHERE IT WAS -- WHAT HE WAS TRYING TO
3 DO AND WHERE IT WAS GOING, AND I WAS JUST LIKE, "PLEASE DON'T
4 DO THIS. LB IS IN THERE. SHE'S CRYING. YOU KNOW, YOU
5 WANT TO SEE LB THERE SHE IS. YOU KNOW, GO SEE HER,"
6 KIND OF THING. AND HE WAS LIKE, "YOU KNOW, WE'RE GOING TO
7 HAVE SEX," AND "NO, YOU KNOW, LET'S -- YOU KNOW, LET'S NOT DO
8 THIS. LB IS AWAKE," KIND OF THING AND THEN HE PULLS ME
9 DOWN ON TO THE FLOOR.

10 Q. OKAY.

11 A. AND PULLS OFF MY UNDER -- WELL, MY PANTS AND MY
12 UNDERWEAR.

13 Q. OKAY. DO YOU REMEMBER WHAT YOU WERE WEARING IN TERMS OF
14 -- YOU SAID A TEE SHIRT ALREADY EARLIER.

15 A. YEAH. IT WAS A GRAY TEE SHIRT. IT HAD A SYMBOL ON IT.
16 IT WAS LAURA'S TEE SHIRT.

17 Q. OKAY.

18 A. AND SOME BLACK LIKE FLEECE PANTS WITH LIKE THE WHITE
19 PIPING ON THE SIDE AND I WAS BAREFOOTED.

20 Q. WHEN HE PULLS YOU DOWN ON THE FLOOR, WHERE ON THE FLOOR
21 DID HE PULL YOU DOWN?

22 A. TO THE COMFORTER.

23 Q. OKAY.

24 A. IT WAS JUST WITHIN LIKE A -- PROBABLY NOT EVEN A FOOT
25 FROM WHERE WE WERE STANDING.

1 Q. OKAY. HOW WAS YOUR BODY AND HOW WAS HIS BODY ON THE
2 FLOOR?

3 A. WHEN HE INITIALLY PULLED ME DOWN, HE LIKE LAID ME DOWN.
4 AND SO I'M LAYING THERE AND THEN---

5 Q. ON YOUR BACK OR ON YOUR FRONT?

6 A. ON MY BACK.

7 Q. OKAY.

8 A. AND THEN HE STARTS KISSING ME AGAIN AND HE KIND OF
9 SLIDES DOWN MY BODY AND HE STARTS TUGGING AT MY PANTS.

10 Q. OKAY.

11 A. AND I'M TRYING TO PULL THEM UP AND HE'S PULLING THEM
12 DOWN. AND, AGAIN, I'M SAYING, "L B IS IN THERE. SHE'S
13 AWAKE," KIND OF THING AND HE DIDN'T STOP. HE JUST PULLED
14 THEM OFF.

15 Q. OKAY. AFTER HE DOES THAT, WHAT DOES HE DO NEXT?

16 A. HE BEGINS TO PERFORM ORAL SEX.

17 Q. ON YOU?

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

19 Q. OKAY. AND WHAT DO YOU DO TO HIM WHEN HE STARTS TO DO
20 THIS?

21 A. I WAS JUST PUSHING HIS HEAD AWAY.

22 Q. OKAY. AND ARE YOU SAYING ANYTHING ELSE TO HIM AT THIS
23 POINT?

24 A. JUST THE SAME THING. I MEAN, WHEN THIS IS OCCURRING, I
25 MEAN, I WAS NOT YELLING OR PHYSICALLY FIGHTING HIM BECAUSE

1 LB WAS AWAKE, BUT I WAS SAYING, LB IS IN THERE.
2 PLEASE -- WHY ARE YOU DOING THIS? PLEASE DON'T DO THIS."
3 AND HE'S, YOU KNOW, "SHUT UP. I KNOW THIS IS WHAT YOU WANT."
4 AND, YOU KNOW, AT THAT POINT I BEGAN SOBBING AND HE MAKES A
5 COMMENT THAT THE SOBBING IS GETTING ON HIS NERVES AND I JUST
6 NEED TO SHUT UP KIND OF THING.

7 Q. OKAY. DOES HE DO ANYTHING TO GET YOU TO SHUT UP?

8 A. HE KEPT MUFFLING MY MOUTH, YOU KNOW, WITH -- I WAS
9 TRYING TO BE QUIET AS POSSIBLE, BUT I GUESS THROUGH THE MORE
10 THAT PROGRESSED I WOULD JUST SOB AND JUST THE SOBBING WAS
11 LOUD. IT WASN'T ACTUALLY ME SCREAMING BUT (WITNESS MAKES A
12 NOISE), YOU KNOW. SO HE WOULD JUST MUFFLE MY MOUTH AND JUST,
13 YOU KNOW, KEEP TELLING ME TO SHUT UP.

14 Q. OKAY. MUFFLE YOUR MOUTH WITH WHAT?

15 A. HIS HAND.

16 Q. OKAY. THEN WHAT HAPPENS NEXT SPECIFICALLY?

17 A. AFTER HE -- THE ORAL AND I WAS PUSHING HIS HEAD AWAY, HE
18 THEN STOPPED AND KIND OF PICKED ME UP BY MY HEAD AND SAT ME
19 UP, AND I THINK HIS WORDS WERE, "YOU NEED TO MAKE ME WET."
20 SO HE WANTED ME TO PERFORM ORAL SEX ON HIM.

21 Q. OKAY. AND THEN WHAT DID HE DO?

22 A. HE PUSHED MY HEAD DOWN, YOU KNOW, BY PULLING MY HAIR,
23 AND AT THAT POINT I WAS REALLY LIKE SOBBING. AND HE WAS
24 BASICALLY TRYING TO FORCE MY MOUTH TO PERFORM ORAL, AND I
25 COULDN'T BECAUSE, YOU KNOW, I'M SOBBING AND I'M, YOU KNOW,

1 KIND OF JUST TAKING MY HAND AND KIND OF PUSHING HIM AWAY.

2 Q. OKAY. DID HE PUT HIS PENIS IN YOUR MOUTH AT SOME POINT?

3 A. YEAH.

4 Q. OKAY. AND BASICALLY DESCRIBE FOR THE JURY WHAT'S
5 HAPPENING THEN.

6 A. I MEAN, THERE WASN'T ANYTHING THAT I COULD DO BECAUSE I
7 WAS SOBBING, SO HE JUST KIND OF FORCED IT IN MY MOUTH. AND
8 THEN I'M JUST THERE AND HE'S JUST -- HE'S GETTING ANGRY
9 BECAUSE I'M NOT DOING ANYTHING, BUT, YOU KNOW, I'M LIKE -- I
10 WAS TELLING HIM THAT I CAN'T BREATHE. YOU KNOW, I CAN'T
11 BREATHE, YOU KNOW, BECAUSE I WAS SOBBING AND HE JUST -- YOU
12 KNOW, YOU JUST NEED TO STOP CRYING. AGAIN, IT'S GETTING ON
13 MY NERVES, YOUR SOBBING.

14 Q. HAS HE -- HAS HE SAID ANYTHING ABOUT L B IN THE
15 OTHER ROOM CRYING?

16 A. NO, ONLY WHEN I WOULD, YOU KNOW, SAY SOMETHING AND THEN
17 ONCE IT PROGRESSED INTO WHERE HE FORCED HIMSELF ON ME, YOU
18 KNOW, THEN I WAS CRYING UNCONTROLLABLY. AND HE, YOU KNOW,
19 MADE THE COMMENT THAT, YOU KNOW, I NEEDED TO BE QUIET AND
20 THAT KIND OF THING BECAUSE L B WOULD WAKE UP AND THEN IF
21 SHE DID START WAKING UP, WE WOULD HAVE TO GET UP AND
22 PHYSICALLY COME IN THERE. AND HE'S LIKE, "IF SHE DOES, I
23 DON'T CARE."

24 Q. THAT HE WOULD MAKE HER WATCH THIS.

25 A. YEAH.

1 MS. OWINGS: OBJECTION, YOUR HONOR.

2 THE COURT: SUSTAINED. THAT -- THAT LAST QUESTION AND
3 ANSWER SHOULD BE DISREGARDED BY THE JURY. LET ME SEE Y'ALL
4 FOR A SECOND, PLEASE.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

6 BY MS. FENT:

7 Q. TABITHA, DID YOU GIVE A STATEMENT WITH REGARD TO WHAT
8 HAPPENED THAT NIGHT?

9 A. I DID.

10 Q. OKAY. AND THAT STATEMENT THAT YOU GAVE, WHEN WAS IT IN
11 RELATION TO WHEN THIS HAPPENED?

12 A. IT WAS -- HE DIDN'T LEAVE UNTIL THE NEXT DAY, SO IT WAS
13 A FEW HOURS AFTER HE HAD LEFT.

14 Q. OKAY. WAS YOUR MEMORY ABOUT THE EVENTS FRESHER WHEN YOU
15 GAVE THIS WRITTEN STATEMENT?

16 A. THAN IT IS NOW, YEAH. IT'S BEEN A FEW YEARS, SO...

17 Q. WOULD IT HELP YOU TO REFRESH YOUR MEMORY BY LOOKING AT
18 YOUR STATEMENT?

19 A. UH-HUH. IT WOULD, YES.

20 Q. I ASKED YOU ABOUT WHAT, IF ANYTHING, HE SAID ABOUT
21 L B AND I WANT YOU TO LOOK AT PAGE 3 OF YOUR STATEMENT,
22 THE FIRST AND SECOND LINES.

23 A. STARTING WITH SAID?

24 Q. YEAH.

25 A. READ IT OUT LOUD?

1 Q. 'DON'T READ IT OUT LOUD. JUST READ IT TO YOURSELF.

2 A. OKAY.

3 Q. WHAT DID HE SAY ABOUT -- ABOUT L B THE FACT THAT
4 SHE WAS CRYING AND WHAT WAS HAPPENING?

5 A. HE SAID THAT, "I WOULDN'T WANT L B TO COME IN AND
6 GET UPSET," NOT HIM BUT I, MEANING MYSELF.

7 Q. YOU WOULDN'T WANT L B TO COME IN AND GET UPSET.

8 MS. OWINGS: OBJECTION, YOUR HONOR.

9 THE COURT: SUSTAINED. SHE CAN'T READ FROM THE
10 STATEMENT. NOW, HAVING REFRESHED HER RECOLLECTION, IF YOU
11 WANT TO ASK HER WHAT WAS SAID, YOU CAN ASK HER.

12 BY MS. FENT:

13 Q. WHAT WAS IT THAT HE SAID REGARDING L B BEING IN THE
14 OTHER ROOM AND WHAT WAS GOING ON?

15 A. THAT I WOULDN'T WANT L B TO COME IN AND GET UPSET.

16 Q. AFTER WHAT YOU'VE JUST DESCRIBED IN TERMS OF THE SEXUAL
17 ASSAULT WITH HIS PENIS IN YOUR MOUTH, WHAT HAPPENS NEXT?

18 A. LIKE I SAID, I WAS JUST SOBBING. I COULDN'T PERFORM
19 BECAUSE OF THE SOBBING, YOU KNOW, THAT DEEP (WITNESS MAKES A
20 NOISE). YOU KNOW, IT WAS ALMOST CHOKING. AND SO HE FINALLY
21 -- HE JUST GAVE UP ON THAT AND JUST LAID ME DOWN ON MY BACK
22 AND HE JUST GOT ON TOP.

23 Q. DID YOU CONSENT TO HIM PUTTING HIS PENIS IN YOUR MOUTH?

24 A. NO.

25 Q. AND WHY DID YOU BASICALLY SUBMIT TO THAT?

1 A. LB WAS IN THE NEXT ROOM, AND IF I FOUGHT, I MEAN,
2 SHE WOULD HEAR IT AND I DIDN'T WANT HER TO GET UP AND COME IN
3 AND SEE THAT.

4 Q. THEN WHAT DOES HE DO?

5 A. HE JUST FORCED HIMSELF ON ME AND -- AND, AGAIN, IT WAS
6 JUST THE SAME WHERE I WAS JUST -- I WAS CRYING AND HE WOULD
7 JUST -- "YOU KNOW, SHUT UP, BITCH," AND HE WAS JUST -- ALMOST
8 LIKE I WAS RUINING IT FOR HIM BECAUSE I WAS CRYING. AND I
9 WAS JUST LAYING THERE AND THEN HE WOULD JUST SAY THINGS LIKE,
10 "COME ON. GET INTO IT," YOU KNOW. "I KNOW YOU WANT THIS
11 AND..."

12 Q. WHERE -- OR HOW ARE YOU LYING PHYSICALLY?

13 A. I'M JUST LAYING ON MY BACK ON THE FLOOR.

14 Q. OKAY. AND WHERE HE IS?

15 A. HE'S JUST ON TOP OF ME.

16 Q. DO YOU WANT SOME WATER?

17 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)

18 Q. AND WHEN YOU SAID THAT BASICALLY HE JUST CONTINUES, WHAT
19 IS HE DOING NOW?

20 A. I'M SORRY. I DON'T...

21 Q. YOU SAID THAT BASICALLY HE CONTINUES DOING WHAT HE'S
22 DOING. SO WHAT IS HE PHYSICALLY DOING TO YOU?

23 A. FORCING HIMSELF ON ME. HE'S HAVING SEX WITH ME.

24 Q. OKAY.

25 A. AND I'M JUST, YOU KNOW, AGAIN SAYING NO AND JUST THE

1 SAME... YOU KNOW, HE'S MUFFLING MY MOUTH AND JUST MAKING
2 COMMENTS.

3 Q. OKAY. YOU'RE SAYING THAT HE'S FORCING SEX ON YOU. CAN
4 YOU TELL THE JURY WHAT TYPE OF SEX THAT WAS NOW?

5 A. IT WAS VAGINAL.

6 Q. OKAY.

7 A. LIKE INTERCOURSE.

8 Q. OKAY. I GUESS -- ABOUT HOW LONG DOES THIS LAST NOW?

9 A. LONGER THAN USUAL. IT WAS AWHILE BECAUSE HE HAD BEEN
10 DRINKING, I GUESS, IS WHAT I'M TRYING TO SAY.

11 Q. OKAY.

12 A. SO IT TOOK HIM LONGER.

13 Q. OKAY. DOES HE EJACULATE INSIDE YOU?

14 A. NO.

15 Q. WHAT HAPPENS?

16 A. HE PULLED OUT AND EJACULATED ON MY -- I GUESS MY SHIRT
17 WAS KIND OF RAISED UP FROM WHERE HE WAS ON TOP OF ME. ON MY
18 STOMACH AND ON MY SHIRT.

19 Q. AND WHAT DOES HE DO NOW?

20 A. HE THEN GETS UP, WALKS INTO THE BEDROOM, PASSED L B
21 WHO'S STILL AWAKE, INTO THE BATHROOM AND HE GRABS MY HAND
22 TOWEL AND COMES BACK IN AND HE'S CLEANING HIMSELF OFF AND
23 THEN HE JUST KIND OF THROWS IT ON ME TO WIPE UP.

24 Q. I'M GOING TO SHOW YOU EXHIBIT 23. WHAT IS THAT?

25 A. THAT'S THE HAND TOWEL.

1 Q. OKAY. ONCE HE THROWS THE HAND TOWEL AT YOU, WHAT DO YOU
2 DO NEXT OR WHAT DOES HE DO NEXT?

3 A. I DON'T REMEMBER WHAT HE SPECIFICALLY DID. I KNOW AT
4 THAT POINT MY ONLY CONCERN WAS GETTING IN TO LB SO I
5 JUST WIPE OFF AND WENT IN TO CONSOLE OR TO COMFORT HER.

6 Q. OKAY. SO WHAT DID YOU DO WHEN YOU GOT TO THE BEDROOM?
7 HOW DID YOU COMFORT HER?

8 A. I JUST LAID DOWN BESIDE HER. GOT IN THE MIDDLE OF THE
9 BED AND JUST HELD HER.

10 Q. OKAY. AND IS SHE STILL CRYING AT THIS POINT?

11 A. SHE WASN'T CRYING. SHE WAS LAYING.

12 Q. OKAY. WHAT HAPPENS NEXT THEN?

13 A. HE CAME INTO THE BEDROOM, AND AT THAT TIME I THINK IT
14 WAS LIKE 5:45 OR SO AND, YOU KNOW, SAID THAT HE WAS DRINKING.
15 YOU KNOW, HE WAS DRUNK, AND HE HAD TO BE AT WORK AT LIKE I
16 THINK 6:30 OR 7. I TOLD HIM LIKE, "OKAY. GREAT," YOU KNOW,
17 HOPING THAT HE WAS GOING TO LEAVE, AND I THINK I EVEN TOLD
18 HIM, "WELL, YOU NEED TO HURRY UP, YOU KNOW, AND GET TO WORK
19 OR WHATNOT." AND HE SAID THAT HE NEEDED TO SLEEP LIKE I
20 GUESS TO GET THE ALCOHOL OUT OF HIS SYSTEM BECAUSE, AGAIN, HE
21 WAS DRIVING THAT BIG TRUCK THAT CARRIED LIKE BIG SAWS ON THE
22 BACK OF IT SO...

23 Q. SO WHAT TIME DID HE NORMALLY GO TO WORK?

24 A. THIS WAS WEIRD BECAUSE IT WAS LIKE ON A SUNDAY MORNING.
25 SO HIS SUNDAY SCHEDULE I DO NOT KNOW, BUT WHEN HE LIVED WITH

1 ME MONDAY THROUGH FRIDAY I BELIEVE IT WAS 7:30 OR 8:00 THAT
2 HE HAD TO BE AT WORK.

3 Q. OKAY. AND YOU SAY THAT HE HAD BEEN DRINKING. CAN YOU
4 TELL THE JURY WHAT IT WAS THAT YOU OBSERVED ABOUT HIM THAT
5 LED YOU TO BELIEVE THAT HE HAD BEEN DRINKING BEFORE HE CAME
6 OVER?

7 A. WELL, HE WAS IN HIS WORK TRUCK. HE WAS DRESSED UP, NOT
8 LIKE IN A TEE SHIRT OR ANY -- I MEAN, HE WAS WEARING CLOTHES
9 THAT YOU WOULD GO OUT IN. ONCE HE GOT INSIDE THE HOUSE, HE
10 REEKED OF ALCOHOL. I MEAN, YOU COULD SMELL IT COMING OFF OF
11 HIS BREATH. HE TOLD ME THAT HE'D BEEN DRINKING, YOU KNOW,
12 AGAIN ADMITTING THAT WHEN HE SAID HE NEEDED TO SLEEP IT
13 OFF...

14 Q. OKAY.

15 A. YOU KNOW, HIS SPEECH WAS SLURRED AT SOME POINTS.

16 Q. OKAY. SO THEN YOU BASICALLY TALKED TO HIM ABOUT HAVING
17 TO GET TO WORK, AND WHAT HAPPENS NEXT?

18 A. LIKE I SAID, HE SAID THAT HE NEEDED TO SLEEP IT OFF, AND
19 HE STARTED QUESTIONING ME AGAIN ABOUT THE CELL PHONE. YOU
20 KNOW, "WHERE IS THE CELL PHONE? I WANT TO SEE IT," KIND OF
21 THING AND JUST KIND OF JUST, I DON'T KNOW, GOING ON LIKE
22 BABBLING ALMOST, JUST ON AND ON AND ON, AND THEN FINALLY I'M
23 LAYING IN THE MIDDLE OF THE BED AND L B IS ON THE RIGHT-
24 HAND SIDE. MY ARM WAS KIND OF LIKE LAYING LIKE THIS, AND HE
25 JUST KIND OF CAME INTO THE BED AND KIND OF FLOPPED DOWN LIKE

1 HIS BODY WAS -- THE MAJORITY OF HIS BODY WAS LAYING ON TOP OF
2 MINE---

3 Q. OKAY.

4 A. ---TO WHERE HIS FACE -- LIKE IF THIS IS MY FACE, HIS
5 MOUTH AND NOSE WOULD HAVE BEEN RIGHT HERE.

6 Q. OKAY. AND THEN WHAT DOES HE DO?

7 A. HE IS IN AND OUT AND KIND OF PASSING OUT. IT TOOK HIM
8 PROBABLY A GOOD 30 MINUTES TO FALL I GUESS INTO A REALLY HARD
9 DEEP SLEEP.

10 Q. OKAY. DOES HE EVENTUALLY FALL ASLEEP?

11 A. YEAH.

12 Q. OKAY.

13 A. ABOUT -- I GUESS IT WAS PROBABLY ABOUT 30 MINUTES.

14 Q. OKAY. THEN HOW LONG DO YOU ALL STAY IN THAT BED?

15 A. IT'S JUST A FEW HOURS---

16 Q. OKAY.

17 A. ---THAT WE'RE ACTUALLY LAYING IN THE BED. I DON'T -- I
18 MAY HAVE DOZED OFF. I GOT LB BACK TO SLEEP. I MAY
19 HAVE DOZED OFF FOR 15 OR 20 MINUTES, BUT, YOU KNOW, ONCE HE
20 FINALLY FELL ASLEEP, HE STAYED SLEEPING.

21 Q. OKAY. AND THEN AT WHAT POINT DO YOU EVENTUALLY GET OUT
22 OF THE BED?

23 A. THE POINT WHEN MY -- MY CELL PHONE WAS UNDERNEATH THE
24 PILLOW, AND BECAUSE HE HAD BEEN ASKING FOR THE CELL PHONE
25 BEFORE HE CAME IN AND PASSED OUT, I KNEW THAT WHEN HE WOKE UP

1 HE WAS GOING TO STILL BE LOOKING FOR THE CELL PHONE. SO I --
2 WITH THE HAND THAT -- YOU KNOW, HE WAS LAYING SO I HAD TO
3 KIND OF WIGGLE MY HAND. I GOT THE CELL PHONE OUT. I
4 COULDN'T ACTUALLY MOVE IT TO MY HEAD AND IT WOULDN'T -- I
5 DIDN'T GET A SIGNAL. I WENT IN AND CHANGED A PHONE NUMBER TO
6 SAY -- YOU KNOW, LIKE I CHANGED LAURA'S PHONE NUMBER TO SAY
7 MAHTAB BUT LEFT THE SAME PHONE NUMBER IN THERE, AND I KIND OF
8 TOSSED -- MY PURSE WAS LAYING BESIDE THE BED. I KIND OF
9 TOSSED MY PHONE IN THE PURSE, AND THEN I KIND OF STARTED, YOU
10 KNOW, NUDGING AT HIM TO GET UP. "YOU KNOW, YOU NEED TO GET
11 UP. GET UP. YOU'VE GOT TO GO TO WORK OR YOU'RE GOING TO GET
12 FIRED." "I DON'T CARE. I NEED TO SLEEP." IT WAS JUST KIND
13 OF BACK -- BACK AND FORTH. THEN FINALLY LB WOKE UP AND
14 SHE HAD TO GO POTTY.

15 Q. AND WHAT WAS YOUR REASONING BEHIND CHANGING LAURA'S
16 NUMBER TO READ MAHTAB IN YOUR CELL PHONE?

17 A. BECAUSE I KNEW THAT HE WAS GOING TO GET THIS CELL PHONE
18 AND WHEN HE WOKE UP HE WAS GOING TO ASK FOR IT AND, YOU KNOW,
19 IF I DIDN'T GIVE IT TO HIM, THEN -- YOU KNOW, I WAS IN FEAR,
20 SO I DIDN'T KNOW WHAT HE WOULD DO.

21 Q. OKAY. WHEN LB NEEDS TO GET UP AND GO TO THE
22 BATHROOM, THEN KIND OF WHAT HAPPENS THE REST OF THE MORNING?

23 A. WELL, I FINALLY, YOU KNOW, GET HIM TO KIND OF LIKE ROLL
24 OVER. I'M NUDGING HIM, YOU KNOW, TELLING HIM -- I SAID, "GET
25 UP. LB HAS TO GO TO THE BATHROOM." SHE GETS UP AND GOES

1 TO THE BATHROOM. AT THAT POINT WHILE WE'RE IN THE BATHROOM I
2 SHUT THE DOOR, AND WHEN WE CAME OUT, HE WAS UP. AND HE
3 SLIPPED ON HIS BOOTS AND HEADED OUT THE FRONT DOOR AND THEN
4 L B YOU KNOW, FOLLOWED HIM.

5 Q. OKAY. AND THEN WHAT HAPPENS?

6 A. HE WENT TO MY CAR, WAS LOOKING AROUND IN MY CAR. I WAS
7 STANDING AT THE GLASS WINDOW KIND OF TRYING TO, YOU KNOW,
8 "COME INSIDE, L B WITH MOM," BECAUSE AGAIN I WAS JUST
9 GOING TO KIND OF LOCK THE DOOR, YOU KNOW, WITH HIM OUTSIDE.
10 AND, YOU KNOW, SHE WOULDN'T COME IN, AND THEN THEY SAT ON THE
11 PORCH FOR MAYBE A MINUTE AND A HALF AND KIND OF TALKED IN THE
12 SWING, AND THEN HE CAME INSIDE AND TOLD ME THAT MY CELL PHONE
13 WAS NOT IN THE CAR.

14 Q. OKAY. AND THEN WHAT DID YOU DO TO THAT?

15 A. I WAS LIKE, "WELL, THAT'S, YOU KNOW, WHERE I LEFT IT."
16 I JUST KIND OF DANCED AROUND IT, AND FINALLY I'M LIKE, "OH,
17 YOU KNOW WHAT? MAYBE IT'S IN MY PURSE." AND, "WHERE IS YOUR
18 PURSE?" "WELL, IT'S IN THE BEDROOM." AND THEN HE WENT IN
19 AND PULLED MY CELL PHONE OUT OF MY PURSE.

20 Q. OKAY. AND DID HE LOOK FOR MAHTAB'S NUMBER?

21 A. YES.

22 Q. OKAY. AND AFTER HE FINDS THE NUMBER, WHAT HAPPENS NEXT?

23 A. THAT WAS IT. HE -- I MEAN, I GUESS THAT SATISFIED HIM
24 TO KNOW THAT, YOU KNOW, I ACTUALLY HAD BEEN COMMUNICATING
25 WITH HER. I DON'T KNOW HOW HE COULD TELL THAT BY LOOKING AT

1 HER NUMBER, BUT WHATEVER. AND HE, YOU KNOW, HANDED THE CELL
2 PHONE BACK AND MADE SOME COMMENT ABOUT, YOU KNOW, HAVING SEX
3 AGAIN OR SOMETHING, AND I'M JUST KIND OF LIKE, "YOU NEED TO
4 GO. YOU KNOW, IT'S TIME TO GO TO WORK," KIND OF THING AND
5 EVENTUALLY HE LEFT.

6 Q. ALL RIGHT. DO YOU KNOW ABOUT WHAT TIME IT WAS THAT HE
7 FINALLY LEFT?

8 A. I WANT TO SAY IT WAS BETWEEN MAYBE 10:30 AND 11 BECAUSE
9 I WAS SITTING ON THE BED AND HE ACTUALLY CAME INTO THE
10 BEDROOM BEFORE HE LEFT AND LIKE -- I DON'T KNOW IF THE WORD
11 IS CONDESCENDING ME BUT KIND OF, YOU KNOW, KISSED ME ON THE
12 -- LIKE RIGHT HERE AND SAID THANKS FOR LAST NIGHT KIND OF
13 THING AND KIND OF LEFT, AND I THINK IT WAS BETWEEN 10:30 AND
14 11, MAYBE 10:45.

15 Q. OKAY. ONCE HE GETS OUT OF THE HOUSE, WHAT DO YOU DO
16 NEXT?

17 A. WELL, THE FIRST THING WAS GETTING OUT OF THE HOUSE
18 BECAUSE I DIDN'T KNOW IF ONCE HE GOT ON THE ROAD HE REALIZED
19 THAT HE DIDN'T WRITE DOWN THE NUMBER OR IF HE'D WANT TO
20 INVESTIGATE ANYTHING ELSE, SO I STAYED IN MY CLOTHES. I
21 THREW ON SOME FLIP-FLOPS, DRESSED L B AND LEFT. I GOT IN
22 MY CAR AND LEFT.

23 Q. WHOSE HOUSE DID YOU GO TO?

24 A. I TRIED TO ACTUALLY CALL MY FRIEND LAURA, AND SHE DIDN'T
25 ANSWER HER PHONE. I THEN CALLED HIS MOTHER TO SPEAK WITH HER

1 AND WENT TO LAURA'S HOUSE TO LET HER KNOW WHAT WAS GOING ON,
2 BUT I JUST WENT TO LAURA'S HOUSE TO PICK HER UP SO MAYBE WE
3 COULD GO GET L B SOMETHING TO EAT BECAUSE IT WAS 11:00 AND
4 SHE HADN'T EATEN ANYTHING.

5 Q. OKAY. AND HOW FAR AWAY DOES LAURA LIVE FROM YOUR HOUSE?

6 A. AT THE TIME IT WAS PROBABLY FIVE MINUTES.

7 Q. OKAY. AND HOW LONG HAVE YOU BEEN FRIENDS WITH LAURA?

8 A. PROBABLY THREE AND A HALF, FOUR YEARS.

9 Q. OKAY.

10 A. TOTAL COMBINED.

11 Q. AND HOW DID YOU GET TO KNOW LAURA?

12 A. SHE WAS DATING MY BROTHER.

13 Q. OKAY.

14 A. WELL, THEY STILL ARE DATING, BUT THAT'S ANOTHER MATTER.

15 Q. OKAY. ONCE YOU GET OVER TO LAURA'S HOUSE, WHAT HAPPENS?

16 A. YOU KNOW, I'M LIKE, "YOU KNOW, GET YOUR SHOES ON,

17 WHATEVER. WE NEED TO GO GET L B SOMETHING," AND I

18 STARTED TO TELL HER THE DETAILS OF WHAT HAD HAPPENED THE

19 NIGHT BEFORE.

20 Q. OKAY. DO YOU ALL LEAVE AND GO GET L B SOMETHING TO
21 EAT?

22 A. YEAH. YEAH. WE WEREN'T AT HER HOUSE VERY LONG. I

23 MEAN, BASICALLY I'M JUST GOING TO -- L B STAYED IN THE CAR,

24 AND I RAN IN AND SAID, "GET YOURSELF -- LET'S GO. WE NEED TO

25 GO." AND I BELIEVE I WAS STILL ON THE PHONE WITH HIS MOTHER

1 AT THAT TIME.

2 Q. OKAY. WHAT ARE YOU TELLING -- WHAT IS YOUR INTENTION IN
3 CALLING HIS MOTHER?

4 A. I DIDN'T THINK THAT I WAS ABLE TO SAY...

5 Q. OKAY. OKAY. OKAY.

6 A. I MEAN, I WAS TELLING HER WHAT HAPPENED, BUT THERE WAS A
7 REASON WHY I WAS...

8 Q. OKAY. OKAY. YOU WERE BASICALLY -- IT WASN'T SOME OTHER
9 -- OUR PLANS FOR NEXT WEEK.

10 A. NO.

11 Q. YOU ALSO TOLD HIS MOTHER WHAT HAPPENED.

12 A. YEAH.

13 Q. OKAY. WHERE DO YOU GO AFTER YOU GET L B SOMETHING TO
14 EAT?

15 A. WE WENT BACK TO MY HOUSE.

16 Q. OKAY. AND WHAT DO YOU DO AFTER YOU TALK TO LAURA AND
17 TELL HER WHAT HAPPENED?

18 A. I TALKED TO LAURA. I TOLD HER WHAT HAPPENED. YOU KNOW,
19 SHE SAID, "CAN YOU STAY OVER HERE?" AND I SAID, "I NEED TO
20 REPORT THIS TO THE COPS. I NEED THEM TO COME OVER HERE AND
21 MAKE A STATEMENT." AND ONE OF THE REASONS I HAD HER IS
22 BECAUSE I NEEDED TO GET L B AWAY. I DIDN'T WANT
23 L B TO BE THERE WHEN THE COPS CAME.

24 Q. OKAY.

25 A. SO SHE HAD CALLED MY AUNT AND MADE ARRANGEMENTS ACTUALLY

1 FOR MY AUNT TO PICK LB UP FROM THE HOUSE. AND SO MY
2 AUNT LIVES IN ELGIN AND THAT'S THE ONE I WAS MOVING IN WITH.
3 I HAD TO WAIT FOR HER TO COME ALL THE WAY FROM ELGIN, AND
4 WHEN SHE GOT THERE, AS SOON AS SHE TOOK LB IS WHEN I
5 CALLED THE COPS.

6 Q. OKAY. AND WHAT POLICE AGENCY DID YOU CALL?

7 A. I THINK I DIRECTLY CALLED FOREST ACRES.

8 Q. OKAY. DID AN OFFICER SHOW UP AT YOUR HOUSE?

9 A. YES.

10 Q. OKAY. AND DID YOU TELL THAT OFFICER EVERYTHING THAT
11 HAPPENED TO YOU?

12 A. I DID.

13 Q. OKAY. AND DID YOU POINT OUT -- OR WHAT DID YOU DO IN
14 TERMS OF ALL THE STUFF THAT WAS IN THE HOUSE WITH THIS
15 OFFICER?

16 A. WELL, WHEN HE INITIALLY CAME, WE JUST TALKED ON THE
17 PORCH AND HE WAS -- YOU KNOW, I TOLD HIM THAT I WANTED TO
18 FILE A COMPLAINT AGAINST SHEY FOR BREAKING INTO MY HOME, AND
19 THEN THE OFFICER SAYS, "WELL, HAVE YOU MESSED WITH ANYTHING
20 ON THE INSIDE OR ANYTHING?" AND I TOLD HIM NO. AND SO WE
21 WALKED INTO THE HOME AND THEN I SAID, "YOU KNOW, THIS IS
22 WHERE THE SEXUAL INCIDENT OCCURRED, AND THERE'S WHERE LB
23 WAS STAYING AND THEN THIS IS THE KITCHEN," AND THAT KIND OF
24 THING. AND THEN HE ASKED ME AND LAURA TO LEAVE THE HOUSE, GO
25 BACK TO THE PORCH, AND THEN THAT'S WHERE I WROTE MY

1 STATEMENT.

2 Q. OKAY. AFTER TALKING TO THE OFFICERS AT THE HOUSE, WHERE
3 DID YOU GO NEXT?

4 A. I WENT TO RICHLAND COUNTY - I'M SORRY - RICHLAND
5 MEMORIAL HOSPITAL.

6 Q. OKAY. AND---

7 A. TO HAVE A RAPE KIT PERFORMED.

8 Q. OKAY. DO YOU REMEMBER ABOUT HOW MANY HOURS YOU HAD TO
9 STAY AT RICHLAND MEMORIAL?

10 A. IT WAS AWHILE, I MEAN, BECAUSE I THINK WE ACTUALLY HAD
11 TO KIND OF DO LIKE YOU DO WHEN YOU GO TO THE EMERGENCY ROOM.
12 AND THEN ONCE I GOT BACK THERE, I SPOKE WITH ANOTHER
13 ADVOCATE. CHRYSTIE VARN WAS THERE AND MARY JANE SCOTT WHO
14 HAD ACTUALLY TAKEN ME THERE FROM THE HOUSE WAS THERE, AND I
15 SPOKE WITH THEM. THEN I HAD TO DRINK - I DON'T KNOW WHAT IT
16 IS - BUT STUFF, YOU KNOW, TO TEST FOR S.T.D.'S AND
17 EVERYTHING, AND THEN WE ACTUALLY WENT BACK AND DID THE EXAM.
18 BUT I THINK IT WAS -- IT WAS I WOULD SAY EASILY FIVE HOURS.

19 Q. OKAY. AND PART OF THE EXAM WAS A PELVIC EXAM?

20 A. YES.

21 Q. OKAY. WHAT I WANT YOU TO DO NOW IS JUST LOOK THROUGH
22 EXHIBITS 5 THROUGH 15 AND JUST ASK YOU IF YOU RECOGNIZE ALL
23 OF THOSE PHOTOS.

24 A. (THE WITNESS LOOKS AT THE EXHIBITS.) YES.

25 Q. OKAY. DO THOSE ACCURATELY SHOW THE INJURIES AND THE

1 PHOTOGRAPHS THAT WERE TAKEN AT YOUR SEXUAL ASSAULT
2 EXAMINATION?

3 A. YES.

4 Q. OKAY. I'M GOING TO SHOW YOU WHAT ARE PACKAGED AND
5 MARKED AS EXHIBIT 38 AND 39 AND IF YOU WANT TO---

6 THE COURT: LET ME SEE Y'ALL FOR JUST A SECOND, PLEASE.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

8 BY MS. FENT:

9 Q. TAKE A PEEK INTO THESE PACKAGES. AND DO YOU RECOGNIZE
10 WHAT'S IN THERE?

11 A. OH, YES. THAT'S THE COMFORTER HE PULLED OFF THE BED.

12 Q. OKAY. AND IN EXHIBIT 39?

13 A. I BELIEVE THAT'S THE -- YEAH, THAT'S THE PILLOW THAT HE
14 PULLED OFF THE BED.

15 MS. FENT: OKAY. I OFFER INTO EVIDENCE EXHIBITS 38 AND
16 39.

17 MS. OWINGS: WITHOUT OBJECTION, YOUR HONOR.

18 THE COURT: THEY'RE ADMITTED.

19 (STATE'S EXHIBITS 38 AND 39 WERE RECEIVED IN EVIDENCE.)

20 MS. FENT: AND OFFER INTO EVIDENCE EXHIBITS 5 THROUGH
21 15.

22 MS. OWINGS: WITHOUT OBJECTION.

23 THE COURT: THEY'RE ADMITTED.

24 (STATE'S EXHIBITS 5 THROUGH 15 WERE RECEIVED IN
25 EVIDENCE.)

1 BY MS. FENT:

2 Q. JUST FOR THE LAST THING, TABITHA, WHAT I'D LIKE YOU TO
3 DO IS TAKE A LOOK AT THE CALENDARS.

4 A. OH, OKAY.

5 Q. IF YOU COULD -- YOU CAN JUST MARK DOWN ON THE CALENDAR
6 THE DATE - YOU CAN COME DOWN HERE IF YOU WANT TO - THE DATE
7 THE DEFENDANT MOVED OUT. YOU SAID YOU THOUGHT IT WAS A
8 SATURDAY?

9 A. YEAH. DO YOU WANT ME TO CIRCLE IT OR...

10 Q. OR PUT "MOVED OUT."

11 A. (THE WITNESS COMPLIES.)

12 Q. AND YOU -- WHEN WAS IT THEN THAT THE FIRST INCIDENT WAS
13 THAT HE CAME OVER TO THE HOUSE?

14 A. IT WOULD HAVE BEEN -- IT WAS SATURDAY, BUT IT WAS LIKE 2
15 OR 3:00 IN THE MORNING, SO IT WAS ACTUALLY SUNDAY. SO WHICH
16 ONE?

17 Q. OKAY.

18 A. MARK THE SUNDAY?

19 Q. IF IT WAS ACTUALLY ON SUNDAY, PUT IT ON SUNDAY.

20 A. OKAY.

21 Q. AND IS THAT THE DATE THAT YOU CALLED YOUR DAD?

22 A. CALLED MY DAD, YEAH.

23 Q. OKAY. SO THEN WHY DON'T WE PUT DOWN "CALLED DAD"?

24 A. (THE WITNESS COMPLIES.)

25 Q. AND THEN WHEN WAS IT THAT YOU THINK THAT HE CAME -- THE

1 OTHER DATES THAT HE CAME BACK?

2 A. I BELIEVE THAT IT WAS TUESDAY, THURSDAY, AND THEN AGAIN
3 ON THE SATURDAY WHICH WAS ACTUALLY SUNDAY WHEN IT OCCURRED.

4 Q. ON APRIL 3RD THEN IS WHEN THIS HAPPENED.

5 A. CORRECT.

6 Q. OKAY. BE CAREFUL WITH THE STEP. JUST HAVE A SEAT REAL
7 QUICK. DO YOU SEE LB FATHER, BOBBY, WHO WE'VE BEEN
8 TALKING ABOUT TODAY? DO YOU SEE HIM IN THE COURTROOM?

9 A. I DO.

10 Q. AND CAN YOU POINT HIM OUT AND DESCRIBE TO THE JURY WHAT
11 HE'S WEARING SO WE KNOW?

12 A. HE IS THE GENTLEMAN IN THE WHITE SHIRT AND I GUESS
13 THAT'S A BLUE TIE.

14 MS. FENT: MAY THE RECORD REFLECT THE WITNESS HAS
15 IDENTIFIED THE DEFENDANT? I HAVE NO FURTHER QUESTIONS AT
16 THIS TIME.

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
18 GOING TO BREAK HERE FOR THE DAY, AND WE WILL RESUME TOMORROW
19 MORNING AT 9:30. PLEASE REMEMBER MY INSTRUCTIONS THAT YOU
20 MAY NOT DISCUSS THIS CASE IN ANY MANNER. IF SOMEONE IN YOUR
21 FAMILY ASKS YOU WHAT YOU'RE DOING, WHICH THEY INEVITABLY
22 WILL, TELL THEM THAT YOU'RE INVOLVED ON A JURY IN A CASE AND
23 THE JUDGE HAS BEEN VERY CLEAR THAT YOU CANNOT DISCUSS IT WITH
24 THEM. AFTER THE TRIAL IS OVER, IF YOU CHOOSE TO DISCUSS IT,
25 YOU MAY THEN, BUT YOU MAY NOT DISCUSS IT IN ANY MANNER UNTIL

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1 YOUR DELIBERATIONS HAVE BEGUN. Y'ALL HAVE A NICE NIGHT, AND
2 I WILL SEE YOU IN THE MORNING.

3 LET ME SAY ONE MORE THING. I SAY THIS IN EVERY CASE AND
4 I HAVE NO IDEA WHETHER OR NOT THERE'S GOING TO BE ANY PRESS
5 COVERAGE ABOUT THIS CASE. I HAVEN'T SEEN ANY MEMBERS OF THE
6 PRESS IN THE COURTROOM TODAY, BUT IT'S ALWAYS POSSIBLE THAT
7 THERE COULD BE SOMETHING. SO BE CAREFUL IF YOU'RE WATCHING
8 THE LOCAL NEWS TONIGHT OR IF YOU ARE READING THE PAPER IN THE
9 MORNING TO MAKE SURE THAT YOU DO NOT ALLOW YOURSELVES TO BE
10 EXPOSED TO ANY PRESS COVERAGE ABOUT THIS CASE. AND I WILL
11 SEE YOU TOMORROW MORNING AT 9:30. Y'ALL HAVE A NICE NIGHT.

12 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR THE
13 DAY AT 5:17 P.M.)

14 THE COURT: MA'AM, YOU CAN STEP DOWN BUT IN JUST ONE
15 SECOND. DURING THE TIME BETWEEN NOW AND THE TIME YOU GET
16 BACK ON THE STAND FOR YOUR CROSS-EXAMINATION TOMORROW, YOU
17 MAY NOT DISCUSS YOUR TESTIMONY WITH ANYONE.

18 THE WITNESS: OKAY.

19 THE COURT: NOW, YOU CAN TALK TO THE PROSECUTORS ABOUT
20 WHAT TIME TO BE HERE AND WHERE TO COME AND THAT KIND OF
21 THING, BUT THE SUBSTANCE OF YOUR TESTIMONY AND HOW YOU'RE
22 GOING TO HANDLE CROSS-EXAMINATION IS NOT SOMETHING THAT YOU
23 CAN DISCUSS WITH ANYONE. DO YOU UNDERSTAND?

24 THE WITNESS: YES, SIR.

25 THE COURT: ALL RIGHT.

1 THE WITNESS: ALL RIGHT, SIR. THANK YOU.

2 THE COURT: OKAY. ANYTHING FURTHER TODAY?

3 MS. FENT: NOTHING FROM THE STATE, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MS. OWINGS: JUST VERY BRIEFLY. I DISCUSSED THIS WITH
6 YOU EARLIER TODAY, THE ISSUE OF THE DEFENDANT'S BOND, AND I
7 UNDERSTAND YOUR POSITION THAT YOU TOLD ME IN CHAMBERS.
8 HOWEVER, I DO HAVE A LETTER FROM A.B.C. BONDING COMPANY AND
9 I'LL HAND IT UP TO YOU. THEY SAY THAT THEY WILL REMAIN ON
10 HIS BOND AND HONOR THE CONTRACT WITH THE COURT UNTIL THE CASE
11 IS DISPOSED OF.

12 THIS CASE IS TWO YEARS OLD. THERE'S NEVER BEEN ANY
13 ALLEGATIONS THAT MR. RATHBURN VIOLATED HIS BOND TRYING TO
14 MAKE ANY CONTACT WITH MS. BRAZELL. IN FACT, HE HASN'T SEEN
15 HIS DAUGHTER SINCE THIS HAPPENED. HE DOES WANT ME TO TELL
16 YOU THAT HE DOES HAVE A THREE-MONTH-OLD SON AND HE HASN'T
17 MISSED A DAY OF -- FIVE-MONTH-OLD SON AND HE HASN'T MISSED A
18 DAY OF THAT CHILD'S LIFE. HE WOULD LIKE NOT TO MISS IT
19 TONIGHT.

20 THE COURT: I UNDERSTAND THE REASONS THAT YOU WANT THIS,
21 BUT I'M GOING TO -- I'M GOING TO GO AHEAD AND FOLLOW THE
22 NORMAL PROCEDURE, AND ONCE THE -- ONCE THE JURY WAS SWORN THE
23 DEFENDANT WOULD BE IN OUR CUSTODY. ALL RIGHT. WE'LL SEE
24 Y'ALL IN THE MORNING.

25 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 5:20 P.M.)

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1 AND RESUMED THE FOLLOWING DAY, APRIL 3RD, 2007, AS FOLLOWS:)

2 THE COURT: BE SEATED. IS THE JURY ALL HERE? OH, WE
3 HAVE ONE JUROR WHO WROTE ME A NOTE, AND I DON'T KNOW WHAT
4 IT'S ABOUT. IT SAYS, "NEED TO SEE," AND THEN SOME MARK. I
5 CAN'T TELL, BUT IT MUST BE A U. "I MAY NEED TO STEP DOWN.
6 NUMBER 103, LEO HARRIS." SO LET'S GET MR. HARRIS IN HERE AND
7 SEE WHAT THAT'S ABOUT.

8 (JUROR LEO HARRIS IS BROUGHT INTO THE COURTROOM.)

9 THE COURT: GOOD MORNING, MR. HARRIS.

10 JUROR HARRIS: GOOD MORNING, SIR.

11 THE COURT: ARE YOU COMFORTABLE TELLING ME FROM RIGHT
12 THERE?

13 JUROR HARRIS: YES, SIR.

14 THE COURT: ALL RIGHT.

15 JUROR HARRIS: I HAVE A SLEEP DISORDER, AND IF I'M NOT
16 BUSY DOING SOMETHING WITH MY HANDS, SOMETIMES I FALL ASLEEP.
17 I EXPLAINED TO THE JUDGE YESTERDAY AND HE SAID THE COURT
18 WOULD KEEP ME AWAKE, AND I NOTICED YESTERDAY JUST BEFORE WE
19 DISMISSED I GOT JUST A LITTLE SLEEPY. SO I JUST WANTED TO
20 BRING IT TO YOUR ATTENTION THIS MORNING.

21 THE COURT: OKAY. DO YOU -- DID YOU FALL ASLEEP ANY
22 YESTERDAY DURING THE TRIAL?

23 JUROR HARRIS: NO.

24 THE COURT: ALL RIGHT. IS THERE ANYTHING THAT YOU COULD
25 BE DOING WITH YOUR HANDS TODAY THAT WOULD KEEP YOU FROM

1 FALLING ASLEEP? WHAT DO YOU NORMALLY DO WITH YOUR HANDS?

2 JUROR HARRIS: I USUALLY WORK.

3 THE COURT: YOU WORK. OKAY. DO YOU HAVE -- DO YOU HAVE
4 SITUATIONS WHERE YOU JUST FIND SOMETHING TO DO WITH YOUR
5 HANDS THAT WOULD -- THAT WILL KEEP YOU FROM FALLING ASLEEP?

6 JUROR HARRIS: YES, SIR, BUT IT'S NOT HERE.

7 THE COURT: OKAY.

8 JUROR HARRIS: THAT'S SOMETHING I CAN'T BRING HERE.

9 THE COURT: ARE YOU -- ARE YOU AWARE OF ANYTHING THAT
10 YOU COULD DO?

11 JUROR HARRIS: NOW, SOMETIMES -- I MEAN, SOMETIMES IT
12 DOESN'T BOTHER ME---

13 THE COURT: OKAY.

14 JUROR HARRIS: ---BECAUSE I SLEEP AT NIGHT WITH A CPAP,
15 YOU KNOW, ONE OF THOSE MACHINES.

16 THE COURT: UH-HUH.

17 JUROR HARRIS: BUT JUST SOMETIMES IT'S -- YOU KNOW, I
18 JUST WANTED TO BRING IT TO THE COURT'S ATTENTION SO---

19 THE COURT: OKAY.

20 JUROR HARRIS: I DON'T WANT TO GO TO JAIL.

21 THE COURT: ALL RIGHT. WELL, I -- NOW THAT YOU HAVE
22 BROUGHT IT TO MY ATTENTION, YOU'RE SAFE AND I APPRECIATE
23 THAT. YOU DO YOUR BEST TO TRY TO STAY AWAKE. IF YOU CATCH
24 YOURSELF FALLING ASLEEP, MAYBE YOU NEED A BREAK, YOU JUST
25 SIGNAL ME AND WE'LL TAKE A BREAK.

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1 JUROR HARRIS: OKAY.

2 THE COURT: WE'LL ALL -- WE'LL ALL GET UP AND MOVE
3 AROUND. I'LL ALSO KEEP MY EYE ON YOU, BUT IF YOU FEEL
4 YOURSELF GETTING SLEEPY, LET'S JUST TAKE A BREAK AND WE'LL
5 GET UP AND WALK -- EVERYBODY WILL WALK AROUND. IF YOU NEED
6 TO, YOU CAN WALK OUTSIDE. WE'LL DO WHATEVER IS NECESSARY TO
7 KEEP YOU IN THE BEST POSITION TO STAY AWAKE. BUT THANK YOU
8 VERY MUCH FOR BRINGING THAT TO MY ATTENTION.

9 JUROR HARRIS: THANK YOU, SIR.

10 THE COURT: ALL RIGHT, SIR.

11 (JUROR LEO HARRIS LEAVES THE COURTROOM. COURT'S EXHIBIT
12 1 WAS MARKED FOR IDENTIFICATION ONLY.)

13 THE COURT: OKAY. DOES ANYBODY FEEL THAT FURTHER
14 INQUIRY OR ACTION IS NECESSARY BEFORE WE PROCEED WITH THE
15 FULL JURY REGARDING MR. HARRIS?

16 MS. FENT: NOT FROM THE STATE.

17 MS. OWINGS: NO, SIR.

18 THE COURT: ALL RIGHT. Y'ALL READY FOR THE JURY?

19 MS. OWINGS: YES, SIR.

20 THE COURT: OKAY.

21 THE CLERK: WE'RE STILL SHORT THREE JURORS.

22 THE COURT: WE'RE MISSING THREE JURORS?

23 BAILIFF: YES, SIR.

24 THE COURT: Y'ALL WILLING TO GO WITH NINE? OR I GUESS
25 WE COULD GO WITH ELEVEN, COULDN'T WE? WELL, THAT HAPPENS ALL

1 THE TIME IN GREENVILLE, BUT I KNEW EVERYBODY IN COLUMBIA WAS
2 SO ON THE BALL THAT I DIDN'T THINK WE WOULD RUN INTO THAT
3 PROBLEM DOWN HERE.

4 (PAUSE IN PROCEEDINGS.)

5 THE CLERK: THEY'RE WALKING DOWN THE HALL RIGHT NOW,
6 YOUR HONOR.

7 THE COURT: ALL RIGHT. WELL, LET'S GO AHEAD AND TELL
8 THEM TO BRING THEM STRAIGHT ON IN THEN.

9 THE CLERK: YES, SIR.

10 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 9:36
11 A.M.)

12 THE COURT: ALL RIGHT. MA'AM, COME BACK AROUND TO THE
13 WITNESS STAND, PLEASE.

14 THE CLERK: MS. WEISS, I REMIND YOU YOU ARE STILL UNDER
15 OATH FROM YESTERDAY.

16 THE WITNESS: YES, SIR.

17 BAILIFF: STATE YOUR NAME.

18 THE WITNESS: TABITHA RUTH WEISS.

19 THE COURT: CROSS-EXAMINATION.

20 MS. OWINGS: THANK YOU, SIR. MAY IT PLEASE THE COURT?

21 CROSS-EXAMINATION

22 BY MS. OWINGS:

23 Q. MS. WEISS, HOW OLD IS L B NOW?

24 A. SHE'S FIVE.

25 Q. WHEN IS HER BIRTHDAY?

1 A. AUGUST 7.

2 Q. OF?

3 A. 2001.

4 Q. 2001. SO WHEN THIS TOOK PLACE IN 2005 SHE WAS THREE AND
5 A HALF?

6 A. THREE AND A HALF, GOING ON FOUR IN AUGUST, YES.

7 Q. OKAY. SO SHE WASN'T A BABY ANYMORE.

8 A. NO.

9 Q. KIND OF OLDER THAN A TODDLER?

10 A. I WOULD CONSIDER HER A TODDLER AT THAT AGE.

11 Q. PRESCHOOL AGE?

12 A. NOT QUITE PRESCHOOL YET. THAT WOULD HAVE BEEN AROUND
13 FOUR.

14 Q. OKAY. AND SHE WAS WALKING?

15 A. SHE WAS WALKING.

16 Q. AND TALKING?

17 A. AND TALKING, YES, MA'AM.

18 Q. AND CLIMBING?

19 A. AND CLIMBING, YES.

20 Q. BUSY THREE-YEAR-OLD?

21 A. PRETTY MUCH SO.

22 Q. OKAY. IN FACT, I THINK YOU SAID THAT SHE WAS SO BUSY
23 THAT YOU WERE HAVING A HARD TIME PACKING WHILE SHE WAS AWAKE?

24 A. WELL, NOT HAVING A HARD TIME BUT, YOU KNOW, TRYING TO
25 WATCH HER AND PACK BOXES, NOT THAT SHE WAS INTO EVERYTHING---

1 Q. SO YOU COULDN'T---

2 A. ---BUT IF SHE WAS IN THERE, YOU HAD TO HAVE A WATCHFUL
3 EYE.

4 Q. SO YOU COULDN'T JUST PUT HER IN ONE PLACE AND SHE'D STAY
5 NECESSARILY.

6 A. NOT NECESSARILY, NO. IT DEPENDED ON IF SHE HAD AN
7 ACTIVITY.

8 Q. OKAY. NOW, YOU AND MR. RATHBURN HAD BEEN IN A
9 RELATIONSHIP FOR FIVE YEARS.

10 A. CORRECT.

11 Q. AND TABITHA -- I MEAN, LB WAS THREE YEARS OLD.

12 A. CORRECT.

13 Q. AT THE TIME.

14 A. AT THE TIME.

15 Q. AND YOU TESTIFIED EARLIER THAT YOU AND MR. RATHBURN HAD
16 LIVED TOGETHER OFF AND ON FOR A LARGE PORTION OF YOUR
17 RELATIONSHIP.

18 A. CORRECT.

19 Q. OKAY. AND SO FOR A LARGE PORTION OF LB 'S THREE
20 YEARS SHE HAD LIVED WITH HER DADDY.

21 A. WE WERE -- I WOULDN'T SAY A LARGE PORTION BECAUSE WE
22 WERE SPLIT UP MORE THAN WE WERE ACTUALLY LIVING TOGETHER.

23 Q. BUT OFF AND ON---

24 A. OFF AND ON---

25 Q. ---BASICALLY---

1 A. ---BUT IF YOU HAD TO LOOK AT WHEN HE WAS THERE AND WHEN
2 HE WASN'T, HE WAS THERE LESS THAN -- HE WASN'T ACTIVE IN HER
3 LIFE. THERE WAS LIKE A SIX -- HE MISSED SIX MONTHS WHEN HE
4 MOVED AWAY AND THAT KIND OF THING. SO IF YOU HAD TO LOOK AT
5 WHETHER HE WAS THERE MORE OR LESS, HE WAS THERE LESS.

6 Q. BUT THROUGHOUT HER THREE YEARS SHE HAD CONTACT WITH HER
7 DADDY.

8 A. SHE HAD CONTACT, YES.

9 Q. NOW, YOU ALSO TESTIFIED THAT WHENEVER -- IN THE TWO
10 WEEKS PRIOR THAT YOU TESTIFIED ABOUT YESTERDAY THAT MR.
11 RATHBURN WOULD COME OVER TO THE HOUSE---

12 A. CORRECT.

13 Q. ---AND HE WAS BEATING ON THE DOORS---

14 A. YES.

15 Q. ---HE WAS ASKING TO SEE L B RIGHT?

16 A. CORRECT.

17 Q. AND WHILE YOU WERE LIVING AT ROAD -- WAS
18 THAT WHAT IT WAS?

19 A. YES, MA'AM.

20 Q. HE WAS LIVING THERE WITH YOU.

21 A. AT THE TIME THAT HE WAS COMING AND BANGING ON THE DOOR
22 HE WAS NOT.

23 Q. NO, NO. AT THE TIME YOU MOVED IN

24 A. FROM THE TIME WE MOVED IN UP UNTIL MARCH 19TH WHEN HE
25 MOVED OUT, HE WAS LIVING THERE.

1 Q. OKAY. AND HE WAS LIVING THERE WITH L B

2 A. YES.

3 Q. SO AT THE TIME OF MARCH 19TH THEY WERE ACCUSTOMED TO
4 SEEING EACH OTHER.

5 A. YES.

6 Q. AND AT THE TIME THAT Y'ALL WERE LIVING AT
7 ROAD, BOTH YOU AND BOBBY WERE ON THE LEASE. IS THAT RIGHT?

8 A. CORRECT.

9 Q. SO BOTH OF YOU WERE TENANTS OF THAT HOME.

10 A. CORRECT.

11 Q. NOW, AFTER MARCH 19TH THERE WAS NO VISITATION
12 ARRANGEMENT FOR BOBBY AND L B

13 A. NO.

14 Q. YOU DIDN'T HAVE AN AGREEMENT WHERE EVERY -- YOU KNOW,
15 CERTAIN DAYS A WEEK HE WOULD SEE HER OR CERTAIN HOURS OF THE
16 DAY.

17 A. NO.

18 Q. AND HE DIDN'T HAVE WEEKEND VISITATION WITH L B

19 A. NO, WE DID NOTHING THROUGH THE COURTS FOR HIM TO HAVE
20 VISITATION.

21 Q. I DON'T MEAN THROUGH THE COURTS. YOU HAD NOTHING
22 BETWEEN THE TWO OF YOU WORKED OUT SO THAT HE WOULD HAVE
23 VISITATION WITH L B

24 A. NO. HE JUST PACKED HIS STUFF AND LEFT.

25 Q. AND HE DIDN'T HAVE WEEKEND VISITATION ARRANGEMENTS.

1 A. THERE WERE NO VISITATION ARRANGEMENTS, NO.

2 Q. I'M SHOWING THE WITNESS STATE'S EXHIBIT NUMBER 17. CAN
3 YOU PLEASE TELL THE JURY WHAT THIS IS?

4 A. THIS IS THE RESIDENCE AT

5 Q. OKAY. NOW, THIS WASN'T OUT IN THE COUNTRY NECESSARILY,
6 WAS IT?

7 A. NO, IT WAS IN FOREST ACRES.

8 Q. SO IT'S IN A NEIGHBORHOOD.

9 A. A NEIGHBORHOOD.

10 Q. AND YOU SAID THERE WERE NEIGHBORS ON BOTH SIDES?

11 A. THERE WERE.

12 Q. AND WERE THERE NEIGHBORS ACROSS THE STREET?

13 A. THERE WAS LIKE A WOODED AREA ACROSS THE STREET. IT
14 WOULDN'T HAVE BEEN EXACTLY ACROSS. IT WAS MORE LIKE
15 PARALLEL.

16 Q. SO PARALLEL THERE WAS A HOUSE.

17 A. CORRECT.

18 Q. AND CAN YOU TELL ME WHAT THAT IS THROUGH THE TREES RIGHT
19 THERE? CAN YOU SEE THAT?

20 A. THAT DOESN'T LOOK TO BE PART OF OUR BACKYARD, MAYBE LIKE
21 A SHED IN THE NEIGHBOR'S BACKYARD---

22 Q. OKAY.

23 A. ---OR SOMETHING BECAUSE IT LOOKS LIKE THERE'S A FENCE
24 THERE.

25 Q. SO THERE WERE NEIGHBORS BACKING UP TO YOU, TOO.

1 A. RIGHT.

2 Q. OKAY.

3 A. NOT -- THE YARD WAS BIG, SO THEY WERE IN THE BACK OF THE
4 FENCE.

5 Q. BUT THERE WERE NEIGHBORS ALL AROUND YOU.

6 A. THERE WERE NEIGHBORS ALL AROUND, YES.

7 Q. I'M SHOWING THE WITNESS STATE'S EXHIBIT NUMBER 3.

8 A. OKAY.

9 Q. OKAY. NOW, I THINK -- LET ME GO TO THE SIDE OF IT.
10 NOW, YOU TESTIFIED WITH THE SOLICITOR YESTERDAY THAT THIS IS
11 NOT TO SCALE.

12 A. NOT TO SCALE, NO.

13 Q. THIS ACTUALLY -- IT'S PRETTY SPACIOUS COMPARED TO WHAT
14 THE HOUSE WAS---

15 A. CORRECT.

16 Q. ---ISN'T IT? OKAY. SO THERE WASN'T ALL THIS ROOM IN
17 THE MAIN LIVING ROOM?

18 A. WELL, IT WAS PRETTY BIG. YOU COULD ALMOST DIVIDE IT AND
19 MAYBE PUT A LITTLE TABLE ON THE OTHER SIDE, BUT IT WASN'T --
20 I GUESS WHEN I SAY TO SCALE, LIKE THE DOOR WOULD HAVE BEEN
21 CLOSER TO THIS WAY AND...

22 Q. SO THERE WASN'T A LOT OF ROOM BETWEEN THE FRONT DOOR AND
23 THE KITCHEN.

24 A. CORRECT.

25 Q. AND THERE WASN'T A TON OF ROOM BETWEEN THE FRONT DOOR

1 AND THE BEDROOMS.

2 A. PROBABLY SEVEN OR EIGHT FEET.

3 Q. OKAY.

4 A. FROM THE FRONT DOOR MAYBE TO THE BEDROOM.

5 Q. OKAY. THAT WOULD BE THE EXTENT OF IT.

6 A. MAYBE SEVEN, EIGHT, NINE FEET, SOMEWHERE IN THERE.

7 Q. OKAY. SO THIS IS A VERY SMALL HOUSE.

8 A. VERY SMALL HOUSE.

9 Q. DO YOU KNOW HOW MANY SQUARE FEET IT WAS?

10 A. I DON'T KNOW ANYTHING ABOUT SQUARE FOOTAGE. I WOULD
11 MAYBE SAY 900.

12 Q. OKAY. SO IT WAS LIKE A SMALL APARTMENT ALMOST.

13 A. YEAH.

14 Q. I'M SHOWING THE WITNESS STATE'S EXHIBIT NUMBER 18. NOW,
15 THIS IS A VIEW FROM THE FRONT DOOR AREA TO THE LIVING ROOM;
16 IS THAT RIGHT?

17 A. CORRECT.

18 Q. OKAY. AND WHAT WE'RE SEEING STRAIGHT THROUGH HERE, THAT
19 IS YOUR BEDROOM.

20 A. CORRECT.

21 Q. AND THAT WOULD BE THE BEDROOM WHERE L B WAS
22 SLEEPING.

23 A. WITH ME, YES.

24 Q. OKAY. I'M SHOWING THE WITNESS STATE'S EXHIBIT 30, AND
25 THIS IS A PICTURE OF THE BEDROOM WHERE YOU AND L B WERE

1 SLEEPING.

2 A. CORRECT.

3 Q. IS THAT RIGHT?

4 A. YES.

5 Q. AND THERE ARE NO SIDE RAILS ON THIS BED, ARE THERE?

6 A. NO.

7 Q. AND THERE ARE NO CHAIRS UP AGAINST THE BED OF ANY KIND.

8 A. NO.

9 Q. AND THERE ARE NO BOXES OR ANYTHING UP AGAINST THE BED?

10 A. NO.

11 Q. AND ON THE BED---

12 A. WELL, THERE'S THE CHEST AT THE END OF THE BED. THAT'S

13 THE ONLY TYPE OF BOX---

14 Q. BUT THERE'S NOTHING ON THE SIDE OF THE BED.

15 A. NO.

16 Q. OKAY. NOW, ON THIS BED THERE ARE PILLOWS.

17 A. CORRECT.

18 Q. THERE ARE SHEETS.

19 A. CORRECT. AND A COMFORTER.

20 Q. AND A COMFORTER, RIGHT. AND THERE'S SOME CLOTHES, TOO.

21 A. CORRECT.

22 Q. RIGHT. AND THIS IS WHERE L B WAS SLEEPING THAT
23 NIGHT.

24 A. YES.

25 Q. OKAY. NOW, IN THE ENTRANCE TO THE BEDROOM THERE'S NO

1 BABY GATE?

2 A. NO.

3 Q. THERE WAS NO CHILD RESTRAINT TO KEEP LB IN THE
4 ROOM?

5 A. NO.

6 Q. I BEG THE COURT'S INDULGENCE JUST ONE MOMENT, PLEASE.
7 DO YOU RECALL -- WHAT WAS YOUR CELL PHONE NUMBER AT THE TIME
8 THIS HAPPENED?

9 A. AT THE TIME? I DON'T RECALL BECAUSE I DON'T HAVE IT
10 ANYMORE.

11 Q. COULD IT HAVE BEEN ?

12 A. YEAH, THAT'S POSSIBLE.

13 Q. DO YOU RECALL BOBBY'S OR BOBBY SHEY RATHBURN'S CELL
14 PHONE NUMBER AT THE TIME THIS HAPPENED?

15 A. AT THE TIME? I DON'T RECALL. HIS MOTHER HAD GIVEN IT
16 TO ME.

17 Q. COULD IT HAVE BEEN ?

18 A. I GUESS, IF THAT'S WHAT YOU'RE SHOWING. I DON'T RECALL
19 THE NUMBER SPECIFICALLY.

20 Q. DO YOU RECALL CALLING SHEY RATHBURN ON MARCH THE 30TH?

21 A. THE ONLY SPECIFIC TIME THAT I REMEMBER CALLING HIM WAS
22 ONE NIGHT AFTER HE LEFT THE HOUSE TRYING TO GET IN AND ASKING
23 HIM TO PLEASE STOP COMING BY THE HOUSE.

24 Q. DO YOU RECALL CALLING SHEY RATHBURN ON MARCH THE 31ST?

25 A. IT WOULD -- I DON'T REMEMBER THE DATE THAT IT WAS THAT I

1 CALLED HIM, BUT IT WOULD HAVE BEEN WHENEVER -- ONE OF THE
2 NIGHTS WHEN HE LEFT THE HOUSE AFTER TRYING TO GET INTO THE
3 HOME. I CALLED HIM AND TOLD HIM THE NEXT TIME HE DID I WAS
4 GOING TO CALL THE COPS.

5 Q. DO YOU RECALL CALLING HIM ON APRIL THE 1ST?

6 A. THE ONLY SPECIFIC -- CAN YOU SHOW ME?

7 Q. YES. CAN YOU PLEASE READ LINE 99 -- LINE 106 FOR ME?
8 WHAT IS THE DATE?

9 A. IT'S MARCH THE 30TH.

10 Q. WHAT TIME?

11 A. I DON'T KNOW HOW TO TELL MILITARY TIME.

12 Q. WELL, JUST READ THE NUMBERS.

13 A. IT'S 21:14---

14 MS. FENT: OBJECTION, YOUR HONOR. THIS IS HEARSAY.
15 READING A DOCUMENT -- THERE'S NO CUSTODIAN. SHE'S JUST
16 READING OFF THE DOCUMENT THAT'S NOT IN EVIDENCE. IT'S
17 HEARSAY.

18 THE COURT: REPEAT THE QUESTION FOR ME, PLEASE.

19 MS. OWINGS: I ASKED HER TO READ THE TIME.

20 THE COURT: UH-HUH. LET ME SEE Y'ALL UP HERE JUST FOR A
21 SECOND, PLEASE.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

23 THE COURT: I SUSTAIN THE OBJECTION.

24 BY MS. OWINGS:

25 Q. MAY I APPROACH THE WITNESS AGAIN? TABITHA, DO YOU SEE

1 THIS DOCUMENT? .

2 A. I DO.

3 Q. AND YOU SEE THE HIGHLIGHTED PORTIONS.

4 A. I DO.

5 Q. AND DO YOU ADMIT YOU CALLED BOBBY RATHBURN ON 4/1/2005

6 THREE TIMES AROUND 4 A.M.?

7 A. I DID.

8 Q. NOW, I WANT TO GO TO THE DAY OF THIS INCIDENT.

9 A. OKAY.

10 Q. OKAY. AFTER BOBBY LEFT AND WENT TO WORK---

11 A. CORRECT.

12 Q. ---YOU TESTIFIED THAT YOU THREW ON YOUR FLIP-FLOPS.

13 A. UH-HUH.

14 Q. YOU GRABBED L B

15 A. UH-HUH.

16 Q. AND YOU WENT TO LAURA'S HOUSE.

17 A. CORRECT.

18 Q. NOW, ONCE YOU WERE OUTSIDE OF YOUR DOOR, YOUR CELL PHONE
19 WORKED.

20 A. CORRECT.

21 Q. IT DIDN'T WORK IN YOUR HOUSE.

22 A. THERE WERE CERTAIN AREAS IT DID NOT WORK IN, AND I
23 USUALLY HAD TO STEP OUTSIDE TO GET A SIGNAL. CORRECT.

24 Q. BUT ONCE YOU STEPPED OUTSIDE, YOUR CELL PHONE WORKED.

25 A. CORRECT.

1 Q. AND YES OR NO - YOU DIDN'T CALL THE POLICE WHEN YOU
2 STEPPED OUTSIDE.

3 A. NO, I DID NOT.

4 Q. OKAY. AND, IN FACT, YOU TOOK L B TO LAURA'S HOUSE.

5 A. CORRECT.

6 Q. AND YOU DIDN'T LEAVE L B WITH LAURA AND THEN GO TO
7 THE HOSPITAL.

8 A. I DID NOT. AM I ALLOWED TO ELABORATE WHY OR ARE YOU
9 JUST ASKING ME QUESTIONS?

10 Q. I'M JUST ASKING YOU QUESTIONS.

11 A. OKAY.

12 Q. AND YES OR NO---

13 MS. FENT: YOUR HONOR, I WOULD OBJECT THAT SHE IS
14 ALLOWED TO EXPLAIN HER ANSWER.

15 THE COURT: YOUR QUESTION WAS WHAT NOW?

16 MS. OWINGS: I ASKED HER IF SHE DIDN'T LEAVE L B AT
17 LAURA'S HOUSE AND THEN GO TO THE HOSPITAL. IT WAS A
18 YES-OR-NO QUESTION.

19 THE COURT: OKAY. YOU CAN FOLLOW UP ON REDIRECT.

20 THE WITNESS: AM I ALLOWED TO GIVE YOU THE REASON?

21 BY MS. OWINGS:

22 Q. NO.

23 A. OKAY.

24 Q. AND YES OR NO - YOU DIDN'T LEAVE L B AT LAURA'S
25 HOUSE AND GO STRAIGHT TO THE POLICE STATION.

1 A. I DID NOT.

2 Q. AND, IN FACT, Y'ALL WENT AND GOT FOOD.

3 A. FOR L B YES.

4 Q. YOU WENT AND GOT FOOD.

5 A. YES, FOR L B

6 Q. YOU WENT AND GOT FOOD.

7 A. YES.

8 Q. AND THEN, AFTER TALKING TO LAURA, Y'ALL WENT TO THE
9 HOSPITAL.

10 A. INCORRECT.

11 Q. YOU WENT TO YOUR HOUSE AND CALLED THE POLICE.

12 A. CORRECT. CORRECT.

13 Q. AND THEN YOU WENT TO THE HOSPITAL.

14 A. CORRECT.

15 Q. I BEG THE COURT'S INDULGENCE ONE MOMENT, PLEASE. OKAY.

16 I'M SHOWING THE WITNESS EXHIBIT NUMBER 30 AGAIN, STATE'S

17 EXHIBIT NUMBER 30. NOW, ONCE AGAIN, THIS IS THE BEDROOM THAT

18 YOU AND L B SHARED.

19 A. WELL, SHE HAD HER OWN BEDROOM, BUT THAT'S WHERE WE WERE
20 SLEEPING AT THE TIME, YES.

21 Q. AND YOU TESTIFIED YESTERDAY THAT THERE WAS A SIDE DOOR
22 OUT THE KITCHEN THAT WENT TO A LAUNDRY ROOM AND SORT OF OUT
23 ON THE DECK? IS THAT RIGHT?

24 A. CORRECT.

25 Q. OKAY. AND THE DECK IS OUTSIDE ONE OF THESE BEDROOM

1 WINDOWS.

2 A. YES. THIS ONE.

3 Q. OKAY. AND CAN YOU PLEASE DESCRIBE WHAT THAT WINDOW
4 FRAME IS MADE OUT OF IN THAT PICTURE?

5 A. IT'S MADE OUT OF WOOD.

6 MS. OWINGS: OKAY. YOUR HONOR, I HAVE NO FURTHER
7 QUESTIONS AT THIS TIME.

8 REDIRECT EXAMINATION

9 BY MS. FENT:

10 Q. DEFENSE COUNSEL WAS ASKING YOU ABOUT THE LEASE. WHEN
11 Y'ALL FIRST SIGNED YOUR LEASE, THE DEFENDANT WAS ON THAT
12 LEASE. CORRECT?

13 A. CORRECT.

14 Q. OKAY. BUT ON MARCH 19TH WHAT HAPPENED WITH HIS LIVING
15 IN THAT HOUSE?

16 A. HE REMOVED HIS ITEMS FROM THE HOME AND HE LEFT.

17 Q. OKAY. AND WHAT HAPPENED TO THE KEY THAT THE DEFENDANT
18 WAS IN POSSESSION OF?

19 A. HE TURNED IT IN TO ME.

20 Q. OKAY. WHEN DID THAT LEASE ACTUALLY END?

21 A. I BELIEVE IT WAS IN JULY OF 2005.

22 Q. OKAY. AND YOU WERE MOVING OUT. YOUR GOAL WAS TO MOVE
23 OUT OF THAT HOUSE WHEN?

24 A. I HAD PAID UP THROUGH APRIL, SO I WAS TRYING TO BE OUT
25 ON THE 1ST WHICH FELL ON A FRIDAY. SO I WAS GIVING MYSELF

1 UNTIL SUNDAY---

2 Q. OKAY.

3 A. ---THE WEEKEND TO GET EVERYTHING OUT.

4 Q. AND WHAT HAD YOU TOLD YOUR LANDLORD ABOUT YOUR PLAN TO
5 BREAK THIS LEASE?

6 A. THEY WEREN'T INFORMED THAT I WAS BREAKING THE LEASE.

7 Q. OKAY. WHY?

8 A. BECAUSE I WAS TRYING TO LEAVE WITHOUT ANYONE KNOWING
9 WHERE I WAS GOING.

10 Q. OKAY. AND IN BREAKING THAT LEASE, WERE YOU RISKING
11 LOSING THE SECURITY DEPOSIT?

12 A. YES.

13 Q. OKAY. DO YOU RECALL HOW MUCH THAT SECURITY DEPOSIT WAS?

14 A. IT WAS -- HALF OF THE RENT WAS \$300, SO IT WOULD HAVE
15 BEEN 350. WE PAID HALF.

16 Q. AND YOU WERE WILLING TO LOSE THAT MONEY IN ORDER TO GET
17 OUT OF THAT HOUSE.

18 A. YES.

19 Q. THEY ASKED YOU ABOUT SOMETHING ABOUT WOOD ON THE DECK OR
20 THE DOOR FRAME. EARLIER YOU HAD TESTIFIED THAT WHEN YOU
21 HEARD HIM BREAKING IN YOU HEARD METAL ON METAL. CAN YOU
22 EXPLAIN THAT?

23 A. WELL, OBVIOUSLY THE INSIDE OF THE DOOR IS WOOD AND --
24 BUT THE OUTSIDE, IT WAS LIKE A STORM WINDOW. SO THERE WAS
25 LIKE METAL THAT WOULD SURROUND THE CASING OF THE WINDOW, AND

1 HE WAS BENDING THE METAL WITH SOME TYPE OF TOOL. I'M
2 ASSUMING IT WAS A TOOL, MAYBE A SCREWDRIVER OR -- I CAN'T
3 SAY. I DON'T KNOW WHAT IT WAS, BUT IT WAS METAL ON METAL
4 THAT YOU COULD HEAR.

5 Q. OKAY. WHEN HE WAS COMING OVER AND ASKING TO SEE
6 L B WHAT TIME OF DAY OR NIGHT WAS THAT?

7 A. EVERY TIME THAT HE CAME OVER IT WAS AT ROUGHLY ANYWHERE
8 BETWEEN 2:30 TO 4:00 IN THE MORNING.

9 Q. OKAY. ON MARCH 20TH DID HE COME OVER TO YOUR HOUSE
10 ASKING TO SEE L B

11 A. MARCH THE 20TH WOULD HAVE BEEN LIKE THE MONDAY?

12 Q. THE DAY AFTER HE MOVED OUT?

13 A. OH, NO. NO, HE DID NOT.

14 Q. ON THE 21ST DID HE COME OVER?

15 A. HE DID NOT.

16 Q. ON THE 22ND DID HE COME OVER?

17 A. HE DID NOT.

18 Q. ON THE 23RD DID HE COME OVER?

19 A. HE DID NOT.

20 Q. ON THE 24TH DID HE COME OVER?

21 A. HE DIDN'T.

22 Q. THE 25TH?

23 A. NO.

24 Q. THE 26TH?

25 A. NO.

1 Q. SO THE FIRST TIME YOU SEE HIM ASKING TO SEE L B IS
2 AT 2 OR 3 OR 4 IN THE MORNING.

3 A. CORRECT.

4 Q. DURING THE DAY WHEN YOU WERE WORKING, WHERE WAS L B
5 STAYING? WHAT WAS HER DAY CARE?

6 A. SHE WASN'T IN DAY CARE. SHE WAS STAYING WITH MY
7 PARENTS.

8 Q. OKAY. AND WAS THAT THE -- YOUR ARRANGEMENT PRIOR TO HIM
9 MOVING OUT OF THE HOUSE?

10 A. CORRECT, BECAUSE MY MOTHER -- SHORTLY AFTER L B WAS
11 BORN MY MOTHER STOPPED WORKING AND WE LIVED -- MOVED IN WITH
12 MY PARENTS AND SHE WOULD WATCH L B SO WE WOULDN'T HAVE
13 TO PAY FOR DAY CARE.

14 Q. OKAY. SO FROM MARCH 19TH UNTIL THE DEFENDANT STARTS
15 SHOWING UP AT YOUR HOUSE 3:00 IN THE MORNING BANGING ON THE
16 DOORS, L B IS STAYING AT YOUR MOM'S HOUSE DURING THE
17 DAY?

18 A. CORRECT.

19 Q. OKAY. AND HAD THE DEFENDANT EVER BEEN OVER TO YOUR
20 PARENTS' HOUSE?

21 A. YES, WE LIVED THERE FOR LIKE SIX MONTHS.

22 Q. HE KNEW EXACTLY HOW TO GET THERE?

23 A. HE KNEW HOW TO GET THERE. HE HAD BEEN THERE BEFORE,
24 YES.

25 Q. OKAY. DURING THIS PERIOD OF TIME, HAD THERE BEEN ANY

1 PETITIONS IN FAMILY COURT BY THE DEFENDANT FOR VISITATION?

2 A. NO.

3 Q. AND SINCE THAT DAY HAS THERE BEEN ANY PETITIONS IN

4 FAMILY COURT FOR HIM TO VISIT L B

5 A. NO.

6 Q. TO TODAY AS WE'RE SITTING HERE.

7 A. TODAY AS WE'RE SITTING HERE.

8 Q. ON THE 1ST AT ABOUT 3 OR 4:00 IN THE MORNING, WHY WAS IT

9 THAT YOU CALLED THE DEFENDANT'S CELL PHONE?

10 A. BECAUSE HE CAME BY THE HOUSE AND HE WAS TRYING TO GET

11 IN, AND I JUST WAS FED UP WITH HIM AND I JUST CALLED HIM TO

12 TELL HIM TO PLEASE STOP COMING BY THE HOUSE, THAT IF HE

13 NEEDED TO SEE L B THAT HE COULD COME BY DURING THE DAY.

14 I WASN'T -- ALTHOUGH I WAS TRYING TO MOVE, I JUST DIDN'T WANT

15 HIM TO KNOW WHERE I WAS GOING SO HE COULD NOT CONTINUE TO

16 HARASS ME EVERY SINGLE NIGHT. I WASN'T SAYING, "YOU CAN'T

17 SEE L B IF HE HAD COME BY AT 6:00 IN THE AFTERNOON,

18 SURE. SEE YOUR DAUGHTER. SPEND TIME WITH HER. THIS IS WHEN

19 YOU'RE SUPPOSED TO, NOT AT 2 AND 3:00 IN THE MORNING.

20 Q. AND THE MORNING AFTER THIS HAPPENS AND YOU GO OVER TO

21 LAURA'S HOUSE, CAN YOU EXPLAIN TO THE JURY BASICALLY, YOU

22 KNOW, WHY YOU DIDN'T IMMEDIATELY DRIVE TO THE POLICE, WHY YOU

23 DIDN'T IMMEDIATELY DRIVE TO THE HOSPITAL AND---

24 MS. OWINGS: OBJECTION, YOUR HONOR. SHE ALREADY

25 ANSWERED THIS DURING DIRECT.

1 THE COURT: OVERRULED.

2 BY MS. FENT:

3 Q. SHE ASKED YOU -- YOU WENT OVER TO LAURA'S HOUSE AND YOU
4 DIDN'T LEAVE L B AT LAURA'S HOUSE.

5 A. CORRECT.

6 Q. OKAY. WHY IS THAT?

7 A. BECAUSE I WAS SCARED TO GO BACK TO MY HOUSE BY MYSELF.
8 I WANTED LAURA TO GO WITH ME.

9 Q. AND THAT MORNING WERE SOME OF YOUR PREPARATION PLANS --
10 WHAT WERE YOU PLANNING TO DO?

11 A. THAT MORNING -- THAT WAS -- FELL ON SUNDAY. THAT WAS
12 THE DAY I HAD TO BE OUT OF THE HOUSE, SO LAURA WAS COMING
13 OVER ANYWAYS TO HELP ME REMOVE ITEMS FROM THE HOUSE.

14 Q. OKAY. BUT WHEN YOU CALLED THE POLICE, DID YOU MAKE
15 ARRANGEMENTS FOR SOMEONE TO TAKE CARE OF L B

16 A. I DID. IT WAS MY AUNT AND SHE LIVED IN ELGIN, SO SHE
17 HAD TO GET UP AND GET DRESSED AND COME DOWN TO PICK L B
18 UP.

19 MS. FENT: NO FURTHER QUESTIONS.

20 MS. OWINGS: MAY I APPROACH THE WITNESS?

21 THE COURT: YEAH. YOU DON'T NEED SPECIFIC PERMISSION TO
22 APPROACH THE WITNESS.

23 RECROSS EXAMINATION

24 BY MS. OWINGS:

25 Q. I'M GOING TO SHOW YOU THESE DOCUMENTS AGAIN. YOU

1 ACTUALLY -- DO YOU DENY THAT YOU ACTUALLY DIDN'T CALL HIM AT
2 4 IN THE MORNING ON THESE TWO DATES? YOU ACTUALLY CALLED HIM
3 IN THE EVENING AROUND 9:30 AND 7:00?

4 A. WHAT DATES ARE THESE?

5 Q. THE ONES THAT ARE HIGHLIGHTED. DO YOU DENY THAT YOU
6 ACTUALLY CALLED HIM AROUND 1800 HOURS AND 2100 HOURS WHICH
7 WOULD HAVE BEEN 7:00 AND 9:00?

8 A. AM I DENYING THAT I DID THAT?

9 Q. YEAH.

10 A. NO, I'M NOT DENYING IT.

11 MS. OWINGS: OKAY. NO FURTHER QUESTIONS.

12 THE COURT: ALL RIGHT, MA'AM. YOU CAN STEP DOWN.

13 MS. SHIPLEY: THE STATE CALLS ALLYSON BAGLEY, YOUR
14 HONOR.

15 ALLYSON BAGLEY, AFTER BEING DULY SWORN, TESTIFIED
16 AS FOLLOWS:

17 THE CLERK: PLEASE HAVE A SEAT UP THERE, MA'AM. STATE
18 YOUR FULL NAME FOR THE RECORD.

19 THE WITNESS: ALLYSON BAGLEY. IT'S A-L-L-Y-S-O-N
20 B-A-G-L-E-Y.

21 DIRECT EXAMINATION

22 BY MS. SHIPLEY:

23 Q. GOOD MORNING, MS. BAGLEY.

24 A. GOOD MORNING.

25 Q. MS. BAGLEY, CAN YOU TELL THE JURY WHERE YOU'RE EMPLOYED?

1 A. I'M A REGISTERED NURSE AT PALMETTO HEALTH RICHLAND.

2 Q. AND IS THAT WHERE YOU WERE WORKING BACK IN APRIL OF
3 2005?

4 A. IT IS. I WAS WORKING IN THE EMERGENCY DEPARTMENT AT
5 THAT TIME. CURRENTLY I WORK IN LABOR AND DELIVERY.

6 Q. AND BACK IN APRIL OF '05 DID YOU COME INTO CONTACT WITH
7 ANY EVIDENCE INVOLVED IN THIS CASE?

8 A. . YES, I DID.

9 Q. AND WHAT ITEM OF EVIDENCE WAS THAT?

10 A. A FORENSIC EVIDENCE SEXUAL ASSAULT KIT WAS TURNED OVER
11 TO ME.

12 Q. OKAY. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S
13 34 FOR IDENTIFICATION PURPOSES ONLY. DO YOU RECOGNIZE THIS
14 BOX AND DO YOU SEE YOUR SIGNATURE ANYWHERE ON IT?

15 A. YES, I DO.

16 Q. AND WHERE IS IT THAT YOU SEE YOUR SIGNATURE?

17 A. IN THE CHAIN OF CUSTODY ON THE BACK OF THE BOX.

18 Q. AND CAN YOU EXPLAIN FOR THE JURY WHY IT'S IMPORTANT TO
19 MAINTAIN A CHAIN OF CUSTODY ON THE RAPE KIT DONE IN THIS
20 CASE?

21 A. THIS WAS TURNED OVER TO ME BY THE NURSE THAT COMPLETED
22 THE EXAM IN A SEALED CONDITION, AND IN TURN I TURNED IT OVER
23 TO LAW ENFORCEMENT IN THAT SAME SEALED CONDITION TO INSURE
24 THERE WAS NO TAMPERING OF EVIDENCE.

25 Q. OKAY. AND THAT'S IN ORDER TO MAINTAIN THE INTEGRITY OF

1 THE EVIDENCE. IS THAT CORRECT?

2 A. THAT'S CORRECT.

3 Q. NOW, FROM WHOM DID YOU RECEIVE THIS BOX?

4 A. AS WRITTEN ON THE BACK OF THE BOX, IT WAS RECEIVED FROM
5 TERRY CASTO.

6 Q. AND WHO IS TERRY CASTO?

7 A. SHE IS A SEXUAL ASSAULT NURSE EXAMINER.

8 Q. AND WHAT TIME AND DATE DID SHE TURN THAT BOX OVER TO
9 YOU?

10 A. IT WAS TURNED OVER TO ME ON APRIL 3RD OF 2005 AT 22:11
11 OR 10:11.

12 Q. P.M.?

13 A. P.M.

14 Q. OKAY. AND, IN TURN, WHAT -- HOW LONG DID YOU HAVE
15 CUSTODY OF THAT BOX?

16 A. I HAD KEPT IT IN MY POSSESSION UNTIL I TURNED IT OVER TO
17 TONY HENSON AT 10:34 P.M.

18 Q. AND BY TONY HENSON'S NAME DOES IT LIST AN AGENCY OR
19 INITIALS OF AN AGENCY?

20 A. IT'S FOREST ACRES POLICE DEPARTMENT.

21 Q. OKAY. AND WHAT TIME AGAIN DID YOU TURN IT OVER TO MR.
22 HENSON?

23 A. 10:34 P.M.

24 Q. ALL RIGHT. AND AT ANY TIME WHILE THAT BOX WAS IN YOUR
25 CUSTODY DID YOU TAMPER WITH THE EVIDENCE INSIDE OF THAT BOX

1 AT ANY TIME?

2 A. NO, I DID NOT.

3 Q. DID IT REMAIN SEALED AT ALL TIMES?

4 A. YES, IT DID.

5 Q. AND IT WAS IN YOUR CUSTODY AND CONTROL AT ALL TIMES.

6 A. THAT'S CORRECT.

7 MS. SHIPLEY: BEG THE COURT'S INDULGENCE. THAT'S ALL I
8 HAVE FOR THIS WITNESS, YOUR HONOR.

9 MS. PAYNE: NO QUESTIONS, YOUR HONOR.

10 THE COURT: MA'AM, YOU CAN STEP DOWN. LET ME SEE Y'ALL
11 JUST ONE SECOND BEFORE YOU CALL YOUR NEXT WITNESS.

12 MS. SHIPLEY: YOUR HONOR, MAY SHE BE EXCUSED?

13 THE COURT: SHE MAY.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

15 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
16 GOING TO TAKE A SHORT BREAK AND I'M GOING TO SEND YOU BACK
17 INTO THE JURY ROOM, AND I'LL HAVE YOU BACK OUT HERE VERY
18 QUICKLY.

19 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
20 10:07 A.M.)

21 THE COURT: GO AHEAD.

22 MS. OWINGS: YOUR HONOR, WE WILL CONCEDE TO THE CHAIN.

23 THE COURT: ALL RIGHT.

24 MS. SHIPLEY: WE'D LIKE TO -- IF IT'S OKAY WITH YOUR
25 HONOR IF WE COULD JUST LET THE JURORS KNOW WHAT STIPULATION

1 MEANS ABOUT THE CHAIN.

2 THE COURT: OKAY. I WILL. SO YOU HAVE THAT EXHIBIT---

3 MS. SHIPLEY: YES, SIR.

4 THE COURT: ---THERE AND -- AND THAT EXHIBIT CONTAINS
5 THE SAMPLES THAT WERE COLLECTED BY THE WITNESS WHO JUST
6 TESTIFIED.

7 MS. SHIPLEY: ACTUALLY IT WAS FROM -- THE S.A.N.E. NURSE
8 COLLECTED THE EVIDENCE AND TURNED IT OVER TO THAT WITNESS YOU
9 JUST HEARD FROM AND SHE'LL BE HERE TO TESTIFY ABOUT HER
10 EXAMINATION.

11 THE COURT: THE S.A.N.E. NURSE?

12 MS. SHIPLEY: YES, SIR.

13 THE COURT: IS SHE HERE NOW?

14 MS. SHIPLEY: NOT YET.

15 THE COURT: OKAY.

16 MS. FENT: WE'RE GOING TO HAVE TO KIND OF REORGANIZE.
17 WE HAD OUR ELEVEN CHAIN PEOPLE PLANNED---

18 THE COURT: OKAY.

19 MS. FENT: ---SO WE'LL HAVE TO DO A QUICK
20 REORGANIZATION.

21 THE COURT: ALL RIGHT. AND SO THE NET RESULT OF THE
22 STIPULATION TO THE CHAIN IS THAT THE STATE'S EXHIBIT---

23 MS. SHIPLEY: 34.

24 THE COURT: ---34 CONTAINS SAMPLES THAT WERE TESTED BY
25 SOMEBODY WHO IS GOING TO TESTIFY TO THE RESULTS OF THOSE

COLLOQUY

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1 TESTS.

2 MS. SHIPLEY: YES, SIR.

3 THE COURT: AND THE STIPULATION -- THE RESULT OF THE
4 STIPULATION IS THAT THE SAMPLES TESTED ARE, IN FACT, THE
5 SAMPLES THAT WERE COLLECTED FROM THE VICTIM AS WILL BE
6 TESTIFIED TO BY THE -- BY THE S.A.N.E. NURSE.

7 MS. SHIPLEY: YES, SIR.

8 MS. FENT: IN ADDITION, WE'D NEED A STIPULATION
9 REGARDING THE SWABS TAKEN FROM THE DEFENDANT AND THAT THAT
10 CHAIN WAS MAINTAINED ALSO---

11 THE COURT: ALL RIGHT.

12 MS. FENT: ---ULTIMATELY TO THE SAME -- OBVIOUSLY THE
13 SAME PERSON THAT ANALYZES THIS ANALYZES HIS SWABS.

14 THE COURT: ARE YOU STILL GOING TO PUT UP THE WITNESS
15 WHO COLLECTED THE SWABS?

16 MS. SHIPLEY: YES.

17 MS. FENT: YES.

18 THE COURT: OKAY. WELL, THEN WHEN THAT WITNESS IS --
19 WHEN YOU -- WHEN YOU PUT THE -- THE S.A.N.E. NURSE IS GOING
20 TO GET UP THERE AND TESTIFY AS TO WHAT SHE DID, AND AT THAT
21 POINT I WILL INFORM THE JURY THAT THERE HAS BEEN A
22 STIPULATION THAT WHAT WAS COLLECTED IS, IN FACT, WHAT'S RIGHT
23 THERE.

24 MS. SHIPLEY: OKAY. AND OUR D.N.A. EXPERT WILL TESTIFY
25 THAT WHEN SHE RECEIVED THIS BOX AND THE DEFENDANT'S BUCCAL

1 SWABS THAT THEY WERE SEALED AND INTACT, SO SHE CAN DO THAT.

2 THE COURT: OKAY.

3 MS. SHIPLEY: OKAY.

4 THE COURT: ALL RIGHT? ALL RIGHT. SO WHO IS -- WHO IS
5 NEXT?

6 MS. SHIPLEY: OUR NEXT WITNESS IS LAURA WEIDMAN, YOUR
7 HONOR. SHE'S NOT PART OF THE CHAIN.

8 THE COURT: AND THEN -- SO WE'LL ANNOUNCE THE
9 STIPULATION THEN WHEN THE S.A.N.E. NURSE TESTIFIES AND WHEN
10 THE WITNESS WHO COLLECTED THE SWABS FROM THE DEFENDANT
11 TESTIFIES.

12 MS. SHIPLEY: YES, SIR. THANK YOU.

13 THE COURT: ALL RIGHT. BRING IN THE JURY.

14 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
15 10:15 A.M.)

16 THE COURT: ALL RIGHT. DURING THE BREAK WE WERE ABLE TO
17 SORT OF REARRANGE SOME THINGS AND SAVE WHAT I AM SURE WILL BE
18 A SUBSTANTIAL AMOUNT OF TIME IN THE PRESENTATION OF
19 WITNESSES, AND YOU'LL HEAR ABOUT THAT SHORTLY. SO YOU CAN
20 CALL YOUR NEXT WITNESS.

21 MS. SHIPLEY: THANK YOU, YOUR HONOR. AT THIS TIME THE
22 STATE CALLS LAURA WEIDMAN TO THE STAND.

23 LAURA WEIDMAN, AFTER BEING DULY SWORN, TESTIFIED AS
24 FOLLOWS:

25 THE COURT: YOU CAN TAKE A SEAT ON THE WITNESS STAND,

1 PLEASE.

2 DIRECT EXAMINATION

3 BY MS. SHIPLEY:

4 Q. PLEASE STATE YOUR NAME FOR THE RECORD.

5 A. LAURA WEIDMAN.

6 Q. MS. WEIDMAN, CAN YOU TELL THE JURY WHERE YOU'RE FROM?

7 A. ORIGINALLY FROM MARIETTA, GEORGIA, AND THEN MOVED TO
8 GREENVILLE, THEN ENDED UP HERE.

9 Q. AND HOW LONG HAVE YOU LIVED IN COLUMBIA?

10 A. ABOUT FIVE YEARS NOW.

11 Q. AND HOW OLD ARE YOU?

12 A. TWENTY-FIVE.

13 Q. AND WHERE DID YOU GO TO SCHOOL?

14 A. I GRADUATED FROM BETA TECH.

15 Q. AND WHAT DEGREE DID YOU GET?

16 A. I'M A MEDICAL ASSISTANT.

17 Q. AND WHERE DO YOU WORK?

18 A. I WORK AT COLUMBIA PHYSICAL MEDICINE.

19 Q. DO YOU KNOW TABITHA BRAZELL OR NOW WEISS?

20 A. YES, I DO.

21 Q. AND TELL THE JURY HOW YOU MET HER.

22 A. I MET HER THROUGH HER BROTHER. I'M DATING HER BROTHER.

23 Q. AND WHAT'S HER BROTHER'S NAME?

24 A. TIM BRAZELL.

25 Q. HOW LONG HAVE YOU BEEN DATING TIM?

- 1 A. ABOUT FIVE YEARS.
- 2 Q. AND SO HAVE YOU KNOWN TABITHA FOR THOSE FIVE YEARS?
- 3 A. UH-HUH.
- 4 Q. OKAY. AND DID YOU EVER LIVE WITH TABITHA AND TIM?
- 5 A. YES, I DID.
- 6 Q. AND WHAT ABOUT THE DEFENDANT, BOBBY SHEY RATHBURN?
- 7 A. YES, I DID.
- 8 Q. HOW LONG DID YOU LIVE WITH THEM?
- 9 A. ALL OF US - ME, TIM, AND TABITHA - LIVED TOGETHER THE
- 10 WHOLE YEAR. SHEY I THINK MOVED IN AROUND NOVEMBER, SO
- 11 PROBABLY ABOUT SEVEN, EIGHT MONTHS.
- 12 Q. OKAY. SO HE DID NOT MOVE IN ORIGINALLY INITIALLY TO THE
- 13 HOUSE.
- 14 A. HUH-UH.
- 15 Q. AND NOW DO YOU LIVE WITH THE BROTHER, TIM?
- 16 A. YES, I DO.
- 17 Q. OKAY. AND YOU HAVE YOUR OWN HOME WITH HIM.
- 18 A. YES.
- 19 Q. I'M GOING TO BRING YOUR ATTENTION TO APRIL THE 3RD,
- 20 2005. DO YOU REMEMBER WHAT YOU WERE DOING THAT SUNDAY?
- 21 A. I BELIEVE I WAS STILL SLEEPING.
- 22 Q. AND WHAT WOKE YOU UP?
- 23 A. TABITHA COMING OVER.
- 24 Q. AND CAN YOU EXPLAIN FOR THE JURY -- YOU KNOW, HOW FAR
- 25 DID YOU LIVE FROM TABITHA AT THE TIME?

1 A. PROBABLY LIKE TWO MILES.

2 Q. AND PRIOR TO HER SHOWING UP TO YOUR HOUSE ON THAT
3 SUNDAY---

4 A. UH-HUH.

5 Q. ---HAD YOU BEEN GOING OVER TO HER HOUSE AT
6 EDGEHILL?

7 A. YES.

8 Q. CAN YOU DESCRIBE FOR THE JURY WHAT IT WAS YOU WERE DOING
9 THERE WHEN YOU'D GO OVER TO HER HOUSE?

10 A. I WAS HELPING HER PACK UP ALL HER STUFF TO MOVE OUT.

11 Q. AND DO YOU REMEMBER WHEN THE DEFENDANT, BOBBY SHEY
12 RATHBURN, MOVED OUT OF THAT HOUSE?

13 A. I DON'T PERSONALLY LIKE REMEMBER THE DATE, BUT I KNOW HE
14 WASN'T THERE THAT WHOLE WEEK.

15 Q. OKAY. AND IF SHE CAME OUT TO YOUR HOUSE ON A SUNDAY,
16 APRIL THE 3RD, WOULD A CALENDAR ASSIST YOU IN REFRESHING YOUR
17 MEMORY ABOUT DATES AND TIMES AND SO FORTH?

18 A. YES.

19 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED FOR
20 IDENTIFICATION PURPOSES AS STATE'S EXHIBIT NUMBER 1. DOES
21 THAT ACCURATELY REFLECT THE DATES OF MARCH 2005?

22 A. YES.

23 Q. OKAY. DO YOU RECALL APPROXIMATELY HOW LONG IT HAD BEEN
24 SINCE BOBBY SHEY RATHBURN MOVED OUT OF THE RESIDENCE?

25 A. I MEAN, I'M NOT SURE. I KNOW HE WASN'T THERE THAT WHOLE

1 ENTIRE WEEK BUT...

2 Q. SO YOUR TESTIMONY IS THAT UP UNTIL SUNDAY -- THIS IS
3 APRIL 1, 2, AND THEN 3 IS SUNDAY. UP UNTIL THE SUNDAY THAT
4 TABITHA CAME TO YOUR HOUSE AND WOKE YOU UP, WHEN WAS IT THAT
5 YOU WERE GOING OVER TO HER HOUSE TO HELP HER PACK?

6 A. THAT WHOLE WEEK.

7 Q. THIS WEEK RIGHT HERE?

8 A. YEAH, LIKE THE 28TH---

9 Q. OKAY.

10 A. AROUND THEN.

11 Q. WHEN YOU WERE IN HER HOME, DID YOU SEE ANY BELONGINGS OF
12 THE DEFENDANT, BOBBY SHEY RATHBURN, IN THE HOUSE?

13 A. NO, I DID NOT.

14 Q. AND HOW MUCH PACKING DID YOU GET ACCOMPLISHED EVERY TIME
15 YOU WENT OVER THERE?

16 A. I THINK WE GOT A GOOD PORTION DONE WITH BOXES.

17 Q. OKAY. WAS THERE MUCH TIME FOR HER TO MOVE OUT? IN
18 OTHER WORDS, HAD THE MAJORITY OF HER BELONGINGS BEEN PACKED
19 UP UP UNTIL THAT POINT?

20 A. YEAH, LIKE EVERYTHING LIKE BUT FURNITURE AND EVERYTHING
21 WAS PRETTY MUCH PACKED UP.

22 Q. OKAY. AND ANY TIME -- WHAT TIME DURING THE DAY WOULD
23 YOU GO OVER TO HELP HER PACK HER THINGS?

24 A. I WOULD PROBABLY GO AFTER WORK, AFTER 5.

25 Q. AND HOW LONG WOULD YOU ESTIMATE YOU STAYED?

1 A. I'D PROBABLY STAY A COUPLE OF HOURS, MAYBE THREE.

2 Q. THREE HOURS OR SO?

3 A. YEAH.

4 Q. AND DID YOU GO EVERY DAY OR HOW OFTEN DO YOU THINK YOU
5 WENT THAT WEEK?

6 A. I THINK I PRETTY MUCH WENT EVERY DAY AFTER WORK TO HELP
7 HER PACK.

8 Q. AND AT ANY OF THOSE TIMES WAS IT DAYLIGHT OUTSIDE?

9 A. YES.

10 Q. DID -- AT ANY OF THOSE TIMES DID YOU SEE THE DEFENDANT,
11 BOBBY SHEY RATHBURN, COMING OVER TO SEE HIS DAUGHTER,
12 LB

13 A. NO, I DID NOT.

14 Q. DESCRIBE FOR THE JURY TABITHA'S DEMEANOR, HOW SHE WAS
15 BEHAVING, WHEN YOU FIRST SAW HER ON SUNDAY, APRIL THE 3RD.

16 A. SHE CAME OVER. SHE WAS REAL LIKE SHAKY. SHE HAD
17 STARTED CRYING. SHE WAS JUST REAL -- I GUESS KIND OF SCARED
18 AND ANGRY AND...

19 Q. AND WHY DID YOU FEEL SHE WAS ANGRY?

20 A. BECAUSE OF SHEY.

21 Q. AND CAN YOU DESCRIBE ABOUT WHAT TIME IT WAS THAT SHE
22 CAME THAT DAY?

23 A. IT WAS AROUND 11:00.

24 Q. ALL RIGHT. WHAT WAS HER APPEARANCE LIKE? HAD SHE --
25 DESCRIBE FOR THE JURY WHAT SHE LOOKED LIKE, HER CLOTHING AND

1 HER HAIR, EVERYTHING.

2 A. YOU COULD TELL SHE HADN'T SHOWERED OR ANYTHING. SHE
3 JUST HAD LIKE SWEAT PANTS ON AND A TEE SHIRT, NO MAKE-UP ON
4 OR ANYTHING LIKE THAT.

5 Q. AND WHAT ABOUT HER HAIR? HOW DID THAT APPEAR?

6 A. I THINK IT WAS JUST IN A PONYTAIL.

7 Q. AND YOU INDICATED THAT SHE WAS SHAKING?

8 A. UH-HUH.

9 Q. AND SHE WAS CRYING.

10 A. YES.

11 Q. DID SHE TELL YOU -- DESCRIBE FOR THE JURY WHO WAS WITH
12 HER WHEN SHE CAME TO YOUR HOUSE.

13 A. HER DAUGHTER, L B

14 Q. AND WHEN SHE ARRIVED, WHERE DID YOU GO WITH L B

15 A. WE WENT TO MCDONALD'S TO GET HER SOMETHING TO EAT.

16 Q. TO GET L B -- SOME FOOD?

17 A. YES.

18 Q. AND DID YOU GET FOOD FOR YOURSELF AND FOR TABITHA?

19 A. NO.

20 Q. WHERE DID YOU GO AFTER YOU GOT FOOD FROM MCDONALD'S?

21 A. WE WENT OVER TO HER HOUSE AND WE THEN CALLED THE COPS
22 WHEN WE GOT THERE.

23 Q. AND WHEN -- WHEN THE COPS WERE CALLED WHEN YOU GOT
24 THERE, CAN YOU TELL THE JURY EXACTLY WHAT YOU DID WITH
25 L B WHILE THE COPS WERE EN ROUTE?

1 A. I TOOK HER FOR A WALK SO THEY WOULDN'T SEE OR SO SHE
2 WOULDN'T SEE THE COPS THERE AND EVERYTHING.

3 Q. AND PRIOR TO YOU TAKING L.B. FOR A WALK, WERE YOU
4 AWARE OF ANY ARRANGEMENTS MADE FOR SOMEBODY TO COME GET
5 L.B.

6 A. YES.

7 Q. WHO WAS SUPPOSED TO COME GET L.B.

8 A. HER -- TABITHA'S AUNT CINDY.

9 Q. AND PRIOR TO YOU WALKING L.B. DID YOU GO INSIDE OF
10 THE HOUSE?

11 A. YES, I DID.

12 Q. AND DID TABITHA SHOW YOU AROUND THE HOUSE?

13 A. YES, SHE DID.

14 Q. AND WHAT DID SHE POINT OUT TO YOU?

15 A. THAT SHE HAD CLUMPS OF HAIR THAT WERE ON THE KITCHEN
16 FLOOR. THE COMFORTER AND PILLOWS WERE IN THE LIVING ROOM.
17 THE HOLE IN THE WALL IN THE BEDROOM WHERE THE END TABLE HIT
18 IT.

19 Q. AND SO YOU SAW ALL THAT WITH YOUR OWN EYES.

20 A. YES.

21 Q. AND AT ONE POINT DID THE OFFICERS SHOW UP?

22 A. YES, THEY DID.

23 Q. AND HOW LONG DID IT TAKE THEM TO SHOW UP?

24 A. NOT TOO LONG. PROBABLY ABOUT 10 MINUTES.

25 Q. AND DO YOU KNOW THE -- DID YOU SEE THE OFFICERS WHEN

1 THEY PULLED UP?

2 A. I BELIEVE I WAS ACTUALLY -- WE WERE -- ME AND L B
3 WERE WALKING DOWN THE ROAD AND THEY WERE COMING DOWN THE
4 STREET.

5 Q. OKAY. SO YOU DIDN'T ACTUALLY SEE THE OFFICER AT THAT
6 TIME.

7 A. NO. I SAW THEM PULL INTO THE DRIVEWAY.

8 Q. AND DID TABITHA'S AUNT FINALLY GET THERE TO TAKE
9 L B

10 A. YES.

11 Q. ONCE THE AUNT CAME AND TOOK L B DID YOU THEN SPEAK
12 WITH THE OFFICERS ABOUT WHAT TABITHA HAD REPORTED TO YOU?

13 A. YES, I DID.

14 Q. AND DID YOU PROVIDE THEM WITH A STATEMENT?

15 A. YES, I DID.

16 Q. A WRITTEN STATEMENT?

17 A. UH-HUH.

18 Q. APPROXIMATELY A TWO-PAGE-LONG STATEMENT.

19 A. YES.

20 Q. DID YOU TELL THE OFFICERS THAT THIS WAS NOT THE---
21 MS. OWINGS: OBJECTION, YOUR HONOR. CAN WE APPROACH?
22 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

23 BY MS. SHIPLEY:

24 Q. WHAT TIME WAS IT THAT TABITHA CAME OVER TO YOUR HOUSE?

25 A. AT AROUND 11:00.

1 Q. ~~AND DID SHE BEGIN TELLING YOU WHAT HAD HAPPENED TO HER~~
2 THE NIGHT BEFORE?

3 A. YES.

4 Q. AND DESCRIBE HER DEMEANOR.

5 A. SHE WAS REAL SHAKY---

6 MS. OWINGS: OBJECTION, YOUR HONOR. ASKED AND ANSWERED.

7 THE COURT: OVERRULED.

8 BY MS. SHIPLEY:

9 Q. PLEASE CONTINUE.

10 A. OKAY. SHE WAS SHAKING AND CRYING AND JUST LIKE ANGRY
11 AND MAD AND JUST SCARED.

12 MS. SHIPLEY: YOUR HONOR, AT THIS TIME UNDER THE HEARSAY
13 EXCEPTION OF EXCITED UTTERANCE I WOULD SEEK TO INTRODUCE THE
14 TESTIMONY OF THIS WITNESS.

15 MS. OWINGS: OBJECTION, YOUR HONOR.

16 THE COURT: LADIES AND GENTLEMEN, LET ME ASK YOU TO STEP
17 BACK INTO THE JURY ROOM FOR JUST A MINUTE, PLEASE.

18 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
19 10:27 A.M.)

20 THE COURT: ALL RIGHT. GO AHEAD.

21 MS. OWINGS: WHICH ONE?

22 THE COURT: ASK THE QUESTION.

23 BY MS. SHIPLEY:

24 Q. WHAT EXACTLY DID SHE TELL YOU HAPPENED TO HER THAT
25 NIGHT?

1 A. SHE TOLD ME THAT SHEY HAD COME OVER IN THE EARLY HOURS
2 OF THE MORNING, LIKE 3 OR 4:00 IN THE MORNING, THAT HE HAD
3 GOTTEN IN THROUGH THE DOOR. SHE THOUGHT---

4 Q. WHICH DOOR?

5 A. THE STORM DOOR SHE THOUGHT WAS LOCKED, BECAUSE HER
6 FRIEND DIDN'T LOCK IT BACK, AND SHE TOLD ME THAT HE PUSHED
7 HER, WAS GRABBING HER HAIR, CHOKED HER, AND HAD FORCED HER TO
8 HAVE SEX AND ORAL SEX.

9 Q. AND DID SHE INDICATE ANYTHING THAT HAPPENED IN THAT ROOM
10 FOR THE HOLE TO GO INTO THE WALL?

11 A. YES, THAT SHE GOT PUSHED INTO THE WALL WHEN SHE HIT THE
12 TABLE.

13 Q. OKAY. AND DID SHE INDICATE WHETHER OR NOT HE HAD BEEN
14 THERE BEFORE THAT NIGHT?

15 A. YES.

16 Q. AND WHAT NIGHTS DID SHE INDICATE HE HAD BEEN THERE
17 BEFORE?

18 A. I BELIEVE IT'S THE SUNDAY NIGHT, TUESDAY, AND THEN
19 THURSDAY.

20 MS. SHIPLEY: THAT'S THE EXTENT, YOUR HONOR.

21 MS. OWINGS: YOUR HONOR, IN HER STATEMENT WHAT SHE SAYS
22 IS ABOUT THE EVENTS THAT HAPPENED THE TWO DAYS BEFORE:

23 "TABITHA CALLED ME ON MONDAY, THE DAY AFTER EASTER, TO TELL
24 ME THAT HE TRIED TO LEAVE HER HOUSE." SO SHE TOLD HER THAT
25 BEFORE ANY OF THIS HAPPENED, SO THAT'S NOT AN EXCITED

1 UTTERANCE.

2 MS. SHIPLEY: I STAND CORRECTED ON THAT, YOUR HONOR.
3 SHE'S ABSOLUTELY CORRECT. THAT WAS REFERRING TO A
4 CONVERSATION HELD ON MONDAY THE 28TH. HOWEVER, THE STATE
5 SEEKS TO INTRODUCE THE EVENTS THAT THE VICTIM REPORTED TO HER
6 FRIEND WHEN SHE WENT IMMEDIATELY TO HER HOUSE AT 11:00 AFTER
7 THE DEFENDANT HAD LEFT HER HOME. SHE IMMEDIATELY WENT TO
8 LAURA'S HOUSE AND WAS STILL UNDER THE EXCITEMENT OF THESE AND
9 THE STRESS OF THE CRIME AND THE ASSAULT AND SHE HAS -- I'VE
10 LAID THE FOUNDATION THAT IT WAS CLOSE IN TIME AND THAT SHE
11 WAS SHAKING AND CRYING AND UPSET, AND I BELIEVE THAT
12 QUALIFIES FOR EXCITED UTTERANCES AND I WILL NOT TRY TO GO
13 INTO THE PRIOR EVENTS OF THAT WEEK.

14 MS. OWINGS: YOUR HONOR, IF I MAY?

15 THE COURT: HUH-UH.

16 MS. OWINGS: I MAY NOT. OKAY.

17 THE COURT: NOW, THIS CONVERSATION THAT SHE'S TESTIFYING
18 TO OCCURRED SOMETIME AFTER -- AROUND 11:00 THE NEXT MORNING
19 WHEN -- WHEN THE DEFENDANT FINALLY LEFT.

20 MS. SHIPLEY: CORRECT.

21 THE COURT: THE -- I'M NOT -- I'M -- YOU CAN GET IN THE
22 FACT THAT THE VICTIM SAID TO HER THAT SHE WAS SEXUALLY
23 ASSAULTED AT SUCH AND SUCH A TIME, AT SUCH AND SUCH A PLACE.
24 THAT COMES IN. THAT'S NOT HEARSAY UNDER 801(D). THE REST OF
25 IT IS, IN MY OPINION, DIFFICULT TO GET IN AS AN EXCITED

1 UTTERANCE BECAUSE OF THE FACT THAT IT IS -- IT OCCURRED HOURS
2 AFTER THE SEXUAL ASSAULT. IN BETWEEN THERE WAS A LONG PERIOD
3 OF TIME IN WHICH SHE WAS LAYING IN THE BED CALMLY. SHE
4 ADMITTED THAT SHE POSSIBLY HAD FALLEN ASLEEP DURING THAT
5 PERIOD OF TIME. THE SEXUAL ASSAULT OCCURRED ABOUT 4 IN THE
6 MORNING. THIS CONVERSATION OCCURRED SOMETIME AFTER 11:00 THE
7 NEXT -- OR THAT SAME MORNING. SO THAT'S AT LEAST SEVEN HOURS
8 THAT SEPARATES THESE TWO.

9 NOW, I REALIZE THAT THERE ARE CASES THAT SAY THAT SEVEN
10 HOURS IS NOT TOO LONG. IN THIS CONTEXT, IN MY OPINION, ON
11 THESE SPECIFIC FACTS, PARTICULARLY GIVEN THE FACT THAT THE
12 ONLY ADDITIONAL TESTIMONY THAT'S GOING TO COME IN UNDER
13 EXCITED UTTERANCE IS THE IDENTITY OF THE PERSON WHO COMMITTED
14 THE SEXUAL ASSAULT AND SOME OF THE DETAILS OF THE ASSAULT,
15 NEITHER OF WHICH REALLY HAVE ALL THAT MUCH IMPORTANCE TO THE
16 POINT YOU'RE TRYING TO MAKE -- AND SO I'M GOING TO SAY THAT
17 I'M NOT ALLOWING IT IN UNDER THE EXCITED UTTERANCE EXCEPTION,
18 BUT AS I SAID, THE PRIOR CONSISTENT STATEMENT IS ADMISSIBLE
19 UNDER 801(D) (1) (D) .

20 MS. SHIPLEY: (D) (1) (D)? OKAY.

21 THE COURT: ALL RIGHT?

22 MS. SHIPLEY: SO ONLY AS TO TIME AND PLACE, YOUR HONOR,
23 JUST SO I'M CLEAR.

24 THE COURT: SHE CAN TESTIFY THAT A -- SHE CAN TESTIFY
25 THAT SHE WAS TOLD BY HER FRIEND THAT THE FRIEND WAS SEXUALLY

1 ~~ASSAULTED AT SUCH AND SUCH A TIME AT SUCH AND SUCH A PLACE.~~

2 MS. SHIPLEY: AND ALSO, YOUR HONOR, JUST SO I CAN PUT IT
3 ON THE RECORD: THE DEFENDANT IS ALSO CHARGED WITH KIDNAPPING
4 WHICH EXPLAINS WHY SHE WAS NOT FREE TO LEAVE OR FREE TO CALL
5 ANYBODY UNTIL HE LEFT THE HOUSE, AND THAT WAS HER FIRST
6 OPPORTUNITY TO GET OUT OF THERE. ALTHOUGH SHE MAY HAVE
7 CALMED DOWN AFTER THE SEXUAL ASSAULT, SHE WAS FINALLY FREE TO
8 GO AND GET HELP, AND THAT'S WHEN SHE -- THE EXCITEMENT AND
9 STRESS ENSUED.

10 THE COURT: I UNDERSTAND.

11 MS. SHIPLEY: OKAY.

12 THE COURT: ALL RIGHT. BRING IN THE JURY.

13 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
14 10:35 A.M.)

15 THE COURT: YOU CAN PROCEED.

16 MS. SHIPLEY: THANK YOU, YOUR HONOR.

17 BY MS. SHIPLEY:

18 Q. MS. WEIDMAN, WITHOUT SAYING WHO OR IDENTITY, COULD YOU
19 PLEASE TELL THE JURY WHAT TABITHA TOLD YOU HAPPENED IN THE
20 LIVING ROOM?

21 A. SHE TOLD ME THAT SHE WAS FORCED TO HAVE SEX, THAT SHE
22 WAS FORCED TO HAVE ORAL OR GIVE ORAL SEX AND...

23 MS. SHIPLEY: IS THAT SUFFICIENT, YOUR HONOR?

24 THE COURT: I DIDN'T HEAR ANY OBJECTION.

25 MS. SHIPLEY: OKAY.

1 BY MS. SHIPLEY:

2 Q. AND YOU GAVE -- THAT DAY ON APRIL THE 3RD DID YOU GIVE A
3 WRITTEN STATEMENT TO THE POLICE, FOREST ACRES POLICE?

4 A. YES, I DID.

5 MS. OWINGS: OBJECTION, YOUR HONOR.

6 THE COURT: TO THE QUESTION DID SHE GIVE A WRITTEN
7 STATEMENT TO THE FOREST ACRES POLICE?

8 MS. OWINGS: I'M OBJECTING AHEAD OF TIME.

9 THE COURT: MA'AM?

10 MS. OWINGS: I WAS OBJECTING AHEAD OF TIME. EXCUSE ME.

11 THE COURT: SO YOU'RE WITHDRAWING THE OBJECTION?

12 MS. OWINGS: YES, SIR.

13 BY MS. SHIPLEY:

14 Q. DID YOU -- AFTER YOU GAVE THE STATEMENT, DID YOU
15 ACCOMPANY TABITHA TO ANY OTHER LOCATION? DID YOU LEAVE THE
16 HOUSE AND GO ANYWHERE?

17 A. YES, I DID.

18 Q. OKAY. AND, BY THE WAY, WHILE YOU WERE IN THE HOUSE, DID
19 YOU TOUCH ANY OF THE ITEMS THAT YOU SAW WITH YOUR EYES? DID
20 YOU TAMPER WITH ANY OF THE EVIDENCE AT THE SCENE WHATSOEVER?

21 A. NO, I DID NOT.

22 Q. AND DID YOU SEE TABITHA TOUCHING ANYTHING WHEN SHE IS
23 SHOWING YOU AROUND?

24 A. NO.

25 Q. AND WHERE IS IT THAT YOU LEFT -- LEAVE AND GO TO?

LAURA WEIDMAN - DIRECT EXAM BY MS. SHIPLEY

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1 A. WE WENT OVER TO RICHLAND MEMORIAL HOSPITAL.

2 Q. AND DO YOU KNOW WHY YOU WERE GOING THERE?

3 A. TO GET A RAPE KIT DONE.

4 Q. AND HOW LONG -- DID YOU WAIT WITH TABITHA AT THE
5 EMERGENCY ROOM?

6 A. YES.

7 Q. HOW LONG DO YOU THINK YOU WAITED?

8 A. WE WERE THERE FOR A COUPLE OF HOURS, LIKE FIVE AT LEAST.

9 Q. AND DID YOU AT ANY TIME GO INTO THE EXAMINATION ROOM
10 WHERE TABITHA WAS BEING EXAMINED?

11 A. AT ONE POINT I DID GO BACK THERE.

12 Q. OKAY. AND COULD YOU DESCRIBE HER DEMEANOR WHILE SHE'S
13 BEING EXAMINED?

14 MS. OWINGS: OBJECTION, YOUR HONOR.

15 MS. SHIPLEY: BASIS, YOUR HONOR?

16 THE COURT: OVERRULED.

17 BY MS. SHIPLEY:

18 Q. PLEASE PROCEED.

19 A. OKAY. WELL, SHE WAS JUST LIKE UPSET.

20 Q. OKAY. AND DO YOU -- DID YOU STAY UNTIL HER EXAM WAS
21 COMPLETED?

22 A. YES.

23 Q. AND WHERE DID YOU GO FROM THERE?

24 A. I BELIEVE TIM WAS WITH US ALSO. I BELIEVE THAT ME AND
25 HIM WENT BACK HOME, AND TABITHA WENT TO CINDY'S I BELIEVE.

1 Q. TO BE WITH HER CHILD?

2 A. YES.

3 Q. DO YOU REMEMBER IF IT WAS DARK OUTSIDE OR LIGHT OUTSIDE
4 WHEN YOU GOT HOME?

5 A. IT WAS DARK.

6 Q. AND THIS IS ON APRIL 3RD OF 2005; CORRECT?

7 A. YES.

8 Q. BEG THE COURT'S INDULGENCE. THANK YOU, MS. WEIDMAN.

9 PLEASE ANSWER ANY QUESTIONS FROM THE DEFENSE.

10 A. OKAY.

11 MS. OWINGS: THANK YOU, YOUR HONOR. JUST A FEW
12 QUESTIONS.

13 CROSS-EXAMINATION

14 BY MS. OWINGS:

15 Q. YOU AND TABITHA WERE REALLY GOOD FRIENDS, WEREN'T YOU?

16 A. YES.

17 Q. YOU'D KNOWN HER FOR ABOUT FIVE YEARS?

18 A. YES.

19 Q. YOU'VE KNOWN HER FOR ABOUT SEVEN NOW.

20 A. WELL, NO. I'VE KNOWN HER NOW FOR FIVE YEARS. AT THE
21 TIME IT WAS PROBABLY THREE.

22 Q. ABOUT THREE YEARS.

23 A. YES.

24 Q. AND YOU WERE DATING HER BROTHER?

25 A. YES.

1 Q. IN FACT, NOW YOU'RE LIVING WITH HER BROTHER.

2 A. UH-HUH.

3 Q. AND YOU'VE BEEN IN A RELATIONSHIP WITH HER BROTHER NOW
4 FOR I GUESS CLOSE TO FIVE YEARS.

5 A. YES.

6 Q. AND YOU'VE BEEN DATING HER BROTHER SINCE YOU BASICALLY
7 MOVED TO COLUMBIA.

8 A. YES.

9 Q. SO YOU WOULD SAY YOU AND TABITHA ARE VERY, VERY CLOSE.

10 A. UH-HUH.

11 Q. IS SHE PROBABLY YOUR BEST FRIEND?

12 A. YES.

13 Q. NOW, YOU TESTIFIED THAT WHEN YOU AND TABITHA AND

14 LB WENT BACK TO TABITHA'S HOUSE, YOU TOOK LB FOR
15 A WALK DOWN STREET.

16 A. YES.

17 Q. BECAUSE TABITHA DIDN'T WANT LB TO BE AROUND WHEN
18 THE POLICE GOT THERE.

19 A. YES.

20 Q. SO YOU LEFT TABITHA ALONE IN THE HOUSE.

21 A. I GUESS I DID.

22 MS. OWINGS: I BEG THE COURT'S INDULGENCE JUST ONE
23 MOMENT, PLEASE. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

24 MS. SHIPLEY: JUST ONE FOLLOW-UP, YOUR HONOR.

25

REDIRECT EXAMINATION

BY MS. SHIPLEY:

Q. MS. WEIDMAN, DID YOU LOOK INSIDE THE HOUSE BEFORE YOU
TOOK L B FOR A WALK?

A. YES.

Q. AND DID YOU -- WHAT DID YOU SEE IN THE KITCHEN?

A. I SAW CLUMPS OF HER HAIR.

Q. OKAY.

A. BOXES, OF COURSE, WERE EVERYWHERE BECAUSE SHE WAS
PACKING.

Q. SO THAT WAS -- YOU SAW THAT BEFORE YOU LEFT TABITHA
ALONE IN THE HOME.

A. YES.

MS. SHIPLEY: THANK YOU. NO FURTHER QUESTIONS.

THE COURT: YOU CAN STEP DOWN, MA'AM.

MS. FENT: THE STATE CALLS OFFICER SHUMARD.

MS. SHIPLEY: YOUR HONOR, MAY THIS WITNESS BE EXCUSED?

THE COURT: SHE MAY.

RUSSELL SHUMARD, AFTER BEING DULY SWORN, TESTIFIED
AS FOLLOWS:

THE CLERK: PLEASE HAVE A SEAT HERE, SIR. STATE YOUR
FULL NAME FOR THE RECORD.

THE WITNESS: RUSSELL SHUMARD.

COURT REPORTER: WOULD YOU SPELL YOUR LAST NAME?

THE WITNESS: S-H-U-M-A-R-D.

DIRECT EXAMINATION

1

2 BY MS. FENT:

3 Q. OFFICER SHUMARD, WHO DO YOU WORK FOR?

4 A. THE FOREST ACRES POLICE DEPARTMENT.

5 Q. OKAY. AND HOW LONG HAVE YOU BEEN WITH THE FOREST ACRES
6 POLICE DEPARTMENT?

7 A. FOURTEEN YEARS THIS MONTH.

8 Q. OKAY. CAN YOU PLEASE EXPLAIN TO THE JURY BASICALLY YOUR
9 EDUCATION AND YOUR TRAINING THAT BRINGS YOU HERE TODAY 14
10 YEARS WITH FOREST ACRES?11 A. WELL, I GOT A MASTER -- NOT -- A BACHELOR'S DEGREE IN
12 CRIMINAL JUSTICE AT CHARLESTON SOUTHERN IN '91, STARTED WITH
13 THE POLICE DEPARTMENT IN '93 WHERE I WENT TO THE BASIC LAW
14 ENFORCEMENT TRAINING WHICH LASTS ABOUT EIGHT WEEKS AND SINCE
15 THAT TIME HAVE BEEN -- SPENT THREE YEARS IN THE INVESTIGATIVE
16 UNIT AT THE POLICE DEPARTMENT INVESTIGATING, YOU KNOW,
17 VARIOUS CRIMES, AND NOW I'M THE SUPERVISOR IN THAT
18 DEPARTMENT.

19 Q. OKAY. AND THIS WEEK WHAT SHIFTS ARE YOU WORKING?

20 A. NIGHT SHIFT.

21 Q. OKAY. SO YOU GOT OFF WORK AT?

22 A. 6:00 THIS MORNING.

23 Q. OKAY. THE JOB'S NEVER DONE. I WANT TO ASK YOU IF YOU
24 WERE CALLED OUT TO ON APRIL 3RD OF 2005.

25 A. YES, I WAS.

1 Q. OKAY. AND DID YOU PREPARE A REPORT IN CONNECTION WITH
2 THAT CALL?

3 A. YES, I DID.

4 Q. OKAY. DO YOU HAVE A COPY WITH YOU?

5 A. NO, MA'AM, I DON'T.

6 Q. OKAY. CAN YOU TELL US ABOUT WHAT TIME IT WAS THAT YOU
7 WERE DISPATCHED OR CALLED OUT TO THAT RESIDENCE?

8 A. AT 2:22 IN THE AFTERNOON ON 4/3/2005.

9 Q. OKAY. AND THAT RESIDENCE, IS IT LOCATED IN RICHLAND
10 COUNTY?

11 A. IT'S IN RICHLAND COUNTY WITHIN THE CITY OF FOREST ACRES'
12 LIMITS, YES.

13 Q. OKAY. AND WHAT WAS THE NATURE -- DID YOU KNOW THE
14 NATURE OF THE CALL WHEN YOU WERE DISPATCHED OUT TO THAT HOME?

15 A. YES, I DID.

16 Q. OKAY. AND WHAT WAS THE NATURE OF THE CALL?

17 A. IT WAS THAT IT WAS A SEXUAL ASSAULT.

18 Q. OKAY. ANYTHING ELSE? ANY OTHER OFFENSES DESCRIBED OVER
19 THE DISPATCH?

20 A. NOT THAT I CAN REMEMBER. JUST THE MAIN THING WAS THAT
21 IT WAS A SEXUAL ASSAULT IS WHAT I HEARD.

22 Q. OKAY. AND WHAT HAPPENS THEN? I GUESS HOW LONG DOES IT
23 TAKE FOR YOU TO ARRIVE THERE? WHAT TIME DO YOU ARRIVE?

24 A. THE DISPATCH TIME INDICATED ON THE REPORT IS 2:22, AND
25 THE ARRIVAL TIME IS INDICATED WHICH IS -- THESE TIMES ARE

1 GIVEN BY THE OFFICER AS THEY ARRIVE ON THE SCENE AND RECORDED
2 ON THE DISPATCH LOG IN DISPATCH, AND THE ARRIVAL TIME WAS
3 2:27.

4 Q. OKAY. AND YOU NOTE ON THAT INCIDENT REPORT ANOTHER
5 OFFENSE BESIDES A SEXUAL ASSAULT; CORRECT?

6 A. YES.

7 Q. AND WHAT IS THAT OTHER OFFENSE?

8 A. A BURGLARY.

9 Q. OKAY. SO YOU ARRIVED TO THE HOME, AND WHO DO YOU MAKE
10 CONTACT WITH?

11 A. THE VICTIM, MS. TABITHA BRAZELL.

12 Q. AND DO YOU SEE HER IN THE COURTROOM?

13 A. YES, I DO.

14 Q. OKAY. DID YOU MAKE CONTACT WITH ANYONE ELSE AT THE
15 RESIDENCE WHILE YOU WERE THERE?

16 A. NOT THAT I CAN REMEMBER RIGHT OFF THE TOP OF MY HEAD.

17 Q. OKAY. SO YOU CONTACTED THE VICTIM, TABITHA, AND
18 BASICALLY WHAT ARE YOUR DUTIES AND RESPONSIBILITIES? WHAT DO
19 YOU---

20 A. I STARTED -- WELL, SHE WAS OUTSIDE ON THE -- ON A SWING
21 BENCH ON THE PORCH, ON THE FRONT PORCH, AND YOU JUST -- YOU
22 KNOW, BASICALLY JUST PRELIMINARY QUESTIONS AS TO, YOU KNOW,
23 WHAT HAPPENED, YOU KNOW, GETTING THE TIME FRAMES DOWN AS TO
24 WHEN THIS, YOU KNOW, INCIDENT OCCURRED. AND IN THE PROCESS
25 OF GATHERING THAT INFORMATION, YOU KNOW, I WENT INSIDE. SHE

1 SHOWED ME AROUND TO WHERE THIS ACT OCCURRED AND THE VARIOUS
2 PLACES AND THINGS ON THE FLOOR AND THE EVIDENCE THAT WAS --
3 THAT WAS OBSERVED BY ME.

4 Q. OKAY. AND WHAT IS THE IMPORTANCE OF GETTING ALL OF THE
5 FACTS FROM THE PERSON AND WHERE EVERYTHING HAPPENED AND
6 EXACTLY WHAT HAPPENED?

7 A. SO THAT WE CAN MAKE SURE AND JUST DOCUMENT EVERYTHING
8 THE BEST WE CAN.

9 Q. OKAY. ARE THERE SOME CALLS THAT YOU GO TO THAT YOU
10 DON'T CALL AN INVESTIGATOR TO COME PROCESS A SCENE?

11 A. SOME THAT WE DON'T CALL?

12 Q. CORRECT.

13 A. THAT'S CORRECT. THERE'S SOME CALLS THAT WE DO NOT NEED
14 AN INVESTIGATOR.

15 Q. OKAY. AND SO HOW DO YOU DETERMINE WHETHER OR NOT YOU
16 NEED AN INVESTIGATOR OUT TO THE SCENE?

17 A. DUE TO THE SERIOUSNESS OF THE CRIME.

18 Q. OKAY. ARE THERE CRIMES THAT THERE IS NOT GOING TO BE
19 ANY EVIDENCE TO COLLECT?

20 A. YES.

21 Q. OKAY. SO DO YOU NEED TO KNOW THAT INFORMATION FROM THE
22 VICTIM OR THE WITNESS ALSO?

23 A. YES, I DO.

24 Q. OKAY. SO YOU ACTUALLY THEN GO INTO THE HOME WITH
25 TABITHA?

1 A. THAT'S CORRECT.

2 Q. OKAY. AND WHAT HAPPENS THEN INSIDE THE HOME WITH
3 TABITHA?

4 A. SHE SHOWS ME AROUND THE VARIOUS AREAS: THE KITCHEN
5 WHERE THERE WAS SOME CLUMPS OF HAIR, SOME SCUFF MARKS ON THE
6 FLOOR, AND AN AREA IN THE BEDROOM WHERE THERE WAS A HOLE IN
7 THE WALL CAUSED BY WHERE SHE WAS PUSHED AGAINST THE TABLE.
8 AND ONCE SHE SHOWED ME ALL THAT, SHE ALSO SHOWED ME THE -- A
9 BLANKET OR COMFORTER WHICH WAS ON THE FLOOR WHERE THIS ACT
10 TOOK PLACE, AND THEN AT THAT POINT I NOTIFIED THE ON-CALL
11 INVESTIGATOR.

12 Q. OKAY. LET'S GO TO THE KITCHEN FIRST AND WHETHER OR NOT,
13 YOU KNOW, AN INVESTIGATOR NEEDS TO BE CALLED OR ANYTHING
14 NEEDS TO BE COLLECTED. WHAT DID SHE TELL YOU SPECIFICALLY
15 HAPPENED IN THE KITCHEN?

16 A. THAT SHE WAS PUSHED DOWN ON TO THE FLOOR.

17 Q. OKAY. AND ANYTHING ELSE?

18 A. THAT HER HAIR WAS PULLED.

19 Q. OKAY. AND WHAT ELSE?

20 A. SHE HAD INDICATED THAT SHE WAS SCREAMING---

21 MS. OWINGS: OBJECTION, YOUR HONOR.

22 THE COURT: SUSTAINED.

23 BY MS. FENT:

24 Q. WOULD IT HELP YOU TO REFRESH YOUR MEMORY TO LOOK AT YOUR
25 REPORT ABOUT WHAT SHE TOLD YOU ABOUT WHAT ELSE HAPPENED IN

1 THE KITCHEN?

2 A. HE WAS CHOKING HER. I'M SORRY.

3 THE COURT: THE OBJECTION WAS AS TO HEARSAY, AND IT IS
4 SUSTAINED.

5 MS. FENT: I JUST ASKED HIM TO REFRESH. HIS RESPONSE
6 WAS NON-RESPONSIVE TO MY -- TO MY QUESTION. I APOLOGIZE.
7 AFTER LOOKING AT YOUR REPORT AND REFRESHING YOUR MEMORY, DO
8 YOU RECALL WHAT ELSE SHE TOLD YOU HAPPENED?

9 MS. PAYNE: OBJECTION.

10 THE COURT: SUSTAINED.

11 BY MS. FENT:

12 Q. DID THAT REFRESH YOUR MEMORY TO LOOK AT THE REPORT?

13 A. YES.

14 Q. OKAY. WHAT WAS IT THAT SHE TOLD YOU?

15 MS. OWINGS: OBJECTION.

16 THE COURT: SUSTAINED.

17 MS. FENT: WELL, YOUR HONOR, IT'S FOR THE PURPOSES OF---

18 THE COURT: I'VE RULED. I'VE RULED. MOVE ON.

19 BY MS. FENT:

20 Q. IN THE BEDROOM THEN YOU SAID THAT SHE POINTED OUT AN
21 ITEM IN THE BEDROOM.

22 A. YES.

23 THE COURT: LET ME SEE Y'ALL FOR A SECOND, PLEASE.

24 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

25

1 BY MS. FENT:

2 Q. I'M GOING TO SHOW YOU EXHIBIT 26. DID YOU RECOGNIZE
3 THAT?

4 A. YES, MA'AM.

5 Q. AND WHAT IS THAT?

6 A. THAT IS THE KITCHEN. THAT'S THE SIDE DOOR GOING OUTSIDE
7 THE RESIDENCE.

8 Q. OKAY. AND EXHIBITS 27, 28, AND 29, DO YOU RECOGNIZE
9 THOSE?

10 A. YES.

11 Q. AND WHAT ARE THOSE?

12 A. THAT'S THE SAME KITCHEN FLOOR IN THAT FIRST PICTURE WITH
13 CLUMPS OF HAIR ON THE FLOOR.

14 Q. OKAY. AND YOU ACTUALLY -- DID YOU ACTUALLY SEE THIS
15 HAIR ON THE FLOOR?

16 A. I DID.

17 Q. OKAY. IN THE BEDROOM, I'M GOING TO SHOW YOU EXHIBIT 31
18 AND 32. DO YOU RECOGNIZE THOSE?

19 A. YES.

20 Q. OKAY. AND WHAT IS THAT THAT'S SHOWN IN THOSE?

21 A. THAT'S A BEDSIDE TABLE WITH A HOLE IN THE WALL
22 CONSISTENT WITH THE EDGE OF THE TABLE.

23 Q. OKAY. AND DID YOU ACTUALLY OBSERVE THAT?

24 A. YES, I DID.

25 Q. OKAY. THE NEXT ROOM THAT YOU WENT INTO WAS WHAT? DID

1 YOU GO INTO THE OTHER BEDROOM? WAS THERE ANYTHING DESCRIBED
2 IN THE OTHER BEDROOM?

3 A. NO.

4 Q. OKAY.

5 A. THAT WAS THE CHILD'S BEDROOM.

6 Q. OKAY.

7 A. IT WAS THE ONLY OTHER BEDROOM IN THE HOUSE.

8 Q. AND THEN IN THE LIVING ROOM WHAT DID THE VICTIM INDICATE
9 TO YOU OCCURRED IN THE LIVING ROOM?

10 MS. OWINGS: OBJECTION, YOUR HONOR. HEARSAY.

11 MS. FENT: IT FITS THE TIME-AND-PLACE EXCEPTION.

12 THE COURT: THERE IS A -- I'M GOING TO SUSTAIN THE
13 OBJECTION, AND I'M GOING TO ALLOW YOU TO REPHRASE THE
14 QUESTION IN SUCH A WAY AS TO LIMIT THE ANSWER TO FIT WITHIN
15 THE EXCEPTION THAT YOU HAVE REFERENCED.

16 MS. FENT: OKAY.

17 MS. PAYNE: THANK YOU, YOUR HONOR.

18 BY MS. FENT:

19 Q. INITIALLY YOU SAID THAT YOU WERE CALLED OUT -- THE
20 NATURE OF THE CALL WAS A SEXUAL ASSAULT.

21 A. THAT'S CORRECT.

22 Q. DID THE VICTIM INDICATE TO YOU WHERE THIS SEXUAL ASSAULT
23 OCCURRED?

24 A. YES, SHE DID.

25 Q. AND WHERE WAS THAT?

1 A. IN THE LIVING ROOM ON THE FLOOR.

2 Q. STATE'S EXHIBIT 21, 22, AND 23, WHAT DO THOSE SHOW?

3 A. THAT IS THE LIVING ROOM. THAT'S THE WINDOW LOOKING OUT
4 THE FRONT OF THE DOOR. JUST TO THE RIGHT OF THIS PICTURE
5 WOULD BE THE FRONT DOOR TO THE HOUSE.

6 Q. OKAY. AND THESE SHOW THE COMFORTER AND THE PILLOW THAT
7 WERE POINTED OUT TO YOU?

8 A. YES, THEY DO.

9 Q. OKAY.

10 A. AND ALSO A TOWEL.

11 Q. OKAY. BASED UPON THE FACT YOU HAD HAIRS THAT NEEDED TO
12 BE PROCESSED AND THE COMFORTER AND PILLOW, WHO DO YOU CALL
13 THEN?

14 A. THE INVESTIGATOR.

15 Q. AND DO YOU RECALL WHO THE ON-CALL INVESTIGATOR WAS AT
16 THAT TIME?

17 A. THAT WAS INVESTIGATOR VARN.

18 Q. OKAY. AS YOU WERE WALKING THROUGH THIS HOUSE WITH
19 TABITHA, DO YOU TOUCH ANY OF THESE ITEMS OR ANY ITEMS IN THE
20 HOUSE?

21 A. I DID NOT.

22 Q. AND DID YOU SEE TABITHA TOUCH ANY OF THESE ITEMS IN THE
23 HOUSE?

24 A. I DID NOT.

25 Q. OKAY. WHAT BASICALLY THEN HAPPENS OR DO YOU RECALL

1 ABOUT HOW LONG IT WAS BEFORE INVESTIGATOR VARN SHOWED UP?

2 A. I'M NOT SURE THE EXACT TIME THAT SHE HAD SHOWED UP, BUT
3 ONCE SHE DID SHOW UP WE CLEARED ABOUT 5 -- A QUARTER AFTER 5
4 THAT AFTERNOON.

5 Q. OKAY. AND BASICALLY WHAT WERE THE DECISIONS OR WHAT
6 HAPPENS NEXT WITH TABITHA, WITH THE VICTIM?

7 A. SHE WAS TAKEN BY THE VICTIM ADVOCATE TO THE HOSPITAL TO
8 START EVIDENCE COLLECTION.

9 Q. OKAY. AND WHO WAS THAT VICTIM ADVOCATE?

10 A. MARY JANE SCOTT.

11 Q. AND DO YOU SEE HER IN THE COURTROOM?

12 A. YES, I DO.

13 Q. OKAY. WHO THEN ACTUALLY TAKES THESE PHOTOGRAPHS?

14 A. INVESTIGATOR VARN.

15 Q. AND HOW DID SHE KNOW -- IF TABITHA IS NOT THERE, HOW
16 DOES SHE KNOW WHAT NEEDS TO BE PHOTOGRAPHED?

17 A. I TOLD HER AND PASSED ON THE INFORMATION TO HER.

18 Q. OKAY. AND LOOKING AT STATE'S EXHIBIT NUMBER 25, WHOSE
19 HAND IS THAT IN THAT PHOTOGRAPH?

20 A. THAT IS MY HAND.

21 Q. OKAY. WITH SOME TYPE OF A GLOVE ON?

22 A. YES, MA'AM, RUBBER GLOVE.

23 Q. OKAY. AND DID YOU ALL -- DID YOU LEAVE THE HOME WITH
24 INVESTIGATOR VARN OR BEFORE SHE WAS FINISHED?

25 A. WE LEFT AT THE SAME TIME.

1 Q. OKAY. AND YOU SAID WHAT TIME WAS THAT APPROXIMATELY?

2 A. ABOUT A QUARTER AFTER 5.

3 MS. FENT: OKAY. NO FURTHER QUESTIONS AT THIS TIME.

4 MS. PAYNE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
5 COURT?

6 CROSS-EXAMINATION

7 BY MS. PAYNE:

8 Q. GOOD MORNING, OFFICER SHUMARD.

9 A. GOOD MORNING.

10 Q. YOU TESTIFIED YOU'VE BEEN WITH THE FOREST ACRES POLICE
11 DEPARTMENT FOR 14 YEARS?

12 A. THAT'S CORRECT.

13 Q. SO YOU'VE HAD A LOT OF TRAINING DURING THOSE 14 YEARS.

14 A. YES, I HAVE.

15 Q. AND YOU'VE HAD TRAINING IN COMPLETING INCIDENT REPORTS.
16 ISN'T THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. YOU MAKE SURE THAT THEY'RE THOROUGH? YES?

19 A. YES.

20 Q. YOU MAKE SURE THAT THEY'RE ACCURATE?

21 A. THAT'S CORRECT.

22 Q. FACT-SPECIFIC?

23 A. AS BEST AS POSSIBLE.

24 Q. AND WHO PROVIDES THAT INFORMATION TO YOU?

25 A. THE VICTIM.

1 Q. OKAY. ON YOUR INCIDENT REPORT FROM APRIL 3RD OF 2005
2 MS. BRAZELL TOLD YOU THAT THIS INCIDENT ALLEGEDLY OCCURRED AT
3 4:00 IN THE MORNING; CORRECT?

4 A. THAT'S CORRECT.

5 Q. UNTIL 11:00? IS THAT CORRECT?

6 A. THAT'S WHAT SHE STATED, YES.

7 Q. SHE ALSO -- AND YOU TESTIFIED THAT YOU WEREN'T
8 DISPATCHED UNTIL 2:22 P.M.; ISN'T THAT CORRECT?

9 A. THAT'S CORRECT.

10 Q. YOU ALSO NOTE ON YOUR INCIDENT REPORT NO VISIBLE
11 INJURIES.

12 A. CORRECT.

13 Q. YOU ALSO INDICATE ON YOUR INCIDENT REPORT THAT IT WAS
14 YOUR UNDERSTANDING THAT TABITHA BRAZELL CALLED THE POLICE
15 AFTER SHE WAS ENCOURAGED BY LAURA WEIDMAN; ISN'T THAT
16 CORRECT?

17 A. THAT'S CORRECT.

18 MS. PAYNE: OKAY. BEG THE COURT'S INDULGENCE. NO
19 FURTHER QUESTIONS.

20 REDIRECT EXAMINATION

21 BY MS. FENT:

22 Q. WHEN YOU SPOKE WITH TABITHA, DID SHE HAVE HER CLOTHES
23 ON?

24 A. YES, SHE DID.

25 Q. I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER 6.

1 MS. PAYNE: OBJECTION, YOUR HONOR.

2 MS. FENT: SHE OPENED THE DOOR REGARDING VISIBLE
3 INJURIES.

4 THE COURT: WAIT A MINUTE. WHAT'S THE BASIS OF THE
5 OBJECTION?

6 MS. OWINGS: CAN WE APPROACH?

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

8 BY MS. FENT:

9 Q. IF LAURA (SIC) WAS CLOTHED WHEN YOU SAW HER, YOU WOULD
10 NOT HAVE SEEN THIS INJURY ON HER BACK THAT'S SHOWN IN STATE'S
11 EXHIBIT NUMBER 6, WOULD YOU HAVE?

12 A. I WOULD NOT HAVE SEEN THAT, NO.

13 Q. AND THAT IS ONE OF THE PURPOSES OF SENDING A VICTIM FOR
14 A SEXUAL ASSAULT EXAMINATION, ISN'T IT?

15 A. THAT'S CORRECT.

16 MS. FENT: NO FURTHER QUESTIONS.

17 MS. PAYNE: NO QUESTIONS.

18 THE COURT: YOU CAN STEP DOWN, SIR.

19 THE WITNESS: THANK YOU, YOUR HONOR.

20 MS. FENT: MAY THIS WITNESS BE EXCUSED?

21 THE COURT: YOU MAY.

22 THE WITNESS: THANK YOU, YOUR HONOR.

23 MS. SHIPLEY: THE STATE CALLS INVESTIGATOR CHRYSTIE
24 VARN.

25 CHRYSTAL L. VARN, AFTER BEING DULY SWORN, TESTIFIED

1 AS FOLLOWS:

2 THE CLERK: PLEASE HAVE A SEAT HERE. STATE YOUR FULL
3 NAME FOR THE RECORD.

4 THE WITNESS: CHRYSTAL LYNN VARN.

5 DIRECT EXAMINATION

6 BY MS. SHIPLEY:

7 Q. MS. VARN, CAN YOU TELL THE JURY WHERE YOU'RE LIVING NOW?

8 A. I'M IN GREENSBORO, NORTH CAROLINA.

9 Q. AND ARE YOU STILL IN LAW ENFORCEMENT OR---

10 A. NO, I'M OUT OF LAW ENFORCEMENT.

11 Q. OUT OF LAW ENFORCEMENT. AND HOW LONG AGO DID YOU MOVE
12 TO NORTH CAROLINA?

13 A. APPROXIMATELY A YEAR AGO.

14 Q. AND PRIOR TO THAT WHERE DID YOU WORK?

15 A. FOREST ACRES POLICE DEPARTMENT.

16 Q. AND HOW LONG HAD YOU WORKED THERE?

17 A. ALMOST 10 YEARS.

18 Q. WHAT WERE YOUR DUTIES WHEN YOU WERE THERE IN 2005?

19 A. I WAS AN INVESTIGATOR.

20 Q. HOW LONG WERE YOU AN INVESTIGATOR?

21 A. APPROXIMATELY THREE AND A HALF YEARS.

22 Q. AND EXPLAIN, PLEASE, FOR THE JURY WHAT YOUR DUTIES AND
23 OBLIGATIONS ARE AS AN INVESTIGATOR AT THE TIME IN THE FOREST
24 ACRES POLICE DEPARTMENT.

25 A. I WAS AN INVESTIGATOR. YOU INVESTIGATE VARIOUS CRIMES

1 THAT COME IN THROUGH THE DEPARTMENT. WE HAVE AN ON-CALL
2 LIST, AND ANY TIME THERE'S A SERIOUS CRIME, THEN WE'RE CALLED
3 OUT TO THE SCENE AND COLLECT EVIDENCE.

4 Q. AND RIGHT NOW YOU'RE EXPECTING; IS THAT RIGHT?

5 A. YES, I AM.

6 Q. WHEN IS YOUR DUE DATE?

7 A. JUNE 27TH.

8 Q. GOODNESS. NOW, DID YOU RECEIVE ANY TRAINING IN THE
9 COLLECTION OF EVIDENCE FROM A CRIME SCENE AND SO FORTH?

10 A. YES. I RECEIVED BASIC DETECTIVE AND CRIME SCENE
11 ANALYSIS AT THE ACADEMY.

12 Q. AND ALSO HOW MANY CRIME SCENES DO YOU THINK YOU
13 RESPONDED TO WHILE YOU WERE AN INVESTIGATOR WITH THE FOREST
14 ACRES POLICE DEPARTMENT?

15 A. OH, WOW. THREE AND A HALF YEARS... I'D HAVE TO SAY AT
16 LEAST A HUNDRED, SOMETHING LIKE THAT.

17 Q. AND ON EVERY CALL DID YOU HAVE TO COLLECT EVIDENCE?

18 A. NOT EVERY CALL.

19 Q. NOT EVERY CALL. NOW, WHEN YOU FIRST GET INVOLVED IN A
20 CASE, EXPLAIN WHAT IT IS YOU WANTED -- YOUR FIRST STEP, WHAT
21 DO YOU DO IN ORDER TO PROCEED WITH YOUR INVESTIGATION?

22 A. I TALK WITH THE -- IF THERE'S AN OFFICER THERE, I TALK
23 WITH THE OFFICER, TRY TO GET A BREAKDOWN OF WHAT EXACTLY IS
24 GOING ON, AND THEN WHEN I ENTER A RESIDENCE, PER SE, I LOOK
25 FOR THE EVIDENCE. I TAKE PICTURES IMMEDIATELY BEFORE I START

1 TOUCHING ANYTHING, AND AS SOON AS I TAKE PICTURES, THEN I CAN
2 GO BACK AND COLLECT THE EVIDENCE THAT'S NEEDED.

3 Q. AND DO YOU INTERVIEW ANY WITNESSES AT THAT TIME?

4 A. YES. IF THE VICTIM IS THERE, I TALK TO THE VICTIM AND
5 ANY KIND OF WITNESSES OR ANYBODY ELSE THAT MIGHT HAVE SOME
6 KNOWLEDGE OF IT.

7 Q. AND WHEN YOU RESPONDED, DO YOU RECALL BEING --
8 RESPONDING TO ROAD?

9 A. YES, I DID.

10 Q. AND IS THAT IN RICHLAND COUNTY?

11 A. YES, IT IS.

12 Q. AND CAN YOU EXPLAIN FOR THE JURY WHAT IT IS YOU WERE
13 DOING THAT DAY ON SUNDAY, APRIL THE 3RD?

14 A. I WAS CALLED OUT FOR THE -- TO DO A CRIME SCENE FOR THE
15 -- THERE WAS A RAPE CALL.

16 Q. AND EXACTLY HOW LONG DID IT TAKE YOU TO GET THERE ONCE
17 YOU WERE NOTIFIED?

18 A. AS SOON AS I GET THE CALL USUALLY -- I LIVED ACROSS TOWN
19 AT THE TIME, SO IT TOOK ME PROBABLY APPROXIMATELY 30 MINUTES
20 TO ACTUALLY GET TO THE SCENE.

21 Q. ALL RIGHT. AND SO IF YOU WOULD HAVE BEEN CALLED ABOUT
22 2:30 IN THE AFTERNOON, WHAT TIME DO YOU THINK YOU WOULD HAVE
23 ARRIVED?

24 A. PROBABLY A LITTLE AFTER 3.

25 Q. WHEN YOU FIRST ARRIVED AT ROAD, WHO DO YOU

CHRYSTAL VARN - DIRECT EXAM BY MS. SHIPLEY

253

1 MAKE CONTACT WITH FIRST?

2 A. OFFICER SHUMARD.

3 Q. WHAT DOES -- AND WITHOUT GOING INTO THE DETAILS OF WHAT
4 HE SAID, WERE YOU BRIEFED ABOUT WHAT HAPPENED---

5 A. YES, I WAS.

6 Q. ---AT THIS RESIDENCE?

7 A. YES.

8 Q. AND DID OFFICER SHUMARD TAKE YOU INTO THE RESIDENCE?

9 A. YES, HE DID.

10 Q. AND WHAT DID HE DO ONCE YOU WERE INSIDE?

11 A. HE SHOWED ME THE LIVING ROOM AND KITCHEN AREA AND
12 BEDROOM AND THROUGHOUT THE WHOLE HOUSE, AND THEN I PROCEEDED
13 TO TAKE PICTURES.

14 Q. AND WHEN YOU WERE WALKING -- WHICH ROOM DID YOU COME TO
15 FIRST WHEN YOU ENTERED THE HOUSE?

16 A. AS SOON AS YOU ENTER THE HOUSE, YOU ENTER INTO THE
17 LIVING ROOM AREA WHERE I COULD OBSERVE THE COMFORTER AND THE
18 PILLOW AND THE TOWEL IS LAYING ON THE FLOOR, AND THEN WE
19 WENT -- YOU TURN LEFT AND YOU SEE THERE'S BOXES HERE, BOXES
20 THAT WERE, YOU KNOW, TURNED OVER ENTERING THE KITCHEN AREA.
21 WHEN YOU GET INTO THE KITCHEN AREA, YOU COULD SEE SCUFF MARKS
22 ON THE FLOOR. THERE WERE CLUMPS OF HAIR ALL OVER THE FLOOR.

23 WE BACKED OUT OF THE KITCHEN AREA, WALKED BACK TOWARD
24 THE BEDROOM. YOU SEE THE BED LAYING THERE AND THEN BESIDE
25 THE BED A NIGHTSTAND, THE HOLE BEHIND THE NIGHTSTAND WHERE

1 SHE WAS PUSHED INTO THE NIGHTSTAND. TO THE RIGHT OF THE
2 BEDROOM IS A BATHROOM. NOTHING WAS DISTURBED IN THE
3 BATHROOM. WALKING THROUGH THAT BATHROOM GOES BACK TO THE
4 OTHER BEDROOM WHICH IS THE BABY'S ROOM, AND NOTHING WAS
5 DISTURBED IN THE BABY'S ROOM.

6 Q. OKAY. AND ONCE YOU WERE -- AFTER THE WALK-THROUGH WITH
7 OFFICER SHUMARD, DID YOU THEN BEGIN TO PHOTOGRAPH THE SCENE?

8 A. YES.

9 Q. AND ALL OF THESE PHOTOGRAPHS THAT OFFICER SHUMARD JUST
10 TESTIFIED TO, WERE THESE TAKEN BY YOU?

11 A. YES, THEY WERE.

12 Q. AND DO THESE ACCURATELY DEPICT WHAT YOU OBSERVED COMING
13 INTO ROAD?

14 A. YES, THEY DO.

15 Q. AND STATE'S EXHIBIT 23, DO YOU SEE AN ITEM IN THAT
16 PHOTOGRAPH?

17 A. YES. THAT IS THE TOWEL IN THE LIVING ROOM.

18 Q. OKAY. AND APPROXIMATELY ON THIS CHART WHERE WOULD THAT
19 TOWEL HAVE BEEN LOCATED?

20 A. LET'S SEE. THIS IS THE FRONT DOOR.

21 Q. UH-HUH.

22 A. THE TOWEL WAS RIGHT HERE AND THERE'S A COMFORTER AND
23 PILLOW RIGHT HERE.

24 Q. ALL RIGHT. THANK YOU. AND ONCE YOU PHOTOGRAPHED THAT
25 TOWEL AND THE COMFORTER AND THE PILLOW, WHAT DID YOU DO WITH

1 THOSE ITEMS?

2 A. I BAGGED THEM.

3 Q. AND ARE THESE ITEMS -- THIS IS SEE-THROUGH BAGS.

4 STATE'S NUMBER 38 AND 39, ARE THOSE THE ITEMS---

5 A. YEAH, THAT'S THE COMFORTER AND THE PILLOW, AND THEN THE
6 TOWEL ACTUALLY WENT INTO A BIOHAZARD BAG.

7 Q. WHY IS THAT THAT IT WENT INTO A BIOHAZARD BAG?

8 A. BECAUSE THERE WAS SEMEN ON IT.

9 Q. AND ONCE YOU COLLECTED THESE ITEMS, DID YOU ALSO COLLECT
10 ANY OTHER ITEMS?

11 A. YES. I COLLECTED THE HAIR THAT WAS IN THE KITCHEN.

12 Q. AND I'M SHOWING YOU WHAT'S BEEN MARKED STATE'S 33.

13 A. YES.

14 Q. DO YOU RECOGNIZE THAT?

15 A. YES. THAT'S THE HAIR I GOT FROM THE KITCHEN.

16 Q. AND DO YOU SEE YOUR HANDWRITING ON THAT PACKAGE?

17 A. YES, IT IS.

18 MS. SHIPLEY: YOUR HONOR, AT THIS TIME THE STATE SEEKS
19 TO INTRODUCE NUMBER 33 INTO EVIDENCE.

20 MS. OWINGS: WITHOUT OBJECTION.

21 THE COURT: IT'S ADMITTED.

22 (STATE'S EXHIBIT 33 WAS RECEIVED IN EVIDENCE.)

23 BY MS. SHIPLEY:

24 Q. AND THIS IS THE HAIR THAT YOU COLLECTED FROM WHAT ROOM?

25 A. THE KITCHEN. IT WAS ON THE FLOOR.

1 Q. ALSO YOU PHOTOGRAPHED OTHER ROOMS THAT WERE NOT
2 DISTURBED DURING THIS CRIME. IS THAT CORRECT?

3 A. YES, I DID.

4 Q. I'M SHOWING YOU STATE'S NUMBER 19.

5 A. THAT'S THE BATHROOM.

6 Q. HOW MANY TOOTHBRUSHES DO YOU SEE IN THAT BATHROOM?

7 A. JUST ONE.

8 Q. OKAY. THANK YOU, MA'AM. AND THEN ALSO I'M GOING TO
9 BE -- I'M SHOWING YOU WHAT'S BEEN MARKED STATE'S NUMBER 31
10 AND 32. DID YOU TAKE THESE PHOTOGRAPHS?

11 A. YES, I DID.

12 Q. AND WHAT ARE THOSE PHOTOGRAPHS OF?

13 A. THIS IS IN THE BEDROOM AND THE NIGHTSTAND BESIDE THE BED
14 AND THE HOLE IN THE WALL FROM WHERE SHE WAS PUSHED INTO THE
15 NIGHTSTAND AND THE NIGHTSTAND WENT INTO THE WALL.

16 Q. OKAY. THANK YOU. SO AFTER YOU PHOTOGRAPHED THE SCENE,
17 THAT IS WHEN YOU COLLECTED THE EVIDENCE. IS THAT CORRECT?

18 A. THAT IS CORRECT.

19 Q. AND WHAT MEASURES DO YOU TAKE TO MAKE SURE THAT THERE'S
20 NO CROSS-CONTAMINATION AND SO FORTH?

21 A. I BAG EACH PIECE INDIVIDUALLY, TAPE IT UP OR SEAL IT AS
22 BEST I CAN. LIKE WITH THE COMFORTER, I JUST TIED IT UP AND
23 THEN PUT IT IN MY PATROL CAR.

24 Q. AFTER YOU COLLECT AT THE SCENE, HOW LONG DO YOU THINK
25 THAT TOOK? AFTER YOU COLLECT THE EVIDENCE AT THE SCENE, HOW

1 LONG---

2 A. HOW LONG---

3 Q. ---DO YOU THINK IT TOOK YOU TO PHOTOGRAPH AND COLLECT
4 EVERYTHING?

5 A. PROBABLY ABOUT AN HOUR OR SO.

6 Q. WHERE DID YOU GO FROM THERE?

7 A. WENT TO THE HOSPITAL, RICHLAND MEMORIAL HOSPITAL.

8 Q. AND WHY DID YOU GO THERE?

9 A. THE VICTIM HAD ALREADY BEEN TAKEN DOWN TO THE HOSPITAL
10 BY THE VICTIM'S ADVOCATE FOR A RAPE PROTOCOL KIT, SO I WANTED
11 TO GO DOWN TO THE HOSPITAL AND INTERVIEW HER.

12 Q. AND WHEN YOU ARRIVED, WAS SHE ALREADY BEING EXAMINED OR
13 WHERE WAS SHE WHEN YOU MET HER?

14 A. SHE WAS IN THE BACK ROOM. I BELIEVE SHE WAS WAITING TO
15 BE EXAMINED BECAUSE THEY HAD TO CALL IN THE S.A.N.E. NURSE,
16 BUT SHE WAS IN THE BACK OF THE -- OR THE BACK ROOM OF THE
17 HOSPITAL.

18 Q. AND DID YOU SPEAK WITH HER AT THAT TIME?

19 A. YES, I DID.

20 Q. AND WITHOUT GOING INTO DETAILS OF WHAT SHE SAID, ONLY
21 LIMITED TO TIME AND PLACE WHAT DID SHE REPORT TO YOU?

22 A. AT 4 A.M. THE DEFENDANT CAME OVER. A SEXUAL ASSAULT
23 OCCURRED.

24 Q. IN WHAT ROOM?

25 A. IN THE LIVING ROOM.

1 Q. OF WHAT HOUSE?

2 A. OF THE --

3 Q. OKAY. AND DID YOU SIT DOWN AND -- EXPLAIN FOR THE JURY
4 THIS CONVERSATION, YOU KNOW, THE FORMAT, IF YOU WILL.

5 A. I TRY TO GET HER TO TELL ME AS MUCH DETAIL AS SHE CAN AS
6 THE EVENT'S TAKING PLACE. WE STARTED FROM THE VERY BEGINNING
7 WHEN HE GOT TO THE HOUSE, HOW HE GOT INTO THE HOUSE, WHAT
8 KIND OF ASSAULT HAD OCCURRED OR ANY KIND OF PHYSICAL ASSAULT
9 OCCURRING, GO THROUGH ALL THE DETAIL THAT I CAN AND GET ALL
10 THE INFORMATION FROM HER.

11 Q. AND DID YOU TAKE HANDWRITTEN NOTES DURING THIS
12 CONVERSATION?

13 A. YES, I DID.

14 Q. APPROXIMATELY HOW LONG ARE YOUR NOTES?

15 A. I BELIEVE THERE ARE THREE PAGES. NO, FOUR PAGES.

16 Q. FOUR PAGES? THEN ALSO WERE YOU AWARE THAT OFFICER
17 SHUMARD HAD ALREADY GIVEN HER A STATEMENT SHEET?

18 A. YES.

19 Q. AND HAD SHE ALREADY COMPLETED THAT BY THE TIME YOU MET
20 WITH HER?

21 A. SHE DID. I ACTUALLY WENT OVER THE STATEMENT WITH HER
22 AND HAD HER SIGN IT IN FRONT OF ME.

23 Q. AND WHY DID YOU HAVE HER SIGN IT IN FRONT OF YOU?

24 A. BECAUSE I'M A NOTARY AND SWEAR -- THAT'S HER SWEARING
25 MAKING SURE THAT THAT'S EVERYTHING TRUE AND CORRECT TO THE

1 BEST OF HER KNOWLEDGE.

2 Q. OKAY. AND I'M GOING TO SHOW YOU THIS DOCUMENT. DID YOU
3 SIGN THIS DOCUMENT?

4 A. YES, I DID.

5 Q. OKAY. AND HOW MANY PAGE -- WHAT IS THAT DOCUMENT, BY
6 THE WAY?

7 A. THIS IS HER STATEMENT.

8 Q. AND HOW MANY PAGES IS THAT?

9 A. IT'S ONE, TWO, THREE, FOUR.

10 Q. OKAY. AND THE STATEMENT THAT YOU READ TO HER, WAS THAT
11 CONSISTENT OR INCONSISTENT WITH WHAT SHE TOLD YOU IN THE
12 CONVERSATION THAT YOU TOOK NOTES ON?

13 A. IT WAS VERY CONSISTENT.

14 Q. APPROXIMATELY WHAT TIME DID YOU THEN LEAVE THE HOSPITAL
15 AND WHERE DID YOU GO?

16 A. I LEFT THE HOSPITAL. I TURNED IN THE EVIDENCE. I
17 BELIEVE IT WAS AROUND 9:00.

18 Q. I'M GOING TO SHOW YOU A DOCUMENT AND ASK YOU IF YOU
19 RECOGNIZE IT. WHAT IS THAT?

20 A. THAT'S MY LOG ENTRY FROM WHERE I TURNED THE EVIDENCE IN
21 TO OUR LAB ROOM AND THAT WAS AT 9:15.

22 Q. ON WHAT DAY?

23 A. ON APRIL THE 3RD.

24 Q. AND WHAT ITEMS DID YOU TURN IN?

25 A. ONE COMFORTER, ONE PILLOW, ONE HAND TOWEL, AND THE HAIR

1 FROM THE KITCHEN FLOOR.

2 Q. OKAY. THAT HAND TOWEL, DID YOU EVER HAVE CONTACT WITH
3 IT AFTER APRIL THE 3RD, 2005?

4 A. YES, I DID.

5 Q. AND WHAT DAY DID YOU HAVE CONTACT WITH THAT ITEM?

6 A. I GOT IT OUT OF THE EVIDENCE ROOM - I BELIEVE THAT WAS
7 JANUARY THE 9TH - AND TOOK IT OUT TO S.L.E.D.

8 Q. AND WHAT TIME ON JANUARY THE 9TH DID YOU COLLECT -- TAKE
9 THAT?

10 A. IT WAS 8:30 THAT MORNING.

11 Q. AND WHO WAS YOUR CUSTODIAN OF---

12 A. TINA JOHNSON.

13 Q. ---EVIDENCE? TINA JOHNSON. AND DID YOU GET IT FROM MS.
14 JOHNSON?

15 A. YES, I DID.

16 Q. AND BEFORE YOU WENT TO S.L.E.D. AND TOOK THAT HAND TOWEL
17 TO S.L.E.D., DID YOU HAVE TO STOP ANYWHERE ON YOUR WAY?

18 A. YES. I CAME UP HERE TO THE COURTHOUSE AND GOT THE
19 D.N.A. SAMPLES FROM THE DEFENDANT.

20 Q. AND CAN YOU EXPLAIN EXACTLY HOW YOU GOT HIS D.N.A.
21 SAMPLES?

22 A. IT'S A SWAB AND IT COMES IN A -- IT'S A Q-TIP AND I OPEN
23 THE PACKAGE WITHOUT TOUCHING THE Q-TIP AND HAVE THE DEFENDANT
24 ACTUALLY PULL THE Q-TIP OUT. HE'LL SWAB BOTH SIDES OF HIS
25 MOUTH. I'LL HAVE A BOX. HE SLIDES IT INTO THE BOX AND

1 CLOSES THE BOX AND THEN I TAKE IT. AND HE ACTUALLY DOES TWO
2 SWABS.

3 Q. AND DO YOU SEAL THOSE BOXES?

4 A. YES, I DO.

5 Q. AND WHAT -- DID YOU DO THAT TO MR. RATHBURN ON JANUARY
6 THE 9TH?

7 A. YES, I DID.

8 Q. AND HE CONSENTED FOR YOU TO TAKE HIS D.N.A.

9 A. YES, HE DID.

10 Q. AND AT THAT POINT WHERE DID YOU LEAVE -- WHERE DID YOU
11 GO WITH HIS SWABS OF D.N.A. AND THE HAND TOWEL?

12 A. I TOOK BOTH ITEMS OUT TO S.L.E.D.

13 Q. AND AT ANY TIME DID YOU CONTAMINATE THE TOWEL WITH
14 THE---

15 A. NO, I DIDN'T.

16 Q. ---SWABS---

17 A. NO, THEY'RE IN---

18 Q. ---AND THE SHIRT?

19 A. THEY'RE IN -- THEY'RE IN TWO SEPARATE CONTAINERS.

20 Q. OKAY. AND, AGAIN, HOW WAS THE TOWEL PACKAGED?

21 A. THE TOWEL WAS IN A BIOHAZARD BAG. IT'S IN A VERY THICK
22 RED BAG.

23 Q. AND IS IT -- WAS IT SEALED---

24 A. YES, IT IS.

25 Q. ---WHEN YOU COLLECTED IT?

1 A. YES.

2 Q. AND THEN FROM THERE WHERE DID YOU TAKE IT?

3 A. TO S.L.E.D.

4 Q. AND WHAT IS S.L.E.D.?

5 A. SOUTH CAROLINA LAW ENFORCEMENT DIVISION. THEY DO
6 ANALYSIS FOR D.N.A.

7 MS. SHIPLEY: OKAY. YOUR HONOR, IS IT APPROPRIATE AT
8 THIS TIME AS FAR AS THE CHAIN OF CUSTODY FOR THE ITEM OF THE
9 TOWEL AND THE ITEM OF D.N.A. OR DID YOU -- WOULD YOU LIKE TO
10 WAIT FOR THE FINAL PERSON WHO HANDLED IT?

11 THE COURT: IF Y'ALL AGREE TO DO IT NOW, I'LL DO IT NOW.

12 MS. OWINGS: THAT'S FINE, YOUR HONOR.

13 MS. SHIPLEY: OKAY.

14 THE COURT: ALL RIGHT. WHICH EXHIBIT IS IT?

15 MS. SHIPLEY: YOUR HONOR, WE HAVE YET TO MARK THE TOWEL.
16 THE EXPERT IS BRINGING THAT WITH HER BUT THE -- AND ALSO THE
17 D.N.A. SWABS THAT ARE DESTROYED AFTER EXAMINATION.

18 THE COURT: ALL RIGHT. WHICH ONE ARE WE DEALING WITH
19 RIGHT NOW? THAT'S -- THAT'S THE BOX.

20 MS. SHIPLEY: THE TOWEL -- SHE DID NOT HAVE CONTACT WITH
21 THE BOX, YOUR HONOR. WE CAN WAIT UNTIL THE D.N.A. IS HERE.

22 THE COURT: ALL RIGHT. WHAT'S -- IS THE -- IS THE TOWEL
23 IN EVIDENCE?

24 MS. SHIPLEY: NOT YET. SHE'S BRINGING IT WITH HER.

25 THE COURT: OKAY. WELL, I THINK THAT IT HAS TO BE DONE

1 WHEN THE TOWEL IS INTRODUCED INTO EVIDENCE.

2 MS. SHIPLEY: OKAY. WE'LL DO THAT, YOUR HONOR.

3 BY MS. SHIPLEY:

4 Q. AND AGAIN, INVESTIGATOR VARN, OR MS. VARN NOW, THAT IS
5 -- IS THAT THE TOWEL THAT YOU COLLECTED?

6 A. YES, IT IS.

7 Q. IS THAT THE TOWEL THAT YOU SEALED AND DELIVERED TO
8 S.L.E.D.?

9 A. YES, IT IS.

10 Q. WHEN YOU WERE SPEAKING WITH MS. BRAZELL, DID YOU TRY TO
11 COLLECT ANY INFORMATION ON THE DEFENDANT'S WHEREABOUTS?

12 A. YES, I DID.

13 Q. AND WHAT INFORMATION WERE YOU ABLE TO GATHER CONCERNING
14 HIS RESIDENCE?

15 A. SHE WAS NOT SURE WHERE HE WAS LIVING AT THE TIME.
16 BELIEVED TO BE LIVING WITH A FRIEND IN THE SHANDON AREA. SHE
17 KNEW THAT HE WORKED AT PENHALL OFF OF BLUFF ROAD AND GAVE ME
18 A DESCRIPTION OF HIS TRUCK, OF HIS WORK TRUCK, THAT HE
19 USUALLY DRIVES.

20 Q. ALL RIGHT. SO IF THIS -- YOU DIDN'T DROP THE EVIDENCE
21 OFF UNTIL 9:15 ON APRIL THE 3RD. WHEN IS IT THAT YOU
22 OBTAINED WARRANTS FOR HIS ARREST?

23 A. THE FOLLOWING DAY, THAT MONDAY.

24 Q. OKAY. SO WOULD THAT BE APRIL THE 4TH?

25 A. THAT'S CORRECT.

1 Q. AND WHEN I ASKED YOU ABOUT WARRANTS OBTAINED, WHO DO YOU
2 HAVE TO GO TO TO GET THE WARRANTS?

3 A. WE HAVE TO GET THE -- I HAVE TO GET THE WARRANTS TYPED
4 AND GET EVERYTHING TOGETHER AND THEN GO TO THE JUDGE AND GET
5 HIM TO SIGN IT.

6 Q. AND AT THAT POINT DID YOU MAKE PLANS WITH YOUR
7 COLLEAGUES AND DID YOU DISCUSS THE FACTS OF YOUR CASE WITH
8 INVESTIGATOR HINSON?

9 A. YES, I DID.

10 Q. AND SO HE WAS BRIEFED AS WELL AS TO WHAT WARRANTS YOU
11 WERE TO OBTAIN.

12 A. YES, HE WAS.

13 Q. WHAT WARRANTS DID YOU OBTAIN?

14 A. WE'VE GOT THE C.D.V. HIGH AND AGGRAVATED NATURE.

15 Q. AND WHAT DOES C.D.V. STAND FOR?

16 A. CRIMINAL DOMESTIC VIOLENCE.

17 Q. ALL RIGHT.

18 A. CRIMINAL SEXUAL CONDUCT FIRST DEGREE, BURGLARY FIRST
19 DEGREE, AND KIDNAPPING.

20 Q. AND YOU OBTAINED THESE WARRANTS BASED ON THE INFORMATION
21 PROVIDED TO YOU FROM THE VICTIM?

22 A. YES, AND FROM THE EVIDENCE FROM THE HOUSE.

23 Q. OKAY. AT THAT POINT DID YOU MAKE ARRANGEMENTS WITH
24 YOUR -- YOUR AGENCY TO PLAN FOR THE ARREST OF THE DEFENDANT?

25 A. YES, I DID.

1 Q. AND HOW DID YOU GO ABOUT DOING THAT?

2 A. BECAUSE WE WEREN'T SURE WHERE HE WAS LIVING, WE DECIDED
3 -- MYSELF AND ANOTHER COWORKER, INVESTIGATOR MARTIN, WE MET
4 AT I BELIEVE IT WAS 7 OR 7:30, AROUND THAT TIME, THE NEXT
5 MORNING TO TRY TO FIND THE DEFENDANT AT HIS WORK.

6 Q. OKAY. SO THAT WOULD BE ON THE 5TH?

7 A. THAT'S CORRECT.

8 Q. AT 7:30 YOU MET WITH WHO?

9 A. INVESTIGATOR MARTIN.

10 Q. AND WHAT'S HIS FIRST NAME?

11 A. JIMMY MARTIN.

12 Q. ALL RIGHT.

13 A. IT WAS ACTUALLY A LITTLE BIT BEFORE 7:30 BECAUSE TABITHA
14 HAD TOLD US THAT HE USUALLY GETS TO WORK AT 7:30. SO WE
15 WANTED TO GET THERE AND WAIT FOR HIS TRUCK TO SEE IF HE
16 ACTUALLY ARRIVED.

17 Q. SO I'LL JUST PUT 7-ISH.

18 A. OKAY.

19 Q. AND SO DID YOU GO TO HIS PLACE OF EMPLOYMENT?

20 A. YES, I DID.

21 Q. WERE YOU ABLE TO MAKE CONTACT WITH -- WAS HE THERE WHEN
22 YOU ARRIVED?

23 A. NO, HE WAS NOT THERE, AND WE ACTUALLY SAT ACROSS THE
24 STREET AND WAITED FOR AWHILE TO SEE IF HE SHOWED UP IN HIS
25 WORK TRUCK AND HE DID NOT.

1 Q. AND AT THAT POINT DID YOU MAKE CONTACT WITH ANY OF HIS
2 EMPLOYERS?

3 A. YES. WE WENT IN AND TALKED TO THE MANAGER, BRUCE
4 SEAWRIGHT. HE TOLD US THAT THE DEFENDANT WAS IN ORANGEBURG
5 ON A WORK SITE. WE TOLD HIM NOT TO TELL THE DEFENDANT
6 ANYTHING AND TO CALL US IMMEDIATELY WHEN HE GOT BACK TO THE
7 OFFICE.

8 Q. AND FROM THERE WHERE DID YOU GO?

9 A. WE WENT BACK TO OUR HEADQUARTERS.

10 Q. AND WHEN YOU WERE AT HEADQUARTERS, DID YOU RECEIVE ANY
11 CONTACT FROM MR. SEAWRIGHT?

12 A. YES, WE DID. HE CALLED AND SAID THAT THE DEFENDANT WAS
13 NOT ACTUALLY IN ORANGEBURG, THAT HE WAS AT STREET.
14 APPARENTLY THE WORK TRUCK HAD BROKEN DOWN, AND HE WAS
15 REQUESTING A TOW TRUCK.

16 Q. AND WHAT DID YOU DO BASED ON GETTING THAT ADDRESS?

17 A. JIMMY AND I WENT OVER TO THAT ADDRESS.

18 Q. AND WHERE -- WHOSE JURISDICTION IS THAT ADDRESS?

19 A. THAT'S ACTUALLY THE COLUMBIA POLICE DEPARTMENT'S
20 JURISDICTION.

21 Q. WHAT EFFORTS DID YOU MAKE TO CONTACT THEM ABOUT THIS?

22 A. WE CALLED THEM OR CALLED THEIR DISPATCH TO LET THEM KNOW
23 THAT WE HAD WARRANTS AND WE WERE GOING OVER TO THAT LOCATION
24 TO ARREST THE SUSPECT -- TO ARREST THE DEFENDANT.

25 Q. AT WHAT TIME DO YOU BELIEVE YOU ARRIVED AT THAT

1 LOCATION?

2 A. OH, IT PROBABLY WAS A LITTLE AFTER 8 OR 8:30.

3 Q. AND WHEN YOU ARRIVED, WERE THE COLUMBIA POLICE
4 DEPARTMENT OFFICERS THERE?

5 A. NO, THEY WERE -- THEY HAD NOT GOTTEN THERE YET.

6 Q. WERE YOU ABLE TO FIND THE LOCATION STREET?

7 A. YES, AND THE TRUCK WAS PARKED RIGHT OUT FRONT.

8 Q. AND HOW DO YOU KNOW IT WAS HIS TRUCK?

9 A. THE DESCRIPTION THAT TABITHA HAD GIVEN US.

10 Q. AND WERE THERE ANY MARKINGS OR WRITINGS ON THE TRUCK?

11 A. I CANNOT RECALL THAT. I'M NOT SURE. I REMEMBER IT WAS
12 RED AND A BIG DIESEL TRUCK.

13 Q. AND HOW DO YOU KNOW IT WAS A DIESEL TRUCK?

14 A. TABITHA TOLD US.

15 Q. WAS THIS TRUCK PARKED -- DESCRIBE WHETHER IT WAS RUNNING
16 OR NOT WHEN YOU ARRIVED THERE.

17 A. I BELIEVE IT WAS RUNNING AND IT WAS LIKE PARKED ON THE
18 STREET AND THEN THE HOUSE IS RIGHT HERE IN THE FRONT.

19 Q. AND DESCRIBE THE HOUSE, PLEASE.

20 A. FROM WHAT I CAN REMEMBER, THE DOOR WAS TO THE SIDE. I
21 BELIEVE IT WAS A TWO-STORY HOUSE. I DON'T REALLY REMEMBER.

22 Q. AND WHEN YOU -- WHERE DID YOU WAIT WHILE YOU WERE
23 WAITING FOR THE COLUMBIA POLICE DEPARTMENT TO ARRIVE?

24 A. WE WERE WAITING FOR THE COLUMBIA POLICE DEPARTMENT AND
25 THERE WERE SOME RED TIP BUSHES ON THIS SIDE. SO WE STOOD

1 BEHIND THE RED TIP BUSHES WAITING FOR THE POLICE DEPARTMENT
2 OR WAITING FOR COLUMBIA TO ARRIVE.

3 Q. AND IS THAT NORMAL PROTOCOL TO INFORM ANOTHER AGENCY
4 YOU'RE ABOUT TO DO SOMETHING IN THEIR JURISDICTION?

5 A. JUST IN CASE ANYTHING HAPPENS, YES, IT IS.

6 Q. AND DID -- AT ANY TIME DID YOU SEE THE DEFENDANT PRIOR
7 TO THEIR ARRIVAL?

8 A. YES, WE DID. HE ACTUALLY CAME OUT THE FRONT DOOR AND
9 WAS WALKING TOWARD THE PICKUP TRUCK, AND THAT'S WHERE WE
10 APPREHENDED HIM.

11 Q. DID -- AT ANY TIME DID YOU APPROACH THE PICKUP TRUCK AND
12 LOOK INSIDE HIS PICKUP TRUCK WHEN YOU ARRIVED TO THE SCENE?

13 A. I'M SURE WE MIGHT HAVE WALKED PAST IT OR LOOKED IN IT TO
14 MAKE SURE HE WASN'T IN THERE. I CAN'T RECALL IF WE ACTUALLY
15 LOOKED VERY DETAILED OR TOOK MUCH TIME TO LOOK INSIDE THE
16 TRUCK.

17 Q. AND WHEN YOU SAW HIM, WHAT WAS THE FIRST THING YOU DID?

18 A. WE ASKED HIM WHAT WAS HIS NAME, AND WE PLACED HIM UNDER
19 ARREST.

20 Q. SO YOU CONFIRMED HIS IDENTITY BEFORE YOU ARRESTED HIM.

21 A. YES, I DID.

22 Q. AND WHEN YOU ARRESTED HIM, WHAT DID YOU DO RIGHT AWAY?

23 A. I READ HIM HIS RIGHTS, ADVISED HIM OF HIS RIGHTS AND
24 READ IT OFF A FORM, AND THEN INVESTIGATOR MARTIN ACTUALLY
25 READ THE FOUR WARRANTS TO HIM.

1 Q. OKAY. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S
2 NUMBER 40. DO YOU RECOGNIZE THAT?

3 A. YES, I DO.

4 Q. AND WHAT IS IT?

5 A. THAT'S THE WAIVER OR ADVICE OF RIGHTS THAT I READ TO
6 HIM.

7 Q. AND HOW DO YOU KNOW THOSE ARE THE -- THAT THAT'S THE
8 FORM YOU USED?

9 A. THIS IS THE FORM THAT I ALWAYS USE IN EVERY CASE.

10 Q. OKAY. AND IS IT UNIQUE -- ANY UNIQUE INFORMATION
11 CONCERNING -- PERTAINING TO THIS CASE?

12 A. YES. I HAVE HIS INFORMATION, ADDRESS, SOCIAL SECURITY
13 NUMBER, AND EVERYTHING ELSE AND THE CASE NUMBER.

14 Q. WHERE WOULD YOU HAVE OBTAINED ALL THAT INFORMATION FROM?
15 WHO GAVE THAT TO YOU?

16 A. THE DEFENDANT DID.

17 Q. ALL RIGHT. AND SO WHAT INFORMATION DID HE PROVIDE TO
18 YOU?

19 A. THE ADDRESS, THE SOCIAL SECURITY NUMBER, AND DATE OF
20 BIRTH.

21 Q. WHAT ADDRESS DID HE GIVE YOU?

22 A. STREET.

23 Q. AND WHAT ABOUT HIS SOCIAL SECURITY NUMBER?

24 A. 240-41-6049.

25 Q. AND WHAT ABOUT HIS DATE OF BIRTH?

1 A. 1/1/77.

2 Q. AND DID YOU DOCUMENT THE DATE AND TIME THAT THIS
3 INFORMATION WAS GATHERED?

4 A. YES, I DID.

5 Q. WHAT TIME WAS IT?

6 A. IT IS 8:45 IN THE MORNING ON APRIL THE 5TH, 2005.

7 Q. INCIDENTALLY, WHY DIDN'T YOU JUST GO AHEAD AND ARREST
8 HIM ON THE 4TH OF APRIL?

9 A. WE WEREN'T EXACTLY SURE WHERE HE WAS GOING TO BE, AND BY
10 THE TIME I GOT THE WARRANTS TOGETHER ON MONDAY I DIDN'T KNOW
11 WHERE HE WAS GOING TO BE LOCATED OR WHERE HE WAS RESIDING.
12 SO WE JUST WAITED TO MAKE A PLAN IN THE MORNING.

13 Q. NOW, ONCE -- YOUR HONOR, AT THIS TIME THE STATE SEEKS TO
14 INTRODUCE NUMBER 40 INTO EVIDENCE.

15 MS. OWINGS: WITHOUT OBJECTION.

16 THE COURT: IT'S ADMITTED.

17 (STATE'S EXHIBIT 40 WAS RECEIVED IN EVIDENCE.)

18 BY MS. SHIPLEY:

19 Q. AND DID YOU DOCUMENT THE BOTTOM OF THAT FORM? WHAT DID
20 YOU WRITE THERE?

21 A. READ ON THE SCENE. THE SUSPECT WAS HANDCUFFED.

22 Q. SO HE'S IN CUSTODY. NO QUESTION HE'S UNDER ARREST.

23 A. NO QUESTION HE'S UNDER ARREST.

24 Q. DID YOU BEGIN QUESTIONING HIM IN ANY WAY ABOUT---

25 A. NO, I DID NOT.

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1 Q. ---THESE CHARGES?

2 A. NO, I DID NOT.

3 Q. AND WHAT WAS THE PURPOSE OF DOCUMENTING THAT YOU HAD
4 MIRANDIZED HIM, READ HIM HIS RIGHTS?

5 A. I WANTED TO READ HIM HIS RIGHTS IMMEDIATELY BECAUSE OF
6 THE SERIOUSNESS OF THE CHARGES AND LET HIM KNOW WHAT HIS
7 RIGHTS WERE.

8 Q. OKAY.

9 A. AND THEN...

10 Q. EXPLAIN FOR THE JURY WHAT THESE RIGHTS ARE THAT WE'RE
11 SPEAKING OF IN CASE THEY DON'T UNDERSTAND THIS.

12 A. DO YOU WANT ME TO READ THEM?

13 Q. YES, PLEASE.

14 A. OKAY. "BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST
15 UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT TO REMAIN SILENT.
16 ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT. YOU HAVE
17 THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU
18 ANY QUESTIONS AND TO HAVE HIM OR HER WITH YOU DURING
19 QUESTIONING. IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE
20 APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH. IF YOU
21 DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU
22 WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME. YOU
23 ALSO HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME. YOU ALSO
24 HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK
25 TO A LAWYER."

1 AND THEN THERE'S A SECTION ON THE BOTTOM THAT SAYS,
2 "WAIVER OF RIGHTS. I HAVE READ THIS STATEMENT OF MY RIGHTS
3 AND I UNDERSTAND WHAT MY RIGHTS ARE. I'M WILLING TO MAKE A
4 STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT
5 THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO
6 PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR
7 COERCION OF ANY KIND HAS BEEN USED AGAINST ME."

8 Q. AND YOU DID NOT ASK THE DEFENDANT TO SIGN THAT, DID YOU?

9 A. NO, I DID NOT.

10 Q. BECAUSE YOU WERE -- WERE YOU PLANNING ON ASKING HIM
11 QUESTIONS?

12 A. I WAS NOT PLANNING ON ASKING HIM ANY QUESTIONS AT THAT
13 TIME.

14 Q. WHERE WAS HE WHEN YOU READ HIM THIS FORM?

15 A. HE WAS ACTUALLY STANDING OUTSIDE OF THE TRUCK BECAUSE HE
16 -- AS HE WAS APPROACHING THE TRUCK IS WHEN WE APPROACHED HIM,
17 AND THEN WE IMMEDIATELY ARRESTED HIM AND I WENT AHEAD AND
18 READ HIM HIS RIGHTS.

19 Q. SO YOU HANDCUFFED HIM AND THEN READ IT.

20 A. YEAH. I ALWAYS HANDCUFF THEM IN THE BACK.

21 Q. WHERE DID YOU THEN TAKE HIM AFTER YOU READ HIM THE
22 RIGHTS?

23 A. I BELIEVE WE SAT HIM IN THE CAR WAITING FOR ANOTHER
24 OFFICER TO COME AND PICK HIM UP TO TRANSPORT HIM TO FOREST
25 ACRES WHERE HE CAN BE INTERROGATED.

1 Q. AND WHERE WAS IT THAT INVESTIGATOR MARTIN READ HIM HIS
2 WARRANTS?

3 A. I BELIEVE HE WAS EITHER STANDING OUTSIDE THE TRUCK OR HE
4 WAS SITTING IN THE PATROL CAR. I CAN'T RECALL.

5 Q. AND YOU WERE PRESENT WHEN INVESTIGATOR MARTIN READ
6 THROUGH EACH WARRANT.

7 A. YES, HE READ THROUGH EACH WARRANT.

8 Q. SO THE DEFENDANT WAS APPRISED OF EXACTLY WHAT THESE
9 ALLEGATIONS ARE.

10 A. THAT IS CORRECT.

11 Q. WHAT, IF ANYTHING, DID THE DEFENDANT SAY AFTER
12 INVESTIGATOR MARTIN READ HIM HIS ARREST WARRANTS?

13 A. WELL, HE COULDN'T BELIEVE HE WAS BEING ARRESTED AND HE
14 SAID -- I CAN'T REMEMBER THE EXACT TERMINOLOGY BUT SOMETHING
15 TO THE EFFECT, "YEAH, I CHOKED HER, BUT THE SEX WAS
16 CONSENSUAL."

17 Q. "YEAH, I CHOKED HER, BUT THE SEX WAS CONSENSUAL."

18 A. YES.

19 Q. WAS THIS IN RESPONSE TO ANY OF YOUR QUESTIONS?

20 A. NO, IT WAS NOT. IT WAS IN RESPONSE TO THE WARRANTS THAT
21 WERE READ ACTUALLY.

22 Q. OKAY. AND AT THAT POINT YOU INDICATED THAT YOU HAD HIM
23 TRANSPORTED TO HEADQUARTERS?

24 A. YES.

25 Q. WHO WAS GOING TO TAKE CARE OF INTERVIEWING HIM THERE?

1 A. SERGEANT BRYANT HINSON WAS THERE.

2 Q. AND HOW WOULD SERGEANT HINSON KNOW WHAT QUESTIONS TO ASK
3 HIM PERTAINING TO THIS CASE?

4 A. HE WAS FAMILIAR WITH THE CASE PRIOR TO US---

5 Q. WHO MADE HIM---

6 A. ---EVEN GOING OUT.

7 Q. WHO MADE HIM FAMILIAR WITH THE FACTS OF THIS CASE?

8 A. I DID.

9 Q. ALL RIGHT. AND THEN WHAT DID YOU DO WITH THE PICKUP
10 TRUCK, THE WORK TRUCK?

11 A. THE MANAGER AT THE SHOP WAS CONCERNED ABOUT THE PICKUP
12 TRUCK, SO WHEN HE CALLED US AND TOLD US WHERE THE DEFENDANT
13 WAS STAYING, HE ASKED THAT WE PLEASE ALLOW HIM TO COME PICK
14 UP THE PICKUP TRUCK. SO WE STAYED BEHIND WHERE WHEN AN
15 OFFICER CAME AND PICKED UP THE DEFENDANT AND TOOK HIM TO
16 FOREST ACRES, WE ACTUALLY WAITED FOR THE MANAGER TO COME AND
17 GET THE TRUCK.

18 Q. BACK WHEN YOU WERE TALKING TO THE VICTIM, MISS TABITHA
19 BRAZELL, CAN YOU -- DO YOU RECALL HER DEMEANOR WHEN YOU WERE
20 TALKING TO HER AT THE HOSPITAL?

21 A. SHE WAS -- SHE WAS CALM AT THAT POINT. YOU COULD TELL
22 SHE HAD BEEN CRYING. HER EYES WERE PUFFY. SCARED. SHE
23 WASN'T REALLY SURE WHAT TO DO OR HOW TO SOLVE THE SITUATION.

24 Q. OKAY. BEG THE COURT'S INDULGENCE, YOUR HONOR. JUST TO
25 CLARIFY THE DATE THAT YOU TOOK THE DEFENDANT'S SWABS FROM HIS

1 MOUTH---

2 A. UH-HUH.

3 Q. ---AND THE TOWEL TO S.L.E.D., WHAT DATE WAS THAT?

4 A. THAT WAS---

5 Q. I'M GOING TO SHOW YOU A DOCUMENT TO SEE IF---

6 A. OKAY.

7 Q. WHAT IS THIS DOCUMENT?

8 A. THAT'S WHERE I SIGNED OUT THE -- WELL, THAT'S THE CHAIN
9 OF CUSTODY FOR THE COMFORTER, PILLOW, HAND TOWEL, AND HAIR ON
10 THE KITCHEN FLOOR, AND I SIGNED OUT THE TOWEL ON JANUARY
11 THE 9TH, 2006, AT 8:30 THAT MORNING.

12 Q. 2006.

13 A. YES, MA'AM.

14 Q. AND YOU THEN TURNED THE TOWEL AND THE D.N.A., THE
15 DEFENDANT'S D.N.A., OR THE SWABS---

16 A. UH-HUH.

17 Q. ---IN TO WHERE?

18 A. TO S.L.E.D.

19 Q. OKAY. AND NOW AT ANY TIME DID YOU TAMPER WITH EITHER
20 ITEM OF EVIDENCE?

21 A. NO, I DID NOT.

22 Q. BEG THE COURT'S INDULGENCE ONE MORE TIME, YOUR HONOR.
23 THE DEFENDANT THAT YOU ARRESTED ON MARCH - I'M SORRY -
24 APRIL THE 4TH, 2005, DO YOU SEE HIM IN THE COURTROOM TODAY?

25 A. YES, I DO.

1 Q. IS THAT HIM RIGHT THERE?

2 A. YES, IT IS.

3 Q. YOUR HONOR, LET THE RECORD REFLECT SHE'S IDENTIFIED THE
4 DEFENDANT. AND THAT IS THE SAME INDIVIDUAL THAT YOU OBTAINED
5 BUCCAL SWABS FROM?

6 A. YES, IT IS.

7 MS. SHIPLEY: THANK YOU, YOUR HONOR. NO FURTHER
8 QUESTIONS.

9 THE COURT: CROSS-EXAMINATION.

10 MS. OWINGS: THANK YOU, SIR.

11 CROSS-EXAMINATION

12 BY MS. OWINGS:

13 Q. INVESTIGATOR VARN OR MS. VARN, DO YOU HAVE A PREFERENCE?

14 A. NO.

15 Q. WHENEVER YOU ARRESTED MR. RATHBURN, YOU ACTUALLY BOOKED
16 HIM. IS THAT RIGHT?

17 A. YES. I DID A BOOKING SHEET RIGHT THERE ON THE SCENE.

18 Q. OKAY. DO YOU HAVE A COPY OF YOUR BOOKING SHEET?

19 A. YES, I DO.

20 Q. NOW, ON YOUR BOOKING SHEET YOU WROTE DOWN BOBBY'S NAME.
21 IS THAT RIGHT?

22 A. YES.

23 Q. AND HIS PERSONAL INFORMATION.

24 A. YES.

25 Q. AND YOU NOTED HIS PHONE NUMBER.

1 A. YES.

2 Q. AND WHAT PHONE NUMBER DID YOU NOTE?

3 A. 528-5528.

4 Q. OKAY. NOW, AT THE BOTTOM OF THIS BOOKING REPORT YOU
5 ALSO WROTE DOWN THE VICTIM'S NAME AND HER PERSONAL
6 INFORMATION.

7 A. THAT'S CORRECT.

8 Q. AND YOU ALSO WROTE DOWN HER CELL PHONE NUMBER.

9 A. NOT AT THE BOTTOM, NO.

10 MS. OWINGS: MAY I APPROACH THE -- DIDN'T EVEN HAVE TO
11 ASK.

12 THE COURT: YOU MAY.

13 THE WITNESS: THAT'S NOT WRITTEN BY ME. THAT'S -- MY
14 COPY DOESN'T HAVE IT ON THERE.

15 BY MS. OWINGS:

16 Q. WHO WOULD HAVE WRITTEN ON...

17 A. I DO NOT KNOW.

18 Q. WHO WOULD HAVE TAKEN ANY MORE OF HER INFORMATION?

19 A. POSSIBLY THE VICTIM'S ADVOCATE OR SOMEBODY FROM THE
20 SOLICITOR'S OFFICE NEEDING TO GET IN TOUCH WITH HER.

21 Q. OKAY. SO IT COULD HAVE BEEN ANOTHER LAW ENFORCEMENT
22 OFFICER WHO WROTE ON THE INCIDENT REPORT.

23 A. AS FAR AS GETTING THE INFORMATION FROM HIM?

24 Q. NO, FROM TABITHA.

25 A. FROM TABITHA.

1 Q. I BEG THE COURT'S INDULGENCE ONE MOMENT, PLEASE. NOW,
2 YOU ALSO -- WHEN YOU ARRESTED BOBBY, YOU SHOWED HIM AN -- YOU
3 READ HIM AN ADVICE OF RIGHTS FORM.

4 A. UH-HUH.

5 Q. AND YOU NOTED ON THERE THAT THE ADDRESS IS
6 STREET.

7 A. YES.

8 Q. IN FACT, YOU KNEW YOU WERE GOING TO STREET TO
9 LOOK FOR BOBBY RATHBURN.

10 A. THAT'S CORRECT.

11 Q. AND YOU KNEW THE ADDRESS THAT YOU WERE GOING TO.

12 A. THAT'S CORRECT.

13 Q. NOW, YOU TOOK ALL THE PHOTOGRAPHS THAT WERE IN THE
14 HOUSE.

15 A. THAT'S CORRECT.

16 Q. IS THAT RIGHT? AND YOU PHOTOGRAPHED THE KITCHEN.

17 A. UH-HUH.

18 Q. AND YOU ALSO TOOK THE PHOTOGRAPHS OF THE HAIR ON THE
19 FLOOR.

20 A. YES, I DID.

21 Q. AND WHAT YOU HAVE IS YOU HAVE A PHOTOGRAPH OF TWO SPOTS
22 OF HAIR ON THE FLOOR. IS THAT RIGHT?

23 A. THAT'S CORRECT.

24 Q. AND THEN THAT HAIR IS WHAT YOU PUT IN THE BAG RIGHT
25 HERE.

1 A. THAT'S CORRECT.

2 Q. OKAY. AND ONE OF THEM IS KIND OF IN A STRAND? IS THAT
3 RIGHT?

4 A. YEAH, SOME KIND OF STRAND.

5 Q. AND THE OTHER IS JUST KIND OF A LITTLE CLUMP.

6 A. CLUMP, YEAH.

7 Q. ABOUT THE SIZE OF WHAT YOU'D GET OUT OF A HAIR BRUSH IF
8 YOU CLEANED IT OUT?

9 A. I GUESS IF YOU HAD THICK HAIR, YEAH.

10 Q. OUT OF A HAIR BRUSH IF YOU PULLED IT OUT? NOW, YOU ALSO
11 SAID THAT YOU DID NOT MAINTAIN THE TOWEL BECAUSE YOU HAD TO
12 PUT IT IN A BIOHAZARD BAG.

13 A. YES, MAINTAINING IT MEANING TAKING IT TO THE DEPARTMENT.

14 Q. WELL, YOU PUT IT IN A BIOHAZARD BAG; IS THAT RIGHT?

15 A. YES.

16 Q. AND YOU TOOK IT TO BE TESTED.

17 A. YES.

18 Q. OKAY. AND YOU TOOK IT TO BE TESTED IN A BIOHAZARD BAG
19 BECAUSE IT'S YOUR UNDERSTANDING THAT IT HAD SEMEN ON IT.

20 A. YES.

21 Q. BUT YOU DIDN'T PUT THE COMFORTER IN A BIOHAZARD BAG, DID
22 YOU?

23 A. NO, I DID NOT.

24 Q. BUT IT WAS YOUR UNDERSTANDING THEY HAD SEX ON THE
25 COMFORTER.

1 A. THAT'S CORRECT. I DON'T KNOW IF I DIDN'T HAVE A
2 BIOHAZARD BAG THAT BIG OR WHAT THE PURPOSE WAS OF THAT.

3 Q. BUT YOU DIDN'T.

4 A. NO, I DID NOT.

5 Q. OKAY. I BEG THE COURT'S INDULGENCE FOR ONE MOMENT. AND
6 EVERYTHING THAT YOU DID ON THIS CASE WHEN YOU INITIALLY GOT
7 TO THE HOUSE WAS BASED ON WHAT OFFICER SHUMARD TOLD YOU?

8 A. YES.

9 Q. BECAUSE THE VICTIM WASN'T THERE WHEN YOU GOT THERE.

10 A. THAT'S CORRECT.

11 Q. SO HE WOULD HAVE TOLD YOU THAT HE NEEDED -- THAT YOU
12 NEED TO SPEAK TO LAURA WEIDMAN OR ANY OTHER WITNESSES THAT
13 YOU WOULD NEED TO TALK TO.

14 A. THAT'S CORRECT.

15 MS. OWINGS: NO FURTHER QUESTIONS AT THIS TIME.

16 REDIRECT EXAMINATION

17 BY MS. SHIPLEY:

18 Q. INCIDENTALLY, DID YOU MAKE CONTACT WITH LAURA WEIDMAN AT
19 THE HOSPITAL?

20 A. YES, I DID.

21 Q. AND DID YOU SPEAK WITH HER AS WELL?

22 A. YES, I DID.

23 Q. AND DID YOU SWEAR HER STATEMENT?

24 A. YES, I DID.

25 Q. DO YOU RECALL HOW LONG HER STATEMENT WAS?

1 A. I BELIEVE A PAGE OR TWO.

2 Q. IF YOU COULD LOOK IN YOUR CASE FILE TO BE SURE.

3 A. OKAY. A PAGE AND THREE-FOURTHS.

4 Q. OKAY. I'M GOING TO SHOW YOU A DOCUMENT AND ASK YOU IF
5 YOU RECOGNIZE THIS.

6 A. YES. THAT IS AN INCIDENT REPORT.

7 Q. FOR WHICH CASE?

8 A. FOR THIS CASE.

9 Q. AND YOU RELIED ON THAT IN OBTAINING INFORMATION OR
10 CONCLUDING YOUR INVESTIGATION OR USING IT IN YOUR
11 INVESTIGATION---

12 A. I USE IT BUT DON'T RELY ON IT SOLELY.

13 Q. OKAY. YOU OBTAIN OTHER INFORMATION.

14 A. YES, I DO---

15 Q. OKAY.

16 A. ---FROM THE VICTIM AND WITNESSES AND ANY KIND OF
17 EVIDENCE.

18 Q. AND WHO DRAFTED THAT INCIDENT REPORT?

19 A. OFFICER SHUMARD.

20 Q. AND IS THAT TYPICAL FOR THE FIRST RESPONDING OFFICER TO
21 DRAFT THE INCIDENT REPORT?

22 A. YES, IT IS.

23 Q. AND ON THAT INFORMATION DO YOU SEE ANY PHONE NUMBERS FOR
24 THE VICTIM?

25 A. IT'S ACTUALLY BEEN MARKED OUT.

1 Q. AND IS THERE ANY WRITING OR ANYTHING BY THE VICTIM'S
2 PHONE NUMBER?

3 A. "SUSPECT DOES NOT HAVE HIS NUMBER."

4 Q. OKAY. THANK YOU. YOU WERE ASKED BY MS. OWINGS
5 CONCERNING WHY YOU TOOK MEASURES TO PACKAGE THE TOWEL AND NOT
6 THE COMFORTER AND THE PILLOW.

7 A. YES.

8 Q. WERE YOU AWARE THAT THE DEFENDANT LIVED WITH THE VICTIM,
9 AT THIS LOCATION?

10 A. HE DID NOT LIVE WITH THE VICTIM.

11 Q. AND PRIOR TO THAT ON MARCH -- PRIOR TO MARCH 19TH OF
12 2005, HAD THE DEFENDANT LIVED AT THAT LOCATION?

13 A. PRIOR TO THAT HE HAD -- HE HAD LIVED AT THAT LOCATION.

14 Q. OKAY. AND SO IF THIS WAS ON THEIR BED THAT THEY SHARED
15 IN COMMON WHEN THEY LIVED TOGETHER---

16 A. THAT'S CORRECT.

17 Q. ---WOULD YOU EXPECT TO FIND SOMETHING BELONGING TO HIM
18 ON THERE?

19 A. YES.

20 Q. WHAT WAS IT ABOUT THE TOWEL THAT MADE IT IMPORTANT FOR
21 YOU TO COLLECT THAT THAT DAY?

22 A. HE ACTUALLY WIPED HIMSELF OFF AND THREW THE TOWEL AT HER
23 AND TOLD HER TO CLEAN UP HERSELF.

24 MS. SHIPLEY: THANK YOU. NO FURTHER QUESTIONS, YOUR
25 HONOR.

1 MS. OWINGS: YOUR HONOR, MAY I BRIEFLY?

2 THE COURT: YES, MA'AM.

3 RECROSS EXAMINATION

4 BY MS. OWINGS:

5 Q. I'M SHOWING THE WITNESS EXHIBIT NUMBER 30. THAT'S A
6 PICTURE OF THE BED; IS THAT RIGHT?

7 A. YES.

8 Q. AND ON THAT BED THERE'S SOME PILLOWS?

9 A. YES.

10 Q. AND ON THAT BED THERE'S SOME SHEETS?

11 A. YES.

12 Q. AND THERE'S ANOTHER COMFORTER, ISN'T THERE?

13 A. YES, THERE IS.

14 MS. OWINGS: NO FURTHER QUESTIONS.

15 THE COURT: ALL RIGHT, MA'AM. YOU CAN STEP DOWN.

16 THE WITNESS: THANK YOU.

17 MS. FENT: MAY WE APPROACH?

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

19 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A
20 SHORT BREAK AND WE'LL COME BACK WITH A LITTLE MORE TESTIMONY
21 BEFORE LUNCH TODAY. Y'ALL CAN GO BACK TO THE JURY ROOM.

22 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
23 11:37 A.M., AND A SHORT BREAK WAS TAKEN.)

24 THE COURT: ALL RIGHT. ARE Y'ALL READY?

25 MS. FENT: YES.

1 THE COURT: BRING IN THE JURY THEN.

2 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
3 11:44 A.M.)

4 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

5 MS. FENT: THE STATE CALLS TERRY CASTO.

6 TERRY CASTO, AFTER BEING DULY SWORN, TESTIFIED AS
7 FOLLOWS:

8 THE CLERK: PLEASE HAVE A SEAT THERE. STATE YOUR FULL
9 NAME FOR THE RECORD, PLEASE.

10 COURT REPORTER: AND WOULD YOU SPELL IT, PLEASE?

11 THE WITNESS: MY NAME IS TERRY, T-E-R-R-Y, CASTO,
12 C-A-S-T-O.

13 DIRECT EXAMINATION

14 BY MS. FENT:

15 Q. MS. CASTO, WHERE DO YOU WORK?

16 A. AT PALMETTO HEALTH RICHLAND.

17 Q. OKAY. AND IN WHAT CAPACITY?

18 A. I'M A REGISTERED NURSE AND I'M THE COORDINATOR OF THE
19 SEXUAL ASSAULT NURSE EXAMINER PROGRAM.

20 Q. OKAY. CAN YOU PLEASE TELL THE JURY THEN ABOUT YOUR
21 EDUCATION AND YOUR TRAINING AND EXPERIENCE THAT LEADS YOU TO
22 BE IN CHARGE OF THE SEXUAL ASSAULT NURSE EXAMINER PROGRAM?

23 A. WELL, I'VE BEEN A NURSE FOR 27 YEARS AND I'VE WORKED
24 EMERGENCY ROOMS FOR 20 OF THOSE YEARS. IN THE LAST -- WELL,
25 IT WILL BE 17 YEARS I'VE WORKED AT RICHLAND IN THE EMERGENCY

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1 ROOM THERE. AND SO IN 1998 I WAS OFFERED AN OPPORTUNITY TO
2 GO TO A CLASS FOR SEXUAL ASSAULT NURSE EXAMINERS, AND THIS IS
3 ONE OF THE VICTIMS THAT WE TAKE CARE OF AT TIMES IN THE
4 EMERGENCY ROOM. I KNEW THAT WE COULD DO A BETTER JOB. SO WE
5 WENT TO THIS COURSE AND WE STARTED THE S.A.N.E. PROGRAM THERE
6 AT PALMETTO HEALTH RICHLAND.

7 Q. OKAY. WHAT ADDITIONAL TRAINING DOES A NURSE HAVE TO GO
8 THROUGH TO BECOME A S.A.N.E., A SEXUAL ASSAULT NURSE
9 EXAMINER?

10 A. WELL, A REGISTERED NURSE WOULD TAKE A FOUR-DAY COURSE,
11 AND THE COURSE GOES OVER ALL ASPECTS OF SEXUAL ASSAULT, AND
12 THEN FOLLOWED BY THAT IS WHAT YOU WOULD CALL CLINICALS. I
13 WENT OUT AND DID NORMAL PELVIC EXAMS ON WOMEN, A MINIMUM OF
14 40. I WENT TO COURT AND WATCHED EXPERT WITNESS TESTIMONY. I
15 RODE ALONG WITH LAW ENFORCEMENT TO FIND OUT WHAT THEIR ROLE
16 IS IN INVESTIGATION, AND I VISITED THE CRIME LAB TO SEE WHERE
17 THE SPECIMENS GO AND HOW THEY'RE PROCESSED, AND THEN I ALSO
18 DID A MINIMUM OF SIX RAPE EXAMS WITH A PRECEPTOR. AND THAT
19 TOOK NINE MONTHS TO COMPLETE THAT.

20 Q. OKAY. AND YOU ARE IN CHARGE OF THE PROGRAM NOT JUST AT
21 RICHLAND MEMORIAL, BUT DO YOU ALSO OVERSEE THE PROGRAMS AT
22 OTHER HOSPITALS?

23 A. WE ALSO COVER BAPTIST, ANY VICTIMS THAT WILL BE SENT TO
24 BAPTIST. WE EITHER SEE THEM AT RICHLAND OR BAPTIST HOSPITAL.

25 Q. OKAY. AND BEING IN CHARGE OF THE PROGRAM, WHAT

1 ADDITIONAL DUTIES AND RESPONSIBILITIES DO YOU HAVE IN THAT
2 REGARD?

3 A. WELL, I JUST COORDINATE THE CALL SCHEDULE. WE HAVE
4 EIGHT OTHER NURSES THAT HELP TAKE CALLS. I DO CHART REVIEWS
5 OF EACH CASE. WE WORK WITH OUR MEDICAL DIRECTOR, DR. HARVEY.
6 WE ALSO STARTED A PEDIATRIC PROGRAM THIS AUGUST, AND SO I
7 WORKED WITH DR. ROSA DOING PEDIATRIC EXAMS AND CASE REVIEWS.
8 AND THEN I WORK IN THE COMMUNITY. I DO EDUCATION AND
9 TEACHING OUTSIDE IN THE COMMUNITY. I ALSO ATTEND MANY
10 CONFERENCES TRYING TO INCREASE MY SKILLS.

11 Q. OKAY. AND IN, AS YOU SAID, SAYING THAT WE COULD DO A
12 BETTER JOB BACK WHEN YOU WENT TO THOSE CLASSES, CAN YOU
13 EXPLAIN TO THE JURY WHAT ARE THE UNIQUE ASPECTS OR THE
14 ASPECTS THAT CONCERNED YOU IN TERMS OF EXAM FROM ANY OTHER
15 VICTIM OR A VICTIM OF A DIFFERENT TYPE OF AN ASSAULT?

16 A. -RIGHT. WHAT WILL HAPPEN NOW IS WHEN A RAPE VICTIM
17 COMES, IT'S VERY INVOLVED TO TAKE CARE OF ONE AND TO DO WHAT
18 THEY CALL A RAPE KIT AND TO COLLECT EVIDENCE FROM THE BODY,
19 MAINTAIN THE CHAIN OF CUSTODY THE WHOLE TIME, AND FOR A NURSE
20 TO BE FREED UP TO DO THIS IT TAKES A MINIMUM OF -- A
21 REGISTERED E.R. NURSE TWO HOURS TO DO A CASE. SO SHE ALREADY
22 HAS THREE OTHER PATIENTS TO BE ABLE TO GET FREED UP FROM
23 THAT. SO THE VICTIMS OFTENTIMES HAVE TO WAIT MANY HOURS.

24 AND IN OUR HOSPITAL SOMETIMES JUST GETTING IN THE BACK
25 AND FINDING AN EMPTY BED IS TIME-CONSUMING. ONCE YOU GET IN

1 THE BACK, YOU HAVE A NURSE MAYBE THAT'S NEVER DONE A KIT
2 BEFORE WHO ARE READING INSTRUCTIONS IN FRONT OF THE VICTIM,
3 AND DEPENDING ON HER -- THE KIND OF DAY SHE HAS, HER BELIEFS
4 IN SEXUAL ASSAULT, HER BELIEFS IN WOMEN'S RIGHTS, IT CAN BE
5 KIND OF TRAUMATIZING TO A VICTIM AGAIN. AND I HAVE HEARD
6 VICTIMS SAY THEY FELT LIKE THEY WERE TRAUMATIZED ALL OVER
7 AGAIN.

8 BUT WITH THE SEXUAL ASSAULT PROGRAM THEY COME IN --
9 WE'RE ON CALL. WE MEET THEM WITHIN AN HOUR OF THEIR ARRIVAL
10 TO THE HOSPITAL. WE HAVE OUR OWN PRIVATE INTERVIEW ROOM. WE
11 HAVE OUR OWN PRIVATE EXAM ROOM. WE'RE SPECIALLY TRAINED. WE
12 WANT TO BE THERE. WE BELIEVE IN WHAT WE'RE DOING, AND WE
13 HAVE SOME DIFFERENT EQUIPMENT THAT CAN HELP ENHANCE AND
14 LOCATE THE EVIDENCE AND HELP COLLECT IT.

15 Q. SO YOUR SET-UP IN TREATING THE VICTIMS IS A LITTLE
16 DIFFERENT. AND THEN TALK ABOUT THE COLLECTION OF EVIDENCE,
17 THE DIFFERENT TYPES OF EVIDENCE THAT YOU'RE NEEDING TO
18 COLLECT VERSUS, YOU KNOW, SOMEONE WHO HAS BEEN SHOT OR
19 STABBED, SOME OTHER TYPE OF INJURY.

20 A. RIGHT. MANY TIMES WITH RAPE VICTIMS A LOT OF THE
21 INJURIES MAY NOT BE EVIDENT TO SOMEONE WHO DOESN'T LOOK VERY
22 FINE AND CLOSELY. SO WE'RE ABLE TO DO THAT, HAVE THE TIME TO
23 DO THAT, AND THEN WE ALSO HAVE SOME DIGITAL CAMERAS TO TAKE
24 PHOTOGRAPHS OF INJURIES SO WE'LL HAVE THAT ON RECORD. WE CAN
25 USE WHAT THEY CALL A COLPOSCOPE WHICH LOOKS AT THE GENITAL

1 AREA. IT MAGNIFIES IT AND THE ABILITY TO TAKE PHOTOGRAPHS OF
2 THAT AND ANY INJURIES AS DOCUMENTED. WE HAVE AN ULTRAVIOLET
3 LIGHT THAT LOOKS FOR ANY SEMEN THAT MIGHT BE ON THEIR BODY.
4 THEN WE USE A Q-TIP AND COLLECT THAT. WE HAVE DRYERS FOR OUR
5 SWABS, SO EVERYTHING IS PACKAGED CORRECTLY AND DRY AND THAT
6 WILL BE USABLE. WE, YOU KNOW, DO OUR OWN PELVIC EXAMS. SO
7 IT'S -- THEREFORE, IT'S IN A VERY PRIVATE AREA AND WE'RE ABLE
8 TO, YOU KNOW, TAKE CARE OF THE INDIVIDUAL SOLELY WITHOUT
9 HAVING ANY DISTRACTIONS.

10 Q. OKAY. YOU SAID SOMETHING ABOUT THE INJURIES MAY NOT BE
11 OBVIOUS TO SOMEONE WHO DOES NOT KNOW WHAT TO LOOK FOR?

12 A. RIGHT.

13 Q. OKAY. AND IS THAT RELATED TO HOW MANY EXAMS YOU REQUIRE
14 YOUR S.A.N.E.'S IN ORDER TO BE CERTIFIED TO COMPLETE?

15 A. YOU'RE TAUGHT MORE TO GO BY THE HISTORY OF AN ASSAULT
16 RATHER THAN JUST WHAT THE BOX SAYS AND THE PROTOCOL SAYS. SO
17 THERE IS AN ENVELOPE, SAY, FOR INSTANCE, FOR BITE MARKS. SHE
18 MAY NOT HAVE GOTTEN BITTEN, BUT THERE MIGHT BE A SUCK MARK.
19 THERE MIGHT BE AREAS WHERE HE KISSED. AND SO YOU CAN TAKE
20 THE Q-TIPS AND GET THE D.N.A. OFF OF THAT, AND THAT'S JUST
21 ONE EXAMPLE OF LEARNING TO GO BY YOUR HISTORY, NOT JUST WHAT
22 THE BOX SAYS. AND SO YOU'RE GOING TO BE THINKING OF THINGS
23 THAT MIGHT BE PERTINENT TO EACH VICTIM AND THEN ADJUST YOUR
24 EXAM FOR THAT.

25 Q. OKAY. WERE YOU ON CALL ON APRIL 3RD, 2005, THAT --

1 AFTERNOON HOURS?

2 A. YES, MA'AM.

3 Q. OKAY. AND WERE YOU CALLED THEN TO RICHLAND HOSPITAL TO
4 DO A SEXUAL ASSAULT EXAMINATION?

5 A. YES, I WAS.

6 Q. AND WHO WAS THE VICTIM OF THAT SEXUAL ASSAULT?

7 A. I WANT TO GET THIS CHART OUT---

8 Q. DO YOU HAVE YOUR REPORT WITH YOU?

9 A. I DO.

10 Q. OKAY.

11 A. I JUST WANT TO MAKE SURE I'M QUOTING EVERYTHING
12 CORRECTLY. IT WAS TABITHA BRAZELL.

13 Q. OKAY. AND APPROXIMATELY SINCE YOU, I GUESS, STARTED
14 DOING THIS OR EVEN IN YOUR CAREER, HOW MANY SEXUAL ASSAULT
15 EXAMINATIONS HAVE YOU PERFORMED?

16 A. I'M UP TO AROUND 500.

17 Q. WHAT TIME WAS IT THAT YOU WERE -- OR ARRIVED TO THE
18 HOSPITAL, I GUESS?

19 A. AT 5:45 P.M.

20 Q. AND WALK US THROUGH THEN THE STEPS AND THE PROCEDURES
21 THAT YOU TAKE WITH TABITHA.

22 A. WELL, SHE WOULD HAVE BEEN IN THE TRIAGE AREA, AND WE HAD
23 DR. PRIVETTE COME. HE'S ONE OF THE E.R. PHYSICIANS, AND HE
24 DID A MEDICAL CLEARANCE EXAM JUST MAKING SURE THERE'S NO
25 X-RAYS OR ANY ACUTE TRAUMA THAT NEEDED TO BE TAKEN CARE OF

1 PRIOR TO COLLECTING EVIDENCE, AND HE CLEARED HER. AND THEN I
2 TOOK HER TO THE BACK INTO THE INTERVIEW ROOM, AND WE SAT DOWN
3 AND WE GOT DOWN ON PAPER MAKING SURE WHO THE LAW ENFORCEMENT
4 WAS, WHO THE CASE NUMBER WAS, MAKING SURE SEXUAL TRAUMA
5 SERVICES WAS THERE AND REPRESENTED HER AS AN ADVOCATE.

6 Q. I WANT TO STOP YOU RIGHT THERE. IS DR. PRIVETTE
7 CLEARING HER FOR NO ACUTE INJURIES? HAVING EXAMINED YOURSELF
8 500 AND REVIEWED OTHERS---

9 A. RIGHT.

10 Q. ---IS THAT UNUSUAL THAT A SEXUAL ASSAULT VICTIM WILL NOT
11 HAVE ACUTE INJURIES?

12 A. IT'S VERY UNUSUAL THEY DO HAVE ACUTE INJURIES.

13 Q. OKAY.

14 A. YES.

15 Q. OKAY. I'M SORRY. AND SO THEN YOU'RE DOCUMENTING LAW
16 ENFORCEMENT ON THAT.

17 A. RIGHT, GETTING EVERYTHING STRAIGHT, AND THEN WE ASK FOR
18 HER CONSENT TO DO THIS, MAKING SURE THAT SHE UNDERSTANDS WHAT
19 WE'RE GOING TO DO, WHAT THE EVIDENCE-COLLECTION PROCESS IS
20 AND THAT WE HAVE HER CONSENT. AND THEN ONCE WE ARE ALL
21 STRAIGHT, THEN SHE SITS DOWN AND GIVES ME A HISTORY OF THE
22 ASSAULT AND I WRITE THAT DOWN.

23 Q. OKAY. AND, AGAIN, WHAT IS THE IMPORTANCE OF -- WELL, I
24 GUESS WHAT'S -- WHAT'S ANOTHER WORD FOR HISTORY OF THE
25 ASSAULT? WHAT DO YOU MEAN BY HISTORY?

1 A. WELL, SHE'S GOING TO TELL ME WHAT HAPPENED DURING THE
2 ASSAULT, AND THAT WAY I'LL KNOW WHAT TYPE OF INJURIES TO LOOK
3 FOR AND WHAT TYPE OF EVIDENCE TO COLLECT.

4 Q. OKAY. YOU'RE NOT TALKING AN ENTIRE LIFETIME MEDICAL
5 HISTORY---

6 A. NO.

7 Q. ---AS DID YOU EVER HAVE THE MUMPS OR THE MEASLES OR THE
8 CHICKEN POX.

9 A. RIGHT.

10 Q. JUST SPECIFIC TO WHY SHE'S THERE TO HAVE THE EXAM.

11 A. WE DO GO THROUGH A FEW BRIEF MEDICAL QUESTIONS, TALKING
12 ABOUT HER PERIOD, HER PAST PREGNANCIES, ANY INJURIES OR
13 ANYTHING SHE HAD PRIOR TO THIS THAT MIGHT AFFECT WHAT I SEE,
14 AND THEN WE GO INTO THE HISTORY OF THE ASSAULT.

15 Q. OKAY. DID SHE TELL YOU WHEN THIS ASSAULT HAD TAKEN
16 PLACE?

17 A. AROUND 4:30 IN THE MORNING.

18 Q. AND WHY IS THAT IMPORTANT IN TERMS OF WHEN A SEXUAL
19 ASSAULT TOOK PLACE IN TERMS OF YOUR POSSIBLE COLLECTION OF
20 EVIDENCE?

21 A. IT MIGHT EXPLAIN WHY YOU'RE NOT FINDING EVIDENCE. MAYBE
22 SHE'S SHOWERED; MAYBE SHE'S BATHED. MAYBE JUST TIME HAS WENT
23 BY. AND IT MAY TELL YOU ABOUT ANY INJURIES THAT SHE HAD
24 ABOUT THE HEALING PROCESS.

25 Q. OKAY. WHAT INJURIES DID SHE DETAIL TO YOU THAT YOU

1 NEEDED TO BE LOOKING OUT FOR TO PHOTOGRAPH OR DOCUMENT?

2 A. WELL, SHE HAD GAVE ME THE HISTORY THAT HE CHOKED HER
3 WITH BOTH OF HIS HANDS, SO I WANT TO LOOK AT HER NECK VERY
4 CLOSELY, ALSO MAKING SURE SHE DOESN'T HAVE ANY HOARSENESS,
5 ANY AIRWAY OBSTRUCTION. HE -- SHE HAD HIT HER CHEST, SO
6 WE'RE LOOKING AT HER CHEST TO MAKE SURE THERE WAS NO BRUISING
7 OR ANY INTERNAL INJURIES THERE, AND ALSO THERE WAS A RED AREA
8 ON TO HER BACK AND WE WERE LOOKING AT THAT ALSO.

9 Q. OKAY. WHAT FURTHER INJURIES OR DETAILS DID SHE GIVE IN
10 TERMS OF THE HISTORY AND WHAT WAS IMPORTANT FOR YOU TO
11 COLLECT?

12 A. WELL, YOU KNOW, HE WAS PULLING HER BY HER HAIR. SO I'M
13 LOOKING AT HER HAIR VERY CLOSELY AND LOOKING AT HER SCALP,
14 ANY BALD AREAS, ANY LOOSE HAIRS THAT I MIGHT FIND. HE WAS
15 PULLING HER BY HER ARMS, SO I WANT TO LOOK AT HER ARM ALSO
16 CLOSELY FOR ANY ABRASIONS, ANY REDNESS IN ANY AREAS THERE,
17 YOU KNOW, JUST DOING A HEAD-TO-TOE ASSESSMENT AND HONING IN
18 ON THOSE AREAS THAT WERE RELATED TO THE ASSAULT.

19 Q. OKAY. IN TERMS OF THE SEXUAL ASSAULT, WHAT WAS THE
20 HISTORY IN TERMS OF WHAT TYPE OF SEXUAL ASSAULT IT WAS?

21 A. OKAY. HE HAD PERFORMED ORAL SEX ON HER. HE ALSO HAD
22 PENETRATED HER VAGINALLY, AND HE ALSO HAD FORCED HER TO
23 PERFORM ORAL SEX ON HIM. SO WE'RE GOING TO LOOK AT HER MOUTH
24 AND WE'RE GOING TO LOOK AT HER VAGINAL AREA.

25 Q. DID SHE REPORT THAT THERE WAS ANY EJACULATION IN HER

1 MOUTH?

2 A. NO.

3 Q. OKAY. DID SHE REPORT EJACULATION AT ALL?

4 A. YES.

5 Q. AND WHERE WAS THAT?

6 A. SHE SAID THAT HE HAD PENETRATED HER VAGINALLY AND THAT
7 WHEN HE EJACULATED HE HAD PULLED OUT AND THEN IT WENT INTO
8 HER STOMACH.

9 Q. THERE ARE -- ON YOUR FORM THERE'S A LARGE PORTION THAT
10 SAYS HISTORY OF ASSAULT, AND THEN THERE'S OTHER INFORMATION
11 IN TERMS OF TOOTH BRUSHING AND ALL THAT SORT OF THING. DO
12 YOU GET THAT INFORMATION FIRST OR DID YOU GET THE DETAILS OF
13 THE ASSAULT FIRST?

14 A. THE DETAILS OF THE ASSAULT FIRST.

15 Q. OKAY. GOING BACK THEN TO THE ACTIVITIES, I GUESS YOU
16 NEED TO KNOW IF THEY'VE SHOWERED? YOU MENTIONED THAT?

17 A. RIGHT.

18 Q. OKAY. WHEN DO YOU GET THIS INFORMATION?

19 A. USUALLY, YOU KNOW, I'LL WRITE DOWN THE HISTORY OF THE
20 ASSAULT, AND THEN WE'LL JUST GO AS THE PAGES GO THROUGH THE
21 DIFFERENT AREAS. WE'LL FIND OUT WHAT -- SPECIFICALLY WHAT
22 KIND OF GENITAL CONTACT THEY HAD. WE'LL FIND OUT IF SHE'S
23 SHOWERED, IF SHE'S BRUSHED HER TEETH, IF SHE'S DOUCHED,
24 WHATEVER IT MAY BE FOR THAT THAT COULD SHOW MAYBE WHY YOU'RE
25 NOT FINDING EVIDENCE OR LACK OF.

1 Q. OKAY. SO WHAT DOES -- TAKING A SHOWER, WHAT IS THAT
2 GOING TO DO TO POSSIBLE EVIDENCE?

3 A. IT MIGHT WASH IT AWAY, ESPECIALLY LIKE IF THERE'S
4 ANYTHING ON THE OUTSIDE, THE EJACULATE HE DID ON HER BELLY OR
5 THE SALIVA THAT HE MIGHT HAVE LEFT ON HER NECK FROM KISSING
6 HER.

7 Q. OKAY. GOING TO THE BATHROOM, EITHER URINATING OR
8 DEFECATING, HOW DOES THAT AFFECT POSSIBLE EVIDENCE?

9 A. IF YOU HAVE ANY SEMEN THAT IS ON THE OUTSIDE OF THE
10 GENITALS, IF YOU GO TO THE BATHROOM AND YOU WIPE WITH TOILET
11 TISSUE, IT'S GOING TO TAKE THAT, YOU KNOW, EVIDENCE AWAY.
12 ANY TIME SOMEONE HAS BEEN RECTALLY PENETRATED AND THEY HAVE A
13 BOWEL MOVEMENT, THEN YOUR FINDINGS MIGHT BE A LITTLE
14 OBSCURED.

15 Q. OKAY. SO WHAT DID SHE REPORT TO YOU IN TERMS OF WHETHER
16 OR NOT SHE HAD GONE TO THE BATHROOM?

17 A. I KNOW SHE -- LET ME MAKE SURE I'M TELLING... SHE HAD
18 URINATED ONE TIME.

19 Q. OKAY. IN TERMS OF HER MOUTH IF SHE HAD EATEN OR BRUSHED
20 OR...

21 A. SHE HAD BRUSHED HER TEETH. SHE HAD EATEN AND SHE HAD
22 HAD SOMETHING TO DRINK.

23 Q. OKAY. IN TERMS OF THE SEXUAL ASSAULT THEN, THE TYPE OF
24 SEXUAL ASSAULT THAT OCCURRED, THE TYPE OF PENETRATION.

25 A. RIGHT. THAT EVIDENCE COULD STILL BE THERE. WHATEVER IS

1 LEFT INSIDE THE VAGINAL VAULT CAN BE THERE FOR -- CAN BE
2 THERE FOR DAYS ACTUALLY.

3 Q. OKAY.

4 A. SO WE ALWAYS COLLECT VAGINAL SECRETIONS.

5 Q. OKAY. AND THE TYPE OF PENETRATION THAT SHE REPORTED TO
6 YOU WAS WHAT?

7 A. VAGINAL PENETRATION.

8 Q. OKAY. AND WAS THAT ALL?

9 A. AN ORAL ASSAULT.

10 Q. OKAY.

11 A. HE PERFORMED ORAL SEX ON HER, AND HE ALSO MADE HER
12 PERFORM ORAL SEX ON HIM BY PULLING HER HAIR.

13 Q. OKAY. DID SHE REPORT THAT ANY -- HE ALSO USED ANY
14 OBJECT?

15 A. NO OBJECTS.

16 Q. OKAY. DID SHE REPORT WHETHER OR NOT HE HAD EJACULATED?

17 A. YES.

18 Q. DID SHE REPORT WHETHER OR NOT HE HAD USED A CONDOM?

19 A. NO CONDOM WAS USED.

20 Q. DID SHE REPORT WHETHER OR NOT THERE HAD BEEN A HAND OR
21 DIGITAL PENETRATION?

22 A. HE HAD USED HIS HAND AND PENETRATED HER.

23 Q. OKAY. YOU ASKED ABOUT ORAL COPULATION OF THE VICTIM BY
24 THE ASSAILANT. WHAT DOES THAT MEAN?

25 A. HE PUT HIS MOUTH INTO HER GENITALS.

1 Q. OKAY. OF THE ASSAILANT BY THE VICTIM?

2 A. THAT SHE WAS FORCED TO PERFORM ORAL SEX ON HIM.

3 Q. WHETHER -- WHETHER OR NOT THERE WAS ANY MASTURBATION OF
4 THE VICTIM.

5 A. THAT -- YOU KNOW, IF HE HAD HER RUB ON HIS PENIS WITH
6 HER HAND OR IF HE RUBBED ON HIMSELF.

7 Q. OKAY. AND WHAT WAS THE REPORT THERE?

8 A. THAT SHE HAD TO RUB ON HIS PENIS AND THAT HE USED HIS
9 HAND ON HER.

10 Q. DID SHE REPORT WHETHER OR NOT HE HAD EITHER BITTEN,
11 LICKED, OR KISSED HER?

12 A. YES, HE HAD BEEN KISSING ON HER.

13 Q. OKAY.

14 A. TO HER NECK.

15 Q. DID HE FONDLE HER AT ALL?

16 A. YES, HER BREASTS AND HER GENITALS.

17 Q. AND WAS THERE ANY LUBRICANT USED?

18 A. NO.

19 Q. DO YOU NEED TO KNOW IF THERE WAS ANY OTHER WITNESSES TO
20 THE INCIDENT?

21 A. WE ALWAYS ASK THAT QUESTION, AND IT COULD BE PERTINENT
22 TO THE INVESTIGATION. WITH HER, HER DAUGHTER WAS IN THE
23 HOUSE.

24 Q. AND SHE REPORTED HOW OLD THAT CHILD WAS?

25 A. THREE YEARS OLD AT THE TIME.

1 Q. IF YOU CAN THEN GO TO PAGE 2 OF YOUR REPORT AND DOCUMENT
2 TO US OR TELL US THE REST OF THE, I GUESS, THE KIND OF
3 HISTORY THAT YOU'RE GETTING IN TERMS OF THE QUESTIONS AND THE
4 ANSWERS.

5 A. WE ALWAYS ASK THE VICTIM DID SHE HAVE ANY ALCOHOL OR ANY
6 TYPE OF DRUGS AT THE TIME, AND FOR HER AT I BELIEVE IT'S
7 10:00 SHE HAD TAKEN TWO TYLENOL P.M.'S. WE ALSO ASKED ABOUT
8 THE ASSAILANT. WAS HE DRINKING OR DOING ANY DRUGS? AND SHE
9 SAID THAT HE WAS -- SMELLED HEAVILY OF ALCOHOL AND THAT HE
10 HAD JUST LEFT THE PLATINUM PLUS CLUB BEFORE COMING TO HER
11 PLACE. WE ASKED IF THERE WAS ANY COERCION USED, AND HE HAD
12 THREATENED TO PUNCH HER AND HE ALSO PULLED HER HAIR.

13 Q. OKAY. AND NO WEAPONS USED BUT DID SHE INDICATE WHETHER
14 OR NOT HE HAD CHOKED HER?

15 A. YES, SHE DID SAY -- GAVE A HISTORY OF BEING CHOKED BY
16 USING BOTH OF HIS HANDS.

17 Q. OKAY. DID SHE INDICATE THAT SHE KNEW THE PERSON THAT
18 HAD SEXUALLY ASSAULTED HER?

19 A. YES. THEY HAD BEEN LIVING TOGETHER ON AND OFF FOR FIVE
20 YEARS.

21 Q. AND SHE GAVE YOU A NAME?

22 A. SHEY RATHBURN.

23 Q. OKAY. AND DID SHE INDICATE WHETHER OR NOT HE LIVED WITH
24 HER?

25 A. NOT AT THE TIME.

1 Q. DO YOU NEED TO KNOW IF THEY HAVE HAD SEXUAL INTERCOURSE
2 WITHIN THE LAST SEVEN DAYS?

3 A. YEAH. THAT'S ONE THING LIKE IF YOU GO TO THE VAGINAL
4 VAULT AND GET SECRETIONS AND FIND SPERM, YOU NEED TO KNOW --
5 IT MIGHT HAVE BEEN THE GIRL'S PRIOR PARTNER AND WHETHER IT
6 WAS A HUSBAND, BOYFRIEND, WHATEVER IT MIGHT BE FOR EACH
7 INSTANCE. WITH HER, SHE SAID THEY HADN'T HAD -- SHE TOLD ME
8 SHE HADN'T HAD SEX SINCE FEBRUARY AND AT THAT TIME HE HAD---

9 MS. OWINGS: OBJECTION.

10 THE COURT: SUSTAINED.

11 BY MS. FENT:

12 Q. OKAY. BUT IN THE LAST SEVEN DAYS THERE HAD NOT BEEN
13 SEXUAL INTERCOURSE.

14 A. RIGHT.

15 Q. OKAY. THE LAST TIME THEY HAD HAD SEXUAL INTERCOURSE WAS
16 IN FEBRUARY.

17 A. RIGHT.

18 Q. OKAY. WHAT WAS HER BASIC Demeanor?

19 A. SHE WAS VERY RESTLESS. WHEN SHE WOULD TALK ABOUT THE
20 ASSAULT, SHE WOULD -- JUST WANTED TO GET IT OVER WITH VERY
21 QUICKLY, TALK QUICKLY ABOUT IT, AND OTHER THAN ME ASKING --
22 ANSWERING MY QUESTIONS SHE WAS VERY QUIET.

23 Q. OKAY. SO SHE WASN'T JUST POURING OUT INFORMATION: AND
24 THEN HE DID THIS AND THEN HE DID THIS. YOU WERE HAVING TO
25 ASK HER---

1 A. RIGHT.

2 Q. ---QUESTIONS.

3 A. RIGHT.

4 Q. OKAY. WHAT THEN IS THE NEXT STEP THAT YOU TAKE IN TERMS
5 OF THE PROCESS OF THE EXAM?

6 A. WELL, WE'RE GOING TO GO NEXT DOOR TO THE EXAM ROOM AND
7 TAKE A POLAROID PICTURE OF HER SO THAT WE ATTACH THAT TO HER
8 CHART, AND THEN I WOULD COLLECT HER CLOTHING. I WOULD HAVE
9 HER UNDRESS ON TOP OF A PAPER SHEET AND TAKE ALL OF HER
10 CLOTHES OFF, AND THEN EACH PIECE OF HER CLOTHING I WOULD PUT
11 INTO A PAPER BAG AND LABEL IT, AND I WOULD HAVE HER PUT A
12 GOWN ON.

13 Q. WHAT'S THE PURPOSE OF HAVING HER STAND ON A PAPER SHEET
14 WHILE SHE DISROBES?

15 A. SOME VICTIMS MIGHT HAVE HAIRS, FIBERS, LEAVES, SAND,
16 SOMETHING THAT MIGHT BE PERTINENT TO THE CASE THAT WAS ON HER
17 CLOTHING, AND AS SHE GETS UNDRESSED IT MIGHT FALL ON TO THAT
18 SHEET.

19 Q. OKAY. AND ULTIMATELY THEN WHAT DO YOU DO WITH THAT
20 SHEET?

21 A. WE TAKE IT AND WE FOLD IT UP GOING INWARDS AND BAG IT
22 AND SEND THAT ALONG WITH THE RAPE KIT.

23 Q. OKAY. SO ON THE SHEET AND YOU HAVE HER START
24 DISROBING... HOW DO YOU -- WHAT'S THE METHOD OR IS THERE A
25 METHOD WITH THAT?

1 A. I WOULDN'T SAY THERE'S A METHOD. SHE JUST GETS
2 UNDRESSED AND LEAVES HER CLOTHING ON THAT PAPER SHEET, AND
3 THEN SHE'LL PUT A GOWN ON AND STEP -- THEN SIT OVER ON THE
4 BED. AND THEN I TAKE EACH PIECE OF HER CLOTHING. I LOOK IT
5 OVER TO MAKE SURE THERE'S NO STAINS OR RIPS OR TEARS AND THEN
6 BAG EACH ONE SEPARATELY AND THEN PUT IT IN THE BAG.

7 Q. OKAY. AND THEN WHAT HAPPENED NEXT?

8 A. THEN I WOULD LOOK HER OVER HEAD TO TOE. I WOULD
9 PHOTOGRAPH THE INJURIES THAT I SAW. SHE HAD A REDNESS ON HER
10 NECK. SHE HAD SOME REDNESS TO HER BACK. I TOOK PHOTOGRAPHS
11 OF THOSE AND MEASURED AND THEN DOCUMENTED THOSE.

12 Q. OKAY. SO YOU STILL ARE AT THE BEGINNING STAGES OF THE
13 EXAM. YOU HAVE NOT DONE A PELVIC EXAM---

14 A. NO.

15 Q. ---YET.

16 A. NO.

17 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS EXHIBITS -
18 AND HOPEFULLY THEY'RE IN ORDER - 6 THROUGH 15.

19 A. ALL RIGHT.

20 Q. AND ASK IF YOU CAN JUST LOOK THROUGH THAT STACK FIRST
21 AND SEE IF YOU CAN RECOGNIZE THOSE PHOTOS.

22 A. (THE WITNESS LOOKS AT THE PHOTOGRAPHS.) THESE WERE THE
23 PHOTOGRAPHS I TOOK OF TABITHA THAT DAY.

24 Q. OKAY. AND THOSE ACCURATELY SHOW, AS WELL AS A PHOTO
25 CAN, THE INJURIES THAT YOU OBSERVED?

TERRY CASTO - DIRECT EXAM BY MS. FENT

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1 A. RIGHT.

2 MS. FENT: OKAY. IF I COULD ASK IF THE WITNESS COULD
3 GET OFF THE STAND AND...

4 THE COURT: SHE MAY.

5 BY MS. FENT:

6 Q. DO YOU HAVE A PROCESS IN TAKING THE PHOTOS? START
7 GENERALLY AND GET SPECIFIC OR HOW DO YOU DO IT?

8 A. LIKE I SAID, I TAKE A POLAROID FIRST. IT JUST HAS HER
9 HEADSHOT, AND THEN I WOULD -- I START WHEREVER I FIND THE
10 FIRST INJURY, WHEREVER THAT MAY BE.

11 Q. I'M GOING TO SHOW YOU A COUPLE OF OTHER PHOTOS, EXHIBITS
12 4 AND 5.

13 A. RIGHT.

14 Q. OKAY. FOUR, WHAT ARE YOU BASICALLY TRYING TO DO THERE?

15 A. LABELING THAT ROLL OF FILM. THIS WAS WHEN WE USED 35
16 MILLIMETER CAMERAS. SO I WANT TO LABEL SO THAT WHEN I GET IT
17 PROCESSED I'LL KNOW WHO IT BELONGED TO, AND IT HAD HER UNIT
18 RECORD NUMBER ON THERE.

19 Q. OKAY. AND YOU HAVE 18:50 THERE. WHAT IS THAT TIME
20 DOCUMENTING?

21 A. THAT WOULD BE 6:50. THAT'S BY THE TIME I GOT HER
22 HISTORY DONE AND WE WERE GETTING READY TO DO THE PHOTOGRAPHS.

23 Q. OKAY. THEN EXHIBIT 5.

24 A. THAT'S JUST SHOWING HER -- HER FACE AND YOU CAN
25 HOPEFULLY SEE THE LITTLE BIT OF REDNESS TO HER NECK THAT WAS

1 PRESENT.

2 Q. OKAY. STATE'S EXHIBIT 6.

3 A. THIS IS SHOWING HER LEFT SHOULDER BACK BEHIND HERE, HER
4 RED AREA, AND I THINK, IF I HAVE IT MEASURED, IT WAS EIGHT BY
5 THREE CENTIMETERS.

6 Q. OKAY. NOW, IN TERMS OF TAKING A PHOTOGRAPH FIRST, I
7 GUESS SO WE CAN SEE---

8 A. WE'RE GOING TO DO AN OVERALL SO THAT YOU CAN TELL THAT
9 THIS IS HER LEFT SHOULDER. THIS IS HER ARM. THEN, YOU KNOW,
10 WE'RE GOING TO HONE IN ON IT AND GET A LITTLE CLOSER.

11 Q. OKAY. BECAUSE IF WE STARTED WITH THE CLOSE-UP---

12 A. YOU WOULDN'T KNOW WHAT BODY PART IT CAME FROM OR WHERE
13 IT WAS LOCATED AT.

14 Q. OKAY. SO STATE'S EXHIBIT NUMBER 7?

15 A. RIGHT. THIS IS JUST, YOU KNOW, A CLOSE-UP VIEW OF THAT
16 RED AREA.

17 Q. OKAY.

18 A. YOU CAN SEE HOW LONG IT WAS.

19 Q. AND THEN THE NEXT STEP YOU TAKE WITH THAT IN TERMS OF
20 EXHIBIT 8---

21 A. YEAH. WE---

22 Q. ---AND 9?

23 A. ---ATTACHED A FORENSIC RULER TO IT SO THAT YOU CAN LOOK
24 AT THE MEASUREMENTS AND HAVE A STANDARD AND TELL THE
25 MEASUREMENT OF IT.

TERRY CASTO - DIRECT EXAM BY MS. FENT

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1 Q. AND APPROXIMATELY WHAT IS THE MEASUREMENT OF THIS
2 INJURY?

3 A. EIGHT CENTIMETERS BY THREE. SO EIGHT LONG, THREE WIDE.
4 THIS IS SHOWING THE REDNESS TO HER NECK, AND THIS IS ON THE
5 LEFT SIDE OF THE NECK. AND THEN WE GOT CLOSER AND WE ALSO
6 USED THE RULER ON THAT RED AREA, TOO.

7 Q. AND WHAT IS -- I GUESS HOW OFTEN HAVE YOU SEEN INJURIES
8 FROM -- AS A RESULT OF CHOKING?

9 A. NORMALLY IF THE HISTORY WARRANTS THAT SHE WAS CHOKED,
10 THERE'S GOING TO BE SOME KIND OF REDNESS, SOME TYPE OF
11 PRESSURE ON THE NECK THAT LEFT A RED MARK.

12 Q. AND EXHIBIT 12?

13 A. JUST SHOWS IT WITHOUT THE RULER A VERY CLOSE-UP AND IT'S
14 RIGHT THROUGH THERE.

15 Q. EXHIBIT 15?

16 A. THIS IS SHOWING THE RIGHT SIDE OF HER NECK. SHE HAD A
17 SMALL AREA RIGHT THERE.

18 Q. OKAY. AND 10 AND 11.

19 A. THAT'S ANOTHER CLOSE-UP AND THEN WITH THE RULER
20 MEASURING THAT.

21 Q. AND WAS THIS REDNESS CONSISTENT WITH CHOKING?

22 A. YES, MA'AM.

23 Q. YOU MAY HAVE A SEAT. AFTER YOU TAKE THESE PHOTOGRAPHS,
24 WHAT'S THE NEXT STEP IN YOUR EXAM?

25 A. THE NEXT FEW STEPS JUST DEPENDS ON WHAT ORDER I DO IT

1 IN, BUT I DRAW HER BLOOD. I TAKE HEAD HAIR SAMPLES, AND YOU
2 HAVE TO PULL HAIR FROM THE FRONT, CENTER, BACK, RIGHT, AND
3 LEFT, AND EACH VICTIM YOU GET A STANDARD OF THEIR HEAD HAIR,
4 AND I WOULD HAVE DONE THAT FOR HER.

5 Q. AND WHAT IS THE PURPOSE OF THAT, TO GET A STANDARD OF
6 HER HEAD HAIR?

7 A. FOR INSTANCE, WHEN THE CRIME LAB WOULD GET THE SHEETS
8 AND THE COMFORTERS, THEY WOULD FIND HAIRS ON THAT AND THEY
9 WOULD NEED TO KNOW WHOSE HAIR IS WHO.

10 Q. OKAY. ARE THERE ALWAYS HAIRS ON THE SHEET?

11 A. NO.

12 Q. OKAY.

13 A. THIS GIRL WAS VERY DIFFERENT IN THAT HER -- SHE HAD THE
14 HISTORY OF BEING -- HER HAIR BEING PULLED, AND SO I DID NOT
15 HAVE TO PULL HER HAIR AT ALL. I JUST PUT MY GLOVED HAND
16 THROUGH HER HAND (SIC) AND GOT GOBS OF HAIR THAT HAD THE
17 ROOTS STILL ATTACHED AND IS CONSISTENT WITH A HISTORY OF HER
18 HAIR BEING PULLED, NOT ONLY GOING THROUGH HER -- TAKING MY
19 HAND THROUGH HER HAIR, BUT WHAT'S LEFT ON THE SHEET AFTER SHE
20 GOT UP WAS MULTIPLE, MULTIPLE HAIRS.

21 Q. I'M GOING TO SHOW YOU -- I'M GOING TO GO A LITTLE BIT
22 BACKWARDS HERE AND SHOW YOU STATE'S EXHIBIT NUMBER 34 AND SEE
23 IF YOU CAN RECOGNIZE THIS PACKAGING.

24 A. YEAH, THIS IS THE S.L.E.D. KIT AND THIS IS MY SIGNATURE
25 ON IT, MY WRITING.

1 Q. OKAY. AND WHAT ALL GOES INTO THIS KIT?

2 A. IF EVERYTHING WAS TO GO IN HERE, THE BLOOD WOULD GO IN
3 HERE, THE HEAD HAIRS. UNDERWEAR WOULD GO IN HERE. ALSO
4 FINGERNAIL SCRAPINGS POSSIBLY, ANY SALIVA FROM A BITE OR A
5 KISSING MARK, GENITAL SWABS, VAGINAL SWABS, SOMETIMES SWABS
6 FROM THE INTROITUS. ANAL SWABS WILL GO IN HERE. WE ALSO
7 COMB PUBIC HAIR AND PULL PUBIC HAIR AND THEY GO IN HERE ALSO
8 AND ANY TYPE OF MISCELLANEOUS FINDINGS. IT COULD BE LEAVES
9 OR SANDS OR BURS OR WHATEVER WE FIND ON THE VICTIM GETS DRIED
10 AND ALSO GOES IN HERE.

11 Q. OKAY. AND ALL THE EVIDENCE THAT YOU COLLECTED AS A
12 RESULT OF THIS EXAM, DID YOU PUT IT INTO THE EXHIBIT 34?

13 A. YEAH. YES, MA'AM.

14 Q. OKAY. AND WHO SEALS THIS BOX?

15 A. I WOULD HAVE SEALED IT.

16 Q. OKAY.

17 A. I PUT THE RED SEALS ON.

18 Q. OKAY. AND THEN YOU HAVE SOME TYPE OF CHAIN OF CUSTODY
19 FORM ON THE BOX?

20 A. RIGHT, AND WHO I HANDED THE KIT OVER TO AND AT WHAT
21 TIME.

22 Q. OKAY. DID YOU ACTUALLY PUT YOUR SIGNATURE AND TIMES ON
23 THAT BOX?

24 A. YES. AT 10:11 I HANDED IT OVER TO ANOTHER NURSE. HER
25 NAME WAS ALLYSON BAGLEY, AND THEN ALLYSON HANDED IT OVER TO

1 LAW ENFORCEMENT.

2 Q. OKAY. I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS
3 STATE'S EXHIBIT NUMBER 35 AND ASK YOU IF YOU CAN LOOK AT THE
4 CONTENTS OF THAT EXHIBIT.

5 A. THIS IS THE ENVELOPE WHERE TRACE EVIDENCE GOES TO.

6 Q. AND WHAT IS TRACE EVIDENCE?

7 A. USUALLY THE HAIRS AND ANY MISCELLANEOUS, POSSIBLY LEAVES
8 OR FIBERS.

9 Q. OKAY. YOU SAID THAT YOU RAN YOUR FINGERS THROUGH HER
10 HAIR AND COLLECTED SOME HAIR?

11 A. RIGHT.

12 Q. AND WHERE DID YOU PACKAGE THAT?

13 A. IT WENT IN THE KNOWN HEAD HAIRS. LIKE I SAID, THERE'S
14 FIVE DIFFERENT ENVELOPES, SO THE FRONT ENVELOPE IS WHERE I
15 PUT ALL THOSE EXCESS HAIRS THAT I OBTAINED---

16 Q. OKAY.

17 A. ---IN THERE.

18 Q. CAN YOU OPEN THAT ENVELOPE?

19 A. UH-HUH. (THE WITNESS COMPLIES.)

20 Q. AND INSIDE THAT ENVELOPE HOW DID YOU PACKAGE ALL OF
21 THESE ITEMS?

22 A. THEY JUST GO INSIDE A SHEET AND I FOLD IT BACK UP ON TO
23 IT, AND THEN IT GOES ALL INTO THAT ENVELOPE.

24 Q. OKAY.

25 A. UH-HUH.

1 Q. AND WHERE WAS THE -- DID YOU BRING GLOVES?

2 A. NO.

3 Q. THE HAIR THAT IS MARKED IN THIS ENVELOPE IS LABELED
4 WHAT?

5 A. FRONT.

6 Q. FRONT?

7 A. UH-HUH.

8 Q. WHERE DID YOU COLLECT THIS HAIR?

9 A. THAT'S LIKE GOING THROUGH MY -- TAKING MY GLOVED HAND
10 THROUGH HER HAIR AND I COLLECTED ALL THAT MASS OF HAIR.

11 THE COURT: LET ME -- LET ME INTERRUPT YOU FOR ONE
12 SECOND, PLEASE, AND ASK Y'ALL TO COME RIGHT UP HERE FOR A
13 SECOND.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

15 THE COURT: ALL RIGHT.

16 MS. FENT: SO THE RECORD IS CLEAR, I'M JUST GOING TO
17 HAVE LABELED THE FRONT ENVELOPE.

18 (STATE'S EXHIBIT 35-A WAS MARKED FOR IDENTIFICATION.)
19 BY MS. FENT:

20 Q. I'VE HAD MARKED SEPARATELY STATE'S EXHIBIT 35-A THE
21 ENVELOPE WHICH WE JUST OPENED---

22 A. RIGHT.

23 Q. ---THE FRONT. AND HOW EXACTLY -- YOU SAID YOU JUST RAN
24 YOUR FINGERS THROUGH HER HAIR?

25 A. JUST SLIGHTLY PULLING THROUGH THAT.

1 Q. OKAY. WHAT -- WHEN YOU LOOKED AT THESE HAIRS, WHAT, IF
2 ANYTHING OF SIGNIFICANCE, DID YOU NOTICE ABOUT THIS HAIR?

3 A. THAT IT STILL HAD THE ROOTS ATTACHED TO IT SO THAT IT
4 PULLED OUT OF HER SCALP. IT WASN'T HAIR THAT BROKE OFF OR
5 DAMAGED HAIR.

6 Q. AND DID YOU -- COULD YOU JUST SEE THE ROOTS LOOKING AT
7 IT OR DID YOU HAVE TO LOOK UNDER A MICROSCOPE?

8 A. NO, I COULD SEE THE ROOTS.

9 Q. OKAY. FIRST IS HOW OFTEN IN ALL THE EXAMS THAT YOU HAVE
10 DONE, 500 EXAMS, HOW OFTEN HAVE YOU SEEN THIS MUCH HAIR?

11 A. THIS IS THE ONLY TIME.

12 MS. FENT: OKAY. I WOULD OFFER EXHIBIT 35-A INTO
13 EVIDENCE.

14 MS. OWINGS: I NEED TO SEE IT. (MS. OWINGS LOOKS AT
15 STATE'S EXHIBIT 35-A.) WITHOUT OBJECTION.

16 THE COURT: IT'S ADMITTED. ALL RIGHT.

17 (STATE'S EXHIBIT 35-A WAS RECEIVED IN EVIDENCE.)

18 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO GO
19 AHEAD AND BREAK FOR LUNCH NOW, AND WE WILL RETURN AT 2:00 TO
20 RESUME WITH TESTIMONY. SO PLEASE BE BACK IN YOUR JURY ROOM
21 AT 2:00. Y'ALL HAVE A NICE LUNCH.

22 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO GO
23 TO LUNCH AT 12:19 P.M.)

24 THE COURT: MA'AM, AS I'M SURE YOU ARE AWARE, DURING
25 THIS BREAK YOU MAY NOT DISCUSS THE SUBSTANCE OF YOUR

1 TESTIMONY WITH ANYBODY.

2 THE WITNESS: OF COURSE.

3 THE COURT: WE'LL SEE YOU AT 2:00.

4 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

5 THE COURT: BE SEATED, PLEASE. LET ME KNOW WHAT THE
6 STATUS OF THE JURY IS.

7 BAILIFF: YES, SIR.

8 (PAUSE IN PROCEEDINGS.)

9 THE CLERK: SHE'S COMING DOWN THE HALLWAY RIGHT NOW, THE
10 SAME ONE THAT WAS LATE THIS MORNING, YOUR HONOR.

11 THE COURT: ALL RIGHT. BRING THEM IN.

12 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 2:02
13 P.M.)

14 THE COURT: MA'AM, COME BACK AROUND TO THE WITNESS
15 STAND, PLEASE.

16 THE CLERK: I REMIND YOU YOU'RE STILL UNDER OATH FROM
17 THIS MORNING.

18 BY MS. FENT:

19 Q. I'M GOING TO STEP BACK JUST A LITTLE BIT TO SOMETHING I
20 FORGOT EARLIER. FORGIVE ME. HOW MANY TIMES HAVE YOU
21 TESTIFIED IN COURTS, GENERAL SESSIONS COURTS, IN THE STATE OF
22 SOUTH CAROLINA AS A SEXUAL ASSAULT NURSE EXAMINER?

23 A. THREE TIMES.

24 Q. OKAY. AND HOW MANY TIMES HAVE YOU BEEN QUALIFIED AS AN
25 EXPERT?

1 A. TWO TIMES.

2 MS. FENT: YOUR HONOR, I WOULD OFFER TERRY CASTO AS AN
3 EXPERT IN THE AREA OF SEXUAL ASSAULT NURSE EXAMINATION.

4 THE COURT: ARE YOU GOING TO BE ELICITING ANY OPINIONS
5 FROM HER?

6 MS. FENT: YES.

7 THE COURT: ON WHAT SUBJECT?

8 MS. FENT: WHETHER OR NOT THIS IS CONSISTENT TO HER -- A
9 REASONABLE DEGREE OF CERTAINTY. IN HER EXPERIENCE WAS THERE
10 A SEXUAL ASSAULT?

11 MS. OWINGS: WITH OBJECTION.

12 THE COURT: I THINK THAT -- THAT WHILE SHE QUALIFIES AS
13 AN EXPERT SEXUAL ASSAULT NURSE EXAMINER, THE -- WHETHER OR
14 NOT SHE'S GOING TO BE ALLOWED TO GIVE A SPECIFIC OPINION IS
15 GOING TO DEPEND ON THE INDIVIDUAL QUESTION THAT YOU ASK AND
16 THE FOUNDATION THAT SURROUNDS THAT SPECIFIC OPINION. SO I'M
17 GOING TO QUALIFY HER AS AN EXPERT, BUT BEFORE YOU -- WHEN YOU
18 ASK YOUR OPINION QUESTIONS, YOU NEED TO ASK THEM IN THIS
19 FASHION: DO YOU HAVE AN OPINION AS TO SUCH AND SUCH, AND
20 THEN YOU ANSWER THAT QUESTION YES OR NO. DON'T THEN GIVE THE
21 OPINION. THAT GIVES THE DEFENSE COUNSEL A CHANCE TO MAKE AN
22 OBJECTION IF THEY HAVE ONE.

23 MS. OWINGS: THANK YOU, SIR.

24 THE COURT: IF YOU'RE ALLOWED TO GIVE THE OPINION,
25 THEY'LL ASK YOU A FOLLOW-UP QUESTION THAT YOU CAN ANSWER.

1 THE WITNESS: YES, SIR.

2 THE COURT: THANK YOU.

3 BY MS. FENT:

4 Q. AND ONE OTHER THING: WHEN I WAS GOING BACK TO READ THE
5 NOTES - IT'S ON PAGE 2 OF YOUR RECORDS - YOU TESTIFIED WITH
6 REGARD TO THE VICTIM TAKING TWO TYLENOL P.M.'S.

7 A. YES, MA'AM.

8 Q. WHAT WAS THE TIME THAT SHE GAVE YOU THAT SHE HAD TAKEN
9 THOSE TWO TYLENOL P.M.'S?

10 A. 2100 OR 9 P.M.

11 Q. OKAY. WE WERE JUST LOOKING AT EXHIBIT 35 AND
12 SPECIFICALLY 35-A THAT WAS INSIDE OF EXHIBIT 35. THAT IS
13 LABELED FRONT. INSIDE THAT SAME ENVELOPE -- BASICALLY HOW IS
14 THAT ENVELOPE LABELED IN TERMS OF WHAT THE EVIDENCE IS INSIDE
15 OF IT?

16 A. WELL, THE ENVELOPE COMES "KNOWN HEAD HAIRS," AND SO I
17 LABEL IT WITH HER STICKER FROM THE HOSPITAL. IT HAS HER NAME
18 AND UNIT RECORD NUMBER ON IT, AND THEN I WRITE IF THERE'S
19 ANYTHING SPECIFIC -- ANYTHING OUT OF THE ORDINARY THAT I
20 WOULD PUT IN HERE, AND SO WITH THIS I WROTE, "THE FRONT
21 CONTAINS HAIR THAT WAS COLLECTED WHEN I RAN MY HAND THROUGH
22 HER HAIR."

23 Q. AND THE FRONT MEANING?

24 A. YOU COLLECT HEAD HAIRS FROM FIVE DIFFERENT SPOTS ON THE
25 HEAD: FRONT, CENTER, BACK, RIGHT, AND LEFT.

1 Q. OKAY.

2 A. SO IN HERE IS STILL -- THAT'S THE FRONT AND I'VE GOT
3 BACK, RIGHT, LEFT, AND CENTER.

4 Q. OKAY. AND YOU SPECIFICALLY NOTED THAT THE ONE LABELED
5 FRONT---

6 A. RIGHT.

7 Q. ---HAD THOSE HAIRS THAT YOU JUST---

8 A. VERY LOOSE HAIRS THAT WERE JUST THERE IN HER SCALP.

9 Q. OKAY. NOW, THE OTHER ONES THAT YOU HAVE THERE, THE
10 BACK, RIGHT, LEFT, AND CENTER---

11 A. UH-HUH.

12 Q. ---DO THESE -- ARE THEY TAKEN IN THE SAME MANNER THAT
13 YOU TOOK THE ONES THAT ARE IN THE FRONT?

14 A. NO. THEY'RE ACTUALLY HAIRS THAT I WOULD HAVE PULLED
15 FROM THAT AREA OF THE SCALP.

16 Q. OKAY. SO WHAT IS THE QUANTITY OF THE HAIR THEN THAT'S
17 GOING TO BE IN HERE VERSUS WHAT YOU FOUND ON IN -- OR IS
18 PLACED IN THE FRONT ENVELOPE?

19 A. USUALLY TWO TO THREE HAIRS. I JUST TRY TO GRAB A SMALL
20 AMOUNT AND PULL FROM THE SCALP AND, YOU KNOW, IT'S HARD TO --
21 SOME PEOPLES' SCALP HAIR IS LITTLE FINER THAN OTHERS, BUT
22 USUALLY IT'S AROUND THAT AMOUNT.

23 Q. OKAY. AND THEN YOU PACKAGED ALL THESE, YOU SAID, IN THE
24 KNOWN HEAD HAIRS ENVELOPE.

25 A. RIGHT, AND THEN I WOULD HAVE SEALED IT UP WITH TAPE AND

1 PUT MY INITIALS OVER THE TAPE AND TIMED AND DATED IT.

2 Q. OKAY. I'LL JUST PLACE 35-A BACK IN THAT KNOWN HEAD
3 HAIRS ENVELOPE. THEN BASICALLY WHAT ELSE IS IN EXHIBIT 35?
4 WE DON'T NEED TO ACTUALLY OPEN ALL THE ITEMS, BUT WHAT IS IT
5 THAT YOU HAVE COLLECTED AND HAVE PLACED AND LABELED IN THAT
6 ENVELOPE?

7 A. WELL, I DID A PUBIC HAIR COMBING, SO I TOOK A COMB
8 THROUGH HER PUBIC HAIR. THE PURPOSE OF THAT IS FINDING MAYBE
9 SOME OF HIS HAIR, SOME SEMEN THAT MIGHT BE MATTED IN HER
10 HAIR, AND THEN WE PULL PUBIC HAIRS FOR A KNOWN SPECIMEN.

11 Q. OKAY. SO THAT IF YOU DO FIND SOME LOOSE HAIRS YOU CAN
12 DISTINGUISH THOSE LOOSE HAIRS FROM BEING HER LOOSE HAIRS OR
13 SOMEONE ELSE'S.

14 A. EXACTLY.

15 Q. OKAY. ANYTHING ELSE IN THAT ENVELOPE?

16 A. IT'S MARKED MISCELLANEOUS, BUT IT DID NOT GO -- IT'S NOT
17 IN HERE. AND I USED THE MISCELLANEOUS ENVELOPE FOR -- TO
18 SWAB SECRETIONS THAT WERE IN THE OPENING TO HER VAGINA, AND
19 THAT'S WHAT I USED IT FOR.

20 Q. OKAY. AND THOSE SWABS OR THE SECRETIONS ULTIMATELY GO
21 WHERE?

22 A. IT WOULD GO TO THE D.N.A. SECTION---

23 Q. OKAY.

24 A. ---RATHER THAN THE TRACE SECTION OF THE CRIME LAB.

25 Q. ANYTHING ELSE IN THAT ENVELOPE?

1 A. NO. THIS IS ALL.

2 Q. OKAY. I'LL GO AHEAD AND HAND YOU 36 AND 37 SO I DON'T
3 HAVE TO KEEP WALKING UP HERE.

4 A. OKAY.

5 Q. THEN YOU CAN JUST CONTINUE KIND OF WALKING US THROUGH
6 THE PHYSICAL EXAM.

7 A. SO AFTER I COLLECTED HER CLOTHING AND LOOKED HER OVER, I
8 DREW THE BLOOD. I SWABBED HER NECK FROM WHERE HE HAD BEEN
9 KISSING HER, AND I SWABBED HER ABDOMEN AND HER BELLY BUTTON.

10 Q. AND WHY DID YOU SWAB -- IS THAT A STANDARD SWAB THAT YOU
11 DO WITH EVERY EXAMINATION?

12 A. NO. IT WAS ACCORDING TO HER HISTORY THAT HE EJACULATED
13 ON TO HER STOMACH.

14 Q. OKAY.

15 A. I DID SWAB THE INSIDE OF HER MOUTH SINCE ORAL SEX WAS
16 PERFORMED ON HER AND POSSIBLY MIGHT BE ABLE TO COLLECT ANY
17 SEMEN THERE IN HER MOUTH, AND THEN I WENT ON TO THE FEMALE
18 PELVIC EXAM.

19 Q. OKAY. THE INFORMATION THAT YOU JUST SAID THAT YOU
20 COLLECTED, ARE THEY IN EITHER 36 OR -- WELL, I GUESS THIS IS
21 36.

22 A. RIGHT. THIS IS HER UNDERWEAR, AND WE PACKAGE THOSE, PUT
23 IT INTO A PAPERWORK BAG AND PACKAGE IT AND PUT IT INSIDE THAT
24 KIT.

25 Q. OKAY. AND THAT'S IN EXHIBIT 37; CORRECT?

1 A. RIGHT.

2 Q. OKAY. THEN WHAT IS BASICALLY CONTAINED THEN IN 36?

3 A. IT WOULD HAVE BEEN HER BLOOD, ANY SMEARS WE PUT -- ANY
4 SECRETIONS, WE PUT IT ON TO A SLIDE, A MICROSCOPE SLIDE;
5 THAT'S A SMEAR. TWO SWABS THAT I OBTAIN SECRETIONS FROM HER
6 VAGINA, TWO ORAL SWABS, TWO RECTAL SWABS, THE MISCELLANEOUS
7 BODY FLUID THAT I FOUND GOT OFF HER BELLY. THE ENVELOPE FOR
8 THE FINGERNAIL SCRAPINGS WOULD HAVE BEEN IN THERE AND THEN
9 THE SWAB OF THE AREAS THAT WERE KISSED.

10 Q. WHEN YOU COLLECT ALL THAT, YOU PUT IT IN A PACKAGE AND
11 IN THOSE EXHIBITS WE JUST TALKED ABOUT?

12 A. YES, MA'AM.

13 Q. OKAY. THEN IF WE CAN WALK THROUGH THEN THE PELVIC EXAM
14 AND WHAT YOU'RE LOOKING FOR FIRST AND HOW THE EVIDENCE IS
15 COLLECTED.

16 A. OKAY. FOR THOSE WHO ARE FEMALES WILL KNOW THAT YOU GET
17 INTO A LITHOTOMY POSITION AND SHE'S LAYING ON HER BACK WITH
18 HER FEET IN STIRRUPS SO I CAN SEE A -- HAVE A GOOD PICTURE OF
19 THE GENITAL AREA. I USE A COLPOSCOPE WHICH IS KIND OF A
20 SCOPE BETWEEN ME AND HER. IT MAGNIFIES THE AREA AND THE
21 PICTURES GO TO A COMPUTER, AND SO I CAN SEE THAT I'M TAKING
22 GOOD PICTURES, AND I HAVE A FOOT PEDAL THAT I PUSH TO TAKE --
23 TO CAPTURE THE PICTURE. I SPEND A LOT OF TIME JUST LOOKING
24 AT THE OUTSIDE OF THE GENITALIA, LOOKING -- PULLING APART
25 SKIN FOLDS AND LOOKING, YOU KNOW, FROM -- ALL THE WAY FROM

1 THE TOP ALL THE WAY BACK DOWN TO BELOW HER ANUS LOOKING FOR
2 ANY INJURIES, ANY BRUISES, ANY ABRASIONS, ANY LACERATIONS,
3 REDNESS OR ANY ABRASIONS.

4 Q. OKAY. AND BASICALLY WHAT THEN DID YOU SEE WHEN YOU
5 EXAMINED TABITHA?

6 A. WELL, THERE WAS A SMALL AREA OF REDNESS AT -- WE
7 DOCUMENT EVERYTHING LIKE A CLOCK. SO AT THE OPENING TO HER
8 VAGINA, ANYWHERE FROM 5 TO 6:00 WAS A LITTLE BIT OF REDNESS,
9 AND AFTER I LOOK AT MY INSPECTION ON THE OUTSIDE AND I TAKE
10 SAMPLES FROM THE OUTSIDE GENITALIA, THEN I PUT DYE ON IT.
11 IT'S CALLED A TOLUENE DYE, AND THE DYE WILL UPTAKE AT ANY
12 PLACES THAT IS ABRADED OR THE SKIN IS BROKEN.

13 Q. WHAT DO YOU MEAN BY UPTAKE?

14 A. IT KIND OF ABSORBS IT. SO IF THERE'S A BROKEN AREA THAT
15 -- THE DYE IS -- IT LIKES NUCLEATED CELLS. SO THE TOP LAYER
16 OF SKIN DOESN'T CONTAIN NUCLEATED CELLS, BUT IF YOU BRUSH
17 THAT AWAY, IT DOES. SO THE DYE HAS UPTAKED IT AND IT KIND OF
18 MAKES IT POSITIVE OR IT MAKES IT DARKER, AND IT'S ACTUALLY A
19 DARK BLUE COLOR. AND THEN YOU CAN TELL IF THERE'S AREAS OF
20 ABRASION OR THE SKIN IS TORN THAT I MAY NOT BE ABLE TO
21 VISUALIZE WITHOUT THE DYE.

22 Q. WHEN YOU SAY THE TOP LAYER OF SKIN HAS NUCLEATED CELLS
23 OR DOES NOT HAVE NUCLEATED CELLS...

24 A. DOES NOT HAVE NUCLEATED CELLS.

25 Q. OKAY. AND SO THE DYE IS NOT GOING TO UPTAKE OR ATTACH

1 TO---

2 A. RIGHT.

3 Q. ---THAT.

4 A. RIGHT.

5 Q. IT'S WHERE THERE IS AN ABRASION TO THAT TOP LAYER, AND
6 THEN IT BASICALLY ATTACHES TO THAT ABRASION.

7 A. EXACTLY.

8 Q. OKAY. AND YOU'VE DESCRIBED IT AS KIND OF A CLOCK THAT
9 YOU'RE LOOKING AT?

10 A. RIGHT. THE CLOCK -- FROM THE 5:00 POSITION TO THE 6:00,
11 IN THAT AREA IT'S CALLED THE POSTERIOR FOURCHETTE, AND THAT'S
12 WHERE SHE HAD THE ABRASION AT.

13 Q. AND BASED UPON YOUR TRAINING AND YOUR EXPERIENCE, WHAT
14 DOES THAT TELL YOU, IF ANYTHING, ABOUT A SEXUAL ASSAULT
15 OCCURRING?

16 MS. OWINGS: OBJECTION, YOUR HONOR.

17 THE COURT: SUSTAINED.

18 THE WITNESS: IT'S TELLS ME---

19 THE COURT: WAIT A MINUTE.

20 MS. FENT: I HAVE TO REPHRASE. WHAT DOES THAT TELL YOU
21 ABOUT, IF ANYTHING, SEXUAL CONTACT, THE SEXUAL CONTACT THAT
22 OCCURRED?

23 THE WITNESS: THAT---

24 MS. OWINGS: OBJECTION.

25 THE COURT: YOU'RE ASKING HER FOR HER OPINION; CORRECT?

1 MS. FENT: WELL, ACTUALLY---

2 THE COURT: ABOUT WHETHER OR NOT SUCH AND SUCH OCCURRED
3 AND THE QUESTION IS IMPROPERLY PHRASED. I SUSTAIN THE
4 OBJECTION.

5 BY MS. FENT:

6 Q. BASED UPON THE 500 PLUS EXAMS THAT YOU HAVE PERFORMED---

7 A. YES, MA'AM.

8 Q. ---AND THE TRAINING THAT YOU HAVE RECEIVED, ARE YOU ABLE
9 TO REACH AN OPINION, YES OR NO, AS TO WHETHER OR NOT OR -- I
10 GUESS FIRST WHETHER OR NOT THIS DYE, WHAT YOU OBSERVED, TELLS
11 YOU SOMETHING ABOUT THE SEXUAL CONTACT?

12 A. YES, IT DOES.

13 Q. OKAY. AND---

14 MS. OWINGS: I STILL OBJECT.

15 THE COURT: IT WAS A YES-OR-NO QUESTION. OVERRULED.

16 MS. FENT: BASED UPON YOUR TRAINING AND EXPERIENCE, WHAT
17 IS THAT OPINION?

18 MS. OWINGS: OBJECTION.

19 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M GOING
20 TO LET YOU STEP OUT OF THE COURTROOM FOR A FEW MINUTES, AND
21 GO INTO THE JURY ROOM AND WE'LL HAVE YOU BACK IN HERE AS
22 QUICKLY AS POSSIBLE.

23 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 2:16
24 P.M.)

25 THE COURT: OKAY. LET ME -- LET ME GET YOU TO JUST BACK

TERRY CASTO - DIRECT EXAM BY MS. FENT

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1 UP A LITTLE BIT AND DIRECT HER TO THE SUBJECT MATTER THAT YOU
2 ARE WANTING HER TO ADDRESS AND THEN ASK HER THE QUESTIONS YOU
3 WANT TO ASK HER.

4 MS. FENT: OKAY.

5 BY MS. FENT:

6 Q. WITH REGARD TO THE DYE AND HOW YOU'VE TESTIFIED THE
7 ABRASION AND THE UPTAKE---

8 A. YES, MA'AM.

9 Q. OKAY. BASED UPON YOUR TRAINING AND EXPERIENCE, DO YOU
10 HAVE AN OPINION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY
11 AS TO WHETHER OR NOT THAT IS CONSISTENT WITH A FORCED SEXUAL
12 CONTACT?

13 A. IT IS CONSISTENT WITH BLUNT FORCE TRAUMA, SOMETHING
14 RUBBING UP AGAINST THAT.

15 THE COURT: AND JUST -- JUST FOR PRACTICE BECAUSE THIS
16 IS THE WAY YOU'RE SUPPOSED TO ANSWER THAT QUESTION: YES.

17 THE WITNESS: YES. SORRY.

18 THE COURT: WHAT IS YOUR OPINION?

19 MS. FENT: WHAT IS THAT OPINION?

20 THE COURT: NOW, NOW YOU STATE YOUR OPINION.

21 THE WITNESS: THAT IT WAS CAUSED BY BLUNT FORCE TRAUMA,
22 SOMETHING RUBBING UP AGAINST THE SKIN, TO MAKE THE SKIN
23 ABRADE.

24 MS. OWINGS: MY OBJECTION TO THIS, YOUR HONOR, IS THAT
25 SHE CAN'T THEN SAY THAT'S A SEXUAL ASSAULT. SHE CAN SAY IT'S

1 A SEXUAL ACT, BUT SEX IN ITSELF IS, I MEAN---

2 MS. FENT: MY QUESTION ACTUALLY SAID SEXUAL CONTACT.

3 MS. OWINGS: NO, THE FIRST ONE WASN'T.

4 MS. FENT: WHAT I JUST -- ACTUALLY, THE LAST TWO OR
5 THREE---

6 MS. OWINGS: BUT, YOUR HONOR, WHAT THE SOLICITOR SAID
7 SHE WANTED TO ASK HER OPINION OF IS WHETHER IT WAS ACTUALLY A
8 SEXUAL ASSAULT, AND I DON'T SEE HOW THAT CONCLUSION CAN BE
9 DRAWN FROM THAT.

10 THE COURT: DOES YOUR -- DO YOUR OBSERVATIONS REGARDING
11 THIS DYE ENABLE YOU TO DIFFERENTIATE BETWEEN A CONSENSUAL
12 SEXUAL ACT AND A FORCED SEXUAL ACT?

13 THE WITNESS: NO, IT DOESN'T, SIR.

14 THE COURT: OKAY.

15 MS. FENT: MY FIRST QUESTION DID SAY WHETHER OR NOT
16 THERE WAS A SEXUAL ASSAULT. THEN THE NEXT TWO I USED THE
17 WORD SEXUAL CONTACT.

18 MS. OWINGS: WHAT WAS SHE AIMING TO DO, WHAT SHE TOLD
19 YOU, WHICH I SAID THAT I WOULD OBJECT TO IS THAT SHE WANTS TO
20 GET THIS WITNESS'S EXPERT OPINION AS TO WHETHER OR NOT THERE
21 WAS---

22 THE COURT: THE WITNESS SAID SHE CAN'T -- THE WITNESS
23 SAID SHE CAN'T DO THAT.

24 MS. OWINGS: OKAY. THEN I'M FINE.

25 THE COURT: ALL RIGHT. ARE THERE ANY OTHER OPINIONS

1 YOU'RE GOING TO SEEK TO ELICIT FROM THIS WITNESS?

2 MS. FENT: NO.

3 THE COURT: OKAY. THEN OBJECTION IS WITHDRAWN. BRING
4 THE JURY IN.

5 MS. OWINGS: THANK YOU, SIR.

6 THE COURT: THE REASON FOR THAT FORMAT IS IT GIVES
7 EVERYBODY A CHANCE TO KNOW WHAT'S ABOUT TO HAPPEN AND MAKE AN
8 OBJECTION. A LOT OF JUDGES WILL MAYBE BE A LITTLE -- I MEAN,
9 I GUESS I WAS KIND OF INSISTENT BUT IF -- IT CAN BE A BIGGER
10 DEAL.

11 THE WITNESS: YEAH.

12 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 2:20
13 P.M.)

14 THE COURT: YOU MAY PROCEED.

15 BY MS. FENT:

16 Q. DO YOU HAVE AN OPINION, YES OR NO, AS TO A REASONABLE
17 DEGREE OF MEDICAL CERTAINTY AS TO THE CAUSE OF THIS ABRASION
18 THAT YOU OBSERVED?

19 A. YES.

20 Q. AND WHAT IS THAT OPINION?

21 A. THAT SOMETHING HIT BLUNTLY AND FORCEFULLY TO CAUSE IT TO
22 ABRADE.

23 Q. WHAT ELSE THEN DO YOU DO IN YOUR EXAMINATION?

24 A. AFTER I LOOK AT THE OUTSIDE ASPECTS OF GENITALIA, I USE
25 THE DYE AND THEN I WILL DO A SPECULUM EXAM WHERE WE PUT THE

1 SPECULUM INSIDE, OPEN IT UP, GET SECRETIONS THAT MIGHT BE
2 PRESENT, AND ALSO LOOKING AT THE WALLS OF THE VAGINA AND THE
3 CERVIX FOR ANY POSSIBLE INJURIES THERE.

4 Q. OKAY. WHAT NEXT DO YOU DO?

5 A. WHILE I'M THERE, I ALSO GET CULTURES FOR SEXUALLY-
6 TRANSMITTED DISEASES, AND THEN WE WOULD BE DONE WITH THAT
7 PORTION OF THE EXAM. WE USUALLY HAVE HER GO TO THE BATHROOM
8 NEXT. SHE'LL GIVE A URINE SPECIMEN THAT WE WOULD SEND TO OUR
9 LAB TO CHECK A PREGNANCY TEST, AND THEN WE WOULD HAVE HER
10 CHANGE HER CLOTHES AND GET DRESSED AND THEN WE WOULD FIND OUT
11 HER URINE PREGNANCY TEST RESULTS. AND THEN WE OFFER HER AN
12 ANTIBIOTIC TO PREVENT GONORRHEA AND CHLAMYDIA AND ALSO OFFER
13 HER AN EMERGENCY CONTRACEPTIVE FOR PLAN B.

14 Q. AND THE ABDOMINAL SWABS THAT YOU TOOK OFF OF TABITHA'S
15 STOMACH---

16 A. YES, MA'AM.

17 Q. ---DID YOU -- HOW DID YOU PACKAGE THOSE?

18 A. THEY'RE JUST Q-TIPS, LONG Q-TIPS. THEY WOULD HAVE BEEN
19 MOISTENED WITH SOME WATER PRIOR TO GETTING IT OFF OF HER
20 SKIN. I PUT THEM IN A SWAB DRYER AND DRIED IT FOR A MINIMUM
21 OF AN HOUR AND WOULD DROP IT INTO THE ENVELOPE AND THEN SEAL
22 IT UP AND PUT IT IN THE KIT.

23 Q. AND ARE THOSE THEN LABELED SPECIFICALLY ABDOMINAL SWABS?

24 A. RIGHT.

25 Q. OKAY. SO THAT ULTIMATELY WHOEVER ANALYZES THEM KNOWS

1 WHERE THOSE SWABS CAME FROM.

2 A. EXACTLY.

3 Q. OKAY. WERE THE INJURIES THAT YOU OBSERVED YOURSELF ON
4 TABITHA, WERE THEY CONSISTENT WITH THE HISTORY THAT TABITHA
5 GAVE YOU?

6 A. YES, IT WAS.

7 MS. FENT: JUST FOR CLARIFICATION PURPOSES, I DON'T KNOW
8 IF I HAVE PREVIOUSLY OFFERED EXHIBITS 4 AND 5 INTO EVIDENCE,
9 IF THEY'VE BEEN ADMITTED OR NOT.

10 MS. OWINGS: WITHOUT OBJECTION. I DON'T KNOW IF THEY
11 HAVE OR NOT.

12 THE COURT: THEY'RE ADMITTED.

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

14 MS. FENT: NO FURTHER QUESTIONS AT THIS TIME.

15 CROSS-EXAMINATION

16 BY MS. OWINGS:

17 Q. WHEN YOU INTERVIEWED TABITHA, YOU KNOW THAT SHE HAD BOTH
18 EATEN A MEAL AND SHE DRANK. IS THAT RIGHT?

19 A. YES, MA'AM.

20 Q. YOU ALSO AS PART OF YOUR -- AS PART OF YOUR MEDICAL
21 HISTORY YOU TOOK DOWN THE DATE OF HER LAST MENSES.

22 A. YES, MA'AM.

23 Q. AND CAN YOU EXPLAIN TO THE JURY WHAT THAT WOULD BE?
24 WHAT IS HER MENSES?

25 A. HER MENSTRUAL PERIOD.

1 Q. SO YOU DOCUMENTED AS MARCH 15TH THE DATE OF HER LAST
2 MENSES.

3 A. YES. CORRECT.

4 Q. AND MARCH 15TH WOULD BE THE FIRST DAY OF HER PERIOD. IS
5 THAT RIGHT?

6 A. THAT'S WHAT WE TRY TO GET AT. A LOT OF GIRLS DON'T KNOW
7 THE SPECIFIC TIME. IT COULD HAVE BEEN RIGHT AROUND THERE.

8 Q. AND THAT WAS THE BEST THAT Y'ALL COULD FIGURE---

9 A. YES. YES, MA'AM.

10 Q. ---THAT DATE. NOW, FROM YOUR MEDICAL TRAINING IN
11 NURSING SCHOOL, CAN YOU TELL -- A WOMAN'S CYCLE TECHNICALLY
12 STARTS ON THE FIRST DAY OF HER PERIOD. IS THAT RIGHT?

13 A. YES, MA'AM.

14 Q. WHETHER IT'S A 28-DAY OR 32.

15 A. CORRECT.

16 Q. BUT IT STARTS ON THE FIRST DAY OF HER PERIOD.

17 A. RIGHT.

18 Q. AND THE FIRST DAY OF HER PERIOD WOULD HAVE BEEN ABOUT
19 TWO WEEKS BEFORE YOU SAW HER? A LITTLE MORE THAN TWO WEEKS?

20 A. LET'S SEE. I SAW HER ON APRIL 3RD. SO A LITTLE MORE,
21 YEAH.

22 Q. ROUGHLY TWO WEEKS.

23 A. UH-HUH.

24 Q. AND A WOMAN OVULATES SOMEWHERE BETWEEN 10 AND 14 DAYS
25 INTO HER PERIOD ROUGHLY?

1 A. THAT'S WHAT THE BOOK SAYS; YES, MA'AM.

2 Q. AND ALL THAT DEPENDS ON HOW LONG HER CYCLE IS. IS THAT
3 RIGHT?

4 A. RIGHT.

5 Q. SO IF SHE WAS OVULATING AT THAT TIME AND SOMEONE HAD
6 EJACULATED INSIDE HER, THEN SHE COULD HAVE GOTTEN PREGNANT.

7 A. POTENTIALLY.

8 Q. POTENTIALLY. NOW, WHENEVER YOU MAKE A NOTE OF YOUR
9 PELVIC EXAMINATION, YOU USE AN ACRONYM: B.R.A.T.S.

10 A. YES.

11 Q. WHAT IS THAT?

12 A. IT STANDS FOR BRUISES, REDNESS, ABRASIONS, TEARS, AND
13 SWELLING.

14 Q. NOW, WHEN YOU DID HER PELVIC EXAMINATION, YOU'VE ALREADY
15 TESTIFIED THAT YOU SAW AN ABRASION AT 5:00.

16 A. YES, MA'AM.

17 Q. BUT YOU ALSO NOTE THAT WHEN YOU EXAMINED HER VULVA YOU
18 FOUND IT -- A CIRCLE WITH A LINE THROUGH IT FOR B.R.A.T.S.,
19 AND THAT MEANS NEGATIVE FOR B.R.A.T.S.?

20 A. RIGHT.

21 Q. OKAY. SO HER VULVA WAS NEGATIVE FOR ANY BRUISES,
22 REDNESS, ABRASIONS, TEARS, OR SWELLING.

23 A. RIGHT. HER LABIA MINORA/MAJORA WAS NEGATIVE.

24 Q. OKAY. AND YOU ALSO NOTED THAT HER HYMEN AREA WAS
25 NEGATIVE FOR B.R.A.T.S.

1 A. YEAH.

2 Q. AND YOU ALSO NOTICED THAT HER VAGINA WAS NEGATIVE FOR
3 B.R.A.T.S.

4 A. YES, MA'AM.

5 Q. AND YOU NOTED THAT HER ANUS WAS NEGATIVE FOR B.R.A.T.S.

6 A. YES, MA'AM.

7 Q. SO NONE OF THOSE AREAS WE JUST DISCUSSED HAD ANY
8 BRUISES, ANY REDNESS, ANY TEARING, ABRASIONS, OR SWELLING.

9 A. THOSE AREAS YOU MENTIONED, YES.

10 MS. OWINGS: OKAY. BEG THE COURT'S INDULGENCE ONE
11 MOMENT, PLEASE. I HAVE NO FURTHER QUESTIONS AT THIS TIME,
12 YOUR HONOR.

13 REDIRECT EXAMINATION

14 BY MS. FENT:

15 Q. THE AREA YOU NOTICED THIS ABRASION IN, WHAT AREA IS THAT
16 AGAIN?

17 A. IT'S CALLED THE INTROITUS WHICH IS THE OPENING TO THE
18 VAGINAL VAULT.

19 Q. OKAY.

20 A. IT'S THE SURROUNDING AREA TO THE VAGINA.

21 Q. OKAY. AND IN 500 EXAMS OR MORE THAT YOU'VE DONE, HOW
22 FREQUENT OR INFREQUENT DO YOU SEE AN ABRASION IN THIS AREA?

23 A. IT'S THE MOST FREQUENT AREA OF ABRASIONS OR INJURIES IN
24 THAT POSTERIOR FOURCHETTE AREA.

25 Q. OKAY. AND DO YOU ALL ACTUALLY HAVE A NAME OR A LABEL

1 FOR THAT TYPE OF INJURY?

2 A. IT'S CALLED A MOUNTING INJURY.

3 MS. FENT: NO FURTHER QUESTIONS.

4 MS. OWINGS: NOTHING FURTHER.

5 THE COURT: YOU CAN STEP DOWN.

6 MS. FENT: THE STATE CALLS LIEUTENANT HINSON.

7 BRYANT W. HINSON, JR., AFTER BEING DULY SWORN,

8 TESTIFIED AS FOLLOWS:

9 THE CLERK: PLEASE HAVE A SEAT THERE, SIR. STATE YOUR
10 FULL NAME.

11 MS. FENT: I FAILED TO REQUEST THAT IF TERRY CASTO
12 REQUESTS TO LEAVE IF SHE COULD PLEASE BE EXCUSED FROM HER
13 SUBPOENA.

14 THE COURT: SHE'S EXCUSED.

15 MS. FENT: OKAY.

16 THE WITNESS: IT'S BRYANT WILLIAM HINSON, JR.

17 DIRECT EXAMINATION

18 BY MS. FENT:

19 Q. AND, LIEUTENANT HINSON, WHO DO YOU WORK FOR?

20 A. FOREST ACRES POLICE DEPARTMENT.

21 Q. OKAY. CAN YOU PLEASE TELL THE JURY ABOUT YOUR
22 EDUCATION, TRAINING, AND WORK EXPERIENCE THAT LEADS YOU TO BE
23 A LIEUTENANT?

24 A. I'VE BEEN IN LAW ENFORCEMENT 26 YEARS, 16 WITH FOREST
25 ACRES, THE REMAINDER PRIMARILY WITH COLUMBIA POLICE

1 DEPARTMENT. I'VE WORKED IN CRIMINAL INVESTIGATIONS FOR 13
2 YEARS, NARCOTICS FOR 10 YEARS, AND THE REMAINDER IN THE
3 PATROL DIVISION. I HAVE AN ASSOCIATE'S DEGREE, CURRENTLY
4 ATTEMPTING TO FINISH MY BACHELOR'S DEGREE IN CRIMINAL
5 JUSTICE, AND I'VE BEEN THROUGH NUMEROUS TRAINING CLASSES
6 THROUGHOUT THE 26 YEARS.

7 Q. IN APRIL OF 2005 BASICALLY WHAT WERE YOUR DUTIES AND
8 RESPONSIBILITIES AT FOREST ACRES?

9 A. AT THAT TIME I WAS A SERGEANT. I WAS PROMOTED TO
10 LIEUTENANT MARCH OF LAST YEAR, BUT I WAS A SERGEANT IN CHARGE
11 OF THE INVESTIGATIONS DIVISION.

12 Q. OKAY. AND SPECIFICALLY THEN WHAT IS YOUR ROLE IN
13 REGARDS TO THE INVESTIGATORS THAT WORK UNDER YOU?

14 A. PRIMARILY WHAT I WILL DO, I'LL COME IN EVERY MORNING.
15 I'LL REVIEW ALL THE CASES AND ASSIGN THOSE CASES TO DIFFERENT
16 INVESTIGATORS, ASSIST THEM WITH THEIR CASES IF NEED BE, AND
17 ALSO MAINTAIN ALL PAPERWORK AND REVIEW THAT.

18 Q. ON APRIL 5TH -- I GUESS ON APRIL 3RD OF 2005 WERE YOU
19 APPRISED OF THIS INCIDENT THAT OFFICER SHUMARD AND CHRYSTIE
20 VARN HAD RESPONDED TO?

21 A. I BELIEVE I WAS; I CAN'T SAY FOR SURE. I BELIEVE THAT
22 WAS ON A WEEKEND. OUR POLICY -- IF IT IS A MAJOR OFFENSE,
23 THEY DO CALL ME TO TELL ME ABOUT IT. I WON'T NECESSARILY
24 COME OUT, BUT THEY WILL CALL ME. SO I'M SURE THEY DID, BUT
25 FOR ME TO SAY FOR SURE, I REALLY COULDN'T.

BRYANT HINSON - DIRECT EXAM BY MS. FENT

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1 Q. OKAY. ON APRIL 5TH THEN WERE YOU ASKED TO DO SOMETHING
2 SPECIFIC IN THIS CASE?

3 A. YES, MA'AM. ON THAT FOLLOWING DAY, OF COURSE, I
4 ASSIGNED THE CASES. THEY HAD OBTAINED THE WARRANTS, I
5 BELIEVE, ON THE 4TH. THEY HAD ARRANGED TO GO ATTEMPT TO MAKE
6 AN ARREST, AND I WAS INFORMED THAT AN ARREST WAS MADE.
7 ANOTHER OFFICER, JOHNNY RAY MARSHALL, WAS GOING TO BE
8 TRANSPORTING HIM BACK TO THE POLICE DEPARTMENT WHERE I WOULD
9 INTERVIEW THE INDIVIDUAL BECAUSE I WAS ALREADY FAMILIAR WITH
10 THE CASE, HAVING SPOKEN WITH INVESTIGATOR VARN MANY TIMES.

11 Q. OKAY. SO THEN WHAT WAS YOUR FIRST PERSONAL INVOLVEMENT
12 TAKING ACTION IN THIS CASE?

13 A. ACTUALLY INTERVIEWING MR. RATHBURN AT THE POLICE
14 DEPARTMENT.

15 Q. OKAY.. DO YOU RECALL APPROXIMATELY WHAT TIME HE WAS
16 BROUGHT IN TO THE POLICE DEPARTMENT?

17 A. I DO NOT RECALL. IT'S ON THE SHEET THAT I FILLED OUT,
18 BUT TO GIVE YOU A TIME, I REALLY COULDN'T SAY.

19 Q. OKAY. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
20 EXHIBITS 41 AND 42, AND WE'RE JUST GOING TO GO THROUGH THIS
21 STEP BY STEP THEN. YOU WERE ASKED TO DO WHAT IN THIS CASE?

22 A. I WAS GOING TO INTERVIEW MR. RATHBURN.

23 Q. OKAY. DID YOU ACTUALLY MAKE PHYSICAL CONTACT WITH MR.
24 RATHBURN?

25 A. YES, I DID. I HAD HIM BROUGHT UP TO MY OFFICE BY

1 OFFICER MARSHALL.

2 Q. OKAY. AND YOUR OFFICE -- CAN YOU DESCRIBE IT? IS IT
3 YOUR OWN PERSONAL OFFICE OR A LARGER AREA?

4 A. NO. IT'S A LARGE ROOM WHICH WE HAVE ABOUT FOUR OR FIVE
5 DESKS IN THERE FOR EACH INVESTIGATOR AS WELL AS FILE
6 CABINETS, TWO WINDOWS, AND A SMALL LAB WHICH IS IN A SEPARATE
7 ROOM WHICH IS OFF OF THAT.

8 Q. OKAY. SO THIS IS THE ROOM HE WAS BROUGHT UP TO?

9 A. THAT'S CORRECT.

10 Q. AND DO YOU RECALL: WAS HE HANDCUFFED OR NOT HANDCUFFED?

11 A. I DO NOT RECALL.

12 Q. OKAY. WALK US THEN THROUGH THE STEPS THAT YOU BEGAN
13 WITH MR. RATHBURN.

14 A. BASICALLY WHEN HE GOT INTO MY OFFICE WE SAT DOWN. WE
15 SPOKE BRIEFLY, INSURED THAT HE KNEW WHY HE WAS THERE AND THAT
16 WHAT HE WAS CHARGED WITH. I ADVISED HIM THAT I WANTED TO
17 ADVISE HIM OF HIS RIGHTS PRIOR TO TAKING ANY STATEMENT FROM
18 HIM AT WHICH TIME I DID INTERROGATION/ADVISEMENT OF RIGHTS
19 FORMS WHICH WE HAVE AT THE POLICE DEPARTMENT, AND I
20 PERSONALLY READ IT OUT LOUD TO HIM. I WENT THROUGH EACH ONE,
21 AND THEN I ALSO READ THE WAIVER OF RIGHTS, AND THEN I WENT
22 BACK AND ASKED HIM IF HE HAD ANY QUESTIONS OR WAS THERE
23 ANYTHING HE DIDN'T UNDERSTAND, ALLOWED HIM TO LOOK THE FORM
24 OVER, AND ASKED HIM IF HE DID, IN FACT, UNDERSTAND THE FORM
25 AND WAS WILLING TO GIVE ME A STATEMENT AND/OR ANSWER

1 QUESTIONS. I NEEDED HIM TO INITIAL EACH ITEM INDICATING THAT
2 HE DID UNDERSTAND IT AND THEN SIGN IT AT THE BOTTOM
3 INDICATING THAT HE HAD WAIVED HIS RIGHTS.

4 Q. OKAY. LET'S START AT THE TOP OF THAT FORM. WHAT
5 INFORMATION ARE YOU SPECIFICALLY DOCUMENTING ON THE TOP OF
6 THAT FORM?

7 A. HIS NAME, WHERE WE'RE AT CURRENTLY, OF COURSE ADDRESS,
8 DATE OF BIRTH.

9 Q. AND WHO ARE YOU GETTING THAT INFORMATION FROM?

10 A. FROM MR. RATHBURN.

11 Q. OKAY. AND WHAT ADDRESS DID HE GIVE YOU?

12 A. STREET.

13 Q. YOU SAID YOU DOCUMENTED WHERE YOU ARE TAKING THE
14 STATEMENT?

15 A. THAT'S CORRECT.

16 Q. OKAY. SO THAT'S FOREST ACRES POLICE DEPARTMENT?

17 A. YES, MA'AM.

18 Q. OKAY. AND APPROXIMATELY THE TIME OR THE TIME THAT
19 YOU'RE GIVING HIM THESE RIGHTS?

20 A. 9:40 A.M.

21 Q. OKAY. THEN YOU SAID THAT YOU ACTUALLY READ HIM THE
22 RIGHTS ON THE FORM.

23 A. THAT'S CORRECT.

24 Q. OKAY. CAN WE GO THROUGH EACH OF THOSE RIGHTS ONE AT A
25 TIME AND WHAT EXACTLY YOU READ TO HIM?

1 A. SURE. BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST
2 UNDERSTAND YOUR RIGHTS. THE FIRST ONE IS: YOU HAVE THE
3 RIGHT TO REMAIN SILENT. THE NEXT ONE IS: ANYTHING YOU SAY
4 CAN BE USED AGAINST YOU IN COURT. THE NEXT ONE: YOU HAVE
5 THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU
6 ANY QUESTIONS AND TO HAVE HIM OR HER WITH YOU DURING
7 QUESTIONING, AND IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE
8 APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH. THEN
9 IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER
10 PRESENT, YOU STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY
11 TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME
12 UNTIL YOU'VE TALKED TO A LAWYER.

13 Q. OKAY. STOP RIGHT THERE. DID HE APPEAR TO UNDERSTAND
14 THE RIGHTS THAT YOU READ TO HIM?

15 A. YES, HE DID.

16 Q. AND YOU GAVE HIM AN OPPORTUNITY ALSO TO READ THOSE
17 RIGHTS, TO READ THAT FORM?

18 A. THAT'S CORRECT.

19 Q. OKAY. DID YOU IN ANY WAY FORCE HIM TO SIGN THAT ADVICE
20 OF RIGHTS?

21 A. NOT AT ALL.

22 Q. DID YOU THREATEN HIM IN ANY WAY TO GET HIM TO SIGN THAT
23 FORM?

24 A. NO, MA'AM.

25 Q. DID YOU MAKE ANY PROMISES TO HIM IF HE GAVE YOU A

1 STATEMENT?

2 A. NO, MA'AM.

3 Q. HOW DID HE INDICATE ON THAT FORM THEN THAT HE UNDERSTOOD
4 THE RIGHTS THAT YOU READ TO HIM?

5 A. HE INITIALED NEXT TO EACH ONE WHICH I JUST READ.

6 Q. THE PERSON THAT INITIALED THAT FORM, DO YOU SEE HIM IN
7 THE COURTROOM TODAY?

8 A. YES, IT'S MR. RATHBURN WITH THE WHITE SHIRT AND BLUE
9 TIE.

10 Q. MAY THE RECORD REFLECT THE WITNESS IDENTIFIED THE
11 DEFENDANT? NOW THAT HE HAS INDICATED THAT HE UNDERSTANDS HIS
12 RIGHTS, WHAT IS THE NEXT STEP THAT YOU GO TO?

13 A. THE NEXT IS THE WAIVER OF RIGHTS WHICH STATES, "I HAVE
14 READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY
15 RIGHTS ARE. I'M WILLING TO MAKE A STATEMENT AND ANSWER
16 QUESTIONS. I DO NOT WANT A LAWYER AT THIS TIME. I
17 UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS
18 HAVE BEEN MADE TO ME, AND NO PRESSURE OR COERCION OF ANY KIND
19 HAS BEEN USED AGAINST ME."

20 Q. AND DID THE DEFENDANT SIGN THAT INDICATING HE WANTED TO
21 GIVE UP THE RIGHTS THAT YOU READ TO HIM?

22 A. YES, HE DID.

23 MS. FENT: I OFFER INTO EVIDENCE STATE'S EXHIBIT 41.

24 MS. PAYNE: WITHOUT OBJECTION.

25 THE COURT: IT'S ADMITTED.

1 (STATE'S EXHIBIT 41 WAS RECEIVED IN EVIDENCE.)

2 BY MS. FENT:

3 Q. OKAY. NOW, WHAT'S THE NEXT STEP THAT YOU GO TO?

4 A. I BEGAN ASKING MR. RATHBURN QUESTIONS PERTAINING TO THE
5 INCIDENT THAT NIGHT. AT THE TIME I WAS AT MY DESK; I HAD THE
6 COMPUTER UP. I DID WHAT I CONSIDER A QUESTION-AND-ANSWER-
7 TYPE STATEMENT. I WOULD ASK HIM SPECIFIC QUESTIONS. I WROTE
8 THAT QUESTION ON THE COMPUTER, AND THEN BASED ON WHAT HE
9 WOULD TELL ME, I WOULD TYPE THAT ANSWER THAT HE GAVE ME ON TO
10 THE COMPUTER. WE WENT THROUGH A SERIES OF QUESTIONS LIKE
11 THAT.

12 Q. OKAY. PRIOR TO ASKING HIM THE FIRST QUESTION, WAS THERE
13 ANY DIALOGUE OR CONVERSATION BETWEEN THE TWO OF YOU?

14 A. IT WOULDN'T BE A GREAT DEAL. I'M SURE THAT WE SPOKE
15 SOME, BUT I MEAN, AS FAR AS EXACTLY WHAT, I DON'T RECALL.

16 Q. OKAY. DOES HE EVER -- DO YOU GET A COMPLETE STATEMENT
17 FROM HIM?

18 A. YES.

19 Q. OKAY. AT ANY TIME DURING THE QUESTIONING DOES HE SAY,
20 "I WANT TO STOP TALKING"?

21 A. NO, HE DOES NOT.

22 Q. AT ANY TIME DURING THE QUESTIONING DOES HE SAY, "I WANT
23 A LAWYER"?

24 A. NO, HE DOES NOT.

25 Q. AFTER HE GIVES YOU THE STATEMENT, BEFORE IT'S SIGNED,

1 WHAT, IF ANYTHING, DO YOU DO WITH THE STATEMENT?

2 A. WHAT I DO IS I PRINTED THAT STATEMENT OUT AND WE WENT
3 OVER IT. I READ THE QUESTIONS AS WELL AS THE ANSWERS, LET
4 HIM LOOK IT OVER, AND I TOLD HIM THAT IF THERE WAS ANYTHING
5 THAT WAS INCORRECT LET ME KNOW. I'VE STILL GOT IT ON THE
6 COMPUTER. WE'LL MAKE THE CHANGES. WE'LL SHRED THIS ONE, AND
7 I'LL PRINT OUT ONE THAT'S PROPER. HE'D INDICATED THAT
8 EVERYTHING WAS FINE WITH THAT AT WHICH TIME I ASKED HIM TO
9 SIGN IT AND, OF COURSE, WE HAD IT WITNESSED AND NOTARIZED.

10 Q. OKAY. DID THE DEFENDANT SIGN THAT STATEMENT?

11 A. YES, HE DID.

12 Q. STATE'S EXHIBIT NUMBER 42.

13 A. YES, HE DID.

14 Q. AND YOU ALSO SIGNED IT AS A WITNESS.

15 A. YES, I DID.

16 Q. DID HE WANT TO MAKE ANY CHANGES TO THIS STATEMENT?

17 A. NO.

18 Q. DID HE WANT TO MAKE ANY ADDITIONS TO THE STATEMENT?

19 A. NO.

20 Q. DID HE WANT TO MARK ANYTHING OUT?

21 A. NO.

22 MS. FENT: I OFFER INTO EVIDENCE STATE'S EXHIBIT NUMBER
23 42.

24 MS. PAYNE: WITHOUT OBJECTION.

25 THE COURT: IT'S ADMITTED.

1 (STATE'S EXHIBIT 42 WAS RECEIVED IN EVIDENCE.)

2 BY MS. FENT:

3 Q. AGAIN, ON THIS STATEMENT YOU HAVE AN ADDRESS. WHO
4 PROVIDED THAT ADDRESS TO YOU?

5 A. HE WOULD HAVE PROVIDED ME THE ADDRESS WHEN I DID THE
6 ADVISEMENT OF RIGHTS AND WOULD HAVE USED THE SAME.

7 Q. AND HE SAID SHEY RATHBURN WHO RESIDES AT WHAT ADDRESS?

8 A. STREET.

9 Q. OKAY. AND THEN LET'S GO QUESTION AND ANSWER. WHAT WAS
10 THE FIRST...

11 A. THE FIRST QUESTION WAS: "ON 4/03/05 DID YOU GO TO
12 ROAD TO SEE TABITHA BRAZELL?"

13 Q. AND WHAT WAS HIS ANSWER?

14 A. "NO, I WENT THERE LATE ON THE 3RD AND STAYED ALL NIGHT."

15 Q. WHAT'S THE NEXT QUESTION?

16 A. "HOW DID YOU GET INTO THE HOUSE?" "I OPENED THE GLASS
17 DOOR AND KNOCKED ON THE WOODEN DOOR, AND SHE OPENED THE DOOR
18 AND I WALKED IN."

19 Q. WHAT WAS THE NEXT QUESTION?

20 A. "ONCE YOU WERE INSIDE, WHY DID SHE GET UPSET?" "AT
21 FIRST WE WERE FINE, AND THEN SHE WOULD NOT TELL ME WHERE SHE
22 WAS MOVING MY DAUGHTER TO. I GOT UPSET." "WHAT DID YOU DO
23 WHEN YOU GOT UPSET?" "AT FIRST I WAS JUST VERBAL, AND SHE
24 WAS YELLING AT ME, TOO. WE THEN WENT INTO THE KITCHEN, AND I
25 GRABBED HER AND PULLED HER HAIR. I THEN LET HER GO AND

1 WALKED BACK INTO THE LIVING ROOM AREA WHERE I WAS---"

2 Q. OKAY. HOLD ON. I THINK YOU SKIPPED A WHOLE LINE THERE.
3 YOUR EYES WENT DOWN A WHOLE LINE. WE THEN WENT INTO THE
4 KITCHEN AND I GRABBED HER AND?

5 A. OKAY. "AND PUSHED HER AGAINST THE FRIDGE AND HAD MY
6 HAND -- AND MY HAND WAS AROUND HER NECK, YET I NEVER APPLIED
7 ANY PRESSURE, AND I BELIEVE I PULLED HER HAIR. I THEN LET
8 HER GO AND WALKED BACK INTO THE LIVING ROOM WHERE I WAS STILL
9 CRYING AND SITTING DOWN. A SHORT TIME LATER TABITHA WALKED
10 INTO LIVING ROOM AND BEGAN KISSING ME. TABITHA THEN GOES TO
11 THE BACK AND GETS A COMFORTER AND PILLOW, AND WE MADE LOVE
12 AND THEN GO TO THE BEDROOM AND WE GO TO SLEEP. TABITHA SET
13 THE ALARM CLOCK FOR ME AND I GOT UP, PLAYED WITH MY DAUGHTER
14 AND THEN I LEFT FOR WORK."

15 Q. QUESTION?

16 A. "DID YOU FORCE TABITHA TO HAVE SEX WITH YOU?" "NO."
17 "DID YOU PREVENT TABITHA FROM EVER LEAVING IF SHE WANTED TO?"
18 "NO." "DID TABITHA EVER ASK YOU TO LEAVE?" "WHEN I FIRST
19 GRABBED HER." "WHAT ELSE WOULD YOU LIKE TO TELL R.O.,"
20 MEANING REPORTING OFFICER, "ABOUT THIS CASE?" "I WAS OVER AT
21 THE HOUSE TWO NIGHTS BEFORE AND HAD SEX THAT NIGHT AND SPENT
22 THE NIGHT. MY MAIN CONCERN WAS KNOWING WHERE MY DAUGHTER WAS
23 GOING TO BE LIVING, NOT HURTING TABITHA. I NEVER FORCED MY
24 WAY INTO THE HOUSE."

25 Q. THERE WAS NOTHING ELSE HE WANTED TO SAY OTHER THAN THAT

1 INFORMATION ON STATE'S EXHIBIT 42.

2 A. THAT'S CORRECT.

3 Q. AS A PART OF THE INVESTIGATION, DID YOU CONSULT WITH
4 INVESTIGATOR CHRYSTIE VARN REGARDING A POSSIBLE WITNESS, A
5 THREE-YEAR-OLD CHILD IN THE HOUSE?

6 A. YES, I DID.

7 Q. OKAY. AND WHAT WAS YOUR ALL'S DECISION OR WHAT WAS THE
8 ACTION THAT YOU ALL DECIDED TO DO REGARDING THAT THREE-YEAR-
9 OLD CHILD?

10 A. BASED ON MY EXPERIENCES, IF YOU WERE A TEENAGER OR
11 OLDER, I WOULD HAVE NO PROBLEM INTERVIEWING YOU MYSELF, BUT
12 NOT HAVING WORKED MANY CASES WITH YOUNG CHILDREN, I DON'T
13 FEEL I'M QUALIFIED IN ORDER TO REALLY INTERVIEW THEM
14 PROPERLY. THERE'S A PLACE CALLED THE A.R.C., THE ABUSE
15 RECOVERY CENTER, WHICH WE TYPICALLY USE WHERE THERE ARE
16 EXPERTS THERE WHO DO INTERVIEW CHILDREN. SO I ADVISED
17 INVESTIGATOR VARN TO ATTEMPT TO HAVE HER INTERVIEWED AT THE
18 ABUSE RECOVERY CENTER.

19 MS. FENT: OKAY. NO FURTHER QUESTIONS.

20 MS. PAYNE: MAY IT PLEASE THE COURT?

21 CROSS-EXAMINATION

22 BY MS. PAYNE:

23 Q. GOOD AFTERNOON, LIEUTENANT HINSON.

24 A. GOOD AFTERNOON.

25 Q. ON THE TOP OF THE STATEMENT THAT WAS GIVEN BY MR.

1 RATHBURN, CAN YOU TELL ME THE TELEPHONE NUMBER THAT'S ON
2 THERE?

3 A. I DO NOT HAVE IT.

4 Q. TO REFRESH YOUR MEMORY... (MS. PAYNE HANDS A DOCUMENT
5 TO THE WITNESS.)

6 A. IT'S 528-5528.

7 Q. OKAY. THANK YOU. WE'RE LOOKING AT STATE'S EXHIBIT
8 NUMBER 1. YOU READ ON YOUR STATEMENT THAT MR. RATHBURN SAID
9 HE WAS AT MS. BRAZELL'S HOUSE OR THEIR HOUSE HOW MANY DAYS
10 PRIOR TO THE 3RD?

11 A. I THINK HE HAD INDICATED A COUPLE OF DAYS BEFORE THAT.

12 Q. OKAY. IF YOU WOULD HOLD THAT UP. IF YOU'LL READ THE
13 LAST ANSWER FOR ME.

14 A. TWO NIGHTS BEFORE THAT.

15 Q. OKAY. SO THAT WOULD BE?

16 A. HE INDICATED THAT HE---

17 Q. SO THE DATE---

18 A. HE WENT THERE ON THE 3RD, HE'D INDICATED, SO THAT WOULD
19 HAVE BEEN THE 1ST PROBABLY.

20 MS. PAYNE: APRIL 1ST. BEG THE COURT'S INDULGENCE. NO
21 FURTHER QUESTIONS.

22 THE COURT: ANY REDIRECT?

23 MS. FENT: NO, YOUR HONOR.

24 THE COURT: ALL RIGHT, SIR. YOU CAN STEP DOWN.

25 THE WITNESS: THANK YOU.

1 MS. FENT: MAY WE APPROACH?

2 THE COURT: YES, MA'AM.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

4 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO NEED TO
5 TAKE A SHORT BREAK AS WE LINE UP THE NEXT WITNESS, AND SO I'M
6 GOING TO SEND YOU BACK INTO THE JURY ROOM. WE'LL SEE YOU IN
7 JUST A FEW MINUTES.

8 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 2:47
9 P.M., AND A SHORT BREAK WAS TAKEN.)

10 THE COURT: BE SEATED.

11 MS. SHIPLEY: YOUR HONOR, SHE WAS TRYING TO GET PARKING
12 IN THE PARKING GARAGE AND THEY WOULDN'T LET HER IN, SO SHE'S
13 PARKING HER CAR ON THE STREET AND SHE'LL BE RIGHT HERE.

14 (PAUSE IN PROCEEDINGS.)

15 MS. SHIPLEY: HERE SHE IS, YOUR HONOR.

16 THE COURT: OKAY. ARE YOU READY?

17 MS. FENT: YES, SIR.

18 THE COURT: BRING IN THE JURY.

19 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 3:05
20 P.M.)

21 MS. FENT: THE STATE CALLS ADRIENNE RILEY.

22 ADRIENNE RILEY, AFTER BEING DULY SWORN, TESTIFIED
23 AS FOLLOWS:

24 THE CLERK: PLEASE HAVE A SEAT HERE. STATE YOUR FULL
25 NAME FOR THE RECORD.

1 THE WITNESS: THANK YOU. ADRIENNE RILEY.

2 R-I-L-E-Y.

3 DIRECT EXAMINATION

4 BY MS. FENT:

5 Q. AND, MS. RILEY, WHERE ARE YOU EMPLOYED?

6 A. WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION

7 COMMONLY KNOWN AS S.L.E.D.

8 Q. OKAY. AND IN WHAT CAPACITY DO YOU WORK FOR S.L.E.D.?

9 A. AS A FORENSIC SCIENTIST ASSIGNED TO THE D.N.A. LAB.

10 Q. OKAY. AND CAN YOU TELL THE JURY BASICALLY ABOUT YOUR
11 EDUCATION, YOUR TRAINING BACKGROUND THAT BRINGS YOU TO BE A
12 D.N.A. ANALYST AT S.L.E.D.?

13 A. SURE. I HAVE A BACHELOR OF SCIENCE DEGREE IN BIOLOGY
14 FROM THE UNIVERSITY OF SOUTH CAROLINA. BEFORE JOINING
15 S.L.E.D. I WORKED AS A MEDICAL TECHNOLOGIST IN A PRIVATE
16 CLINICAL LABORATORY. ONCE I JOINED S.L.E.D., I WAS TRAINED
17 BY A COURT-QUALIFIED ANALYST AT S.L.E.D. IN THE FIELD OF
18 FORENSIC D.N.A. AND SEROLOGY. I'VE ALSO TAKEN POSTGRADUATE
19 COURSES SINCE JOINING S.L.E.D. IN THE FIELD OF MOLECULAR
20 BIOLOGY, GENETICS, AND IN POPULATION STATISTICS AS IT APPLIES
21 TO D.N.A. ANALYSIS.

22 Q. HOW LONG HAVE YOU BEEN A D.N.A. ANALYST THEN WITH
23 S.L.E.D.?

24 A. APPROXIMATELY SINCE -- WELL, MARCH OF 1999 I BECAME AN
25 ANALYST, BUT I'VE BEEN WITH S.L.E.D. SINCE NOVEMBER OF 1997.

1 Q. OKAY. AND WHAT ELSE DID YOU DO FOR S.L.E.D. THEN PRIOR
2 TO BECOMING A D.N.A. ANALYST?

3 A. I WAS A FORENSIC TECHNICIAN IN THE D.N.A. ANALYSIS UNIT.

4 Q. OKAY. ONCE AT S.L.E.D. AS A D.N.A. ANALYST, WHAT TYPES
5 OF TRAINING AND SUPERVISION DO YOU HAVE AT THAT POINT?

6 A. YES. AGAIN, WE'RE TRAINED BY A COURT-QUALIFIED ANALYST.
7 WE ALSO ATTEND ON A YEARLY BASIS DIFFERENT SYMPOSIUMS AND
8 CONFERENCES TO STAY ABREAST OF ANY CHANGES IN THE FIELD OF
9 D.N.A. ANALYSIS.

10 Q. HOW MANY TIMES HAVE YOU TESTIFIED IN THE COURTS OF SOUTH
11 CAROLINA AS A D.N.A. ANALYST?

12 A. I'VE BEEN QUALIFIED AS AN EXPERT APPROXIMATELY 30 TIMES.

13 MS. FENT: YOUR HONOR, AT THIS TIME I OFFER ADRIENNE
14 RILEY AS AN EXPERT IN THE AREA OF D.N.A. ANALYSIS.

15 MS. PAYNE: WITHOUT OBJECTION.

16 THE COURT: ALL RIGHT. SHE'S QUALIFIED AS AN EXPERT IN
17 D.N.A. ANALYSIS.

18 BY MS. FENT:

19 Q. CAN YOU EXPLAIN TO THE JURY BASICALLY WHAT -- AS SIMPLY
20 AS POSSIBLE WHAT D.N.A. IS?

21 A. SURE. D.N.A. IS THE GENETIC MATERIAL THAT WE ALL HAVE
22 THAT WE INHERITED FROM EACH ONE OF OUR PARENTS. THE
23 SCIENTIFIC NAME FOR D.N.A. IS DEOXYRIBONUCLEIC ACID. IT'S
24 FOUND IN ALL NUCLEATED CELLS OF OUR BODIES, AND AS I SAID
25 BEFORE, WE INHERIT THIS INFORMATION FROM OUR PARENTS AND IT'S

1 PASSED ON FROM GENERATION TO GENERATION. NOW, A LOT OF OUR
2 D.N.A. IS THE SAME BECAUSE WE HAVE D.N.A. THAT CODES US FOR
3 BEING HUMANS. IT GIVES US TWO ARMS AND TWO LEGS AND TWO
4 EYES. BUT, OF COURSE, OUR D.N.A. IS DIFFERENT. IF YOU LOOK
5 AROUND THIS COURTROOM, EVERYONE LOOKS DIFFERENT. SO NOT --
6 WHILE 99 PERCENT OF OUR D.N.A. IS THE SAME, THAT ONE PERCENT
7 IS DIFFERENT FROM PERSON TO PERSON. NO TWO PEOPLE HAVE THE
8 SAME D.N.A. WITH THE EXCEPTION OF IDENTICAL TWINS.

9 Q. HOW THEN IS D.N.A. USED IN FORENSIC PURPOSES OR APPLYING
10 THEM TO CRIMINAL CASES?

11 A. SURE. JUST AS I SAID WITH THE D.N.A. THAT'S DIFFERENT
12 FROM PERSON TO PERSON, WE USE THAT IN FORENSICS TO BE ABLE TO
13 COMPARE THE D.N.A. PROFILE OF KNOWN STANDARDS AGAINST THE
14 D.N.A. PROFILE OF UNKNOWNNS, AND OUR UNKNOWNNS ARE ITEMS OF
15 EVIDENCE, BIOLOGICAL EVIDENCE, THAT WAS LEFT BEHIND AT A
16 CRIME SCENE OR -- AND THAT COULD INCLUDE HAIR, BLOOD, SEMEN,
17 SALIVA, TISSUE, BONE, TEETH, SO ON AND SO FORTH.

18 Q. HOW LONG BASICALLY HAS D.N.A. ANALYSIS BEEN AROUND? HOW
19 LONG HAVE WE BEEN ABLE TO DEVELOP THIS SCIENCE?

20 A. IT'S BEEN AROUND FOR A LOT OF YEARS. I KNOW WE'VE BEEN
21 PERFORMING D.N.A. ANALYSIS AT S.L.E.D. SINCE AROUND '89.

22 Q. AND HOW HAVE THE TESTS OVER THE YEARS DEVELOPED, THE
23 DIFFERENT TYPES OF TESTS THAT YOU PERFORM?

24 A. WHEN I FIRST STARTED AT S.L.E.D., WE WERE USING WELL NOW
25 AN OLD TECHNIQUE TO DO D.N.A. ANALYSIS KNOWN AS R.F.L.P.

1 THAT REQUIRED A LARGE AMOUNT OF D.N.A., A LARGE STAIN, TO BE
2 -- HAVE BEEN LEFT BEHIND BY THE PERPETRATOR AT THE CRIME
3 SCENE TO BE ABLE TO GET A D.N.A. PROFILE FROM. OVER THE
4 YEARS, PROBABLY AROUND 1990, 2000, WE BEGAN USING WHAT'S
5 KNOWN AS P.C.R. P.C.R. IS POLYMERASE CHAIN REACTION, AND THE
6 DIFFERENCE WITH THAT FROM R.F.L.P. IS THAT WE CAN HAVE A
7 SMALL STAIN OF D.N.A. NOW AND BE ABLE TO GET A D.N.A. PROFILE
8 FROM IT.

9 Q. AND YOU LISTED SOME ITEMS REGARDING FORENSIC CASES. IS
10 -- WHAT ITEMS ON OUR BODY THEN CAN D.N.A. BE FOUND?

11 A. D.N.A. CAN BE FOUND IN YOUR SALIVA, IN YOUR SKIN CELLS,
12 IN YOUR BLOOD, IN YOUR HAIR, IN YOUR TEETH, IN YOUR BONE, IN
13 YOUR SEMEN IN MALES.

14 Q. DID YOU PERFORM AN ANALYSIS ON A CASE THAT WAS SUBMITTED
15 TO YOU BY THE FOREST ACRES POLICE DEPARTMENT, YOUR S.L.E.D.
16 NUMBER BEING L-053850?

17 A. YES, MA'AM, I DID.

18 Q. OKAY. CAN YOU WALK US THROUGH THE TYPES OF EVIDENCE
19 THAT WAS, I GUESS, INITIALLY SUBMITTED AND HOW THAT GOES
20 THROUGH S.L.E.D. TO BE ANALYZED?

21 A. SURE. INITIALLY WHAT WAS SUBMITTED WAS A SEXUAL ASSAULT
22 EVIDENCE COLLECTION KIT FROM TABITHA BRAZELL. IN THAT KIT WE
23 HAVE VARIOUS ITEMS THAT COME STANDARD IN A SEXUAL ASSAULT KIT
24 SUCH AS HAIRS, BLOOD STANDARDS, SMEARS, VAGINAL SWABS, AS
25 WELL AS RECTAL AND ORAL SWABS, ALSO MISCELLANEOUS BODY FLUID

1 SWABS, BITE MARKS, AND ANY OTHER SWABS FROM ANY OTHER AREAS.
2 UNDERWEAR IS ALSO SUBMITTED IN A SEXUAL ASSAULT KIT. IN
3 ADDITION TO THE SEXUAL ASSAULT KIT, IN THIS CASE WE ALSO GOT
4 A BUCCAL SWAB WHICH IS A SWAB FROM THE INSIDE OF THEIR CHEEK
5 FROM BOBBY SHEY RATHBURN AND CUTTINGS FROM TOWEL -- A TOWEL.

6 Q. OKAY. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
7 EXHIBITS 35, 36, AND 37, AND I'M GOING TO BACK UP TO THE
8 S.L.E.D. NUMBER L-053850. HOW ARE THOSE NUMBERS ASSIGNED TO
9 EVIDENCE THAT'S BROUGHT IN TO S.L.E.D.?

10 A. THEY'RE IN CHRONOLOGICAL ORDER. THEY'RE ASSIGNED WHEN
11 THEY'RE BROUGHT INTO THE EVIDENCE LOG-IN UNIT. THEY ASSIGN A
12 NUMBER TO EACH CASE VOLUME BY SUBMITTING AGENCIES.

13 Q. SO DOES EVERY SINGLE CASE HAVE ITS OWN UNIQUE S.L.E.D.
14 NUMBER?

15 A. YES, SIR.

16 Q. SO ANY EVIDENCE THAT'S SUBMITTED WITH REGARD TO THIS
17 CASE WILL HAVE THE L-053850 NUMBER.

18 A. YES, MA'AM.

19 Q. OKAY. AND THEN ALL OF THE INDIVIDUAL ITEMS THAT ARE
20 SUBMITTED UNDER THAT CASE NUMBER, HOW DO Y'ALL LABEL THOSE?

21 A. THEY ARE SUB-ITEMIZED BASICALLY. LIKE, FOR EXAMPLE, THE
22 SEXUAL ASSAULT KIT MAY COME IN AS ITEM NUMBER 1. THEN ALL
23 THE ENVELOPES CONTAINED IN THERE WHICH CONTAIN THE SWABS
24 WHICH WERE COLLECTED AT THE HOSPITAL BY THE SEXUAL ASSAULT
25 EXAMINER WOULD GET SUB-ITEMIZED FROM THERE. FOR EXAMPLE, IF

1 YOUR SEXUAL ASSAULT KIT IS ITEM 1, THEN THE VAGINAL SWAB IS
2 GOING TO BE ITEM 1.5 OR 6 IN THAT.

3 Q. OKAY. SO THEY WERE CONTAINED INSIDE OF ITEM 1
4 BASICALLY.

5 A. THAT IS CORRECT.

6 Q. OKAY. AND THEN OUTSIDE OF ITEM 1 ADDITIONAL ITEMS ARE
7 SUBMITTED AND GIVEN WHAT TYPES OF NUMBERS?

8 A. THEY'RE ALL -- EACH ITEM THAT'S SUBMITTED IS GIVEN AN
9 ITEM NUMBER. WHEN IT'S A KIT, IT'S SUB-ITEMIZED. WHEN IT'S
10 AN INDIVIDUAL, ITEMS SUCH AS THIS TOWEL THAT WAS GIVEN ITEM
11 NUMBER 3 AS WELL AS THE CUTTINGS FROM THE TOWEL ARE
12 SUB-ITEMIZED INTO ITEMS 3.1, 3.2, AND 3.3.

13 Q. OKAY. EXHIBITS 35, 36, AND 37, WERE THOSE A PART OF THE
14 EVIDENCE THAT WAS SUBMITTED IN THE SEXUAL ASSAULT KIT?

15 A. YES, MA'AM.

16 MS. FENT: OKAY. I OFFER INTO EVIDENCE -- I BELIEVE I
17 ALREADY ADMITTED 35-A, BUT I HAVEN'T ADMITTED 35, 36, AND 37.

18 MS. PAYNE: WITHOUT OBJECTION.

19 THE COURT: THEY'RE ADMITTED.

20 (STATE'S EXHIBITS 35 THROUGH 37 WERE RECEIVED IN
21 EVIDENCE. STATE'S EXHIBITS 55 AND 56 WERE MARKED FOR
22 IDENTIFICATION ONLY.)

23 BY MS. FENT:

24 Q. YOU BROUGHT WITH YOU WHEN YOU CAME THIS MORNING EXHIBITS
25 55 AND 56. CAN YOU TELL US HOW THOSE ARE RELATED TO THE

1 CASE?

2 A. SURE. THIS IS THE TOWEL THAT WAS---

3 Q. AND THAT'S EXHIBIT 55?

4 A. YES, MA'AM.

5 Q. OKAY.

6 A. AND EXHIBIT 56 ARE THE CUTTINGS FROM THE TOWEL.

7 Q. OKAY. AND DID YOU ACTUALLY PERFORM ANALYSIS ON EXHIBIT
8 56?

9 A. YES, MA'AM.

10 MS. FENT: I OFFER INTO EVIDENCE EXHIBITS 55 AND 56.

11 MS. PAYNE: WITHOUT OBJECTION.

12 THE COURT: THEY'RE ADMITTED.

13 (STATE'S EXHIBITS 55 AND 56 WERE RECEIVED IN EVIDENCE.)

14 BY MS. FENT:

15 Q. WHAT ITEMS THEN WERE SPECIFICALLY SUBMITTED TO S.L.E.D.
16 FOR EXAMINATION?

17 A. ITEM NUMBER 1, THE SEXUAL ASSAULT KIT AND ITS CONTENTS.

18 Q. AND WHAT WERE THOSE CONTENTS?

19 A. THERE WERE KNOWN HEAD HAIRS WHICH WERE ASSIGNED ITEM
20 NUMBER 1.1, KNOWN PUBIC HAIRS WHICH WERE ASSIGNED ITEM NUMBER
21 1.2, PUBIC HAIR COMBINGS 1.3. 1.4 WERE THE KNOWN BLOOD
22 STANDARD. 1.5, SMEARS. 1.6, VAGINAL SWABS. 1.7, ORAL
23 SWABS. 1.8, RECTAL SWABS. 1.9, MISCELLANEOUS BODY FLUID
24 SWABS. 1.11, BITE MARKS, AND IT WAS GIVEN THE SUB-LABEL OF
25 KISS TO NECK. ITEM 1.12, MISCELLANEOUS MATERIALS, AND THEY

1 WERE DESCRIBED AS SWABS FROM THE ABDOMEN. ITEM NUMBER 1.13
2 WHICH WERE PANTIES WHICH THE CUTTING WAS MADE FROM THE CROTCH
3 AREA TO TEST.

4 Q. OKAY. YOU SAID YOU ALSO RECEIVED SWABS FROM A BOBBY
5 SHEY RATHBURN?

6 A. YES. I WAS GIVEN ITEM NUMBER 2, BUCCAL SWABS FROM BOBBY
7 SHEY RATHBURN.

8 Q. OKAY. AND THEN ITEM NUMBER 3 WAS WHAT?

9 A. THE TOWEL. AND I WAS GIVEN ITEM NUMBER 3.1 WHICH WAS A
10 CUTTING FROM THE TOWEL, 3.2 - ANOTHER CUTTING FROM THE TOWEL,
11 AND 3.3, YET ANOTHER CUTTING FROM THE TOWEL.

12 Q. OKAY. YOU'RE GETTING THE CUTTINGS FROM THE TOWEL. WHAT
13 THEN IS THE PROCESS WITHIN S.L.E.D. FOR THAT TOWEL TO BE
14 PROCESSED PRIOR TO IT COMING TO YOU?

15 A. SURE. ONCE A TOWEL IS SUBMITTED OR A LARGE ITEM LIKE
16 THAT IS SUBMITTED, IT GOES TO OUR EVIDENCE PROCESSING
17 DEPARTMENT. WHAT THEY DO IS EXAMINE UNDER AN ULTRAVIOLET
18 LIGHT TO SEE IF ANYTHING FLUORESCES WHEN THEY'RE LOOKING FOR
19 SEMEN IN SEXUAL ASSAULT CASES. IF IT DOES FLUORESCCE, THEY
20 CIRCLE THE AREAS AND THEY SWAB IT AND DO A PRESUMPTIVE TEST
21 KNOWN AS ACID PHOSPHATASE. IF IT'S POSITIVE, YOU'LL SEE A
22 COLOR CHANGE WHICH IS USUALLY A BRIGHT PURPLE COLOR, AND WHEN
23 THEY SEE THAT CHANGE THEY'LL MAKE A CUTTING OF THAT AREA THAT
24 THEY JUST TESTED AND SEND IT TO THE D.N.A. ANALYSIS UNIT FOR
25 CONFIRMATION.

1 Q. SO THEN THOSE CUTTINGS DID COME TO YOU. YOU SAID 3.1,
2 3.2, AND 3.3?

3 A. YES, MA'AM.

4 Q. OKAY. I'LL BACK UP FROM THE TOWEL. WHAT WERE THE FIRST
5 ITEMS THAT CAME TO YOU SPECIFICALLY FOR ANALYSIS THAT, YOU
6 KNOW, SHOWED EVIDENTIARY VALUE FOR YOU TO ANALYZE?

7 A. THE KIT, THE SEXUAL ASSAULT EVIDENCE COLLECTION KIT,
8 FROM TABITHA BRAZELL CAME DIRECTLY TO ME IN THE D.N.A.
9 ANALYSIS UNIT, AND FROM THAT KIT I TESTED FOR SEROLOGY WHICH
10 IS THE FIRST STEP IN OUR D.N.A. ANALYSIS PROCESS. WHAT WE DO
11 IS -- SEROLOGY IS THE IDENTIFICATION OF BODY FLUID. WE
12 BASICALLY WANT TO SEE WHAT FLUIDS WOULD WORK IN THIS, WHETHER
13 IT'S SEMEN, BLOOD, OR SALIVA, AND IN THIS CASE I TESTED THE
14 VAGINAL SWABS FOR SEMEN, THE ORAL SWABS, THE RECTAL SWABS,
15 THE MISCELLANEOUS BODY FLUID SWABS, THE MISCELLANEOUS
16 MATERIAL OR SWABS FROM THE ABDOMEN, AND THE PANTIES WITH THE
17 CUTTING FROM THE CROTCH AREA. I TESTED ALL OF THOSE FOR
18 SEMEN.

19 Q. AND WHAT WAS THE RESULT OF YOUR TEST?

20 A. SURE. THERE WAS NO SEMEN IDENTIFIED ON THE VAGINAL
21 SWABS. THERE WAS NO SEMEN IDENTIFIED ON THE ORAL SWABS. NO
22 SEMEN IDENTIFIED ON THE RECTAL SWABS. THERE WAS SEMEN
23 INDICATED ON THE MISCELLANEOUS BODY FLUID SWABS. THERE WAS
24 SEMEN IDENTIFIED ON THE MISCELLANEOUS MATERIALS WHICH WERE
25 SWABS FROM THE ABDOMEN, AND THERE WAS SEMEN IDENTIFIED IN THE

1 CUTTING FROM THE CROTCH AREA OF THE PANTIES.

2 Q. OKAY. LET ME TALK TO YOU ABOUT THE ORAL SWABS. YOU
3 SAID NO SEMEN WAS IDENTIFIED. HOW MANY SEXUAL ASSAULT KITS
4 IN YOUR TIME AT S.L.E.D. HAVE YOU ANALYZED?

5 A. SEVERAL HUNDRED---

6 Q. OKAY.

7 A. ---IF NOT CLOSE TO A THOUSAND.

8 Q. OKAY. WHEN A -- WELL, HOW OFTEN HAVE YOU EVER FOUND IN
9 HUNDREDS OF SEXUAL ASSAULT KITS HAVE YOU FOUND SEMEN
10 IDENTIFIED FROM AN ORAL SWAB?

11 A. VERY RARELY. AS FAR AS I CAN REMEMBER, IT'S PROBABLY
12 ABOUT TWO TIMES IN MY CAREER AT S.L.E.D. THAT I'VE SEEN A
13 POSITIVE ORAL SWAB.

14 Q. AND WHY IS THAT? CAN YOU EXPLAIN THAT TO THE JURY?

15 A. PRETTY MUCH JUST GIVEN THE ENVIRONMENT OF THE MOUTH AND
16 A PERSON -- SAY IN A SEXUAL ASSAULT THE PERPETRATOR DID
17 EJACULATE IN THE VICTIM'S MOUTH. THE VICTIM MAY SPIT OUT THE
18 EJACULATE, SWALLOW, ANYTHING. YOU WOULD PRETTY MUCH HAVE TO
19 GET TO THE HOSPITAL TO GET THAT SWAB COLLECTED FROM YOUR
20 MOUTH IMMEDIATELY AFTER THE INCIDENT OCCURRED FOR US TO BE
21 ABLE TO GET A POSITIVE SEMEN IDENTIFIED FROM THAT ORAL SWAB.

22 Q. YOU STARTED OUT BY SAYING THE ENVIRONMENT OF THE MOUTH.
23 EXPLAIN THAT. WHAT DO YOU MEAN BY THE ENVIRONMENT OF THE
24 MOUTH?

25 A. WELL, YOU HAVE ALL TYPES OF ENZYMES IN YOUR MOUTH, AND

1 THE SALIVA THAT BREAKS DOWN YOUR FOOD ALSO WILL BREAK DOWN
2 THE SEMINAL FLUID THAT WAS PRESENT.

3 Q. OKAY. AND YOU INDICATED -- YOU WERE TALKING ABOUT IF A
4 PERSON EJACULATED IN THE MOUTH THAT YOU WOULD NEED THE VICTIM
5 TO BE ALMOST IMMEDIATELY SWABBED?

6 A. PRETTY MUCH IMMEDIATELY SWABBED AT THE HOSPITAL OR --
7 AND THAT VICTIM COULD NOT HAVE SPIT OUT THE EJACULATE OR
8 SWALLOWED IN THAT CASE FOR REMNANTS TO BE LEFT BEHIND---

9 Q. OKAY.

10 A. ---IN ORDER TO COLLECT.

11 Q. AND IF AN INDIVIDUAL DIDN'T EJACULATE IN THE MOUTH, DOES
12 THAT EVEN DECREASE THE ODDS OF SEEING ANYTHING EVEN MORE?

13 A. YES.

14 Q. BECAUSE THEN BASICALLY WHAT ARE YOU -- WHAT WOULD YOU BE
15 LOOKING FOR IF NOT SEMEN IN THE MOUTH? IF THE PERSON DIDN'T
16 EJACULATE, WHAT ELSE COULD YOU POSSIBLY GET?

17 A. IT WOULD JUST PROBABLY BE SALIVA.

18 Q. THEN HAVING THE RESULTS OF SEMEN INDICATED ON THE
19 MISCELLANEOUS BODY FLUIDS, WHAT STEP DID YOU TAKE THEN WITH
20 THAT PIECE OF EVIDENCE?

21 A. ONCE SEMEN IS EITHER INDICATED OR IDENTIFIED, WE TAKE IT
22 TO D.N.A. WE'LL START THE D.N.A. PROCEDURE.

23 Q. AND WHAT WAS YOUR RESULT FROM THAT FROM 1.9?

24 A. THERE WAS NO D.N.A. PROFILE FOREIGN TO THE VICTIM
25 DEVELOPED FROM ITEM 1.9.

1 Q. OKAY. 1.13, THE PANTIES, CUT FROM THE CROTCH AREA. YOU
2 SAID YOU HAD SEMEN IDENTIFIED ON THAT. WHAT WAS THE NEXT
3 STEP IN TESTING IT?

4 A. THE NEXT STEP WOULD BE TO TAKE IT TO D.N.A. ANALYSIS TO
5 DEVELOP A D.N.A. PROFILE FROM THAT SEMEN.

6 Q. AND WERE YOU ABLE TO DEVELOP A PROFILE FROM THAT?

7 A. YES, MA'AM.

8 Q. ALL RIGHT. ON 3.1, 3.2, AND 3.3, THE CUTTINGS FROM THE
9 TOWELS, SEMEN WAS IDENTIFIED. DID YOU PERFORM D.N.A.
10 ANALYSIS THEN ON THAT -- THOSE ITEMS?

11 A. YES, MA'AM.

12 Q. AND WERE YOU ABLE TO DEVELOP A PROFILE FROM THOSE?

13 A. YES, I WAS.

14 Q. ON 1.12, MISCELLANEOUS MATERIALS, THOSE WERE
15 SPECIFICALLY IDENTIFIED AS SWABS FROM WHAT?

16 A. THE ABDOMEN.

17 Q. OKAY. AND DID YOU PERFORM D.N.A. ANALYSIS ON THAT?

18 A. YES, MA'AM.

19 Q. WERE YOU ABLE TO DEVELOP A PROFILE FROM THAT, THE SWABS
20 FROM THE ABDOMEN?

21 A. YES.

22 Q. OKAY. TALK TO ME A LITTLE BIT ABOUT WHAT IS A PROFILE.
23 WHAT DO WE MEAN BY THAT?

24 A. A D.N.A. PROFILE IS JUST BASICALLY YOUR GENETIC
25 FINGERPRINTS. THAT'S THE FINGERPRINT THAT WILL DIFFER FROM

1 PERSON TO PERSON, AND WE DEVELOP THE D.N.A. PROFILE FROM AN
2 UNKNOWN WHICH WOULD BE THESE ITEMS OF EVIDENCE THAT WERE
3 SUBMITTED. WE ALSO DEVELOP A D.N.A. PROFILE FROM THE KNOWN
4 WHICH WOULD BE A KNOWN STANDARD FROM OUR VICTIM AS WELL AS
5 ANOTHER KNOWN WHICH WOULD BE THE KNOWN STANDARD FROM OUR
6 SUSPECT. ONCE WE DO THOSE, WE COMPARE THEM TO THE EVIDENCE
7 AND MAKE A FINDING ON WHAT WE SEE.

8 Q. THE SWABS THAT WERE SUBMITTED TO YOU FROM BOBBY SHEY
9 RATHBURN, WERE YOU ABLE TO DEVELOP HIS PROFILE?

10 A. YES, MA'AM.

11 Q. OKAY. AND BASICALLY CAN YOU KIND OF TELL US A LITTLE
12 BIT ABOUT WHAT THAT PROFILE IS? I MEAN, WHAT IS IT A
13 SEQUENCE OF?

14 A. IT IS A SEQUENCE -- IT'S YOUR D.N.A. SEQUENCE, AND
15 BASICALLY WITH P.C.R., THE SUBCATEGORY OF P.C.R. THAT WE DO
16 IS CALLED S.T.R. WHAT S.T.R. IS SHORT TANDEM REPEATS. YOUR
17 D.N.A. SEQUENCE IS A LONG SEQUENCE. IT'S MADE UP OF FOUR
18 BASES, AND AT ONE POINT IT'S GOING TO REPEAT THE FOUR BASES A
19 CERTAIN NUMBER OF TIMES. THAT NUMBER OF TIMES IT REPEATS
20 DIFFERS FROM PERSON TO PERSON, AND THOSE NUMBERS ARE WHAT
21 MAKES UP YOUR D.N.A. PROFILE.

22 Q. AND YOU SAID THAT NO TWO PEOPLE OTHER THAN TWINS HAVE
23 THE SAME D.N.A. PROFILE; CORRECT?

24 A. THAT IS CORRECT.

25 Q. OKAY. AS A RESULT OF ANALYZING THE DEFENDANT BOBBY

1 RATHBURN'S SWABS, DEVELOPING HIS D.N.A., COMPARING THAT, DID
2 YOU COMPARE IT THEN TO THE PROFILES YOU DEVELOPED FROM THE
3 PANTIES, THE ABDOMINAL SWABS, AND FROM THE CUTTINGS FROM THE
4 TOWEL?

5 A. YES.

6 Q. AND BASED UPON THAT COMPARISON, ARE YOU -- DO YOU HAVE
7 AN OPINION AS TO A REASONABLE CERTAINTY -- REASONABLE DEGREE
8 OF CERTAINTY AS TO WHOSE D.N.A. IS ON THE CUTTINGS FROM THE
9 TOWEL, THE ABDOMINAL SWABS?

10 A. YES. IF I CAN READ DIRECTLY FROM MY REPORT...

11 Q. ABSOLUTELY.

12 A. THE D.N.A. PROFILE DEVELOPED FROM SEMEN ON ITEMS 1.12
13 WHICH WERE THE MISCELLANEOUS BODY FLUIDS SWABBED FROM THE
14 ABDOMEN, ITEM 1.13 WHICH WERE THE PANTIES CUT FROM THE CROTCH
15 AREA, 3.1 - A CUTTING FROM THE TOWEL, 3.2 - ANOTHER CUTTING
16 FROM THE TOWEL, AND 3.3 - YET ANOTHER CUTTING FROM THE TOWEL
17 MATCHES THE D.N.A. PROFILE OF BOBBY RATHBURN. THE
18 PROBABILITY OF RANDOMLY SELECTING AN UNRELATED INDIVIDUAL
19 FROM THE POPULATION HAVING A D.N.A. PROFILE MATCHING THESE
20 ITEMS IS APPROXIMATELY ONE IN 36 QUADRILLION.

21 Q. AND WHAT IS THE POPULATION OF THE EARTH?

22 A. APPROXIMATELY ABOUT 6.4 BILLION.

23 Q. AND HOW MANY EARTHS THEN WOULD WE NEED TO MAKE UP YOUR
24 PROBABILITY OF RANDOMLY SEEING THIS PROFILE AGAIN?

25 A. APPROXIMATELY ABOUT 5.6 MILLION TIMES THE WORLD

1 POPULATION.

2 Q. THE ACTUAL SWABS TAKEN FROM THE DEFENDANT AND THE
3 ABDOMINAL SWABS, ARE THEY BASICALLY CONSUMED IN YOUR TESTING,
4 THE SWAB ITSELF?

5 A. NO. WE TRY NOT TO CONSUME ANY OF THE SAMPLE. WE TRY TO
6 TAKE WHAT WE NEED AND LEAVE SOME.

7 Q. OKAY. I'M GOING TO SHOW YOU WHAT'S MARKED AS STATE'S
8 EXHIBIT NUMBER 34. IS THAT THE SEXUAL ASSAULT KIT THAT YOU
9 RECEIVED AND OPENED?

10 A. NO. I NEVER ACTUALLY RECEIVED THE BOX. I RECEIVED THE
11 ENVELOPE CONTAINED IN THIS BOX.

12 Q. THE 35, 36, AND 37.

13 A. THAT YOU JUST SHOWED ME EARLIER, YEAH.

14 MS. FENT: OKAY. NO FURTHER QUESTIONS.

15 MS. PAYNE: JUST BRIEFLY.

16 CROSS-EXAMINATION

17 BY MS. PAYNE:

18 Q. MS. RILEY, THE ONLY HEAD HAIRS YOU RECEIVED TO TEST WERE
19 THE KNOWN HEAD HAIRS THAT WERE IN THE SEXUAL ASSAULT KIT.
20 ISN'T THAT CORRECT?

21 A. YES, MA'AM, THE KNOWN HEAD HAIRS FROM TABITHA BRAZELL.

22 MS. PAYNE: NO FURTHER QUESTIONS.

23 THE COURT: YOU CAN STEP DOWN, MA'AM. NOW, WE HAVE A
24 STIPULATION THAT NEEDS TO BE PUBLISHED? IS THAT CORRECT?

25 MS. SHIPLEY: (NODDED HEAD UP AND DOWN.)

1 THE COURT: Y'ALL COME UP HERE FOR A SECOND TO DISCUSS
2 THAT.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

4 THE COURT: LADIES AND GENTLEMEN, THERE HAS BEEN A --
5 THERE HAVE BEEN SEVERAL STIPULATIONS THAT HAVE BEEN MADE BY
6 THE PARTIES THAT I WANT TO PUBLISH TO YOU NOW IN THIS CASE
7 REGARDING THE CHAIN OF CUSTODY OF SEVERAL OF THE STATE'S
8 EXHIBITS. A STIPULATION IS AN AGREEMENT TO A SET OF FACTS
9 AND TO THE TRUTH OF THOSE FACTS. FACTS WHICH ARE STIPULATED
10 BECOME ESTABLISHED FOR THE PURPOSES OF THIS CASE AND CANNOT
11 BE QUESTIONED OR CONTRADICTED BY EITHER SIDE.

12 THE FIRST STIPULATION HERE IS THAT STATE'S EXHIBITS 35,
13 36, AND 37 CONTAIN THE SAMPLES THAT WERE COLLECTED BY THE
14 S.A.N.E. NURSE, TERRY CASTO, AT THE HOSPITAL FROM TABITHA
15 BRAZELL WEISS. THERE IS ANOTHER STIPULATION THAT STATE'S
16 EXHIBITS 55 AND 56 CONTAIN SAMPLES THAT WERE COLLECTED FROM
17 THE HOME OF TABITHA BRAZELL WEISS BY INVESTIGATOR CHRYSTIE
18 VARN. THERE IS YET ANOTHER STIPULATION THAT THE CHAIN OF
19 CUSTODY WAS PROPERLY MAINTAINED FOR THE SWABS TAKEN FROM THE
20 DEFENDANT ON JANUARY 9TH, 2006, BY INVESTIGATOR CHRYSTIE
21 VARN. ALL OF THESE WERE THE MATERIALS THAT WERE ANALYZED BY
22 THE WITNESS WHO JUST TESTIFIED, ADRIENNE RILEY. CALL YOUR
23 NEXT WITNESS.

24 MS. FENT: MAY WE EXCUSE ADRIENNE RILEY?

25 THE COURT: YOU MAY.

1 MS. SHIPLEY: THE STATE CALLS DONALD BRAZELL.

2 DONALD BRAZELL, AFTER BEING DULY SWORN, TESTIFIED
3 AS FOLLOWS:

4 THE CLERK: PLEASE HAVE A SEAT THERE, SIR. STATE YOUR
5 FULL NAME FOR THE RECORD.

6 THE WITNESS: DONALD BRAZELL.

7 DIRECT EXAMINATION

8 BY MS. SHIPLEY:

9 Q. GOOD AFTERNOON, MR. BRAZELL. MR. BRAZELL, HOW ARE YOU
10 RELATED TO TABITHA BRAZELL?

11 A. SHE'S MY DAUGHTER.

12 Q. AND CAN YOU TELL THE JURY A LITTLE BIT ABOUT YOURSELF?
13 WHERE ARE YOU EMPLOYED?

14 A. WE RUN A FAMILY BUSINESS. IT'S A CLEANING COMPANY, SO I
15 WORK ALL NIGHT.

16 Q. AND WHAT HOURS DO YOU WORK?

17 A. FROM ABOUT 10 TO 6 IN THE MORNING.

18 Q. 10 TO 6 A.M.

19 A. UH-HUH.

20 Q. 10 P.M. TO 6 A.M.?

21 A. YES, MA'AM.

22 Q. AND HOW MANY DAYS A MONTH DO YOU WORK?

23 A. I GET ONE NIGHT A MONTH OFF.

24 Q. AND WHAT NIGHT IS THAT?

25 A. SUNDAY.

1 Q. SUNDAY NIGHT?

2 A. YES, MA'AM.

3 Q. DO YOU GET THE WHOLE DAY SUNDAY OFF?

4 A. YES.

5 Q. I'M GOING TO BRING YOUR ATTENTION TO MARCH 27TH OF 2005.

6 I BELIEVE THAT DAY FELL ON AN EASTER SUNDAY?

7 A. YES, MA'AM.

8 Q. DID YOU HAVE -- DO YOU RECALL WHETHER OR NOT YOU WERE
9 WORKING THAT DAY?

10 A. NO. IT WAS ON A SUNDAY AND I WAS OFF. I WAS WATCHING
11 T.V. IT WAS ABOUT 2:30 OR 3:00 IN THE MORNING.

12 Q. WHAT HAPPENED AT 2:00 OR 3:00 IN THE MORNING?

13 A. TABITHA HAD CALLED AND SAID THAT SHE---

14 Q. WELL, YOU DON'T HAVE TO GO INTO WHAT SHE SAID, BUT DID
15 YOU RECEIVE A PHONE CALL FROM TABITHA?

16 A. YES.

17 Q. COULD YOU DESCRIBE WHAT HER VOICE SOUNDED LIKE ON THE
18 PHONE?

19 A. WELL, SHE WAS UPSET.

20 Q. AS A RESULT OF SPEAKING TO TABITHA, DID YOU SPEAK TO HER
21 FOR A LONG PERIOD OF TIME OR WAS IT A SHORT CONVERSATION?
22 DESCRIBE THE LENGTH OF THE CONVERSATION.

23 A. A COUPLE OF MINUTES AT THE LONGEST.

24 Q. AND AS A RESULT OF TALKING TO TABITHA, WHERE DID YOU GO?

25 A. I WENT TO HER HOUSE. IT PROBABLY TOOK ME ABOUT 15

1 MINUTES TO GET THERE.

2 Q. AND WHEN YOU GOT THERE, WERE YOU -- DID YOU LOOK AROUND
3 THE HOUSE?

4 A. YES.

5 Q. AND WHERE EXACTLY DID YOU LOOK AROUND?

6 A. WELL, I LOOKED IN THE FRONT YARD, AND THEN ON THE SIDE
7 OF THE HOUSE THERE'S A DECK AND I LOOKED OVER THERE.

8 Q. AND DID YOU SEE ANYTHING ON THE DECK OR ANYTHING?

9 A. THERE WAS SOME SCRATCH MARKS ON THE WINDOW WHERE THE
10 DECK WAS.

11 Q. AND WAS -- YOU INDICATED THERE WAS A DENT OR A DECK?
12 I'M SORRY.

13 A. WHERE THE DECK IS.

14 Q. I MISHEARD YOU. I APOLOGIZE. AS A RESULT OF SEEING THE
15 SCRATCH MARKS, WHAT DID YOU DO WITH TABITHA AND L B

16 A. WELL, I WENT BACK INTO THE HOUSE AND WE -- WE PICKED UP
17 L B

18 Q. AND WHO IS WE? WHO ARE YOU REFERRING TO?

19 A. ME AND MY WIFE.

20 Q. YOUR WIFE ACCOMPANIED YOU TO THIS?

21 A. YES.

22 Q. OKAY. AND WHAT DID YOU GUYS DO WITH L B

23 A. WE TOOK L B AND TABITHA FOLLOWED US BACK TO MY HOUSE
24 AND SHE SPENT THE NIGHT THERE.

25 Q. OKAY. AND CAN YOU DESCRIBE HER DEMEANOR WHEN YOU GOT TO

1 THE HOUSE?

2 A. WELL, SHE WAS UPSET, KIND OF NERVOUS.

3 Q. ALL RIGHT. YOU ARE FAMILIAR WITH THE DEFENDANT, BOBBY
4 SHEY RATHBURN. IS THAT CORRECT?

5 A. YES, MA'AM.

6 Q. AND PRIOR -- WERE YOU AWARE OF WHETHER OR NOT MR.
7 RATHBURN RESIDED AT THE HOUSE ON EASTER SUNDAY OF THAT YEAR?

8 A. NO. NO, HE WASN'T THERE.

9 Q. HE WAS NOT LIVING THERE?

10 A. HE HAD LEFT -- HE HAD LEFT I THINK ABOUT A WEEK SOONER.

11 Q. AND PRIOR TO HIM MOVING OUT OF THE RESIDENCE AT
12 ROAD, WHEN HE WAS LIVING WITH TABITHA, WAS HE AWARE
13 OF WHO TOOK CARE OF L B DURING THE DAY?

14 A. YES.

15 Q. WHO TOOK CARE OF L B DURING THE DAY?

16 A. ME AND MY WIFE.

17 Q. WAS HE FAMILIAR OR AWARE OF WHERE YOU AND YOUR WIFE
18 LIVED?

19 A. YES, MA'AM.

20 Q. HAD HE EVER RESIDED WITH YOU AND YOUR WIFE?

21 A. YES, MA'AM.

22 Q. SINCE YOU WORKED STRANGE ODD HOURS FROM 10 P.M. 'TIL 6
23 A.M. IN THE MORNING, WOULD YOU BE HOME THE REST OF THE TIME?

24 A. YES. YES. I SLEEP 'TIL 2 OR 3:00 IN THE AFTERNOON, AND
25 THEN I WOULD BE THERE THE REST OF THE DAY.

1 Q. OKAY. SO YOU'D BE ASLEEP AND THEN BE UP AND THEN GO
2 BACK TO WORK?

3 A. YES, MA'AM.

4 Q. DURING ANY TIME AFTER MARCH THE 19TH LEADING UP TO
5 EASTER SUNDAY, HAD YOU RECEIVED ANY VISITS FROM THE DEFENDANT
6 DURING DAYLIGHT HOURS BETWEEN, LET'S SAY, 5:00 WHEN HE WERE
7 TO GET OFF WORK 'TIL 10:00 WHEN YOU REPORTED TO WORK?

8 A. NO, MA'AM.

9 Q. AND, AGAIN, HE WAS FAMILIAR WITH WHERE L B WAS
10 LOCATED DURING DAYLIGHT HOURS.

11 A. YES, MA'AM.

12 Q. WHEN YOU WENT TO TABITHA'S HOUSE ON EASTER SUNDAY, MARCH
13 THE 27TH OF 2005, DID YOU SEE ANY OF THE BELONGINGS BELONGING
14 TO BOBBY SHEY RATHBURN IN THAT HOUSE?

15 A. NO. NO.

16 Q. BEG THE COURT'S INDULGENCE, YOUR HONOR. THANK YOU, MR.
17 - I JUST HAD A BLANK MOMENT - BRAZELL. THANK YOU.

18 A. YOU'RE WELCOME.

19 MS. SHIPLEY: PLEASE ANSWER ANY QUESTIONS FROM THE
20 DEFENSE.

21 MS. PAYNE: NO QUESTIONS, YOUR HONOR.

22 THE COURT: YOU CAN STEP DOWN, SIR.

23 MS. FENT: LET ME JUST REVIEW THE EVIDENCE FOR A SECOND
24 TO MAKE SURE...

25 MS. SHIPLEY: YOUR HONOR, MAY MR. BRAZELL BE EXCUSED?

1 THE COURT: HE MAY.

2 MS. FENT: YOUR HONOR, WE WOULD ASK AT THIS TIME FOR THE
3 COURT TO TAKE JUDICIAL NOTICE THAT MARCH 27TH OF 2005 WAS
4 EASTER AND THAT APRIL 3RD OF 2005 WAS DAYLIGHT SAVINGS TIME.

5 THE COURT: ANY OBJECTION?

6 MS. OWINGS: I DON'T KNOW FOR MYSELF THAT THAT'S
7 ACCURATE, BUT I MEAN... DO YOU HAVE A CALENDAR?

8 MS. FENT: YES.

9 (THE ATTORNEYS LOOK AT A CALENDAR.)

10 MS. OWINGS: NO OBJECTION.

11 THE COURT: THE LAW ALLOWS THE COURT TO TAKE JUDICIAL
12 NOTICE OF CERTAIN FACTS THAT ARE READILY PROVEN BY REFERENCE
13 TO ALMANACS OR OTHER TYPES OF REFERENCE SOURCES THAT REALLY
14 ARE NOT SUBJECT TO DISPUTE, AND SO I AM TAKING JUDICIAL
15 NOTICE OF THE FACT THAT WHAT -- MARCH 23RD?

16 MS. FENT: 27TH.

17 THE COURT: MARCH 27TH, 2005, WAS EASTER SUNDAY AND THAT
18 BY APRIL 3RD, 2005, THE CLOCKS HAD ALREADY SPRUNG BACK TO
19 DAYLIGHT SAVINGS TIME AND I'M TAKING JUDICIAL NOTICE OF THOSE
20 FACTS, AND HAVING DONE SO, JUST AS WITH THE FACTS THAT WERE
21 STIPULATED, THOSE FACTS BECOME ESTABLISHED FOR PURPOSES OF
22 THIS CASE AND CANNOT BE QUESTIONED.

23 MS. FENT: AT THIS TIME, YOUR HONOR, I'D OFFER INTO
24 EVIDENCE STATE'S EXHIBIT NUMBER 1 AND THEN NUMBER 3.

25 THE COURT: MA'AM?

1 MS. FENT: I APOLOGIZE. I OFFER INTO EVIDENCE AT THIS
2 POINT EXHIBIT 1 WHICH IS OUR CALENDAR, EXHIBIT NUMBER 3 WHICH
3 IS OUR DIAGRAM OF THE HOUSE, AND EXHIBIT 34 WHICH IS THE
4 ORIGINAL KIT TESTIFIED BY TERRY CASTO.

5 MS. OWINGS: WITHOUT OBJECTION, YOUR HONOR.

6 THE COURT: ALL RIGHT. THEY'RE ADMITTED.

7 (STATE'S EXHIBITS 1, 3, AND 34 WERE RECEIVED IN
8 EVIDENCE.)

9 MS. FENT: AT THIS TIME, YOUR HONOR, THE STATE RESTS ITS
10 CASE.

11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I HAVE
12 SOME MATTERS OF LAW THAT I NEED TO ADDRESS NOW, AND SO I'M
13 GOING TO SEND YOU BACK INTO THE JURY ROOM FOR JUST A FEW
14 MINUTES.

15 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 3:50
16 P.M.)

17 THE COURT: ALL RIGHT.

18 MS. OWINGS: YOUR HONOR, AT THIS TIME I DO WANT TO -- I
19 JUST HAD ONE OF YOUR MOMENTS, VANESSA. I WANT TO RENEW ALL
20 PREVIOUS OBJECTIONS THAT I HAVE MADE THAT HAVE BEEN
21 OVERRULED. I DON'T REMEMBER ANY SPECIFICALLY, BUT FOR THE
22 RECORD I WANT TO MAKE SURE THAT I RENEW ALL OF THOSE.

23 ALSO, YOUR HONOR, I HAVE A DIRECTED VERDICT MOTION ON
24 THE CHARGE OF CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND
25 AGGRAVATED NATURE. I BELIEVE THAT HE WAS INDICTED AS

1 COMMITTING AN ATTACK AGAINST HIS HOUSEHOLD MEMBER, AND I
2 BELIEVE THE STATE HAS ARGUED FOR TWO DAYS THEY DIDN'T LIVE
3 TOGETHER. SO I DON'T BELIEVE THEY HAVE PROVEN THE ELEMENTS
4 THAT THEY -- THAT THEY HAD A CHILD IN COMMON, I GUESS, WOULD
5 BE THE OTHER ELEMENT OF THE C.D.V. HAN. ALSO, I DO NOT
6 BELIEVE THAT THE INJURIES THAT SHE SUSTAINED, THE SCRATCH ON
7 THE NECK AND A BRUISE ON HER SHOULDER, RISE TO THE LEVEL OF
8 C.D.V. HAN OF A HIGH AND AGGRAVATED NATURE, IN THE
9 ALTERNATIVE.

10 AND ALSO, YOUR HONOR, HE IS CHARGED WITH KIDNAPPING AND
11 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. YOUR HONOR, I
12 DON'T KNOW HOW HE COULD COMMIT A RAPE WITHOUT ALSO KIDNAPPING
13 UNDER THE DEFINITION OF KIDNAPPING. SO I GUESS MY DIRECTED
14 VERDICT IS THAT HE CAN'T BE CHARGED WITH BOTH OF THESE
15 CRIMES. IF HE'S GOING TO RAPE, THEN HE ALSO HAS TO KIDNAP.
16 AND I HAVE ANOTHER ONE ACTUALLY: THAT IF HE IS CHARGED WITH
17 C.S.C. IN THE FIRST DEGREE AND THERE IS AGGRAVATED FORCE USED
18 TO COMMIT THE C.S.C., THEN HE SHOULDN'T ALSO BE CHARGED WITH
19 C.D.V. HAN BECAUSE WHAT'S ALLEGED IN THE C.D.V. HAN WOULD BE
20 THIS -- WHAT THE AGGRAVATED FORCE USED FOR THE C.S.C. IS.
21 IT'S LIKE HE'S CHARGED WITH ALL THESE---

22 THE COURT: ALL RIGHT. LET'S -- LET ME MAKE SURE THAT I
23 ADDRESS EACH OF YOUR MOTIONS.

24 MS. OWINGS: YES, SIR.

25 THE COURT: SECTION 16-25-10 DEFINES HOUSEHOLD MEMBER TO

1 INCLUDE PERSONS WHO HAVE COHABITED IN THE PAST. SO THAT
2 WOULD -- YOUR MOTION WOULD BE -- OR ACTUALLY IT SAYS, "OR
3 FORMERLY HAVE COHABITED." SO THAT MOTION IS DENIED. THE
4 OTHER MOTION REGARDING THE CRIMINAL DOMESTIC VIOLENCE OF A
5 HIGH AND AGGRAVATED NATURE WAS WHAT?

6 MS. OWINGS: THAT HER INJURIES SHE SUSTAINED -- AND SHE
7 HAS A SCRATCH ON HER NECK. THERE'S SOME HAIR MISSING ON THE
8 FLOOR, AND THERE'S A BRUISE ON HER SHOULDER. THAT THOSE
9 INJURIES DO NOT RISE TO THE LEVEL OF CRIMINAL DOMESTIC
10 VIOLENCE OF A HIGH AND AGGRAVATED NATURE.

11 THE COURT: I WOULD DENY THAT MOTION BECAUSE ONE OF THE
12 AGGRAVATING CIRCUMSTANCES THAT THE STATE CAN PROVE IS A -- IS
13 A DIFFERENCE BETWEEN THE SEXES, AND THAT AGGRAVATING
14 CIRCUMSTANCE HAS BEEN UPHELD BY THE SUPREME COURT.

15 MS. OWINGS: IT'S MY UNDERSTANDING THAT'S NO LONGER A
16 PART OF THE NEW C.D.V. STATUTE.

17 THE COURT: BUT WE'RE OPERATING UNDER THE OLD C.D.V.
18 STATUTE. NOW, THE MOTION REGARDING KIDNAPPING AND C.S.C.,
19 THAT HE CAN'T POSSIBLY HAVE COMMITTED A C.S.C. WITHOUT ALSO
20 COMMITTING A KIDNAPPING, PROBABLY TRUE BUT THAT'S NOT -- I
21 DON'T BELIEVE I CAN DISMISS THE CHARGE OF KIDNAPPING ON THAT
22 BASIS. SO I DENY THAT MOTION.

23 MS. OWINGS: YES, SIR.

24 THE COURT: THEN THE OTHER MOTION IS THAT THE AGGRAVATED
25 FORCE USED ALLEGEDLY TO ACCOMPLISH THE SEXUAL BATTERY

1 INCORPORATES THE SAME INJURIES, THE SAME ACTIONS THAT IS THE
2 C.D.V. HAN, AND EVEN IF THAT WERE TRUE WHICH I BELIEVE THE
3 FACTS WOULD SUPPORT THERE BEING DIFFERENT ASSAULTS AND
4 DIFFERENT INJURIES, BUT EVEN IF IT WERE TRUE, I DON'T BELIEVE
5 THAT WOULD REQUIRE OR EVEN ALLOW THE DISMISSAL OF EITHER
6 CHARGE. SO I DENY THAT MOTION.

7 MS. OWINGS: THANK YOU, YOUR HONOR.

8 THE COURT: HAVE I RULED ON EACH OF YOUR MOTIONS?

9 MS. OWINGS: YES, SIR, YOU DID.

10 THE COURT: ALL RIGHT.

11 MS. OWINGS: YOUR HONOR, ALSO THERE'S THE ISSUE OF
12 WHETHER OR NOT SHEY RATHBURN IS GOING TO TESTIFY. WITH OUR
13 PRETRIAL MOTIONS AND OTHER ISSUES THAT HAVE COME OUT, WE NEED
14 TO DISCUSS WITH HIM A COUPLE OF ISSUES BECAUSE I'M NOT
15 EXACTLY SURE WHAT HE CAN TESTIFY TO WITHOUT OPENING THE DOOR
16 TO HIS PRIOR C.D.V., AND WE NEED TO TALK TO HIM BEFORE HE
17 MAKES THAT DECISION BECAUSE HIS TESTIMONY COULD POSSIBLY --
18 FROM OUR PRETRIAL HEARINGS COULD BRING IN -- DEPENDING ON
19 WHAT HE SAYS AND WHAT HE'S ALLOWED TO SAY COULD OPEN THE DOOR
20 TO HIS PRIOR CONVICTION, IF I'M UNDERSTANDING YOUR PRETRIAL
21 RULING CORRECTLY.

22 THE COURT: WELL, THAT WOULDN'T HAVE BEEN A PRETRIAL --
23 MY RULING WAS THAT I WAS ONLY ALLOWING CERTAIN EVIDENCE IN---

24 MS. OWINGS: RIGHT.

25 THE COURT: ---AT THAT PARTICULAR POINT IN TIME. MY

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1 ADMONITION WAS THAT EVERYBODY BETTER BE VERY CAREFUL BECAUSE
2 THERE'S SOME DOORS THAT ARE JUST BARELY SHUT.

3 MS. OWINGS: EXACTLY.

4 THE COURT: AND THEY COULD BE OPENED READILY AND
5 OTHERWISE INADMISSIBLE EVIDENCE COULD COME IN.

6 MS. OWINGS: RIGHT.

7 THE COURT: IF HE WERE TO -- IF HE WERE TO DECIDE TO
8 TESTIFY, WOULD YOU CALL HIM FIRST OR WOULD YOU CALL SOMEBODY
9 ELSE FIRST?

10 MS. OWINGS: I THINK HE'S ALL WE WOULD CALL AT THIS
11 POINT.

12 THE COURT: ALL RIGHT. WELL, THEN, WE'LL TAKE A BREAK
13 TO GIVE YOU A CHANCE TO DISCUSS THIS WITH HIM, BUT ARE THERE
14 ANY OTHER -- ARE THERE ANY SPECIFIC CRIMES THAT YOU WANT TO
15 DISCUSS WHETHER OR NOT WOULD BE ADMISSIBLE FOR IMPEACHMENT
16 PURPOSES?

17 MS. OWINGS: NO, SIR. HE HAS NO PRIOR RECORD OTHER THAN
18 THAT C.D.V.

19 THE COURT: OKAY. ALL RIGHT.

20 MS. OWINGS: IF WE CAN LET THE OFFICERS LET US INTO D.
21 CELL, WE CAN TALK TO HIM IN PRIVATE. WOULD THAT BE OKAY WITH
22 YOU?

23 THE COURT: THAT WOULD BE FINE WITH ME.

24 MS. OWINGS: THANK YOU, SIR.

25 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

1 THE COURT: BE SEATED, PLEASE. ALL RIGHT. NOW, HAVE
2 YOU ALL HAD ALL THE TIME YOU NEED TO TALK TO YOUR CLIENT
3 ABOUT WHETHER OR NOT HE WISHES TO TESTIFY?

4 MS. OWINGS: YES, SIR, WE HAVE.

5 THE COURT: AND IN DOING SO TODAY AND ALSO ON PREVIOUS
6 DAYS, HAVE YOU DISCUSSED WITH HIM AND EXPLAINED TO HIM HIS
7 RIGHT TO REMAIN SILENT AND ALSO HIS RIGHT TO TESTIFY?

8 MS. OWINGS: YES, SIR.

9 THE COURT: AND DO YOU BELIEVE THAT HE UNDERSTANDS BOTH
10 OF THOSE RIGHTS?

11 MS. OWINGS: YES, SIR.

12 THE COURT: DO YOU NEED -- DO YOU BELIEVE YOU NEED ANY
13 MORE TIME -- ANY MORE TIME TO TALK TO HIM NOW ABOUT WHETHER
14 OR NOT HE IS GOING TO TESTIFY?

15 MS. OWINGS: NO, SIR.

16 THE COURT: ALL RIGHT. MR. RATHBURN, PLEASE STAND AND
17 RAISE YOUR RIGHT HAND.

18 BOBBY SHEY RATHBURN, HAVING BEEN DULY SWORN,
19 TESTIFIED AS FOLLOWS IN CAMERA:

20 EXAMINATION BY THE COURT

21 Q. ALL RIGHT. YOU CAN PUT YOUR HAND DOWN. NOW, MR.
22 RATHBURN, YOU'VE HEARD ME DISCUSS WITH YOUR ATTORNEY THE --
23 YOUR RIGHT TO REMAIN SILENT AND ALSO YOUR RIGHT TO TESTIFY.

24 A. YES, SIR.

25 Q. YOU'VE HAD A CHANCE TODAY AND ALSO ON PREVIOUS DAYS TO

1 DISCUSS BOTH OF THOSE RIGHTS WITH YOUR ATTORNEYS. IS THAT
2 CORRECT?

3 A. YES, SIR.

4 Q. AND AFTER YOUR DISCUSSION WITH THEM, DO YOU FEEL LIKE
5 YOU UNDERSTAND BOTH OF THOSE RIGHTS?

6 A. YES, SIR, I DO.

7 Q. AND I'M GOING TO GO OVER IT WITH YOU SO THAT I CAN MAKE
8 SURE YOU UNDERSTAND IT. YOU HAVE THE RIGHT TO REMAIN SILENT.
9 THAT MEANS THAT NO ONE CAN COMPEL YOU OR MAKE YOU TO TESTIFY
10 IN THE TRIAL OF THIS CASE. THAT RIGHT COMES TO YOU BY WAY OF
11 THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION, AND IF
12 YOU CHOOSE NOT TO TESTIFY, I WILL EXPLAIN TO THE JURY IN VERY
13 CLEAR TERMS THAT THIS IS A CONSTITUTIONAL RIGHT THAT YOU HAVE
14 AND THAT THE FACT THAT YOU EXERCISE THAT RIGHT CANNOT AND
15 MUST NOT BE HELD AGAINST YOU DURING THEIR DELIBERATIONS.

16 ON THE OTHER HAND, YOU DO HAVE THE RIGHT TO TESTIFY IF
17 YOU CHOOSE TO DO SO. IF YOU CHOOSE TO TESTIFY, THEN JUST
18 LIKE ALL OF THE OTHER WITNESSES WHO HAVE TESTIFIED IN THE
19 TRIAL OF THE CASE, YOU ARE SUBJECT TO CROSS-EXAMINATION ON
20 ANY SUBJECT THAT MIGHT BE RELEVANT. NOW, ONE OF THE ISSUES
21 THAT IS PRESENT HERE IS WHETHER OR NOT THE DOOR MIGHT BE
22 OPENED TO TESTIMONY REGARDING A PREVIOUS EVENT BETWEEN YOU
23 AND MS. WEISS, AND YOU UNDERSTAND THAT; RIGHT?

24 A. YES, SIR, I DO.

25 Q. NOW, DO YOU UNDERSTAND EVERYTHING THAT I JUST SAID TO

1 YOU ABOUT YOUR RIGHT TO REMAIN SILENT AND ALSO YOUR RIGHT TO
2 TESTIFY?

3 A. YES, SIR, I DO.

4 Q. DO YOU WANT TO ASK ME ANY QUESTIONS NOW ABOUT THESE TWO
5 RIGHTS?

6 A. NO, SIR.

7 Q. HAVE YOU HAD ALL THE TIME YOU NEED TO TALK TO YOUR
8 ATTORNEYS ABOUT THESE TWO RIGHTS?

9 A. YES, SIR, I HAVE.

10 Q. NOW, DO YOU UNDERSTAND THAT EVEN THOUGH YOU SHOULD
11 LISTEN TO THE ADVICE OF YOUR ATTORNEYS, ULTIMATELY YOU ARE
12 THE ONE WHO MUST MAKE THE DECISION AS TO WHETHER OR NOT YOU
13 WISH TO TESTIFY? DO YOU UNDERSTAND THAT?

14 A. YES, SIR, I DO.

15 Q. NOBODY ELSE CAN MAKE THAT DECISION FOR YOU.

16 A. THAT'S RIGHT.

17 Q. ARE YOU READY TO MAKE THE DECISION?

18 A. YES, SIR.

19 Q. AND WHAT IS YOUR DECISION?

20 A. WE'VE AGREED THAT I WILL NOT TESTIFY.

21 Q. WELL, NOW, YOU SAY WE AGREED---

22 A. I TOLD THEM I WILL NOT TESTIFY.

23 Q. OKAY. SO THIS IS YOUR DECISION.

24 A. YES, SIR.

25 THE COURT: ALL RIGHT. DOES THE DEFENSE NEED TO --

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1 INTEND TO PRESENT ANY EVIDENCE?

2 MS. OWINGS: NO, SIR.

3 THE COURT: ALL RIGHT. THEN I WILL BRING THE JURY IN
4 AND INFORM THEM THAT WE WILL BEGIN WITH CLOSING ARGUMENTS AT
5 9:00 IN THE MORNING. BRING THEM IN. AND I'M GOING TO WANT
6 TO KNOW WHETHER OR NOT THERE ARE ANY SPECIAL REQUESTS FOR
7 CHARGE TONIGHT, SO WE'LL HAVE A CHARGE CONFERENCE IN JUST A
8 MINUTE.

9 MS. OWINGS: OKAY.

10 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 4:49
11 P.M.)

12 THE COURT: LADIES AND GENTLEMEN, YOU HAVE NOW HEARD ALL
13 OF THE TESTIMONY AND THE EVIDENCE THAT YOU WILL HEAR IN THIS
14 CASE. WE'RE GOING TO BREAK NOW FOR THE DAY. WE WILL RESUME
15 TOMORROW MORNING AT 9:00 WITH THE CLOSING ARGUMENTS OF THE
16 ATTORNEYS. AFTER THAT I WILL CHARGE YOU ON THE LAW, AND YOU
17 SHOULD BE DELIBERATING BY ABOUT 10:30 OR SO. SO TONIGHT
18 REMEMBER MY INSTRUCTIONS THAT YOU MAY NOT DISCUSS THIS CASE
19 IN ANY MANNER, AND YOU HAVE A GOOD NIGHT AND I'LL SEE YOU
20 TOMORROW MORNING. PLEASE BE HERE BEFORE 9:00 SO THAT WE CAN
21 BEGIN PROMPTLY AT 9. HAVE A GOOD NIGHT.

22 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR THE
23 DAY AT 4:49 P.M.)

24 THE COURT: ALL RIGHT. NOW, DO ANY OF YOU HAVE ANY
25 SPECIAL REQUESTS FOR CHARGE?

1 MS. FENT: THE ONE THAT COMES TO MIND AT THIS POINT IS A
2 CHARGE ON VOLUNTARY INTOXICATION IS NOT A DEFENSE. IT WAS
3 THE VICTIM HERSELF THAT TESTIFIED THAT HE WAS DRUNK AND
4 SLURRING AND SMELLED OF ALCOHOL.

5 THE COURT: OKAY. ALL RIGHT. ANYTHING FROM THE
6 DEFENSE?

7 MS. OWINGS: I WOULD LIKE THE LESSER INCLUDED OF C.D.V.

8 THE COURT: OKAY. ANYTHING ELSE?

9 MS. OWINGS: NOTHING COMES TO MIND RIGHT NOW, YOUR
10 HONOR. NO, SIR.

11 THE COURT: ALL RIGHT. I THINK THAT I WOULD -- I WILL
12 CHARGE THE LESSER INCLUDED OF C.D.V., AND I'LL PROBABLY
13 CHARGE THE VOLUNTARY INTOXICATION. I NEED TO GO BACK AND
14 REVIEW THAT TO MAKE SURE THAT I HAVE IT STRAIGHT IN MY MIND.
15 ALL RIGHT? NOW -- AND THAT -- YOU'VE ALREADY THEN ADDRESSED
16 MY NEXT QUESTION WHICH IS WHETHER OR NOT THERE ARE ANY LESSER
17 INCLUDED OFFENSES, AND THE ONLY ONE YOU ASKED FOR IS SIMPLE
18 C.D.V.

19 MS. OWINGS: YES, SIR.

20 THE COURT: ALL RIGHT. WELL, THAT WAS QUICK. AND
21 UNLESS THERE'S ANYTHING FURTHER FROM Y'ALL, I'LL SEE YOU IN
22 THE MORNING.

23 MS. OWINGS: YES, SIR.

24 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AND RESUMED
25 THE FOLLOWING DAY, APRIL 4, 2007, AS FOLLOWS:)

1 THE COURT: BE SEATED. THE -- ALL RIGHT. SO EVERYBODY
2 HAS REVIEWED THE CHARGE, AND THE ONLY PROBLEM WITH THE CHARGE
3 THAT I GAVE Y'ALL IS THAT THE ELEMENTS OF CRIMINAL DOMESTIC
4 VIOLENCE OF A HIGH AND AGGRAVATED NATURE HAVE CHANGED AS OF
5 -- I THINK IT'S JANUARY 1ST, 2004. SO I'M GOING TO -- I NEED
6 TO INCORPORATE THE NEW ELEMENTS IN THE CHARGE.

7 NOW, I CAN -- I HAVE DONE THAT IN TWO WAYS IN THE PAST.
8 THAT STATUTE IS MORE CONFUSING THAN THE ONE IT SUPPOSEDLY
9 CLARIFIED, AND IT GIVES -- IT HAS TWO ELEMENTS AND THERE ARE
10 TWO ALTERNATIVE WAYS OF PROVING EACH ELEMENT. THE LAST TIME
11 I TRIED A CASE UNDER THE NEW VERSION OF THE STATUTE,
12 EVERYBODY AGREED THAT WE COULD SIMPLIFY THAT BECAUSE -- LET'S
13 SEE. THE FIRST ELEMENT IS THE DEFENDANT CAUSED PHYSICAL HARM
14 OR INJURY TO A MEMBER OF THE DEFENDANT'S OWN HOUSEHOLD OR
15 THAT THE DEFENDANT THREATENED OR ATTEMPTED TO CAUSE PHYSICAL
16 HARM OR INJURY TO THE DEFENDANT'S OWN HOUSEHOLD MEMBER WITH
17 THE PRESENT APPARENT ABILITY TO COMPLETE THE PHYSICAL HARM OR
18 INJURY UNDER CIRCUMSTANCES REASONABLY CREATING FEAR OF
19 IMMINENT DANGER. AND THE SECOND ELEMENT CAN BE PROVEN IN ONE
20 OF -- IN ONE OF THE FOLLOWING TWO WAYS: THE DEFENDANT
21 COMMITTED AN ASSAULT AND A BATTERY WHICH INVOLVED THE USE OF
22 A DEADLY WEAPON OR RESULTED IN SERIOUS BODILY INJURY OR THE
23 DEFENDANT COMMITTED AN ASSAULT WITH OR WITHOUT A BATTERY
24 WHICH WOULD REASONABLY CAUSE THE VICTIM TO FEAR IMMINENT
25 SERIOUS BODILY INJURY OR DEATH.

1 NOW, I JUST THINK THAT'S CONFUSING, SO I WROTE IT A
2 DIFFERENT WAY. AND THE LAST TIME I TRIED THIS, THE LAWYERS
3 AGREED TO IT. HOLD ON A SECOND. WELL, WAIT A MINUTE. ALL
4 RIGHT. THE IDEA IS THAT IF THE STATE PROVES THAT THE
5 DEFENDANT CAUSED PHYSICAL HARM OR INJURY TO A HOUSEHOLD
6 MEMBER, THEN THAT AUTOMATICALLY MEANS THAT THEY COMMITTED AN
7 ASSAULT AND A BATTERY. THERE'S NO WAY -- THERE'S NO WAY TO
8 CAUSE PHYSICAL HARM OR INJURY WITHOUT ALSO COMMITTING AN
9 ASSAULT AND BATTERY.

10 SO INSTEAD OF CHARGING IT THAT -- IN OTHER WORDS, THERE
11 ARE TWO PRONGS HERE. ONE IS THE PRONG WHERE THERE ACTUALLY
12 IS PHYSICAL INJURY, AND THE OTHER IS WHEN THERE'S THREATENED
13 INJURY. AND SO ON THE ACTUAL INJURY SIDE, INSTEAD OF
14 CHARGING THE TWO ELEMENTS, JUST CHARGE ONE ELEMENT AND THAT
15 IS THAT THE DEFENDANT CAUSED PHYSICAL HARM OR INJURY TO A
16 MEMBER OF THE DEFENDANT'S OWN HOUSEHOLD WHICH INVOLVED THE
17 USE OF A DEADLY WEAPON OR RESULTED IN SERIOUS BODILY INJURY.
18 THAT'S ONE WAY OF PROVING C.D.V. HAN.

19 THEN THE OTHER WAY WOULD BE WHETHER THE DEFENDANT -- SO
20 I WOULD CHARGE -- THE OTHER ONE WOULD BE WHETHER THE
21 DEFENDANT CAUSED PHYSICAL HARM OR INJURY TO THE VICTIM OR
22 NOT, THAT THE DEFENDANT THREATENED OR ATTEMPTED TO CAUSE
23 PHYSICAL HARM OR INJURY TO THE DEFENDANT'S OWN HOUSEHOLD
24 MEMBER WITH THE PRESENT ABILITY TO COMPLETE THE PHYSICAL HARM
25 OR INJURY UNDER CIRCUMSTANCES REASONABLY CREATING A FEAR OF

1 IMMINENT SERIOUS BODILY INJURY OR DEATH, AND THAT COMBINES
2 THE TWO ELEMENTS ON THE THREATENING PRONG. AND -- AND --
3 BECAUSE ON THE THREATENING PRONG YOU HAVE TO ALSO PROVE AN
4 ASSAULT, BUT YOU -- BUT IF THERE'S A THREAT, THERE'S AN
5 ASSAULT. IF THERE IS A THREAT ON THE FIRST PRONG WITH THE
6 PRESENT ABILITY TO COMPLETE THE HARM, THAT'S THE DEFINITION
7 OF ASSAULT. SO THERE'S NO REASON TO CHARGE IT TWICE.
8 THERE'S NO REASON TO BRING IN THE COMPLICATED CONCEPT OF
9 ASSAULT AND BATTERY WHEN THE REST OF THE STATUTE ALREADY
10 INCORPORATES THOSE AS PART OF THE ELEMENTS. THAT'S -- THAT'S
11 THE WAY I BELIEVE -- IT'S SIMPLER TO CHARGE IT THAT WAY. I
12 -- SO WOULD Y'ALL LIKE TO SEE THIS ON PAPER BEFORE YOU...

13 MS. OWINGS: YES, SIR.

14 MS. PAYNE: YES, SIR.

15 THE COURT: OKAY. I'LL BE RIGHT BACK.

16 (PAUSE IN PROCEEDINGS.)

17 MS. PAYNE: WE HAVE NO OBJECTION TO THESE CHARGES. I
18 WOULD LIKE TO RE-ADDRESS THE ISSUE OF THE DIRECTED VERDICT
19 THOUGH BECAUSE IT WAS DONE UNDER THE---

20 THE COURT: ALL RIGHT.

21 MS. PAYNE: YOU KNOW, WE WOULD HAVE A MOTION FOR A
22 DIRECTED VERDICT. LOOKING AT THE EVIDENCE IN THE LIGHT MOST
23 FAVORABLE TO THE STATE, THERE IS NO EVIDENCE OF USE OF A
24 DEADLY WEAPON. THERE'S NO EVIDENCE OF SERIOUS BODILY INJURY,
25 AND THERE'S NO EVIDENCE OF A THREATENED -- OR ATTEMPTED TO

1 CAUSE SERIOUS BODILY INJURY. WE'LL CONCEDE THAT HE IS A
2 HOUSEHOLD MEMBER AND THERE WAS SOME MINOR INJURY TO THE
3 VICTIM, BUT THERE IS ABSOLUTELY NO SERIOUS BODILY INJURY OR
4 USE OF A SERIOUS -- OR OF A DEADLY WEAPON.

5 THE COURT: ALL RIGHT. IS THERE ANY EVIDENCE OF THE USE
6 OF A DEADLY WEAPON?

7 MS. FENT: HIS HANDS. HE PUT THEM AROUND HER THROAT,
8 AND SHE WAS CHOKING SO MUCH SHE COULDN'T BREATHE, AND SHE
9 SAID SHE HAD TO TAP OUT AND MOTIONED HIM THAT SHE WOULD TELL
10 HIM WHAT HE WANTED. CHOKING WITH HIS HANDS IS AN ISSUE.

11 MS. PAYNE: YOUR HONOR, THE S.A.N.E. NURSE TESTIFIED
12 THAT SHE FOUND JUST A MINOR SCRATCH WHERE THERE HAD BEEN
13 HANDS ON THE NECK OR AT LEAST SOME PART OF THE HAND. THERE
14 IS NO INJURY TO HER VOCAL CORDS. THERE WERE NO PRINTS.
15 THERE WAS NO BRUISES. IF WE LOOK AT THE PICTURES, THERE'S
16 NOTHING TO SHOW THAT THERE WAS AN ACTUAL CHOKING.

17 THE COURT: WELL, I THINK THOUGH THAT WHETHER OR NOT
18 THE -- THE QUESTION -- THE QUESTION WOULD BE WHETHER OR NOT
19 USING THE HANDS IN AN ATTEMPT TO CHOKE SOMEBODY TO THE POINT
20 WHERE THEY HAD TO ASK LIKE "GIVE UP" IS THE USE OF A DEADLY
21 WEAPON. WE'LL TALK ABOUT SERIOUS BODILY INJURY IN A MINUTE.
22 BUT THE LAW DEFINITELY PROVIDES THAT THE HANDS CAN BE USED AS
23 A DEADLY WEAPON, AND I BELIEVE IT'S A QUESTION OF FACT FOR
24 Y'ALL TO ARGUE AS TO WHETHER OR NOT THE USE OF THE HANDS HERE
25 WAS THE USE OF A DEADLY WEAPON. NOW, IS THERE ANY -- DO

1 YOU -- DO YOU CONTEND THAT THERE IS EVIDENCE OF SERIOUS
2 BODILY INJURY? I...

3 MS. FENT: THE STATUTE SAYS "OR." CLEARLY THE USE OF
4 THE HANDS -- THE DEADLY WEAPON PORTION OF THE STATUTE SAYS
5 OR.

6 THE COURT: I KNOW, BUT DO YOU CONTEND THAT THERE'S
7 SERIOUS BODILY INJURY BECAUSE IF YOU DON'T, THEN I'M GOING TO
8 TAKE THAT OUT OF THE CHARGE. YOU'VE ALLEGED IN THE BURGLARY
9 -- YOU'VE ALLEGED INJURY IN THE BURGLARY.

10 MS. FENT: CORRECT. AN INJURY COULD JUST BE SLAPPING
11 SOMEONE. FOR A BURGLARY IT'S JUST PHYSICAL HARM---

12 THE COURT: SO LET ME ASK YOU A YES-OR-NO QUESTION. DO
13 YOU CONTEND THAT THERE IS EVIDENCE OF SERIOUS BODILY INJURY
14 IN THIS CASE?

15 MS. FENT: I BELIEVE THE CHOKING CAN BE A FACTOR FOR THE
16 JURY THAT, YEAH, CHOKING---

17 THE COURT: SO YES?

18 MS. FENT: YES. I'M SORRY.

19 THE COURT: OKAY. AND THAT IS THE CHOKING?

20 MS. FENT: CORRECT.

21 THE COURT: NOW, THERE'S EVIDENCE OF MARKS ON HER BACK
22 AND...

23 MS. FENT: CORRECT.

24 THE COURT: SERIOUS -- SERIOUS BODILY INJURY IS REALLY
25 KIND OF AN UNDEFINED TYPE OF TERM, AND THE JURY IS TO USE

1 THEIR OWN CONCEPTION OF WHAT IS SERIOUS BODILY INJURY. SO I
2 DON'T KNOW THAT CHOKING IS AN INJURY. I MEAN, IT MIGHT
3 RESULT IN AN INJURY, BUT THE CHOKING ITSELF IS NOT AN INJURY,
4 IS IT?

5 MS. FENT: IT KEEPS SOMEBODY FROM BREATHING.

6 THE COURT: I KNOW, BUT IF YOU -- IF YOU -- IF YOU --
7 YOU COULD -- YOU COULD VERY CALMLY AND GENTLY PLACE YOUR HAND
8 OVER THEIR MOUTH TO KEEP THEM FROM BREATHING TO THE -- ALMOST
9 TO THE POINT WHERE THEY'RE ABOUT TO DIE, TAKE YOUR HAND OFF
10 THEIR MOUTH AND LET THEM BREATHE AND THEY SUFFER NO -- THEY
11 SUFFER NO INJURY.

12 MS. FENT: THERE'S GOING TO HAVE TO BE ENOUGH PRESSURE
13 ON THAT MOUTH OR ON THAT THROAT. IT CAN'T JUST BE A LIGHT
14 TOUCHING TO KEEP SOMEBODY FROM BREATHING. THERE IS GOING TO
15 HAVE TO BE ENOUGH PRESSURE THAT IT IS PAINFUL, YOU KNOW, THAT
16 THE PERSON THAT THE HAND IS OVER THE MOUTH, THAT IS GOING TO
17 BE A PAINFUL -- THE PERSON IS GOING TO AUTOMATICALLY FIGHT
18 BACK. I MEAN, IT'S THE FLIGHT OR FIGHT THING IF THEY CAN'T
19 BREATHE. THERE HAS TO BE ENOUGH PRESSURE THERE TO KEEP THAT
20 PERSON FROM BREATHING, ENOUGH PRESSURE TO STOP THE OXYGEN IN
21 THE THROAT.

22 THE COURT: I DON'T -- I DON'T FOLLOW YOU.

23 MS. FENT: WELL, IT CAN'T JUST BE A LIGHT TOUCHING OVER
24 SOMEBODY'S MOUTH.

25 THE COURT: IN ORDER TO BE SERIOUS BODILY INJURY.

1 MS. FENT: IN ORDER TO KEEP -- TO CHOKE SOMEBODY, IN
2 ORDER TO KEEP SOMEBODY FROM BREATHING. YOU WERE JUST SAYING
3 THAT YOU DIDN'T THINK THAT IT WAS AN INJURY.

4 THE COURT: NO, I DIDN'T SAY THAT. I'M ASKING YOU TO
5 ARTICULATE YOUR THEORY OF WHAT THE INJURY IS, AND THE SIMPLE
6 FACT OF STOPPING SOMEONE FROM BREATHING FOR A PERIOD OF TIME
7 COULD RESULT IN AN INJURY, BUT IN AND OF ITSELF THE SIMPLE
8 FACT OF STOPPING SOMEONE FROM BREATHING DOESN'T -- DOESN'T
9 SEEM TO ME TO CONSTITUTE AN INJURY. I MEAN, IS THERE -- AND
10 I KNOW THERE'S -- THERE'S TESTIMONY ABOUT MARKS ON THE NECK;
11 RIGHT?

12 MS. FENT: CORRECT.

13 MS. PAYNE: THERE'S TESTIMONY OF ONE MARK ON HER NECK, A
14 SCRATCH.

15 THE COURT: LET ME SEE THE PHOTOGRAPH THAT'S IN EVIDENCE
16 OF THE INJURY TO HER BACK, AND IF THERE'S A PHOTOGRAPH OF HER
17 NECK, LET ME SEE THAT.

18 MS. FENT: THIS IS THE BACK AND THERE WERE ACTUALLY TWO
19 AREAS ON HER NECK.

20 MS. PAYNE: THAT'S THE BACK.

21 MS. FENT: SHE TOOK PHOTOS OF REDNESS ON BOTH SIDES OF
22 THE NECK.

23 THE COURT: ALL RIGHT. WELL, I THINK THAT -- I -- MY
24 COMMENT ABOUT THE HAND OVER THE MOUTH WAS NOT RELATED TO THE
25 FACTS OF THIS CASE. IT WAS JUST SIMPLY TO POINT OUT THE

1 SIMPLE FACT OF STOPPING SOMEONE FROM BREATHING DOES NOT CAUSE
2 AN INJURY, BUT ON THESE -- ON THESE FACTS, HER TESTIMONY THAT
3 THERE WAS PRESSURE PUT ON HER NECK TO THE EXTENT THAT SHE WAS
4 UNABLE TO BREATHE FOR A LONG ENOUGH PERIOD OF TIME THAT IT
5 CAUSED HER TO HAVE TO ESSENTIALLY ASK TO BE ALLOWED TO
6 BREATHE IS -- AND UNDERSTANDING THAT I'M NOT HERE TO WEIGH
7 THE EVIDENCE. I'M SIMPLY HERE TO DETERMINE WHETHER OR NOT
8 EVIDENCE EXISTS, AND I THINK THAT THAT IS ENOUGH EVIDENCE OF
9 SERIOUS BODILY INJURY TO WHERE I WILL LEAVE -- I WILL LEAVE
10 THAT IN THE CHARGE, AND IT WILL BE UP TO Y'ALL TO ARGUE
11 WHETHER OR NOT THE FACTS OF THIS CASE CAN CONSTITUTE SERIOUS
12 BODILY INJURY.

13 MS. PAYNE: THANK YOU.

14 THE COURT: ALL RIGHT? SO YOUR MOTION FOR A DIRECTED
15 VERDICT UNDER THE NEW ELEMENTS IS ALSO DENIED.

16 MS. PAYNE: THANK YOU, YOUR HONOR.

17 THE COURT: ANYTHING ELSE?

18 MS. SHIPLEY: YOUR HONOR, WOULD IT BE POSSIBLE ON THE
19 PORTION OF YOUR CHARGE WHERE YOU DESCRIBE OR DEFINE A DEADLY
20 WEAPON TO INCLUDE THAT THE HANDS CAN BE CONSIDERED A DEADLY
21 WEAPON? I THINK IT'S APPLICABLE TO THE FACTS OF THIS CASE.

22 THE COURT: WHERE IS IT?

23 MS. SHIPLEY: IT'S ON YOUR -- IN THE PORTION OF YOUR
24 DOMESTIC VIOLENCE DEFINITION, TWO PAGES AFTERWARDS.

25 THE COURT: THE NEW ONE THAT I GAVE YOU?

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1 MS. SHIPLEY: LET ME DOUBLE-CHECK, YOUR HONOR. IT'S ON
2 THE SECOND PAGE OF THE NEW ONE THAT YOU GAVE US, SECOND
3 PARAGRAPH. I'M JUST WORRIED THAT THE JURY WOULD ASSUME THAT
4 A DEADLY WEAPON MEANS A GUN OR SOME SORT OF ACTUAL OBJECT.

5 MS. PAYNE: YOUR HONOR, IF WE MAY RESPOND AT THE
6 APPROPRIATE TIME.

7 THE COURT: HERE IS MY VIEW ON THAT. THERE IS CASE LAW
8 THAT SAYS THAT HANDS CAN BE A DEADLY WEAPON. THAT CASE LAW
9 MIGHT EVEN SAY THAT IT IS APPROPRIATE TO CHARGE THE JURY THAT
10 HANDS CAN BE A DEADLY WEAPON, BUT IN MY VIEW TO -- FOR ME TO
11 STATE IN THE CHARGE WHAT CAN BE AND WHAT CAN'T BE A DEADLY
12 WEAPON IS TO MAKE A COMMENT ON THE FACTS WHICH IS, IN MY
13 VIEW, INAPPROPRIATE. IT'S KIND OF LIKE THE -- THERE'S A CASE
14 THAT CAME OUT JUST RECENTLY REGARDING WHETHER OR NOT THE
15 TESTIMONY OF A VICTIM IN A CRIMINAL SEXUAL CONDUCT CASE MUST
16 BE CORROBORATED AND THERE'S -- AND UNDER THE -- UNDER THE OLD
17 COMMON LAW IT HAD TO BE CORROBORATED BEFORE YOU COULD GET A
18 CONVICTION. THERE'S A STATUTE NOW THAT SAYS THE TESTIMONY OF
19 A VICTIM NEED NOT BE CORROBORATED.

20 WELL, THAT DOES NOT MEAN THAT THE JURY HAS TO BE TOLD
21 THAT. IN THE CASE THAT THE SUPREME COURT DECIDED RECENTLY,
22 THEY SAID IT'S OKAY IF ON CERTAIN FACTS THE JUDGE TELLS THE
23 JURY THAT, BUT THE STATUTE DOES NOT MANDATE THAT IT BE --
24 THAT THE JURY BE TOLD THAT. THIS IS THE SAME SITUATION.
25 WHEN THERE IS A STATEMENT BY THE SUPREME COURT THAT SAYS

1 HANDS CAN BE A DEADLY WEAPON UNDER CERTAIN FACTS, THAT IS A
2 RESOLUTION OF SOMETHING LIKE A DIRECTED VERDICT MOTION SAYING
3 EVIDENCE OF HANDS CAN BE SUFFICIENT TO PROVE A DEADLY WEAPON.
4 IN MY OPINION, IT'S UP TO YOU TO CONVINCE THE JURY IN YOUR
5 CLOSING ARGUMENT THAT THE USE OF HANDS ON THESE FACTS ARE A
6 DEADLY WEAPON.

7 MS. SHIPLEY: OKAY.

8 THE COURT: AND IT WOULD BE -- IT GOES CONTRARY TO MY
9 VIEW OF MY ROLE IN CHARGING THE JURY FOR ME TO TELL THE JURY
10 WHAT -- THAT HANDS CAN BE A DEADLY WEAPON. YOU'RE GOING TO
11 ARGUE THAT AND THEY'RE GOING TO DECIDE BASED ON THE FACTS OF
12 THE CASE WHETHER OR NOT THE USE OF THE HANDS WAS THE USE OF A
13 DEADLY WEAPON.

14 MS. SHIPLEY: OKAY. THANK YOU, YOUR HONOR.

15 THE COURT: NOW, ON THE OTHER HAND, IF YOU GET UP AND
16 SAY HANDS CAN'T BE THE USE OF A DEADLY WEAPON, THEN I'M GOING
17 TO CHARGE IT. ALL RIGHT.

18 MS. PAYNE: THANK YOU, YOUR HONOR.

19 THE COURT: WE'LL TAKE A SHORT BREAK, AND THEN WE WILL
20 BRING THE JURY IN. I'LL -- WE'LL JUST GO STRAIGHT THROUGH
21 UNLESS SOME PROBLEM ARISES.

22 MS. OWINGS: OKAY.

23 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

24 THE COURT: NOW, ARE WE READY FOR THE JURY?

25 MS. PAYNE: YES, SIR.

1 THE COURT: BRING THEM IN.

2 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 9:31
3 A.M.)

4 THE COURT: GOOD MORNING. ALL RIGHT. WE'RE READY NOW
5 FOR CLOSING ARGUMENTS. WE HAD SOME LEGAL ISSUES THAT CAME UP
6 THIS MORNING THAT WE HAD TO DEAL WITH, AND WE'VE BEEN IN HERE
7 SINCE BEFORE 9:00 ADDRESSING THOSE. AND I APOLOGIZE FOR
8 Y'ALL HAVING TO SIT BACK IN THE JURY ROOM TO WAIT ON US, BUT
9 WE'RE READY NOW TO BEGIN. SOLICITOR?

10 MS. FENT: RAPE IS A CRIME OF VIOLENCE. IT IS NOT ABOUT
11 SEX. IT IS ABOUT CONTROL, EXERTING CONTROL, PUTTING YOUR
12 CONTROL OVER SOMEONE ELSE IN A VIOLENT AND DEHUMANIZING WAY.
13 TABITHA BRAZELL WEISS HAD BEGUN TO TAKE BACK CONTROL OF HER
14 LIFE AND THE LIFE OF L B SHE HAD BROKEN UP WITH THIS
15 MAN.. HE HAD LEFT THE HOUSE, TAKEN ALL OF HIS BELONGINGS, AND
16 HE GAVE HER THE KEY. THIS KEY IS A METAPHOR REALLY FOR THE
17 POWER AND THE CONTROL THAT TABITHA HAD TAKEN BACK, AND
18 IRONICALLY THIS KEY IS THE VERY WEAKNESS AND WAY THAT HE GOT
19 BACK INTO THAT HOME TO START TAKING BACK CONTROL.

20 TABITHA HAD FINALLY BROKEN IT OFF WITH THE DEFENDANT.
21 THE DEFENDANT MOVED OUT, NOT STAYING IN THAT HOUSE THAT
22 BELONGED TO HIM AND SHE BEGAN TAKING THOSE STEPS. SHE
23 CHANGED HER JOB AT A LOWER SALARY AND WAS GOING TO HAVE TO
24 DRIVE 30 MILES FURTHER TO WORK AND BACK SO THAT HE WOULDN'T
25 KNOW WHERE SHE WORKED. SHE HAD CHANGED HER CELL PHONE

1 NUMBER. SHE WAS MOVING TO A NEW PLACE SO HE WOULDN'T KNOW
2 WHERE SHE WAS LIVING. SHE WAS WILLING TO BREAK A LEASE AND
3 RISK LOSING THE SECURITY DEPOSIT. THE LITTLE MONEY THAT SHE
4 HAD, THAT WAS IMPORTANT ENOUGH TO HER. SHE KNEW THAT SHE HAD
5 A CERTAIN AMOUNT OF TIME TO START GETTING OUT OF THAT HOUSE.
6 SHE GOT A FRIEND TO START HELPING HER PACK AND MOVE HER
7 BELONGINGS OUT OF THAT HOUSE. YOU LOOK AT THOSE PICTURES AND
8 YOU CAN SEE SHE'S CLEARLY BEEN WORKING ON MOVING OUT OF THIS
9 HOUSE FOR AWHILE. THIS WASN'T A ONE-DAY JOB.

10 THE DEFENDANT SHOWS UP -- STARTS SHOWING UP 3:45 --
11 BETWEEN 2 AND 3 IN THE MORNING, BANGING ON THE DOORS,
12 KNOCKING ON THE DOORS, YELLING, "YOU BITCH," WHILE LB
13 IS INSIDE THAT HOME, AND SHE'S SCARED ENOUGH THAT SHE CALLS
14 HER DAD. YOU HEARD HER DAD COME IN HERE AND SAY EXACTLY WHAT
15 HAPPENED. HE GETS THAT PHONE CALL FROM HER, "COME ON OVER."
16 HE GOES OVER AND CHECKS THE WINDOW.

17 A COUPLE OF DAYS LATER, THE SAME THING. EARLY MORNING
18 HOURS. BANGING, YELLING OBSCENITIES, SLURRING HIS SPEECH.
19 HE'S DRUNK. TWO DAYS LATER, THE SAME THING UNTIL FINALLY ON
20 THIS NIGHT WHEN SHE IS TIRED, EXHAUSTED FROM PACKING ALL DAY
21 LONG, TAKING CARE OF HER DAUGHTER, LB THERE IS A WEAK
22 MOMENT WHEN SHE DOES NOT CHECK THE GLASS DOOR. SHE'S
23 THINKING ABOUT HER DAUGHTER FIRST. THE DAUGHTER IS IN THE
24 BATHTUB. SHE NEEDS TO TAKE CARE OF HER. SHE DOESN'T GO BACK
25 AND CHECK THAT STORM DOOR, AND IT'S AROUND 4:00 IN THE

1 MORNING THEN.

2 THE DEFENDANT COMES BACK KNOCKING ON THE DOOR, BANGING
3 ON THE DOOR, YELLING, "LET ME IN. LET ME SEE L B LET
4 ME IN." THE VERY WEAKNESS THAT GAVE HER THAT SECOND TO LEAVE
5 THAT STORM DOOR, HER DAUGHTER -- SHE'S THINKING OF HER
6 DAUGHTER FIRST; RIGHT? HE'S ALSO PLAYING ON THAT SAME
7 WEAKNESS AND STANDING OUTSIDE: "OPEN THE DOOR. I JUST WANT
8 TO SEE L B HOPING THAT SHE'LL OPEN THAT
9 DOOR.

10 FINALLY, SHE GOES TO THE DOOR. SHE JUST OPENED THE MAIN
11 DOOR, THE WOODEN DOOR, AND SAID, "GO AWAY. YOU KNOW, PLEASE
12 JUST LEAVE ME ALONE. I'M GOING TO CALL THE COPS," AND HE
13 GETS HIS SECOND TO OPEN THAT STORM DOOR AND PUSHED HIS WAY
14 IN, AND THE HORROR HAS ONLY JUST BEGUN.

15 WHEN YOU LOOK AT THESE PHOTOGRAPHS, EVERYTHING THAT
16 TABITHA TOLD YOU IS BACKED UP BY THESE PHOTOGRAPHS, HOW THAT
17 DOOR OPENS, THAT SHE'D BE STANDING ON THAT SIDE TRYING TO
18 PUSH IT. HE PUSHES IT OPEN, PUSHES HER TOWARDS THE KITCHEN.
19 ON THE DIAGRAM SHE TOLD US WE HAD A -- IT OPENS THAT WAY.
20 PUSHES HER TO THE KITCHEN. SHE'S FALLING BACKWARDS. HE
21 PUSHES HER DOWN, GRABS HER HAIR. "WHERE ARE YOU TAKING MY
22 DAUGHTER? WHERE ARE YOU MOVING? WHERE ARE YOU MOVING?
23 WHERE ARE YOU MOVING TO?" AND SHE IS SCREAMING AND THEN HE
24 STARTS CHOKING HER BECAUSE SHE WON'T TELL, CHOKING HER,
25 CUTTING OFF HER BREATH, HER LIFE.

1 YOU'LL SEE IN THE PHOTOGRAPHS THE BOXES THAT ARE KNOCKED
2 OVER, THE HAIR THAT'S ON THE GROUND, AND HIM PULLING SO HARD
3 HE IS RIPPING HER HAIR OUT OF HER HEAD. HE IS SO ANGRY AND
4 SO OUT OF CONTROL. BOXES THAT HAVE BEEN PUSHED OVER. TRASH
5 CAN LID PUSHED OVER. THE HAIR, THE RESULT OF THAT VIOLENT
6 ASSAULT.

7 LB STARTS CRYING. SHE OBVIOUSLY HEARS WHAT'S
8 GOING ON. TABITHA IS CHOKING AND CANNOT BREATHE. SHE SAYS
9 THAT SHE HAS TO TAP OUT BASICALLY, GIVE HIM A MOTION, "OKAY,
10 OKAY. I'LL TELL YOU. I'LL TELL YOU." THEN HE LETS GO.
11 "WHERE IS YOUR CELL PHONE?" THEN THEY GET UP. THEY GO INTO
12 THE LIVING ROOM. HE'S ASKING HER ABOUT THAT CELL PHONE.
13 "WHERE IS THE CELL PHONE?" SHE SAYS, "IT MUST BE OUT IN THE
14 CAR," TRYING TO GET HIM OUT OF THE HOUSE. AND HE TURNS AND
15 ACTUALLY STARTS GOING FOR THE DOOR, BUT HE KNOWS BETTER THAN
16 THAT BECAUSE HE WANTS HER IN THAT HOME. HE WANTED TO BE
17 INSIDE THAT HOME, NOT OUTSIDE THAT DOOR. AND HE TURNS BACK
18 AROUND AND HE SAYS, "NO, YOU'RE JUST GOING TO CALL THE COPS."

19 AND THEN WHAT DOES HE SAY TO HER? "GO AHEAD AND CALL
20 THE COPS BECAUSE JUST LIKE LAST TIME I'LL GET SLAPPED ON THE
21 HAND AND I'LL HAVE TO GO TO THOSE BULLSHIT CLASSES." THEN HE
22 HAS THE NERVE TO TAUNT HER WITH HIS OWN CELL PHONE. "HERE.
23 GO AHEAD. CALL THE COPS BECAUSE WHEN I GET OUT OF JAIL, I
24 WILL COME BACK AND I'LL FINISH THE JOB."

25 YOU HEARD TABITHA THEN GOES IN TO LB TO TRY TO

1 COMFORT HER BECAUSE LB IS CRYING. THIS HAS TO BE
2 INCREDIBLY FRIGHTENING FOR THAT THREE-YEAR-OLD LITTLE GIRL.
3 THEY GO IN THERE TO THE BEDROOM, AND AS LB IS STANDING
4 THERE, THE DEFENDANT COMES IN AND WHAT DOES HE DO? HE SHOVES
5 HER INTO THE NIGHTSTAND, SHOVES HER INTO THE NIGHTSTAND
6 LEAVING A HOLE IN THE WALL PERFECTLY CONSISTENT WITH THE
7 CORNER OF THAT NIGHTSTAND. HE SHOVES HER SO VIOLENTLY THAT
8 IT PUTS A HOLE IN THE WALL.

9 HE THEN GRABS HER BY HER SHIRT, PICKS UP THE COMFORTER,
10 PICKS UP THE PILLOW, TAKES HER INTO THE LIVING ROOM. SHE
11 SAYS HE THEN PINS HER UP AGAINST THE WALL AND STARTS KISSING
12 ALL OVER HER AS SHE IS CRYING NOW. SHE SAYS THAT NOW HER
13 CRYING STARTED TO BECOME A SOB AND SHE'S BEGGING HIM,
14 LB IS IN HERE. PLEASE DO NOT DO THIS. PLEASE DO NOT
15 DO THIS. PLEASE DO NOT DO THIS."

16 THE WHOLE TIME, THE WHOLE TIME, WHEN SHE TELLS YOU WHAT
17 HAPPENED TO HER, SHE IS TELLING YOU ABOUT LB SHE IS
18 TELLING YOU HOW THIS IS AFFECTING HER DAUGHTER WHO IS IN THE
19 NEXT ROOM AND IS HEARING THIS AND IS SEEING THIS. PLEASE DO
20 NOT DO THIS. LB

21 HE THEN PULLS HER DOWN ON TO THAT COMFORTER IN THE
22 LIVING ROOM, AND HE STARTS TO PERFORM ORAL SEX ON HER. SHE
23 IS CRYING. SHE IS SOBBING. AND WHAT DOES HE SAY TO HER?
24 "YOU'RE SNIFFLING IS GETTING ON MY NERVES. YOUR SNIFFLING
25 GETTING ON MY NERVES," AND HE TRIES TO START MUFFLING HER

1 MOUTH. "BABY, PLEASE GET INTO IT." THEN HE GRABS HER HEAD
2 AND TURNS THE POSITIONS AROUND TO FORCE HER TO START
3 PERFORMING ORAL SEX ON HIM. AND SHE SAT UP HERE AND AS IT'S
4 EMBARRASSING AND AS DEGRADING AS IT WAS FOR HER, SHE TOLD YOU
5 ABOUT HIM FORCING HIS PENIS INTO HER MOUTH TO THE POINT THAT
6 SHE WAS CHOKING AND COULDN'T BREATHE. AND AS SHE COULD GET
7 WORDS OUT OF HER MOUTH, IT WAS, "PLEASE DON'T DO THIS.

8 L B

9 HE THEN TURNS HER AROUND, LAYS HER DOWN, GETS ON TOP OF
10 HER, AND STARTS VAGINALLY PENETRATING HER, SEXUALLY
11 ASSAULTING HER. AND AS HORRIBLE AS IT IS, SHE SAYS HE IS
12 DRUNK AND TAKES A LITTLE TOO LONG FOR HER. AS L B IS IN
13 THE OTHER ROOM CRYING, SHE'S LAYING THERE SOBBING AND THEN HE
14 PULLS OUT AND EJACULATES ON HER STOMACH.

15 SHE GETS UP -- HE GETS UP, WIPES HIMSELF WITH A TOWEL,
16 AND THROWS IT AT HER. SEMEN IS ALL OVER IT. SHE GETS UP,
17 LEAVING THE EVIDENCE OF WHAT HAPPENED TO HER IN THAT LIVING
18 ROOM TO GO COMFORT HER DAUGHTER TO LAY DOWN ON THAT BED AND
19 HOLD HER DAUGHTER. THE DEFENDANT COMES IN AND BASICALLY
20 ESSENTIALLY PASSES OUT ON TOP OF THEM.

21 FOR HOURS SHE IS AWAKE, WATCHING THAT CLOCK. "HONEY,
22 YOU'VE GOT TO GO. YOU'VE GOT TO GO. YOU NEED TO BE AT
23 WORK," TRYING TO CONVINCE HIM TO GET HIM OUT OF THAT HOUSE.
24 SHE'S NOW GOTTEN A CELL PHONE THAT SHE'S HIDDEN UNDER HER
25 PILLOW, AND SHE'S TRYING TO CHANGE THE NUMBER ON THE PHONE TO

1 PUT MAHTAB'S NUMBER BECAUSE SHE'S TOLD HIM THAT SHE'S GOING
2 TO LIVE WITH A FRIEND BY THE NAME OF MAHTAB. SO SHE NEEDS TO
3 GET THAT NUMBER INTO THE PHONE SO THAT WHEN HE WAKES UP AND
4 HE STARTS CHECKING IT'S GOING TO BE THERE. SHE MANAGES TO DO
5 THAT, AND THEN SHE TOSSES HER CELL PHONE OVER INTO HER PURSE.
6 EVENTUALLY L B WAKES UP, NEEDS TO GO TO THE
7 BATHROOM. SHE NUDGES HIM. GETS UP. SHE SAYS IT'S AROUND
8 9:00 IN THE MORNING, AND THEN SHE FINALLY -- AFTER HE WALKS
9 AROUND THE HOUSE, "WHERE IS THE CELL PHONE?" "OH, MAYBE IT'S
10 IN MY CAR." SURE ENOUGH, HE GOES OUT AND CHECKS THE CELL
11 PHONE, SEES MAHTAB'S NUMBER AND DECIDES HE'LL GO. THEN SHE
12 SAID IN HIS CONDESCENDING, DEMEANING WAY -- SHE'S LYING
13 THERE. HE KISSES HER ON THE CHEEK AND SAYS, "THANKS FOR LAST
14 NIGHT."

15 LADIES AND GENTLEMEN, I WANT TO TALK TO YOU ABOUT THE
16 LAW. YOU HAVE A LOT OF CHARGES IN FRONT OF YOU. THE
17 APPLICATION OF THESE FACTS THAT YOU'VE HEARD THE LAST COUPLE
18 OF DAYS TO THE LAW IS HOW YOU'RE GOING TO REACH YOUR
19 DECISION. YOU, AS THE JURY, ARE THE DETERMINERS OF THE
20 CREDIBILITY OR THE BELIEVABILITY OF THE WITNESSES. YOU CAN
21 BELIEVE ALL OF WHAT A WITNESS TELLS YOU, SOME OF WHAT A
22 WITNESS TELLS YOU, OR NONE OF WHAT A WITNESS TELLS YOU, AND
23 YOU USE THE SAME WAYS THAT YOU DETERMINE PEOPLES' CREDIBILITY
24 EVERY SINGLE DAY.

25 THE COMMON SENSE THAT YOU BROUGHT IN THAT DOOR ON MONDAY

1 IS WITH YOU WHEN YOU GO OUT THIS DOOR LATER THIS MORNING.
2 YOU DON'T LEAVE IT IN THIS COURTROOM. AND THE THINGS THAT
3 YOU ASK YOURSELF IS: WHAT WAS THE Demeanor OF THE PERSON ON
4 THE WITNESS STAND? WERE THEY FORTHRIGHT OR HESITANT? AND IS
5 THE TESTIMONY OF THE WITNESS CORROBORATED? IS IT BACKED UP
6 BY THE OTHER EVIDENCE? DOES THE WITNESS HAVE A REASON TO BE
7 BIASED OR TO TELL YOU WHAT THEY'RE TELLING YOU? AND
8 BASICALLY YOU'RE ASKING IS THEIR Demeanor APPROPRIATE WHEN
9 THEY WERE TELLING YOU EMBARRASSING THINGS? IT'S APPROPRIATE
10 TO LOOK DOWN, TO GET QUIET. IT'S APPROPRIATE TO CRY AT
11 TIMES.

12 WHEN THEY'RE RECALLING THE EVENTS, DO THEY GET CAUGHT UP
13 AND BACK UP A LOT OR ARE THEY RECALLING IT EXACTLY AS IT
14 HAPPENED? AND YOU SAW TABITHA ON THIS WITNESS STAND AND
15 STANDING RIGHT HERE IN FRONT OF YOU AS SHE SLOWLY AND
16 METHODICALLY WENT THROUGH THAT HORRIBLE NIGHT THAT SHE
17 EXPERIENCED AND THE WEEK PRECEDING. THOSE WERE MEMORIES.
18 THAT WAS NOT A STORY. IT WAS HER EXPERIENCE. IT WAS WHAT
19 THE DEFENDANT DID TO HER.

20 IF THEY WERE HESITANT, DID IT SEEM A LOGICAL THING THAT
21 MAYBE, YOU KNOW, "I'LL ADMIT I DON'T PARTICULARLY REMEMBER
22 THAT. LET ME THINK ABOUT IT FOR A SECOND. IT WAS AWHILE
23 AGO"? WAS THE TESTIMONY OF THE WITNESS CORROBORATED? WE'RE
24 GOING TO GO THROUGH SOME OF THE PHYSICAL EVIDENCE AND SEE
25 WHAT THAT BACKS UP.

1 A REASON TO BE BIASED. YOU HAVE NOT HEARD A SINGLE
2 THING ABOUT WHY TABITHA WOULD MAKE THIS UP. NO REASON. THE
3 ONLY REASON SHE'S HERE TO TELL YOU WHAT HAPPENED TO HER IS
4 BECAUSE IT HAPPENED TO HER, BECAUSE SHE WAS TRYING TO MAKE
5 THAT BREAK AND HE FORCED HIS WAY INTO HER HOME, ASSAULTED
6 HER, SEXUALLY ASSAULTED HER.

7 THE STATE HAS THE BURDEN OF PROOF IN THIS CASE, AND WE
8 GLADLY ACCEPT IT AND IT'S BEYOND A REASONABLE DOUBT. YOU ASK
9 YOURSELVES: WHAT IS THAT? PROOF BEYOND A REASONABLE DOUBT
10 IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S
11 GUILT. THERE ARE FEW THINGS IN THIS WORLD THAT WE KNOW WITH
12 ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT
13 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.

14 IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
15 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME
16 CHARGED, YOU MUST FIND HIM GUILTY. IF, ON THE OTHER HAND,
17 YOU THINK THERE'S A REAL POSSIBILITY THAT HE'S NOT GUILTY,
18 YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT
19 GUILTY.

20 THERE ARE FEW THINGS IN THIS WORLD THAT WE KNOW WITH
21 ABSOLUTE CERTAINTY. WE ARE NOT REQUIRED TO PROVE TO YOU
22 ABSOLUTE CERTAINTY WITH EVERY FACT IN THIS CASE. IT IS AN
23 IMPOSSIBILITY TO EVER PROVE TO A JURY WITH ABSOLUTE CERTAINTY
24 THAT SOMETHING HAPPENED BECAUSE YOU WOULD HAVE TO WITNESS IT
25 YOURSELF TO BE CONVINCED WITH ABSOLUTE CERTAINTY, AND IF YOU

1 WITNESSED IT YOURSELF, YOU WOULD NOT BE SITTING ON THE JURY.
2 YOU WOULD BE SITTING IN THE AUDIENCE AND CALLED AS A WITNESS
3 TO TESTIFY. IT IS PROOF BEYOND A REASONABLE DOUBT. WHEN YOU
4 GO BACK AND YOU TALK ABOUT THE FACTS AND THE EVIDENCE, YOU
5 WILL FIND THAT WE HAVE MET THAT BURDEN.

6 BURGLARY IN THE FIRST DEGREE. THE DEFENDANT ENTERS A
7 DWELLING, A HOME, WITHOUT CONSENT. HE HIMSELF ADMITTED HE
8 LIVES AT A DIFFERENT ADDRESS, AND HE ADMITTED THAT
9 HE KNOCKED ON THE DOOR. THIS IS NOT HIS HOME. SHE, TABITHA,
10 CLEARLY SAID: "I DID NOT WANT HIM IN. I WAS SCARED. I WENT
11 TO THE DOOR TO SAY, 'GO AWAY. I'M CALLING THE POLICE.' I
12 HAD TAKEN THE KEY BACK. I DIDN'T WANT HIM TO KNOW WHERE I
13 WAS GOING, WHERE WE WERE GOING."

14 WITH THE INTENT TO COMMIT A CRIME THEREIN. IN HIS OWN
15 STATEMENT HE SAYS, "I WAS ANGRY. I WAS ANGRY," AND HIS ANGER
16 AS HE'S SITTING OUT THERE IS BUILDING UP AND BUILDING UP AND
17 AS HE'S POUNDING ON THOSE DOORS, POUNDING ON THOSE WALLS,
18 TRYING TO BREAK INTO THAT WINDOW AND HE'S CALLING HER A
19 BITCH. HE WANTS TO GET IN THERE TO GET HIS HANDS AROUND HER
20 NECK. HE'S NOT COMING IN TO TALK. HE'S USING L B AS A
21 WAY TO GET THAT DOOR OPENED.

22 IF YOU ENTER THAT HOME WITH A DEADLY WEAPON, YOU CAUSE
23 PHYSICAL INJURY TO A PERSON WHO IS NOT A PARTICIPANT IN THE
24 CRIME. PHYSICAL INJURY. IT DOESN'T HAVE TO BE SERIOUS
25 INJURY. HIM SAYING, "I PULLED HER HAIR," THAT IS ENOUGH

1 PHYSICAL INJURY, JUST THAT IN AND OF ITSELF, BUT WE HAVE
2 BROUGHT YOU SO MUCH MORE. HE CHOKED HER. HE SHOVED HER,
3 PINNED HER UP AGAINST THE WALL, AND HE RAPED HER.

4 THE ENTERING OR REMAINING OCCURS AT NIGHTTIME. IF YOU
5 ENTER SOMEBODY'S HOME, SOMEBODY'S HOME, WHERE YOU WANT TO
6 FEEL SAFE, WITH AN INTENT TO COMMIT A CRIME AND YOU ENTER
7 DURING THE NIGHTTIME HOURS, THAT IS A BURGLARY IN THE FIRST
8 DEGREE, AND IN HIS OWN STATEMENT HE SAYS, "I STAYED ALL
9 NIGHT." HIS OWN WORDS HAS PROVEN THAT ELEMENT OF THE
10 BURGLARY IN THE FIRST DEGREE.

11 FOR EACH OF THESE CRIMINAL OFFENSES AS WE TALK ABOUT,
12 THERE MAY BE MULTIPLE WAYS FOR TO US PROVE A BURGLARY IN THE
13 FIRST DEGREE. FOR EXAMPLE, I JUST SHOWED TO YOU EITHER
14 CAUSES PHYSICAL INJURY TO A PERSON WHO IS NOT A PARTICIPANT
15 IN THE CRIME OR THE ENTERING OR REMAINS -- ENTERING OR
16 REMAINING IN THE NIGHTTIME. YOUR VERDICT DOES NEED TO BE
17 UNANIMOUS ON THE OFFENSE OF BURGLARY IN THE FIRST DEGREE.

18 ONE OF YOU COULD BELIEVE HE CAUSED PHYSICAL INJURY TO A
19 PERSON WHO IS NOT A PARTICIPANT IN THE CRIME, AND ELEVEN OF
20 YOU COULD AGREE, WELL, IT DEFINITELY HAPPENED: ENTERED OR
21 REMAINED DURING THE NIGHTTIME. AS LONG AS YOU'RE UNANIMOUS
22 AS TO THE OFFENSE, THE MANNER FOR WHICH THE ELEMENTS THAT YOU
23 BELIEVE WE HAVE PROVED THAT OFFENSE CAN BE YOUR OWN.

24 THE COURT: LET ME SEE Y'ALL FOR A SECOND, PLEASE.

25 (WHEREUPON, THE FOLLOWING BENCH CONFERENCE WAS HELD AT

1 THE SIDE BAR OUT OF THE HEARING OF THE JURY:)

2 THE COURT: THAT IS AN INCORRECT STATEMENT OF THE LAW.

3 MS. FENT: THIS OR---

4 THE COURT: THERE'S NO DISCUSSING IT. THAT'S AN
5 INCORRECT STATEMENT OF THE LAW. NOW, I GUESS WHAT I'M GOING
6 TO DO IS I'M CLEAR IT UP IN THE CHARGE.

7 MS. FENT: OKAY.

8 THE COURT: OKAY? BUT I'M LETTING YOU KNOW THAT SO IF
9 YOU WANT TO -- IF YOU WANT TO COVER YOURSELF NOW, I GUESS YOU
10 CAN. I DON'T WANT TO EMBARRASS YOU IN ANY WAY, BUT THAT IS
11 DEFINITELY NOT TRUE. THERE HAS -- IF THERE ARE ALTERNATIVE
12 WAYS OF PROVING AN ELEMENT, THEN THE JURY MUST UNANIMOUSLY
13 AGREE ON ONE OF THE ALTERNATIVES BEFORE THEY CAN CONVICT.
14 YOU CAN'T HAVE SIX VOTING FOR NIGHTTIME AND SIX VOTING FOR
15 SERIOUS BODILY INJURY.

16 MS. FENT: OKAY.

17 (WHEREUPON, THE BENCH CONFERENCE CONCLUDED.)

18 MS. FENT: LADIES AND GENTLEMEN, WHEN WE ARE DONE WITH
19 CLOSING ARGUMENTS, THE JUDGE WILL READ TO YOU THE LAW THAT IS
20 APPLICABLE IN THE CASE, AND HOW YOU'RE ABLE TO REACH THAT
21 UNANIMOUS DECISION HE WILL EXPLAIN TO YOU THAT YOU MUST BE
22 UNANIMOUS IN THE ELEMENTS OF THE OFFENSE THAT YOU -- THAT YOU
23 HAVE DISCUSSED. HE WILL BE READING TO YOU THE LAW -- THE LAW
24 THAT IS APPLICABLE IN THIS CASE.

25 ANOTHER CHARGE IN FRONT OF YOU IS THE OFFENSE OF

1 KIDNAPPING. IT IS UNLAWFUL TO SEIZE OR CONFINES OR INVEIGLE
2 OR DECOY OR KIDNAP OR ABDUCT OR CARRY AWAY ANOTHER PERSON
3 WITHOUT AUTHORITY OF LAW. NOW, MANY OF US WHEN WE HEAR THE
4 WORDS KIDNAPPING PROBABLY AUTOMATICALLY PICTURE THAT PERSON
5 DRIVING DOWN THE ROAD THAT GRABS A CHILD OFF THE SIDEWALK,
6 GRABS HIM AND PUTS HIM INTO THEIR CAR AND DRIVES AWAY,
7 POSSIBLY MAY EVEN THINKING THAT IT'S DRIVING AWAY ACROSS
8 STATE LINES. THAT IS NOT THE LAW OF KIDNAPPING.

9 THERE ARE MANY DIFFERENT WAYS THAT THE OFFENSE OF
10 KIDNAPPING CAN OCCUR, AND THEY'RE IN ALL THESE DEFINITIONS.
11 IF YOU SEIZE SOMEONE, IF YOU TAKE HOLD OF SUDDENLY OR
12 FORCIBLY... HE COMES INTO THAT HOUSE AND HE GRABS HER,
13 PUSHES HER AND IS HOLDING HER DOWN ON THAT GROUND AS HE IS
14 CHOKING HER. HE IS SEIZING HER. WHEN HE IS STANDING IN THAT
15 BEDROOM AND HE GRABS HER BY THE SHIRT AND HE PULLS HER FROM
16 THAT BEDROOM INTO THE LIVING ROOM, THAT IS A KIDNAPPING.
17 WHEN HE PUSHES HER UP AGAINST THE WALL IN THE LIVING ROOM AND
18 PINS HER HANDS BACK AGAINST THE WALL, THAT IS A KIDNAPPING.

19 CONFINES, LIMIT, RESTRICT, OR ENCLOSE WITHIN BOUNDS,
20 IMPRISON OR SHUT OR KEEP IN. ALL NIGHT LONG WHEN HE GETS
21 INTO THAT HOUSE, FORCES HIS WAY INTO THAT HOUSE AND HE KEEPS
22 HER THERE, DRAGGING HER FROM ROOM TO ROOM, ASSAULTING HER, IN
23 THAT BEDROOM LAYS DOWN ON TOP OF HER, THAT IS TO CONFINES.
24 KIDNAPPING CAN BE FOR SECONDS. THERE IS NO TIME FRAME THAT
25 THE PERSON HAS TO SEIZE OR CONFINES YOU. YOUR MOVEMENT IS

1 RESTRICTED EITHER BY, "DON'T TAKE ANOTHER STEP," OR, "COME IN
2 HERE." YOUR FREEDOM OF MOVEMENT IS RESTRICTED.

3 CRIMINAL SEXUAL CONDUCT. THERE ARE DIFFERENT DEGREES OF
4 CRIMINAL SEXUAL CONDUCT. WHAT THE JUDGE READ TO YOU AT THE
5 BEGINNING OF THE TRIAL WAS CRIMINAL SEXUAL CONDUCT IN THE
6 FIRST DEGREE. ALL CRIMINAL SEXUAL CONDUCT CHARGES INVOLVE,
7 FIRST, WHAT WE CALL A SEXUAL BATTERY, THAT A SEXUAL BATTERY
8 OCCURRED. A SEXUAL BATTERY IS SEXUAL INTERCOURSE,
9 CUNNILINGUS, FELLATIO, ANAL INTERCOURSE, OR ANY INTRUSION,
10 HOW EVER SLIGHT, OF ANY PART OF A PERSON'S BODY.

11 YOU HAVE CLEARLY HEARD FROM THE VICTIM EXPLAINING BOTH
12 THAT HE MADE HER PERFORM ORAL SEX ON HIM. HE PERFORMED ORAL
13 SEX ON HER, AND THEN THEY HAD VAGINAL INTERCOURSE. YOU HEARD
14 FROM THE SEXUAL ASSAULT NURSE EXAMINER REGARDING THE
15 ABRASIONS THAT ARE CONSISTENT WITH FORCED TRAUMA AND THE
16 D.N.A. EXPERT PLACING HIS D.N.A. ON HER ABDOMEN AND THE
17 DEFENDANT'S OWN STATEMENT: "THE SEX WAS CONSENSUAL." SO HE
18 HAS ADMITTED TO, AT THE VERY MINIMUM, SEXUAL INTERCOURSE, HIS
19 OWN ADMISSION.

20 WHEN A SEXUAL BATTERY IS ACCOMPANIED BY WHAT WE CALL
21 AGGRAVATED FORCE, IT IS A CRIMINAL SEXUAL CONDUCT IN THE
22 FIRST DEGREE. AGGRAVATED FORCE IS PHYSICAL FORCE OR PHYSICAL
23 VIOLENCE OF A HIGH AND AGGRAVATED NATURE WHICH OVERCOMES THE
24 VICTIM OR THREATENS THE USE OF A DEADLY WEAPON. IT CAN ALSO
25 BE THAT THE VICTIM -- ASIDE FROM THE AGGRAVATED FORCE, THE

1 VICTIM IS ALSO THE VICTIM OF FORCIBLE CONFINEMENT,
2 KIDNAPPING, ROBBERY, EXTORTION, BURGLARY, AND WE HAVE ALLEGED
3 IN THIS CASE FORCIBLE CONFINEMENT, KIDNAPPING, BURGLARY, OR
4 ANY OTHER SIMILAR OFFENSE OR ACT. HIS FORCED HIS WAY INTO
5 THAT HOME. HE HELD HER THERE. HE PINNED HER DOWN. THOSE
6 ARE THE ELEMENTS THAT SUPPORT CRIMINAL SEXUAL CONDUCT IN THE
7 FIRST DEGREE.

8 THE JUDGE IS ALSO GOING TO SUBMIT TO YOU WHAT WE CALL A
9 LESSER-INCLUDED OFFENSE WHICH IS CRIMINAL SEXUAL CONDUCT IN
10 THE SECOND DEGREE. AGAIN, SEXUAL BATTERY AND THE DEFENDANT
11 USES AGGRAVATED COERCION, THREATENS TO USE FORCE OR VIOLENCE
12 OF A HIGH AND AGGRAVATED NATURE TO OVERCOME THE VICTIM OR
13 ANOTHER PERSON, IF THE VICTIM REASONABLY BELIEVES THAT THE
14 ACTOR HAS THE PRESENT ABILITY TO CARRY OUT THE THREAT.

15 HE HAS CHOKED HER TO THE POINT THAT SHE CANNOT BREATHE.
16 HE HAS PUSHED HER INTO THE WALL, AND HE HAS TOLD HER AS HE
17 WAS SEXUALLY ASSAULTING HER, "DON'T MAKE THIS WORSE." SHE
18 REASONABLY BELIEVES HE WILL FOLLOW THROUGH WITH IT BECAUSE
19 SHE HAS BEEN CHOKED IN THE KITCHEN. SHE HAS BEEN VIOLENTLY
20 SHOVED IN THE BEDROOM. SHE HAS EVERY REASON TO BELIEVE THAT
21 HE WILL FOLLOW THROUGH ON THAT THREAT.

22 THE TESTIMONY OF A VICTIM IN A CRIMINAL SEXUAL CONDUCT
23 CASE DOES NOT NEED TO BE CORROBORATED FOR YOU TO RETURN A
24 VERDICT OF GUILTY, AND THAT MEANS A VICTIM'S TESTIMONY ALONE
25 WITH NOT A SINGLE OTHER PIECE OF EVIDENCE CAN BE SUFFICIENT

1 FOR YOU TO FIND BEYOND A REASONABLE DOUBT, BUT WE IN THIS
2 CASE HAVE BROUGHT YOU MORE. WE HAVE GONE BEYOND WHAT THE LAW
3 SAYS -- WHERE THE LAW SAYS WE COULD HAVE STOPPED.

4 THE DEFENDANT HAS GIVEN A COUPLE OF STATEMENTS IN THIS
5 CASE. YOU HEARD ABOUT FIRST WHEN HE IS ARRESTED AT
6 WHERE HE'S LIVING. HE COMES OUTSIDE AND THEY PLACE HIM UNDER
7 ARREST. THEY'VE READ HIM THE WARRANTS SO HE KNOWS EXACTLY
8 WHAT HE'S CHARGED WITH, AND THEY HAVE READ HIM HIS RIGHTS
9 FROM THE STATEMENT FORM: EXHIBIT 40 FROM THE ONE AT THE
10 SCENE.

11 INVESTIGATOR CHRYSTIE VARN, SHE'S THE LEAD ON THE SCENE.
12 THE SUSPECT IS HANDCUFFED. SHE SAYS SHE READS TO HIM HIS
13 RIGHTS. "YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU
14 SAY CAN BE USED AGAINST YOU IN COURT. YOU HAVE THE RIGHT TO
15 TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS
16 AND TO HAVE HIM/HER WITH YOU DURING QUESTIONING. IF YOU
17 CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE
18 ANY QUESTIONING IF YOU WISH. IF YOU DECIDE TO ANSWER
19 QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE
20 THE RIGHT TO STOP ANSWERING AT ANY TIME. YOU ALSO HAVE THE
21 RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK TO A
22 LAWYER."

23 HE KNOWS EXACTLY WHAT HIS RIGHTS ARE, AND WHEN HE IS
24 READ THE CHARGES, HE SAYS, "I CHOKED HER, BUT THE SEX WAS
25 CONSENSUAL." THERE WAS ABSOLUTELY NO QUESTIONING. THERE WAS

1 NO INTERROGATION OR BEATING OR, "WE'RE GOING TO GET THIS OUT
2 OF YOU." HE'S AN ADULT. HE CLEARLY KNEW WHAT HIS RIGHTS
3 WERE AND MADE THOSE STATEMENTS EXTREMELY FREELY AND
4 VOLUNTARILY IN HIS OWN RESPONSE TO WHAT HE'S CHARGED WITH.

5 HE'S BROUGHT DOWN TO THE FOREST ACRES POLICE DEPARTMENT
6 WHERE LIEUTENANT HINSON SITS DOWN WITH HIM AGAIN AND READS
7 HIM ANOTHER RIGHTS FORM, AND THIS TIME HAS HIM ACTUALLY
8 INITIAL EACH AND EVERY RIGHT. HE'S ALREADY HEARD THEM ONCE,
9 BUT I'M GOING TO READ THEM TO YOU AGAIN. AND NEXT TO EACH
10 RIGHT I WANT YOU TO INITIAL THAT YOU UNDERSTAND THAT RIGHT,
11 AND HE DOES. AND THEN AT THE BOTTOM OF THE FORM IS THE
12 WAIVER OF RIGHTS.

13 I WANT TO GIVE THESE RIGHTS UP, AND I AM WILLING TO TALK
14 TO YOU. AND HE SIGNS THAT HE HAS READ THIS STATEMENT OF MY
15 RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. I'M WILLING TO
16 MAKE A STATEMENT AND TO ANSWER QUESTIONS. I DO NOT WANT A
17 LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I'M DOING.
18 NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE
19 OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME. AND HE
20 SIGNS IT.

21 AND THEN HE BEGINS HIS STORY, AND HE SIGNS THE BOTTOM OF
22 THAT FORM THAT THAT IS THE STATEMENT HE WANTS TO GIVE. THE
23 LAST QUESTION IS: WHAT ELSE WOULD YOU LIKE TO TELL THE
24 REPORTING OFFICER ABOUT THIS CASE? HE CAN SAY ANYTHING HE
25 WANTS TO. TWO SENTENCES. SIGNS THE BOTTOM OF IT. THIS IS

1 THE STATEMENT I'M SIGNING. YOU CAN CLEARLY USE THESE
2 STATEMENTS WHEN YOU DELIBERATE BECAUSE HE GAVE THESE
3 STATEMENTS VOLUNTARILY AND WITH FULL KNOWLEDGE OF THE LEGAL
4 RIGHTS THAT HE HAD.

5 WHEN WE TALK ABOUT -- BASICALLY WHAT THE DEFENSE HAS
6 ATTEMPTED TO COVER IN THEIR CROSS-EXAMINATION, THEY TRIED TO
7 START OUT SAYING BASICALLY THAT, YOU KNOW, THE QUESTION TO
8 TABITHA WAS, "WELL, HE'S ON THE LEASE; RIGHT?" I DON'T KNOW
9 WHAT THE PURPOSE OF THAT WAS BECAUSE THE DEFENDANT ADMITTED
10 IN HIS STATEMENT ON THE STATEMENT FORMS AND IS FOUND IN THE
11 EARLY MORNING HOURS AFTER HE GETS UP LIVING AT HE
12 SAYS THAT. THE DEFENDANT IN HIS OWN WRITTEN STATEMENT SAYS,
13 "I KNOCKED. I KNOCKED."

14 THEN THEY BRING UP THIS, YOU KNOW, WELL, SHE WAS --
15 WOULD HAVE BEEN I GUESS OVULATING. POSSIBLY SHE COULD HAVE
16 GOTTEN PREGNANT, AND THAT'S WHY I GUESS HE PULLED OUT. WELL,
17 IF THE SEXUAL ACT REACHES THE POINT WHERE THE MAN IS GOING TO
18 EJACULATE, THERE ARE TWO OPTIONS. YOU EJACULATE INSIDE OR
19 OUTSIDE. IT'S A 50/50. I MEAN, THEY CAN TRY TO SAY, OH, IT
20 WAS THEIR DECISION NOT TO GET PREGNANT, THAT THIS SHOWS US
21 THAT IT WAS CONSENSUAL AND, YEAH, I HAVE TO CONCEDE THAT, YOU
22 KNOW, PULLING OUT IS A METHOD OF BIRTH CONTROL, NOT A VERY
23 GOOD ONE, BUT, YEAH, MAYBE SOME PEOPLE COULD USE THAT. BUT
24 IT'S A 50/50 SHOT. IF HE HAD EJACULATED INSIDE OF HER, THEY
25 COULD SAYING THAT SHE WAS TRYING TO TRAP HIM TO GET PREGNANT

1 AGAIN. I MEAN, IT'S EITHER ONE OR THE OTHER.

2 IT ALSO, LADIES AND GENTLEMEN, COULD BE AN INDICATION
3 TOGETHER WITH ALL OF THE EVIDENCE THAT HE KNEW SHE WASN'T
4 CONSENTING, THAT THIS WAS A DEMEANING ACT, A DEMEANING AND
5 IMPERSONAL ACT THAT HE COMMITTED UPON HER AND ADDED TO THAT
6 BY EJACULATING ON HER STOMACH. IT COULD BE THAT HE WAS THE
7 ONE THAT DIDN'T WANT TO RISK HAVING ANOTHER KID OR, LADIES
8 AND GENTLEMEN, IT COULD BE JUST THAT THAT'S WHAT HE DOES AND
9 THERE'S NO REASON FOR IT. THERE'S NO DEEP HIDDEN MEANING AS
10 TO WHY HE DID THAT TO HER. IT'S A 50/50.

11 THEY TRIED TO SAY THAT, YOU KNOW, THERE'S NO BABY GATE
12 AND THERE WAS NOTHING BLOCKING THIS THREE-YEAR-OLD CHILD WHO
13 IS ACTIVE AND WALKS AROUND, BUT IT'S 4:00 IN THE MORNING.
14 LB IS PROBABLY EXHAUSTED. SHE IS CRYING. SHE IS
15 SCARED. SHE HAS HEARD THEM AND SEEN THEM FIGHTING BECAUSE
16 THE SHOVE HAPPENS IN THE BEDROOM WHILE SHE'S ON THE BED
17 CRYING. IT'S ACTUALLY -- WHAT MAKES THIS ALL THAT MUCH
18 HORRIBLE AND CALLOUS IS THAT SHE COULD HAVE GOTTEN UP OUT OF
19 THAT BED. SHE COULD HAVE GOTTEN UP OUT OF THAT BED AND
20 WALKED INTO THE LIVING ROOM AND SEEN MORE AND HEARD MORE THAN
21 WHAT ANY THREE-YEAR-OLD SHOULD EVER SEE OR HEAR. THAT IS
22 WHAT MAKES HIS ACTIONS SO MUCH MORE CALLOUS AND JUST
23 DESPICABLE.

24 THEY TRIED TO SAY THAT TABITHA ATE, YOU KNOW, BEFORE THE
25 SEXUAL ASSAULT EXAM, THAT IT'S WRITTEN DOWN THAT SHE HAD

1 SOMETHING TO EAT OR DRINK. WELL, IF YOU NOTICE IN THE
2 PICTURE, THEY DON'T EVEN START TAKING THE PHOTOGRAPHS -- THE
3 PHOTOGRAPHS WHICH SHE'S ALREADY TAKEN THE HISTORY THEY START
4 TAKING THE PHOTOGRAPHS AT 6:50 P.M. SHE LEFT THE HOME AT 11
5 A.M. TO GO GET L B SOMETHING TO EAT. MAYBE SHE HAD SOME
6 CRACKERS AND WATER IN THE WAITING ROOM.

7 THEY TRIED TO SAY, WELL, TABITHA CALLED THE DEFENDANT.
8 THERE'S A 4 A.M. CALL. TABITHA LOOKED AND SAID, "YEAH,
9 THAT'S MY NUMBER." BUT THAT IS CONSISTENT WITH THE TWO
10 NIGHTS BEFORE EARLY A.M. HOURS. HE SHOWS UP AFTER MIDNIGHT
11 THAT HE IS STANDING OUT THERE AND HE'S BANGING ON THE WINDOW,
12 BANGING ON THE DOORS. SHE'S CRAWLING ON HER HANDS AND KNEES.
13 SHE CALLS HIS NUMBER AND SAYS, "I WILL CALL THE COPS. GO
14 AWAY." THAT'S CONSISTENT WITH HIM COMING OVER TO THE HOUSE
15 AT THAT HOUR AND HIM BANGING ON THE DOORS AND THE WINDOWS AND
16 HER SAYING, "IF YOU COME BACK, I WILL CALL THE POLICE." THAT
17 TABITHA DIDN'T GO DIRECTLY TO THE POLICE... SHE DIDN'T DRIVE
18 HERSELF DIRECTLY TO THE EMERGENCY ROOM.

19 WELL, THIS WHOLE TIME SHE HAD TALKED ABOUT HOW L B
20 WAS NEVER -- L B WAS IN THE BATHTUB. THAT'S WHY SHE GOT
21 DISTRACTED AND DIDN'T CHECK THAT DOOR. WHEN HE IS SEXUALLY
22 ASSAULTING HER AND ABUSING HER IN THAT HOME, SHE IS THINKING
23 NUMBER ONE OF L B WHEN SHE IS FINALLY ABLE TO GET OUT
24 OF THAT HOME, SHE THROWS ON WHAT SHE CAN, HER SHOES, HER
25 FLIP-FLOPS. SHE GOES OVER TO HER FRIEND'S HOUSE, STARTS

1 TELLING HER FRIEND AND SHE SAYS, "I NEED TO GET L B
2 SOMETHING TO EAT. I NEED TO GET L B SOMEONE TO TAKE
3 CARE OF HER TODAY WHILE I HANDLE THIS SITUATION." SHE IS
4 THINKING, AS ANY OTHER MOTHER WOULD, ABOUT HER DAUGHTER
5 FIRST.

6 THEY SAY THAT LAURA AND TABITHA CONSPIRED TOGETHER.
7 LISTENING TO THESE TWO YOUNG WOMEN SITTING ON THIS WITNESS
8 STAND AND LOOKING AT YOU ABOUT WHAT HAPPENED AND WHAT THEY
9 WENT THROUGH, THAT IS THE BELIEVABILITY. THAT IS THEIR
10 SINCERITY, AND THAT IS THEIR HONESTY.

11 ALSO, BLESS HER HEART, LAURA IS JUST -- YOU CAN TELL
12 THAT SHE IS JUST A SWEET, SIMPLE GIRL. SHE COULD PROBABLY
13 NOT CONSPIRE WITH A POTTED PLANT TO DO ANYTHING, AND SHE
14 JUST -- AT ONE POINT THEY ASKED HER, YOU KNOW, "SO I GUESS
15 YOU LEFT TABITHA IN THE HOME ALONE," AND SHE GOES, "YEAH, I
16 GUESS I DID." SO THEN THEY HAD TO GO WITH THE, WELL, TABITHA
17 CONSPIRED ALONE BECAUSE THEY'RE NOT MAKING VERY MUCH HEADWAY
18 WITH JUST SWEET, SINCERE LAURA.

19 IF THEY WERE CONSPIRING, TODAY IS THEIR DAY. THIS IS
20 WHERE IT ALL COMES TOGETHER AND THEY'RE FINALLY ABLE TO GET
21 THAT MAN. LAURA: OH, YOU KNOW, HER CLOTHES WERE ARE TORN.
22 SHE WAS HYSTERICAL. YOU KNOW, SHE GAVE ME ALL THE HORRIBLE
23 DETAILS. I MEAN, THERE'S A LOT MORE IF YOU'RE GOING TO
24 CONSPIRE ABOUT THIS THAT YOU'RE GOING TO BE TELLING. SHE
25 CAME OVER TO MY HOUSE. SHE WAS ANGRY. SHE WAS SHAKING. WE

1 TALKED ABOUT IT. WE WENT TO GO GET I L B SOMETHING TO
2 EAT, AND THEN I WAS GOING TO TAKE CARE OF L B SO THAT
3 SHE WOULDN'T SEE THE POLICE AND, YEAH, I GUESS I LEFT HER IN
4 THE HOME BY HERSELF.

5 SO THAT DOESN'T GO VERY WELL, SO THEN THEY DECIDE THAT
6 TABITHA CONSPIRED ALONE IN THIS WHEN IT WENT TO: WELL, YOU
7 LEFT TABITHA ALONE BY HERSELF IN THE HOME. WELL, NONE OF
8 THAT REALLY MATCHES BECAUSE IT DOESN'T FIT WITH THE
9 DEFENDANT'S OWN STATEMENT THAT HE WENT THERE TWO DAYS BEFORE.
10 SO WHAT HAPPENED WITH THE CONSPIRACY TWO DAYS BEFORE? DID
11 TABITHA JUST GO, OH, GOSH, I'M JUST -- I'M TOO TIRED TO
12 CONSPIRE TONIGHT. IF HE COMES BACK IN A COUPLE MORE DAYS AND
13 WANTS TO HAVE SEX, THEN I'LL JUST -- I'LL CONSPIRE THAT
14 NIGHT. IT'S JUST NOT WORKING OUT TODAY.

15 WHY WOULDN'T THEY HAVE THIS BIG ARGUMENT TWO DAYS BEFORE
16 WHEN THE DEFENDANT COMES OVER ABOUT WHERE ARE YOU MOVING TO,
17 WHERE IS MY BABY GOING? SHE'S ALSO KEPT THIS CONSPIRACY FROM
18 HER BEST FRIEND, AND SHE'S BEEN ABLE TO MAINTAIN THIS
19 CONSPIRACY FOR TWO YEARS. SHE TALKS TO LAURA. SHE TALKS TO
20 OFFICER SHUMARD. SHE TALKS TO TERRY CASTO, THE REGISTERED
21 NURSE. SHE TALKS TO CHRYSTIE VARN, GIVES A FOUR-PAGE
22 STATEMENT. IT'S BECAUSE IT'S THE TRUTH.

23 THEN THEY TRY TO SAY THAT SHE PLANTED THE HAIR AND THE
24 OTHER EVIDENCE. SO SHE'S GOING -- THERE WAS SOMETHING ABOUT
25 A HAIRBRUSH. AND FORGIVE ME FOR THIS; IT'S A LITTLE GROSS.

1 THIS IS MY HAIRBRUSH FROM HOME. IF YOU LOOK AT THE
2 PHOTOGRAPHS OF THAT HAIR ON THAT KITCHEN FLOOR AND YOU LOOK
3 AT THE HAIR THAT'S IN EXHIBIT 35- A THAT WAS PULLED OUT BY
4 THE NURSE, IF YOU TAKE HAIR OUT OF A HAIRBRUSH AND IT IS
5 MATTED AND IT IS NASTY -- THERE'S PROBABLY HAIR PRODUCTS ON
6 IT, HAIR SPRAY, HAIR GEL. THIS IS NOT GOING TO BE THE HAIR
7 THAT'S ON THAT KITCHEN FLOOR. THAT HAIR THAT'S ON THAT
8 KITCHEN FLOOR IS PULLED OUT OF HER HEAD BY THE DEFENDANT.

9 TABITHA, ON THE OTHER HAND, YOU KNOW, WHEN YOU GIVE --
10 TALK TO ALL OF THESE PEOPLE AND YOU GIVE A FOUR-PAGE
11 STATEMENT ABOUT WHAT HAPPENED TO YOU, IF YOU ARE NOT TELLING
12 THE TRUTH, YOU WILL GET CAUGHT IN THE DETAILS. IF THERE ARE
13 INCONSISTENCIES, YOU CAN BET THAT THESE VERY FINE ATTORNEYS
14 WOULD HAVE BROUGHT UP EVERY SINGLE INCONSISTENCY. WELL,
15 TABITHA, YOU DIDN'T TELL OFFICER SHUMARD THAT, DID YOU?
16 WELL, TABITHA, YOU DIDN'T TELL TERRY CASTO THAT, DID YOU?
17 TABITHA, YOU DIDN'T TELL CHRYSTIE VARN THAT, DID YOU? FOUR
18 PAGES.

19 SHE SAID HE PUSHED HIS WAY IN; SHE PUSHED OVER A BOX.
20 YOU LOOK AT THAT PHOTOGRAPH. AGAIN, YOU CAN SEE THE BOX ON
21 ITS SIDE. THAT THERE WAS A STRUGGLE IN THE KITCHEN. YOU
22 LOOK AT THE PHOTOGRAPHS. INVESTIGATOR VARN AND OFFICER
23 SHUMARD SAID THEY SAW SCUFF MARKS ON THE GROUND. THERE'S A
24 TRASH CAN LID THAT'S ON THE GROUND. THERE'S THE MARK ON
25 TABITHA'S NECK, CHOKING AND RED MARKS ON TABITHA'S NECK.

1 THAT SHE WAS CHOKED. THAT HER HAIR WAS PULLED. IT'S NOT
2 ONLY ON THE KITCHEN FLOOR, BUT TERRY CASTO SAYS 500 SEXUAL
3 ASSAULT EXAMINATIONS SHE'S DONE AND SHE HAS NEVER, NEVER SEEN
4 THAT MUCH HAIR.

5 DEFENSE COUNSEL MAY GET UP HERE AND TRY TO GIVE YOU ALL
6 SORT OF REASONS WHY WOMEN LOSE THEIR HAIR, BUT USE YOUR
7 COMMON SENSE THAT THIS SEXUAL ASSAULT NURSE EXAMINER, 500
8 EXAMS -- I GUARANTEE YOU SHE HAS SEEN EVERY RACE, EVERY AGE,
9 PEOPLE WITH ALL TYPES OF DIFFERENT MEDICAL PROBLEMS OR PLACES
10 IN THEIR LIFE WHERE THEY'VE HAD A CHILD, NOT HAD A CHILD,
11 THEY'RE STRESSED OUT, NOT STRESSED OUT, TAKING MEDICATION
12 THAT MAKES THEM LOSE THEIR HAIR. THINK OF 500 EXAMS AND ALL
13 THE DIFFERENT PEOPLE THAT THEY'VE SEEN. THEY HAVE COVERED IT
14 ALL, AND SHE SAYS SHE HAS NEVER SEEN THAT MUCH HAIR.

15 PUSHED INTO THE NIGHTSTAND. YOU SEE A HOLE IN THE WALL,
16 MATCHES THE CORNER OF THE NIGHTSTAND. THAT SHE WAS SEXUALLY
17 ASSAULTED. NUMBER ONE, TERRY CASTO SAYS THAT THERE WAS BLUNT
18 FORCE TRAUMA THAT CAUSED THAT ABRASION. SHE CALLED IT A
19 MOUNTING INJURY. INJURY. NOT AN INDICATION, NOT A MARK. AN
20 INJURY. THAT IT HAPPENED IN THE LIVING ROOM. THE COMFORTER
21 AND THE PILLOW AND THE TOWEL. THAT HE WIPED HIMSELF. THE
22 DEFENDANT'S D.N.A. IS ON THAT TOWEL. THAT HE EJACULATED ON
23 HER STOMACH. THEY DON'T ALWAYS DO ABDOMINAL SWABS. THEY
24 LISTEN TO WHAT THE VICTIM SAYS HAPPENED TO THEM AND THEY
25 COLLECT EVIDENCE APPROPRIATELY. THAT THE DEFENDANT TRIED TO

1 BREAK IN ONCE BEFORE. SHE CALLS HER DAD. SHE CALLS HER DAD
2 WHO CAME UP HERE JUST -- ALSO JUST AS NICE AND SINCERE AS
3 POSSIBLE. IF THIS WAS SOME KIND OF CONSPIRACY, HE'D SAY,
4 YEAH, I SAW HIM DRIVING AWAY WHEN I WAS HEADED OVER TO MY
5 DAUGHTER'S HOUSE. JUST MISSED HIM. NO. HE SAYS SHE CALLS
6 ME AT 2 OR 3 IN THE MORNING. SHE'S UPSET. I GET OVER THERE
7 PROBABLY WITHIN ABOUT 15 MINUTES. I LOOK AROUND THE HOUSE.
8 I DO SEE SOME SCRATCHES ON THE WINDOW, AND THEN WE DECIDE
9 THEY'RE COMING HOME WITH US AND WE TAKE LB , AND SHE FOLLOWS
10 US IN HER CAR. THAT'S NOT THE DEMEANOR OF SOMEONE WHO IS
11 HERE AS A PART OF SOME CONSPIRACY.

12 TABITHA WOULD NOT HAVE ALLOWED HIM INTO THIS HOUSE AND
13 WOULD NOT HAVE CONSENTED TO HAVE SEX WITH HIM. SHE WAS
14 PACKING HER BOXES. SHE HAD NO FURNITURE IN THAT HOUSE. SHE
15 CALLS HER DAD FOR HELP. SHE IS STARTING A NEW JOB, A LOWER
16 SALARY, 40 MILES AWAY. SHE'S GOTTEN A NEW CELL PHONE NUMBER.
17 BREAKS HER LEASE DESPITE LOSING A SECURITY DEPOSIT. AND THE
18 DEFENDANT WAS INTOXICATED AND MAD.

19 THE DEFENDANT'S WRITTEN STATEMENT. TABITHA WHO SAID --
20 HAS TALKED TO HOW MANY PEOPLE AND HAS GIVEN A FOUR-PAGE
21 WRITTEN STATEMENT ABOUT WHAT HAS HAPPENED TO HER. WELL, WHEN
22 YOU'RE NOT TELLING THE TRUTH, YOU WANT TO BE GENERAL. YOU
23 DON'T WANT TO GET CAUGHT IN THE DETAILS BECAUSE THE DETAILS
24 ARE WHAT WILL GET YOU.

25 ON 4/3/05 DID YOU GO TO ROAD TO SEE

1 TABITHA BRAZELL? NO. I WENT THERE ON THE 3RD AND STAYED ALL
2 NIGHT. SO HE'S SAYING I CAME EARLY MORNING HOURS,
3 INAPPROPRIATE HOURS, AND I STAYED ALL NIGHT, THE TERM
4 REMAINING IN THE NIGHTTIME, HIS OWN WORD. HOW DID YOU GET
5 INTO THE HOUSE? I OPENED THE GLASS DOOR AND KNOCKED ON THE
6 WOODEN DOOR. KNOCKED. HE KNEW HE DID NOT HAVE PERMISSION TO
7 JUST ENTER THAT HOME. IT WAS NOT HIS HOME ANYMORE. HE WAS
8 LIVING AT HIS SIGNATURE RESIDES AT
9 ONCE YOU WERE INSIDE, WHY DID YOU GET UPSET? AT FIRST
10 WE WERE FINE, AND WHEN SHE WOULD NOT TELL ME SHE WAS MOVING
11 MY DAUGHTER, I GOT UPSET. WELL, HE SAYS DOWN HERE WE WERE
12 THERE TWO NIGHTS BEFORE. SO WHY IS HE THERE 3:45, 4:00 IN
13 THE MORNING WHEN HE WAS THERE TWO NIGHTS EARLIER AND CAN
14 CLEARLY SEE THAT TABITHA WAS MOVING? SHE WAS ALREADY PACKING
15 THOSE BOXES. THIS WAS NOT A ONE-DAY JOB.
16 WHAT DID YOU DO WHEN YOU GOT UPSET? AT FIRST I WAS JUST
17 VERBAL AND SHE WAS YELLING AT ME, TOO. SO HE WANTS TO SLING
18 A LITTLE MUD AT HER: SHE WAS YELLING AT ME, TOO. SHE WAS
19 SAYING GET OUT. GET OUT. L B IS UPSET. GET OUT.
20 THAT'S WHAT SHE WAS YELLING. WE THEN WENT INTO THE KITCHEN,
21 AND I GRABBED HER AND PUSHED HER AGAINST THE FRIDGE. PUSHES
22 HER AGAINST THE FRIDGE. THAT'S AN ASSAULT. MY HAND WAS
23 AROUND HER NECK, YET I NEVER APPLIED ANY PRESSURE. SO HE'S
24 TRYING TO SOFTEN IT UP FOR US. I BELIEVE I PULLED HER HAIR.
25 HE WANTS TO BACKTRACK.

CLOSING ARGUMENT BY MS. FENT

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1 FROM THE BEGINNING OF THIS STATEMENT, LADIES AND
2 GENTLEMEN, FROM THE BEGINNING OF THIS STATEMENT WHAT HE IS
3 DOING IS HE'S WORKING ON YOU FOR A CRIMINAL DOMESTIC VIOLENCE
4 CONVICTION. JUST LIKE LAST TIME, I'LL GET A SLAP ON THE HAND
5 AND HAVE TO GO TO THOSE BULLSHIT CLASSES.

6 MS. OWINGS: OBJECTION.

7 MS. FENT: SO I'LL BACK UP---

8 THE COURT: HOLD ON JUST A SECOND.

9 (WHEREUPON, THE FOLLOWING BENCH CONFERENCE WAS HELD AT
10 THE SIDE BAR:)

11 MS. OWINGS: THAT'S AN IMPROPER USE OF HIS PRIOR RECORD.
12 SHE SAYS -- SHE'S USING IT TO BACK-DOOR IN HIS PRIOR C.D.V.
13 HE'S WORKING ON GETTING A C.D.V. CONVICTION JUST LIKE LAST
14 TIME.

15 MS. FENT: THE C.D.V. IS SUBMITTED AS A LESSER INCLUDED.

16 THE COURT: HOLD ON. HOLD ON. HOLD ON. YOU'RE GETTING
17 A LITTLE CLOSE TO SUGGESTING THAT HE DOES HAVE A CONVICTION
18 IN THE PAST. I JUST ---I MEAN, IT'S PROPER FOR YOU TO USE
19 THE EVIDENCE TO ARGUE YOUR POINT, AND SO WHEN YOU QUOTED HIS
20 STATEMENT I THINK THAT'S PROPER. WHAT SHE'S SAYING IS
21 THAT -- IS THAT COMING RIGHT AFTER THE SUGGESTION THAT HE'S
22 LOOKING FOR A CRIMINAL SEXUAL CONVICTION MEANING -- I MEAN,
23 WITH A CRIMINAL DOMESTIC VIOLENCE CONVICTION YOU ARE
24 SUGGESTING TO THE JURY THAT HE ALREADY HAS ONE. SO I'M
25 NOT -- I DON'T THINK THAT -- I'M JUST CAUTIONING YOU THAT

1 YOUR ARGUMENT, IF YOU EXTEND IT, COULD BE INTERPRETED THAT
2 WAY.

3 MS. FENT: UH-HUH.

4 THE COURT: NOW, DOES THAT SATISFY YOUR OBJECTION?

5 MS. OWINGS: YES, SIR, BUT I DON'T WANT YOU TO SAY
6 ANYTHING TO THEM NOW. I WANT YOU TO -- YEAH.

7 (THE BENCH CONFERENCE CONCLUDED.)

8 MS. FENT: ASIDE FROM THE CRIMINAL DOMESTIC VIOLENCE OF
9 A HIGH AND AGGRAVATED NATURE CHARGE THAT THE COURT IS
10 SUBMITTING TO YOU -- HE READ THAT INDICTMENT TO YOU AT THE
11 BEGINNING OF THE TRIAL. HE'S ALSO SUBMITTING TO YOU A
12 LESSER-INCLUDED OFFENSE OF CRIMINAL DOMESTIC VIOLENCE, THAT
13 IF YOU BELIEVE THAT THE HIGH AND AGGRAVATED NATURE PORTION OF
14 THE CHARGE WAS NOT PROVED THAT YOU CAN CONSIDER CRIMINAL
15 DOMESTIC VIOLENCE. HE IS SAYING HERE: I PUT MY HANDS ON HER
16 NECK, BUT I DIDN'T CHOKE HER. I MIGHT HAVE PULLED HER HAIR.
17 I THEN LET HER GO AND WALKED BACK INTO THE LIVING ROOM WHERE
18 I WAS STILL CRYING AND SITTING DOWN. WHERE IS HE SITTING?
19 THERE'S NO FURNITURE IN THAT HOUSE. WHERE IS MR. RATHBURN
20 SITTING AND CRYING?

21 TABITHA WALKS INTO THE LIVING ROOM AND BEGINS KISSING
22 ME. SO AFTER SHE'S BEEN CHOKED, HER HAIR HAS BEEN PULLED
23 OUT, SHE COMES IN AND STARTS KISSING HIM. MAYBE THAT'S PART
24 OF HIS DELUSION WHEN HE'S RAPING HER AND SAYING, "BABY, GET
25 INTO IT." SHE BEGINS KISSING ME. TABITHA THEN GOES TO THE

1 BACK AND SHE GETS A COMFORTER AND PILLOWS, AND WE MADE LOVE
2 AND THEN GO TO THE BEDROOM AND GO TO SLEEP. TABITHA SET THE
3 ALARM CLOCK FOR ME. I GOT UP AND PLAYED WITH MY DAUGHTER,
4 LEFT FOR WORK.

5 WHAT ELSE WOULD YOU -- ACTUALLY, DID TABITHA EVER ASK
6 YOU TO LEAVE? WHEN I FIRST GRABBED HER, YEAH. GET OUT. SO
7 HE'S ALSO ADMITTING THERE THAT HE DOESN'T HAVE THE RIGHT OR
8 PERMISSION TO BE IN THAT HOME. LEAVE. GET OUT. L B IS
9 CRYING, UPSET. COME BACK ANOTHER TIME. COME BACK DURING THE
10 DAY. YOU CAN SEE L B WHENEVER YOU WANT TO. THIS IS NOT
11 THE APPROPRIATE TIME. SHE IS CRYING AND SHE IS SOBBING, AND
12 SHE IS HOPING TO GET HIM OUT OF THAT HOME AS THIS VIOLENT
13 INCIDENT IS ESCALATING. I WAS OVER AT THIS HOUSE TWO NIGHTS
14 BEFORE AND HAD SEX THAT NIGHT AND SPENT THE NIGHT. MY MAIN
15 CONCERN WAS KNOWING WHERE MY DAUGHTER WAS GOING TO BE, NOT
16 HURTING TABITHA. I NEVER FORCED MY WAY INTO THIS HOME.

17 DO YOU NOTICE IN HIS STATEMENT HE NEVER SAYS L B
18 HE NEVER SAYS ONCE L B HE SAYS, "MY DAUGHTER."
19 CONTROL. POSSESSION. CONTROL. HOW MANY TIMES CAN WE
20 REMEMBER THAT TABITHA SAT UP HERE AND SAID, "L B
21 L B " OVER AND OVER AND OVER? THE DEFENDANT
22 SAYS, "MY DAUGHTER."

23 I WILL NOT HAVE A CHANCE TO GET BACK UP AND TALK TO YOU.
24 THIS IS MY -- MY ONLY OPPORTUNITY. AS DEFENSE COUNSEL TALKS
25 TO YOU AND GOES OVER THE EVIDENCE, I WOULD LIKE YOU TO THINK

1 AND RESPOND IN YOUR OWN HEAD WHAT I'VE TALKED ABOUT, AND I
2 CAN ONLY IMAGINE THAT MOST OF WHAT THEY ARE GOING TO TRY TO
3 SAY IS THAT HE WAS ANGRY BECAUSE HE WAS NOT SEEING HIS
4 DAUGHTER, L B THAT THAT BOTTOM LINE IS WHAT IT'S ABOUT.

5 WELL, WHAT I WANT YOU TO KEEP IN MIND IS WHY THIS WAS
6 NOT ABOUT L B FROM HIS OWN STATEMENT, AS WE TALKED
7 ABOUT, HE WAS THERE TWO DAYS BEFORE, SPENT THE NIGHT, AND
8 SAYS HE HAD SEX. HE SAW L B THEN, DIDN'T HE? DIDN'T
9 SHOW UP THE DAY AFTER THIS TO SEE HIS DAUGHTER. DID HE SHOW
10 UP ON APRIL 4TH TO SEE HIS DAUGHTER? AND HE CALLS HER, "MY
11 DAUGHTER." NEVER SAYS THE NAME L B

12 FROM THE OTHER EVIDENCE THAT WE'VE HEARD, L B IS AT
13 HER GRANDPARENTS' HOUSE DURING THE DAY. THAT IS HER DAY CARE
14 SITUATION. HE KNOWS WHERE THEY LIVE. HE'S, IN FACT, LIVED
15 IN THAT HOME. LAURA HAS NOT SEEN HIM AROUND THE HOUSE IN
16 THAT WEEK OR WEEK AND A HALF, WHATEVER, THAT SHE'S HELPING
17 HER FRIEND MOVE. NEVER DURING THE DAY. DOESN'T COME BY.
18 GRANDPARENTS HAVEN'T SEEN HIM. HE HASN'T STOPPED BY THE
19 HOUSE TO SEE L B AND THE FACT THAT SHE IS MOVING IS
20 VERY CLEAR AND IT IS NOT SOMETHING THAT HAPPENED IN JUST A
21 SINGLE DAY, THAT IF HE WAS OVER THERE A FEW DAYS BEFORE, HE
22 KNOWS SHE'S MOVING.

23 FROM TABITHA: THE DEFENDANT IS COMING BETWEEN 2 AND
24 4:00 IN THE MORNING. WHO GOES TO SEE THEIR THREE-YEAR-OLD
25 CHILD BETWEEN 2 AND 4:00 IN THE MORNING? HE HADN'T COME ANY

1 TIME DURING THE DAY OF ANY DAY, HAD NOT COME FOR AN ENTIRE
2 WEEK AT ALL, NOT EVEN AT 3 OR 4 IN THE MORNING. HE WAS
3 DRUNK. HE IS YELLING OBSCENITIES THROUGH THE WINDOW. HE IS
4 BANGING ON THE DOORS AND THE WINDOWS WHEN HIS THREE-YEAR-OLD
5 CHILD IS TRYING TO SLEEP. HE ATTACKS FROM HIS OWN ADMISSION:
6 I PUSHED HER UP AGAINST THE FRIDGE. I PUT MY HANDS ON HER
7 NECK, AND I MIGHT HAVE PULLED HER HAIR. HE IS ATTACKING
8 LB MOTHER IN FRONT OF HER. HE HAD NOT DONE A SINGLE
9 THING TO ARRANGE VISITATION, AND TO THIS DAY, TO THIS DAY,
10 NOT JUST THE TWO WEEKS PRIOR TO THIS HAPPENING, BUT TO THIS
11 DAY HE HAS DONE NOTHING ABOUT SEEKING VISITATION WITH
12 LB

13 BUT REALLY THE MOST COMPELLING TO ME MOMENT OF WHY
14 TABITHA BRAZELL WEISS HAS TOLD YOU THE TRUTH ABOUT EVERYTHING
15 THAT HAPPENED TO HER IS THE MOMENT THAT SHE WAS STANDING
16 RIGHT HERE WITH THE DIAGRAM AND SHE WAS DESCRIBING THE
17 DEFENDANT IN THE BEDROOM STANDING OVER THE BED AS LB IS
18 ON THE BED CRYING. AND TABITHA WEPT IN FRONT OF YOU SAYING,
19 "I TOLD HIM: 'THERE IS YOUR DAUGHTER, THE REASON THAT YOU
20 WANT TO BE IN THIS HOUSE, THE REASON THAT YOU HAVE BEGGED TO
21 BE IN THIS HOUSE. THERE SHE IS CRYING ON THE BED,' AND HE
22 DIDN'T EVEN ACKNOWLEDGE HER."

23 RAPE IS A CRIME OF VIOLENCE. IT IS ABOUT CONTROL. AND
24 AFTER GOING OUT AND DRINKING AND FUELING HIS ANGER, THE
25 DEFENDANT COMES OVER TO TABITHA'S HOUSE AND TRIES TO REGAIN

1 SOME OF THAT CONTROL, AND HE VIOLENTLY ATTACKS HER AND RAPES
2 HER IN HER OWN HOME WITH A THREE-YEAR-OLD CHILD.

3 THIS KEY WAS THE FIRST STEP TO TABITHA'S GETTING HER
4 CONTROL BACK. DO NOT -- DO NOT LET DEFENSE COUNSEL USE THIS
5 KEY TO TRY TO SAY THAT HE HAD A RIGHT TO BE IN THAT HOME AND
6 HE HAD A RIGHT TO SEXUALLY ASSAULT HER IN THE HOME. BASED
7 UPON THE LAW THAT THE JUDGE IS GOING TO GIVE YOU AND THE
8 FACTS THAT YOU HAVE HEARD, THE TESTIMONY THAT YOU HAVE HEARD
9 FROM TABITHA WHO SURVIVED THIS, FROM HER FRIEND LAURA WHO
10 SUPPORTED HER, FROM THE EXPERTS THAT EXAMINED THE PHYSICAL
11 EVIDENCE AND CAME IN AND TOLD YOU WHAT IT SAYS AND FROM THE
12 LAW ENFORCEMENT WHO COLLECTED THAT EVIDENCE AND BROUGHT IT TO
13 YOU TODAY, WE ASK YOU TO RETURN VERDICTS OF GUILTY FOR
14 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, BURGLARY IN THE
15 FIRST DEGREE, KIDNAPPING, AND CRIMINAL DOMESTIC VIOLENCE OF A
16 HIGH AND AGGRAVATED NATURE. THANK YOU.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

18 THE COURT: ALL RIGHT. WE'RE GOING TO TAKE A SHORT
19 BREAK BEFORE WE HEAR CLOSING ARGUMENT FROM DEFENSE COUNSEL.
20 Y'ALL GO BACK IN THE JURY ROOM FOR A FEW MINUTES, AND WE'LL
21 HAVE YOU BACK OUT HERE AS SOON AS POSSIBLE.

22 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
23 10:34 A.M., AND A SHORT BREAK WAS TAKEN.)

24 THE COURT: BE SEATED. BRING IN THE JURY.

25 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT

1 11:02 A.M.)

2 THE COURT: MS. OWINGS?

3 MS. OWINGS: THANK YOU, SIR. THIS CASE IS NOT ABOUT A
4 BURGLARY. IT'S NOT ABOUT A RAPE. IT'S NOT ABOUT PHYSICAL
5 ASSAULT, AND IT'S NOT ABOUT KIDNAPPING. YOU SEE, THIS CASE
6 IS ABOUT A LITTLE GIRL. IT'S ABOUT A CHILD THAT WILL FOREVER
7 BE THREE AND A HALF YEARS OLD TO SHEY RATHBURN BECAUSE THAT
8 WAS THE LAST TIME HE SAW HIS DAUGHTER, L B THIS CASE
9 IS ABOUT A LITTLE GIRL. IT'S NOT ABOUT RAPE OR BURGLARY OR
10 KIDNAPPING OR ASSAULT. IT'S ABOUT A MOTHER USING THIS LITTLE
11 GIRL TO MANIPULATE A FATHER.

12 SO WHAT HAPPENED ON APRIL THE 3RD, 2005? SHEY RATHBURN
13 TOLD YOU IN HIS STATEMENT THAT THE SOLICITOR ADMITTED INTO
14 EVIDENCE BECAUSE SHE WANTED YOU TO SEE THIS. SHEY RATHBURN
15 TOLD YOU WHAT HAPPENED ON APRIL THE 3RD OF 2005. NOW, HOW
16 DOES THE EVIDENCE SUPPORT WHAT SHEY RATHBURN TOLD YOU? HE
17 TOLD YOU THAT HE OPENED THE GLASS DOOR. IT WAS UNLOCKED. WE
18 ALREADY KNOW THAT. HE KNOCKED ON THE WOODEN DOOR, AND
19 TABITHA OPENED IT UP AND LET HIM IN. THERE IS ABSOLUTELY NO
20 EVIDENCE OF FORCED ENTRY IN THIS CASE. THERE'S NO BROKEN
21 STORM DOOR.

22 HE WAS POUNDING ON THAT DOOR. CAN YOU IMAGINE THE NOISE
23 IT MUST HAVE MADE WHEN IT WAS RATTLING? SHE SAYS THE HOUSE
24 WAS SHAKING. IN FOREST ACRES NO ONE CALLED AND REPORTED A
25 NOISE DISTURBANCE? THERE'S NO TAMPERING WITH THE DOOR FRAME.

1 THERE'S NO BREAKING OF THE DOOR FRAME. SHE LET HIM IN.

2 AT FIRST WE WERE FINE AND SHE WOULD NOT TELL ME WHERE
3 SHE WAS MOVING MY DAUGHTER TO AND I GOT UPSET. HERE WE GO.

4 LB THIS CASE IS ABOUT A THREE-
5 AND-A-HALF-YEAR-OLD CHILD. SHE WON'T TELL HIM WHERE SHE'S
6 MOVING HIS DAUGHTER TO. THAT'S MANIPULATIVE. I'M NOT GOING
7 TO TELL YOU WHERE SHE'S GOING TO BE. WE'RE BROKEN UP, AND
8 YOU'RE NOT GOING TO BE ABLE TO FIND HER. AND HE GETS ENRAGED
9 AND HE IS MAD AND HE IS UPSET AND HIS THREE-AND-A-HALF-YEAR-
10 OLD CHILD, LB IS BEING USED AGAINST HIM.

11 SO HE DOES GET VIOLENT. HE PUSHES HER UP AGAINST THE
12 REFRIGERATOR. HE PULLS HER HAIR AND HE PUTS HIS HAND ON HER
13 NECK, BUT HE SAYS HE NEVER APPLIED PRESSURE. SO HOW DOES THE
14 EVIDENCE SUPPORT WHAT HE SAYS HAPPENED IN THAT KITCHEN? YOU
15 HEARD THE S.A.N.E. NURSE, TERRY CASTO, TESTIFY YESTERDAY. DO
16 YOU REMEMBER HOW THOROUGH SHE WAS? DO YOU REMEMBER HOW SHE
17 SAID THAT SHE BELIEVED IN WHAT SHE'S DOING? AND DO YOU
18 REMEMBER HOW SHE TALKED ABOUT HOW MUCH TIME SHE TOOK WITH
19 TABITHA?

20 SHE PHOTOGRAPHED HER INJURIES, AND SHE PHOTOGRAPHED THE
21 BRUISE ON HER SHOULDER WHERE SHE WAS PUSHED UP AGAINST THE
22 REFRIGERATOR. HE PULLED HER HAIR AND, IN FACT, THERE'S A BAG
23 THAT YOU WILL TAKE BACK WITH YOU THAT HAS SOME SMALL CLUMPS
24 OF HAIR JUST LIKE WHAT YOU SEE IN THE PICTURE. SMALL AMOUNTS
25 OF HAIR. IT WAS FOUND IN THE KITCHEN FLOOR.

1 NOW, THE NURSE ALSO DOCUMENTED THAT SHE FOUND A SCRATCH
2 ON HER NECK. TABITHA SAYS HE WAS GRABBING HER NECK AND
3 CHOKING HER SO HARD THAT SHE HAD TO TAP OUT. WOULD THAT
4 LEAVE A SCRATCH OR WOULD THAT LEAVE A FINGER BRUISE WHERE A
5 GROWN MAN WAS DIGGING INTO HER NECK AND TRYING TO CUT OFF HER
6 BREATH? YOU'RE GOING TO SEE THE PICTURES. IT'S A SCRATCH.
7 CRIMINAL DOMESTIC VIOLENCE? OKAY. HE SHOULDN'T HAVE DONE
8 THAT; HE SHOULDN'T HAVE OVERREACTED. CRIMINAL DOMESTIC
9 VIOLENCE OF A HIGH AND AGGRAVATED NATURE? NO.

10 THIS IS A COMPLICATED RELATIONSHIP, PEOPLE. THEY HAVE
11 BEEN TOGETHER FOR FIVE YEARS. IT'S ON AGAIN; IT'S OFF AGAIN.
12 SOMETIMES THEY LIVE TOGETHER; SOMETIMES THEY DON'T. THEY
13 HAVE A CHILD TOGETHER. THIS IS NOT SIMPLE AND YOU CAN'T MAKE
14 IT SIMPLE. THEY FIGHT IN THE KITCHEN. THEY'RE ARGUING OVER
15 WHERE THE DAUGHTER IS GOING TO GO. HE WANTS TO KNOW WHERE
16 L B IS GOING TO BE LIVING. HE WANTS TO KNOW WHERE HE
17 CAN FIND HIS DAUGHTER, AND HE CALLS HER HIS DAUGHTER. MY
18 DAUGHTER. MY WIFE. MY HUSBAND. MY GRANDMOTHER. MY MOTHER.
19 HOW DO YOU REFER TO PEOPLE YOU'RE RELATED TO? HE WANTS TO
20 KNOW WHERE HIS DAUGHTER IS GOING TO BE.

21 AT SOME POINT THE FIGHT DIES DOWN. THEY CALM DOWN AND
22 THEN SHE COMES IN THE LIVING ROOM. WHERE IS HE SITTING?
23 WELL, LOOK AT THE PICTURES. THE HOUSE IS PILED WITH BOXES.
24 THERE ARE PLENTY OF PLACES HE COULD BE SITTING. HE DOESN'T
25 HAVE TO BE SITTING ON A COUCH OR A CHAIR TO BE SITTING DOWN.

1 THEY MAKE UP TO AN EXTENT, AND HE SAYS THAT TABITHA GOES
2 BACK INTO THE BEDROOM AND GETS THE COMFORTER AND A PILLOW AND
3 BRINGS IT OUT. NOW, HOW DOES THE EVIDENCE SUPPORT SHEY'S
4 VERSION OF THAT STORY? TABITHA HAS BEEN PACKING UP THIS
5 HOUSE ALL WEEK. SHE KNOWS WHERE HER STUFF IS. THE PICTURE
6 OF THE BED THAT YOU'RE GOING TO TAKE BACK INTO THE JURY ROOM,
7 YOU HEARD ME CROSS-EXAMINE THE OFFICERS. THERE'S A COMFORTER
8 ON THAT BED. THE OFFICERS DIDN'T MANIPULATE THE BED.
9 THERE'S A COMFORTER ON IT. SO HE DIDN'T GO GET A COMFORTER
10 OFF THE BED. SHE WENT INTO THE BACK AND GOT A COMFORTER AND
11 A PILLOW OUT OF SOME BOXES WHERE SHE'S PACKING UP SOME OF HER
12 LINENS.

13 LAURA TOLD YOU, WHO THE STATE DOESN'T WANT YOU TO
14 BELIEVE THAT PUT HER UP -- THEY WANT TO TELL YOU THAT THIS
15 TECH SCHOOL GRADUATE AND MEDICAL ASSISTANT IS JUST STUPID.
16 SO THEY PUT UP A STUPID WITNESS WHICH I DON'T UNDERSTAND.
17 BUT LAURA TELLS YOU THAT THE ONLY THING THAT REALLY WASN'T
18 PACKED UP WAS SOME FURNITURE. SO TABITHA GOES AND SHE GETS A
19 PILLOW AND SHE GETS A COMFORTER, AND SHE TAKES IT OUT INTO
20 THE LIVING ROOM AND SHE SPREADS IT OUT AND THIS IS WHERE THEY
21 HAVE SEX.

22 DOES THIS LOOK LIKE A RAPE SCENE TO YOU? IF HE WANTED
23 TO DEGRADE HER, IF HE WANTED TO CAUSE SUCH HORRIBLE HORROR TO
24 HER, LOOK AT THE PICTURES OF THAT HOUSE. WHY DIDN'T HE RAPE
25 HER ON THE COLD HARDWOOD FLOOR? THAT'S DEGRADING. THAT'S

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1 PAINFUL. THAT HURTS. NO, NO, NO, NO, NO, NO, NO. SHE WENT
2 BACK INTO THE LIVING -- INTO THE BACK OF THE HOUSE. SHE GOT
3 THE COMFORTER. SHE GOT THE PILLOW BECAUSE THE DAUGHTER WAS
4 SLEEPING, NOT AWAKE SCREAMING, SLEEPING IN THE BED, SO SHE
5 BROUGHT ANOTHER BED OUT INTO THE LIVING ROOM. THIS IS NOT A
6 RAPE SCENE.

7 DID YOU HAVE FORCE TABITHA TO HAVE SEX WITH YOU? NO, HE
8 DIDN'T. DID YOU PREVENT TABITHA FROM EVER LEAVING IF SHE
9 WANTED TO? NO. DID TABITHA EVER ASK YOU TO LEAVE? WHEN I
10 GRABBED HER. NOW, REMEMBER, THIS IS A COMPLICATED
11 RELATIONSHIP. FIVE YEARS. THEY'RE HAVING PROBLEMS. THEY'RE
12 FIGHTING OVER A THREE-AND-A-HALF-YEAR-OLD CHILD AND THE
13 FATHER NOT BEING ABLE TO KNOW WHERE HIS DAUGHTER IS GOING TO
14 BE. CAN YOU IMAGINE? WHERE IS MY DAUGHTER GOING TO BE?

15 THEY FIGHT. THEY MAKE UP. DURING THE FIGHT SHE TELLS
16 HIM TO GET AWAY FROM HER; SHE'S MAD AT HIM. THINK ABOUT A
17 FIGHT. THINK ABOUT A FIGHT BETWEEN TWO PEOPLE WHO HAVE BEEN
18 IN A ROMANTIC AND TURBULENT RELATIONSHIP FOR FIVE YEARS.
19 WHAT'S GOING ON IN THIS FIGHT?

20 THINK A MINUTE. WHAT ELSE WOULD YOU LIKE TO TELL THE
21 OFFICER ABOUT THE CASE? I WAS OVER AT THIS HOUSE TWO NIGHTS
22 PRIOR AND WE HAD SEX. NOW, WHAT DO WE KNOW ABOUT WHAT
23 HAPPENED AT THAT HOUSE TWO NIGHTS PRIOR? WELL, WE KNOW THAT
24 TABITHA CALLED HIM THREE TIMES AT 4 IN THE MORNING TWO NIGHTS
25 PRIOR. WE'LL TALK ABOUT THAT IN JUST A MOMENT.

1 NOW, TABITHA HAS STORY AND IT'S HER STORY AND IT'S HER
2 STORY AND SHE'S STICKING TO IT. JUST BECAUSE SHE HAS A STORY
3 DOESN'T MEAN YOU HAVE TO BELIEVE HER STORY. IT'S HER STORY.

4 THE SOLICITOR SHOWED YOU A BOARD ABOUT CREDIBILITY OF
5 WITNESSES. IS THE WITNESS FORTHRIGHT? DO THEY HAVE ANYTHING
6 TO HIDE? WHEN TABITHA TOOK THE STAND AND SHE GAVE YOU HER
7 DIRECT TESTIMONY, DID SHE TELL YOU SHE'D BEEN CALLING SHEY?
8 HUH-UH. SHE DIDN'T. SHE TOLD Y'ALL THAT SHE HADN'T
9 INITIATED ANY CONTACT WITH HIM, THAT SHE DIDN'T WANT HIM TO
10 KNOW WHERE SHE WAS GOING TO LIVE, WHERE SHE WAS GOING TO
11 WORK. SHE DIDN'T WANT HIM TO HAVE HER CELL PHONE NUMBER.

12 SO WHEN I CROSS-EXAMINED HER, I SHOWED HER THE RECORDS
13 AND SHE HAD TO ADMIT, YEAH. SHE DIDN'T LIKE ADMITTING IT
14 EITHER. SHE HAD TO ADMIT, YEAH, SHE CALLED HIM. SO THEN THE
15 SOLICITOR GOT TO QUESTION HER AGAIN AND GOT HER TO EXPLAIN,
16 OH, I WAS CALLING HIM AND TELLING HIM, "DON'T COME BANG ON MY
17 DOOR ANYMORE. YOU KNOW, COME SEE HER DURING THE DAY." BUT
18 THEN WHEN I GOT TO QUESTIONING HER AGAIN, SHE HAD TO STOP
19 LYING AGAIN BECAUSE SHE HAD TO ADMIT THAT ON THE 30TH AND THE
20 31ST OF MARCH SHE DIDN'T CALL AT 2 OR 3 IN THE MORNING. SHE
21 WAS MAKING PHONE CALLS TO BOBBY AT 7:30 AND 9:30. IS THE
22 WITNESS FORTHRIGHT? IS THE WITNESS BEING HONEST? IS THE
23 WITNESS HIDING SOMETHING FROM YOU?

24 YOU SAW HER RESPONSE WHENEVER I HAD TO ASK HER ABOUT
25 THOSE CALLS FROM THE 30TH AND THE 31ST AND THAT SHE HAD TO

1 ADMIT THAT THEY WERE NOT AT 2 OR 3 IN THE MORNING. SHE
2 DIDN'T WANT YOU TO KNOW SHE WAS CALLING SHEY. SO WHY DOESN'T
3 SHE WANT YOU TO KNOW THAT SHE'S CALLING HIM? IF SHE DID IT,
4 IF IT WASN'T A BIG DEAL AND IT WAS INNOCENT AND IT WAS PART
5 OF HER STORY OF FEAR, SHE WOULD HAVE TOLD YOU FROM THE VERY
6 BEGINNING BECAUSE IT WOULD HELP HER STORY. OH, I JUST KEPT
7 CALLING HIM TELLING HIM, "PLEASE DON'T COME OVER HERE
8 ANYMORE. YOU'RE UPSETTING ME. COME DURING THE DAY." THAT
9 WOULD BE A PART OF HER STORY OF FEAR, BUT IT'S NOT A PART OF
10 HER STORY OF FEAR AND THAT'S WHY SHE DOESN'T WANT YOU TO KNOW
11 BECAUSE THIS IS WHAT'S SIGNIFICANT ABOUT THOSE PHONE CALLS.

12 SHE'S CALLING HIM IN THE WEE HOURS OF THE MORNING ON THE
13 1ST, AND AS BOBBY SAYS HE GOES OVER THERE AND THEY HAVE SEX.
14 BUT GUESS WHAT? L B IS NOT THERE ON THE 1ST. TABITHA
15 TESTIFIED THAT ON THAT NIGHT SHE WAS STAYING WITH HER AUNT.

16 SO WHY DOESN'T SHE WANT YOU TO KNOW ANY OF THIS? THIS
17 PUTS A SERIOUS KINK IN HER STORY OF FEAR, HER STORY THAT
18 SHE'S FLEEING COLUMBIA TO LUGOFF. SHE'S LEAVING A JOB WHERE
19 SHE'S GOING TO TAKE LESS MONEY. SHE DOESN'T WANT HIM TO KNOW
20 HER CELL PHONE NUMBER. IF SHE'S CALLING HIM TO COME OVER,
21 THERE'S A PROBLEM WITH THAT STORY, AND THAT'S A PROBLEM WITH
22 HER POSITION THAT SHE'S TERRIFIED OF BOBBY.

23 SHE'S CALLING HIM, FOLKS. SHE'S GIVING HIM HER CELL --
24 SHE'S GIVING HIM HER CELL PHONE NUMBER. DO YOU SEE NUMBERS
25 WHEN YOU GET PHONE CALLS? YOU ANSWER IT AND SUDDENLY YOU

1 REALIZE, AH, SO THAT'S TABITHA'S NUMBER. SHE'S NOT TRYING TO
2 HIDE HER CELL PHONE NUMBER.

3 SO SHE'S CALLING TWO DAYS PRIOR ON APRIL THE 1ST TO COME
4 OVER AND THEY HAVE SEX. SO WHY IS IT SO STRANGE THAT HE
5 WOULD COME OVER ON APRIL THE 3RD? HE HAD BEEN THERE TWO
6 NIGHTS BEFORE. TABITHA IS IN CONTROL. TABITHA HAS THE BABY.
7 TABITHA HAS THE THREE-AND-A-HALF-YEAR-OLD CHILD. TABITHA
8 CALLS AND SHE COMES RUNNING. SHE CAN MANIPULATE HIM AND SHE
9 CAN USE HIM, AND SHE HAS THE KEY TO USE HIM. SHE HAS THE
10 THREE-AND-A-HALF-YEAR-OLD CHILD, AND HE DOESN'T KNOW WHERE
11 THAT CHILD IS GOING TO BE. IT'S ABOUT ALL ABOUT L B
12 L B

13 THEY GOT INTO AN ARGUMENT OVER L B SHE WAS IN
14 CONTROL. SHE USED L B TO MANIPULATE SHEY. SHE'S THE
15 MAMA WITH THE BABY, AND HE'S THE DADDY WHO JUST WANTS TO SEE
16 HIS CHILD. SHE WOULDN'T TELL L B DADDY WHERE HE (SIC)
17 WAS TAKING HER AND, YEAH, HIS CONTROL SNAPPED AND THAT'S WHEN
18 HE COMMITTED CRIMINAL DOMESTIC VIOLENCE. AND IF YOU WANT TO
19 CONVICT HIM OF CRIMINAL DOMESTIC VIOLENCE, THAT'S WHAT HE
20 DID.

21 LOOK AT THE EVIDENCE. WHERE ARE THOSE HORRIBLE CHOKING
22 MARKS I CAN'T EVEN INFLICT UPON MYSELF? WHERE ARE THE
23 BRUISES THESE FINGERS AND THESE THUMBS WOULD HAVE LEFT FROM
24 DIGGING INTO HER WINDPIPE? NOT THERE. THERE'S NO
25 AGGRAVATION HERE. THEY GOT INTO A FIGHT. HE ACTED BADLY,

1 BUT THERE WAS NO AGGRAVATION.

2 LET'S TALK ABOUT THAT TABLE BECAUSE THAT'S A KEY ISSUE
3 FOR THE SOLICITOR IS THAT THERE'S THAT HOLE IN THE WALL WHERE
4 THE TABLE HIT WHERE HE PUSHED HER INTO IT AND HER HIP HIT OR
5 HER SIDE HIT THAT TABLE AND IT PUSHED INTO THE WALL AND IT
6 LEFT A HELL IN THE WALL. OKAY. THERE'S A HOLE IN THE WALL.
7 I CAN'T TELL YOU WHEN THAT HOLE IN THE WALL GOT THERE, BUT I
8 CAN TELL YOU THAT IT DIDN'T HAPPEN THAT NIGHT AND I CAN TELL
9 YOU WHY.

10 REMEMBER S.A.N.E. NURSE CASTO AND HOW THOROUGH SHE WAS?
11 REMEMBER HOW WHEN TABITHA TOOK OFF HER CLOTHES SHE TOOK
12 PHOTOGRAPHS OF HER ENTIRE BODY? SHE TOOK PHOTOGRAPHS OF ANY
13 VISIBLE INJURIES SHE COULD FIND. SHE EVEN PUT DYE ON CERTAIN
14 PARTS OF HER BODY SO SHE COULD FIND INJURIES. DID YOU SEE
15 ANY INJURIES THAT WOULD BE CONSISTENT WITH A WOMAN BEING
16 THROWN AGAINST A WOODEN TABLE SO HARD THAT IT KNOCKS CHUNKS
17 OUT OF THE WALL? IT'S NOT THERE. HE DIDN'T PUSH HER INTO
18 THAT TABLE.

19 LET'S TALK ABOUT THE RAPE. BOBBY SAYS THEY HAD SEX;
20 TABITHA SAYS THEY HAD SEX. BOBBY SAYS IT WAS CONSENSUAL;
21 TABITHA SAYS IT'S RAPE. LET'S GO BACK TO S.A.N.E. NURSE
22 CASTO. SHE DID A VERY THOROUGH EXAM OF TABITHA. SHE DID NOT
23 FIND ABRASIONS. SHE FOUND ONE SMALL AN ABRASION THAT SHE
24 CALLS A MOUNTING INJURY. OKAY. WE'RE ALL ADULTS HERE, AND
25 Y'ALL ARE GOING TO HAVE TO GO BACK IN THAT JURY ROOM AND

1 YOU'RE GOING TO HAVE TO TALK ABOUT THIS. THERE'S A MOUNTING
2 INJURY. THEY HAD SEX. THERE'S BLUNT FORCE. THEY HAD SEX.
3 SHE FINDS ONE ABRASION. AND REMEMBER THOSE B.R.A.T.S. SHE
4 TOLD YOU ABOUT, THE ACRONYM: BRUISES, REDNESS, ABRASIONS,
5 TEARS, AND SWELLING? SHE FOUND ONE ABRASION. A MOUNTING
6 INJURY FROM HAVING SEX. SHE FINDS NOTHING ELSE.

7 AND ONCE AGAIN, BECAUSE WE ARE ALL ADULTS, AND I HAVE TO
8 TALK ABOUT THIS -- I DO WANT TO TALK ABOUT MY QUESTIONING OF
9 HER ABOUT TABITHA'S MENSTRUAL PERIOD, AND WE HAD TO GET INTO
10 ALL OF THAT AND, ONCE AGAIN, IT'S NOT A FUN TOPIC, BUT SHE --
11 HER CYCLE BEGAN TWO WEEKS BEFORE THIS HAPPENED. SHE KNEW IT.
12 SHE KNEW WHEN THE FIRST DAY WAS. SHE COULD POSSIBLY HAVE
13 BEEN OVULATING AT THAT TIME. SHE KNEW IT. SHE OBVIOUSLY
14 KNEW HER CYCLE. SO DOESN'T IT MAKE SENSE IF THEY'RE HAVING
15 CONSENSUAL SEX SHE TELLS HIM, "HEY, YOU NEED TO PULL OUT"?

16 I MEAN, IT'S NOT A PRETTY FACT, BUT ONCE AGAIN IT'S
17 SOMETHING Y'ALL ARE ALL GOING TO HAVE TO TALK ABOUT. SHE
18 KNEW HER CYCLE. THEY WERE HAVING CONSENSUAL SEX. SHE TOLD
19 HIM TO PULL OUT, AND HE EJACULATED ON HER STOMACH. THAT'S
20 THE CLOSEST PLACE.

21 AND ONCE AGAIN THIS COMES BACK TO L B IT'S ALL
22 ABOUT L B OKAY. ONCE AGAIN, THIS IS WHERE YOU USE
23 YOUR COMMON-LIFE EXPERIENCES THAT WE'VE BEEN TALKING ABOUT.
24 THREE-AND-A-HALF-YEAR-OLD CHILD, A TODDLER. WE'RE TALKING
25 ABOUT A CRAWLING BABY. WE'RE TALKING ABOUT A THREE-AND-A-

1 HALF-YEAR-OLD CHILD THAT IS NOT RESTRAINED IN ANY WAY, NO
2 BABY GATE, NO BED RAILS, A THREE-AND-A-HALF-YEAR-OLD CHILD.
3 THINK ABOUT A THREE-AND-A-HALF-YEAR-OLD CHILD.

4 SO DO YOU -- THE STATE WANTS US TO BELIEVE THAT A THREE-
5 AND-A-HALF-YEAR-OLD CHILD WHO IS AWAKE AND IS HEARING ALL
6 THIS COMMOTION, THIS SCREAMING, THIS SOBBING, THESE CHOKING
7 SOBS FROM A RAPE, IS NOT GOING TO GET OUT OF THAT BED AND
8 COME INTO THE LIVING ROOM? YOU CAN'T CONTAIN A THREE-AND-A-
9 HALF-YEAR-OLD PRESCHOOLER. THERE'S NOT A LOT OF DISCIPLINE
10 YOU CAN USE TO SCARE THAT THREE-AND-A-HALF-YEAR-OLD TO STAY
11 IN THE BED. I PROMISE YOU I'VE TRIED. YOU CAN'T GET THEM TO
12 STAY. IF SHE HEARD HER MOMMY AND HER DADDY IN A SITUATION
13 LIKE THIS, L B WOULD HAVE BEEN IN THAT LIVING ROOM, AND
14 THEY WOULDN'T HAVE BEEN ABLE TO STOP HER AND THERE WAS
15 NOTHING TO STOP HER. SHE WOULDN'T HAVE JUST BEEN SITTING IN
16 THE BED CRYING AND WAITING FOR HER MOMMY TO COME. IT'S A
17 TINY HOUSE, 900 SQUARE FEET. IF SHE WAS AWAKE AND THERE WAS
18 ALL THIS COMMOTION GOING ON, THERE WOULD HAVE BEEN NO HIDE
19 THAT FROM L B AND THERE WOULD HAVE BEEN NO KEEPING
20 L B OUT OF THAT ROOM.

21 SO WHY ARE WE HERE AND WHY ARE WE IN A TRIAL FOR
22 BURGLARY, RAPE, PHYSICAL ASSAULT, AND KIDNAPPING? THE
23 SOLICITOR WOULD HAVE YOU BELIEVE THAT TABITHA HAS NO REASON
24 TO LIE, THAT IT'S RIDICULOUS TO THINK OTHERWISE. WELL, IT
25 ALL GOES BACK TO L B IT ALL GOES BACK TO L B AND

1 WHO IS IN CONTROL. WHO HAS ILB AND WHO CAN CONTROL THE
2 DADDY?

3 WE KNOW THEIR RELATIONSHIP WAS ON THE ROCKS. WE KNOW
4 THEY'RE HAVING A LOT OF PROBLEMS. WE KNOW HE WASN'T STAYING
5 THERE AT THE TIME BECAUSE HE HAD TO KNOCK ON THE DOOR FOR HER
6 TO LET HIM IN. WE KNOW THEY STILL HAVE A CHILD IN COMMON,
7 AND WE KNOW THAT IN A FIVE-YEAR RELATIONSHIP IT DOESN'T JUST
8 NECESSARILY END WHEN YOU WALK OUT THE DOOR, ESPECIALLY WHEN
9 YOU HAVE A THREE-AND-A-HALF-YEAR-OLD CHILD IN COMMON.

10 THE THING -- THE FUNNY THING ABOUT A LIE: ONCE YOU
11 START TO TELL A LIE, YOU AREN'T REALLY THINKING AHEAD. IT'S
12 NOT LIKE A MOVIE WHERE YOU HAVE A GRAND SCHEME AND A GRAND
13 PLAN THAT'S ALL THOUGHT OUT AHEAD OF TIME. THE FUNNY THING
14 ABOUT A LIE, ESPECIALLY IF YOU'VE EVER BEEN AROUND CHILDREN
15 WHO TELL THEM, IT SNOWBALLS AND IT GETS BIGGER AND BIGGER.
16 SOMETIMES YOU HAVE TO ADD MORE TO SUPPORT THE ORIGINAL ONE SO
17 YOU DON'T GET STUCK IN THAT ONE.

18 SOMETHING HAPPENED WHENEVER TABITHA LEFT THAT HOUSE, AND
19 THE TIMELINE IS INDICATIVE OF THAT. SHE SAYS BOBBY LEFT HER
20 AROUND 11. . OKAY. SO HE LEFT AROUND 11, AND SHE IMMEDIATELY
21 SCOOPED UP LB AND TOOK HER OUT THE DOOR AND WENT TO GET
22 LAURA, AND THEY WENT TO GET LB SOMETHING TO EAT AND
23 THEN THEY CALLED THE POLICE. ALL RIGHT. THE FOREST ACRES
24 POLICE OFFICER TESTIFIED THAT HE WAS CONTACTED AND DISPATCHED
25 AT 2:22 IN THE AFTERNOON. SO WHAT DID THEY DO FOR THREE

1 HOURS? WHAT'S GOING ON?

2 SO YOUR CELL PHONE DOESN'T WORK IN YOUR HOUSE. AS SOON
3 AS YOUR ASSAILANT WHO BRUTALLY RAPED YOU, BROKE INTO YOUR
4 HOME, BEAT YOU UP AND THEN KIDNAPPED YOU, LEAVES YOUR HOUSE,
5 DON'T YOU RUN OUTSIDE AND CALL FOR SOME HELP? YOU'VE BEEN
6 BRUTALLY RAPED. THIS DOESN'T MAKE SENSE.

7 AND I KEPT ASKING HER ABOUT THE FOOD. I WASN'T DOING IT
8 JUST TO BE MEAN AND TO MAKE HER HAVE TO SAY THEY WENT TO GET
9 FOOD. SHE ONLY WANTED TO SAY THEY WENT TO GET LB FOOD.
10 WELL, SHE TOLD THE NURSE SHE ATE AND DRANK, AND IF IT'S THAT
11 IMPORTANT THAT THE NURSE ASK YOU AHEAD OF TIME, "NOW, HAVE
12 YOU EATEN OR DRANK ANYTHING TODAY THAT WOULD CONTAMINATE ANY
13 OF THIS EVIDENCE I'M COLLECTING?" -- I DOUBT THEY FED HER AT
14 THE HOSPITAL. THEY PROBABLY BEGGED HER TO HOLD OFF UNTIL
15 THEY COULD JUST GET THAT EXAM DONE AND THEN SHE COULD EAT.

16 SO HE LEAVES. THE PROBLEM IS STILL THERE. LB IS
17 STILL THERE. SHE DOESN'T WANT TO TELL HIM THAT SHE'S TAKING
18 LB SHE DOESN'T WANT HIM IN LB LIFE. SHE
19 PROBABLY IS STILL THINKING ABOUT THIS AND SHE'S GETTING MAD
20 AGAIN. SHE'D PROBABLY DOESN'T WANT TO ADMIT SHE HAD SEX WITH
21 HIM AND MADE UP, BUT REMEMBER THIS IS A COMPLICATED FIVE-YEAR
22 RELATIONSHIP. I CAN'T IMAGINE WHAT WAS GOING ON BETWEEN
23 THOSE TWO FOR THOSE FIVE YEARS AND THE KIND OF EMOTIONS THAT
24 THEY HAD.

25 SHE GOES TO LAURA'S HOUSE. THEY GO GET A MEAL. THEY

1 START TALKING ABOUT IT. SHE GETS MAD ALL OVER AGAIN, AND
2 THREE HOURS LATER SHE FINALLY DECIDES TO CALL THE POLICE,
3 THREE HOURS AFTER HER BRUTAL RAPE THAT SHE TESTIFIED ABOUT.
4 THAT'S A PROBLEM. IT DOESN'T MAKE ANY SENSE.

5 SO THE SOLICITOR WOULD HAVE YOU BELIEVE: WHY WOULD SHE
6 LIE ABOUT THIS? SHE'S GOING TO HAVE TO HAVE THIS AWFUL EXAM.
7 WHEN SHE -- THIS IS WHERE WE GO TO NOT PLANNING YOUR LIES.
8 SHE DIDN'T KNOW SHE WAS GOING TO HAVE TO GIVE A RAPE KIT.
9 SHE DIDN'T KNOW WHAT WAS GOING TO HAPPEN. SHE KNEW SHE WAS
10 RETALIATING AGAINST BOBBY. SHE KNEW HE WAS GOING TO GET IN
11 TROUBLE.

12 WE KEEP TALKING ABOUT THIS GOING TO COURT FOR
13 VISITATION? MAYBE SHE WAS TRYING TO HELP OUT HER VISITATION
14 CASE BECAUSE IT MIGHT BE HARD TO GET A FAMILY COURT JUDGE TO
15 GIVE YOU VISITATION WITH YOUR CHILD WHEN YOU HAVE PENDING
16 VIOLENT CHARGES. IT SNOWBALLS AND IT GROWS AND IT GETS
17 BIGGER. I DON'T KNOW HOW MUCH LAURA CONTRIBUTED TO HER
18 DECISION. I MEAN, THE SOLICITOR SAYS LAURA IS STUPID. SO I
19 MEAN, YOU KNOW, BELIEVE A STUPID WITNESS? I DON'T KNOW. I
20 DON'T KNOW WHY YOU'D PUT A STUPID WITNESS UP BUT...

21 I CAN'T TELL YOU WHAT SHE DECIDED OR WHO HELPED HER OR
22 WHY SHE DID WHAT SHE DID. THE EVIDENCE DOES NOT SUPPORT HER
23 STORY BECAUSE THIS IS ALL ABOUT L B A VERY
24 POWERFUL TOOL FOR HER, AND IT CONTROLS BOBBY. I MEAN, YOU
25 HEARD HIS STATEMENT. YOU SAW HER TESTIFY ABOUT THE PHONE

1 CALLS. SHE CALLS AND SHE COMES RUNNING. IT WORKS. SHE
2 WON'T TELL HIM WHERE HE'S (SIC) GOING TO BE LIVING, AND IT
3 GETS HIM ALL RILED UP AND IT GETS HIM UPSET AND IT GETS HIM
4 EMOTIONAL AND IT PULLS HIS STRINGS. THIS IS HIS DAUGHTER. I
5 DON'T CARE WHAT HE CALLS HER. L B MY DAUGHTER. MY
6 CHILD. MY SON. MY MOTHER. MY HUSBAND. MY WIFE. IT IS HIS
7 DAUGHTER. IT IS HIS CHILD.

8 THIS IS ALL ABOUT THAT CHILD AND IT'S ALL ABOUT WHO
9 CONTROLS THAT CHILD. WE HAVE NOT SEEN HER. WE HAVE NOT SEEN
10 A PICTURE OF HER. WE HAVE NOT HEARD HER VOICE, BUT THAT
11 THREE-AND-A-HALF-YEAR-OLD CHILD HAS BEEN IN THIS COURTROOM
12 ALL WEEK. SHE HAS BEEN IN EVERYONE'S TESTIMONY. SHE'S BEEN
13 IN EVERYONE'S MINDS. SHE WAS THROUGHOUT THE SOLICITOR'S
14 CLOSING. WHO HAS L B WHO HAS THE CONTROL?

15 BOBBY DID NOT BREAK IN THAT HOUSE. SHE LET HIM IN. HE
16 HAD BEEN OVER TWO NIGHTS BEFORE. THEY HAD SEX THEN. HE
17 DIDN'T RAPE HER. AND IN THIS COMPLICATED MESS OF A
18 RELATIONSHIP THEY FOUGHT. HE COMMITTED SIMPLE C.D.V. HE
19 PULLED HER HAIR AND HE GRABBED HER NECK. HE HURT HER
20 SHOULDER. SHE HAD A BRUISE. THEY CALMED DOWN. THEY COOLED
21 OFF. AND RATHER THAN A BRUTAL RAPE ON A HARDWOOD FLOOR, WE
22 HAVE CONSENSUAL SEX ON THE PILLOW AND THE COMFORTER. HE
23 DIDN'T KIDNAP HER. THEY WERE WITH EACH OTHER WILLINGLY.

24 WE STILL HAVE THE UNRESOLVED ISSUE OF VISITATION. HE
25 HASN'T SEEN HER SINCE THIS HAPPENED. SO WHY HASN'T HE GONE

1 TO FAMILY COURT TO GET AN ORDER TO SEE HIS CHILD? DOES HE
2 REALLY WANT TO GO TO FAMILY COURT BEFORE A FAMILY COURT JUDGE
3 AND FIGHT FOR VISITATION WITH THE HORRIBLE CHARGES OF
4 BURGLARY IN THE FIRST DEGREE, RAPE, CRIMINAL DOMESTIC
5 VIOLENCE OF A HIGH AND AGGRAVATED NATURE, AND KIDNAPPING
6 AGAINST HIM? NOT REALLY. WOULDN'T HE RATHER GO TO FAMILY
7 COURT AND ESTABLISH A RELATIONSHIP WITH HIS DAUGHTER,
8 L B ONCE HE'S CLEARED HIS NAME? HE'S OUT OF L B
9 LIFE. HE'S BEEN OUT OF HER LIFE FOR TWO YEARS.

10 SO TABITHA CONTROLS SHEY. TABITHA HAD SHEY IN THE PALM
11 OF HER HAND. SHE HAD THE BABY. SHE HAD THE CHILD. HE CAME
12 WHEN HE WAS CALLED, BUT Y'ALL HAVE BEEN BROUGHT IN HERE AS
13 FAIR AND IMPARTIAL JURORS TO HEAR THIS CASE AND TO HEAR THIS
14 EVIDENCE AND LISTEN TO ALL OF US WHICH YOU HAVE DONE VERY
15 PATIENTLY THESE PAST THREE DAYS.

16 I'M TAKING THE CONTROL OF SHEY AWAY FROM TABITHA AND I
17 AM GIVING IT TO YOU, AND I'M ASKING YOU TO GO BACK IN THAT
18 JURY ROOM AND LOOK AT ALL THE EVIDENCE IN THIS CASE. THINK
19 ABOUT EVERYTHING YOU HAVE HEARD AND EVERYTHING THAT SUPPORTS
20 SHEY'S STORY, THE STORY THAT THE SOLICITOR BY HER OWN
21 ADMISSION PUT INTO EVIDENCE, AND I'M ASKING YOU TO FIND SHEY
22 NOT GUILTY, AND I'M ASKING YOU TO FREE HIM FROM THE CHAINS OF
23 HIS CHARGES. THANK YOU.

24 THE COURT: NOW THAT YOU HAVE HEARD ALL OF THE EVIDENCE
25 AND THE ARGUMENTS OF THE LAWYERS, IT BECOMES MY

COURT'S CHARGE ON THE LAW TO THE JURY

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1 RESPONSIBILITY TO EXPLAIN TO YOU THE LAW THAT IS APPLICABLE
2 TO THIS CASE. UNDER OUR CONSTITUTION AND CODE OF LAWS IN
3 SOUTH CAROLINA, ONLY THE JURY CAN MAKE THE FINDINGS OF FACTS
4 IN THIS CASE, AND I AM NOT PERMITTED TO INDICATE TO YOU HOW I
5 MIGHT FEEL ABOUT THE FACTS. SO IF I HAVE SAID ANYTHING OR
6 DONE ANYTHING DURING THE COURSE OF THIS TRIAL THAT MIGHT LEAD
7 YOU TO BELIEVE THAT I HAVE AN OPINION ABOUT THE FACTS, THEN
8 YOU MUST DISREGARD THAT.

9 TO DETERMINE THE FACTS IN THIS CASE, YOU WILL HAVE TO
10 EVALUATE THE CREDIBILITY WHICH, OF COURSE, MEANS THE
11 BELIEVABILITY OF THE WITNESSES WHO HAVE BEEN CALLED ON TO
12 TESTIFY, AND SOME OF THE THINGS THAT YOU MIGHT WISH TO
13 CONSIDER AS YOU DECIDE WHETHER TO BELIEVE A WITNESS'S
14 TESTIMONY ABOUT A PARTICULAR MATTER INCLUDE THE FOLLOWING:
15 THE MANNER AND APPEARANCE OF THE WITNESS WHO TESTIFIED. WAS
16 HE OR SHE STRAIGHTFORWARD OR HESITANT IN ANSWERING QUESTIONS?
17 WAS THE TESTIMONY OF A WITNESS CONSISTENT OR INCONSISTENT?
18 HOW DID THE WITNESS COME TO KNOW THE FACTS THAT HE OR SHE IS
19 TESTIFYING TO, AND WHAT IS THAT WITNESS'S ABILITY TO KNOW
20 THOSE FACTS? IS THERE SOME REASON THAT A WITNESS MIGHT WANT
21 TO GIVE TESTIMONY THAT WOULD HELP OR HURT ONE SIDE OR THE
22 OTHER? IS THE TESTIMONY OF A WITNESS STRENGTHENED OR
23 WEAKENED BY OTHER TESTIMONY AND EVIDENCE?

24 YOU CAN BELIEVE AS MUCH OR AS LITTLE OF EACH WITNESS'S
25 TESTIMONY AS YOU THINK IT IS APPROPRIATE TO DO. YOU CAN

1 BELIEVE THE TESTIMONY OF ONE WITNESS AGAINST ALL OF THE
2 OTHERS OR YOU CAN DO JUST THE OPPOSITE, AND YOU ARE NOT
3 REQUIRED TO ACCEPT TESTIMONY AS TRUE EVEN IF IT IS
4 UNCONTRADICTED.

5 YOU HAVE HEARD THE TESTIMONY OF AN EXPERT WITNESS.
6 EXPERT WITNESSES ARE THOSE WITNESSES WHO HAVE SPECIAL
7 KNOWLEDGE, SKILL, EXPERIENCE, TRAINING OR EDUCATION IN A
8 PARTICULAR PROFESSION OR OCCUPATION, AND BECAUSE OF THOSE
9 SPECIAL QUALIFICATIONS, EXPERTS ARE ALLOWED TO GIVE OPINIONS
10 AS TO MATTERS WITHIN THEIR AREA OF EXPERTISE. IN DETERMINING
11 THE WEIGHT TO BE GIVEN TO THE OPINIONS OF EXPERTS, YOU SHOULD
12 CONSIDER THE QUALIFICATIONS AND THE CREDIBILITY OF THE EXPERT
13 AND THE REASONS GIVEN FOR HIS OR HER OPINION. YOU ARE NOT
14 BOUND BY THE OPINION OF AN EXPERT. GIVE IT THE WEIGHT, IF
15 ANY, THAT YOU BELIEVE IT IS ENTITLED TO RECEIVE.

16 THERE HAVE BEEN SEVERAL STIPULATIONS ENTERED INTO
17 EVIDENCE IN THIS CASE. AS I TOLD YOU BEFORE, A STIPULATION
18 IS AN AGREEMENT AS TO A FACT. FACTS WHICH ARE STIPULATED
19 BECOME ESTABLISHED FOR PURPOSES OF THIS CASE AND CANNOT BE
20 QUESTIONED OR CONTRADICTED.

21 THE SAME CONSTITUTION AND CODE OF LAWS THAT MAKES YOU
22 THE EXCLUSIVE JUDGES OF THE FACTS ALSO MAKES ME THE EXCLUSIVE
23 JUDGE OF THE LAW, AND IF YOU HAVE SOME IDEA AS TO WHAT THE
24 LAW IS OR WHAT THE LAW SHOULD BE AND IF THAT DIFFERS FROM
25 WHAT I NOW TELL YOU THE LAW IS, THEN YOU ARE OBLIGATED UNDER

COURT'S CHARGE ON THE LAW TO THE JURY

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1 THE OATH THAT YOU HAVE TAKEN AS JURORS TO SET YOUR NOTION OF
2 THE LAW ASIDE AND TO ACCEPT AND APPLY THE LAW PRECISELY AS I
3 NOW EXPLAIN IT TO YOU.

4 THE FACT THAT THE DEFENDANT WAS ARRESTED AND CHARGED AND
5 INDICTED IN THIS CASE IS NOT EVIDENCE AND CANNOT BE
6 CONSIDERED BY YOU IN ANY WAY AS EVIDENCE OF THE DEFENDANT'S
7 GUILT NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF
8 GUILT. THE INDICTMENT IS SIMPLY THE FORMAL WRITTEN
9 INSTRUMENT THAT CONTAINS THE CHARGE THAT HAS BEEN MADE
10 AGAINST THE DEFENDANT, AND THE INDICTMENT SERVES TO PROCESS
11 THIS CASE AND BRING IT INTO THIS COURT FOR TRIAL.

12 THE DEFENDANT HAS PLED NOT GUILTY TO EACH OF THESE FOUR
13 INDICTMENTS, AND THE PLEA OF NOT GUILTY CASTS THE BURDEN ON
14 THE STATE TO PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE
15 DOUBT. A PERSON CHARGED WITH COMMITTING A CRIME IN SOUTH
16 CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT. NOW,
17 IT IS A VERY IMPORTANT RULE OF LAW IN OUR COUNTRY THAT A
18 DEFENDANT IN A CRIMINAL TRIAL WILL ALWAYS BE PRESUMED TO BE
19 INNOCENT OF THE CRIMES WITH WHICH HE HAS BEEN CHARGED UNLESS
20 AND UNTIL HIS GUILT HAS BEEN PROVEN BY EVIDENCE THAT
21 SATISFIES YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

22 NOW, THIS PRESUMPTION OF INNOCENCE, AS I TOLD YOU
23 BEFORE, IS NOT MERELY LEGAL THEORY. IT'S NOT JUST A LEGAL
24 PHRASE THAT WE USE. IT IS A SUBSTANTIAL CONSTITUTIONAL RIGHT
25 TO WHICH EVERY DEFENDANT IS ENTITLED. THE PRESUMPTION OF

1 INNOCENCE ACCOMPANIES THE DEFENDANT FROM THE TIME HE IS
2 CHARGED, THROUGHOUT THE TRIAL, AND INTO THE JURY ROOM UNTIL
3 YOU REACH A VERDICT OF GUILT THAT IS BASED ON EVIDENCE THAT
4 HAS SATISFIED YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

5 NOW, LADIES AND GENTLEMEN, I INSTRUCT YOU NOW AND I
6 EMPHASIZE TO YOU THAT THE FACT THAT THE DEFENDANT DID NOT
7 TESTIFY CANNOT BE CONSIDERED BY YOU IN ANY MANNER DURING YOUR
8 DELIBERATIONS. THE DEFENDANT HAS A CONSTITUTIONAL RIGHT TO
9 REMAIN SILENT, AND THE EXERCISE OF THAT RIGHT CANNOT AND MUST
10 NOT BE HELD AGAINST THE DEFENDANT. UNDER THE OATH THAT YOU
11 HAVE TAKEN AS JURORS, YOU ARE TO DRAW NO INFERENCE AND NO
12 CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT DID
13 NOT TESTIFY. DO NOT EVEN DISCUSS THIS IN THE JURY ROOM. THE
14 DEFENDANT IS NOT REQUIRED TO PROVE ANYTHING. THE BURDEN OF
15 PROOF REMAINS UPON THE STATE.

16 A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST,
17 SINCERE, CONSCIENTIOUS JUROR IN SEARCH OF THE TRUTH IN THE
18 CASE TO HESITATE TO ACT. PROOF BEYOND A REASONABLE DOUBT
19 MUST, THEREFORE, BE PROOF OF SUCH A CONVINCING CHARACTER THAT
20 A REASONABLE PERSON WOULD NOT HESITATE TO RELY ON IT AND ACT
21 ON IT IN THE MOST IMPORTANT OF HIS OR HER OWN AFFAIRS.

22 PROOF BEYOND A REASONABLE DOUBT CAN ALSO BE DESCRIBED AS
23 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S
24 GUILT. NOW, THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES
25 EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE

1 EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS
2 GUILTY OF THE CRIME CHARGED, THEN YOU MUST FIND HIM GUILTY.
3 BUT, ON THE OTHER HAND, IF YOU THINK THAT THERE'S A REAL
4 POSSIBILITY THAT HE IS NOT GUILTY, THEN YOU MUST GIVE THE
5 DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

6 I HAVE ADMITTED INTO EVIDENCE IN THIS CASE STATEMENTS
7 ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT. BEFORE YOU MAY
8 CONSIDER THESE STATEMENTS AS EVIDENCE FOR ANY PURPOSE, YOU
9 MUST FIND THAT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT
10 THAT THE ANSWER IS YES TO BOTH OF THE FOLLOWING TWO
11 QUESTIONS: FIRST, DID THE DEFENDANT MAKE THE STATEMENT AND,
12 SECOND, WAS THE STATEMENT MADE VOLUNTARILY? THE WORD
13 VOLUNTARILY, OF COURSE, MEANS THAT HE FREELY CHOSE TO MAKE
14 THE STATEMENT, THAT IT WAS NOT INDUCED BY PRESSURE, FORCE, OR
15 INTIMIDATION. IF THE STATEMENT WAS VOLUNTARILY GIVEN, IT MAY
16 BE USED AGAINST HIM. IF THE STATEMENT IS NOT VOLUNTARY, THEN
17 IT CANNOT BE USED AGAINST THE DEFENDANT.

18 IN DETERMINING WHETHER OR NOT THE STATEMENT OF THE
19 DEFENDANT WAS VOLUNTARY, YOU SHOULD CONSIDER ALL OF THE FACTS
20 AND CIRCUMSTANCES SURROUNDING THE STATEMENT INCLUDING THE
21 DEFENDANT'S AGE AND MATURITY, HIS LEVEL OF EDUCATION AND
22 INTELLIGENCE, HIS PHYSICAL AND MENTAL HEALTH, HIS BACKGROUND
23 AND ENVIRONMENT, THE NATURE OF ANY QUESTIONING, AND ANY OTHER
24 EVIDENCE THAT YOU BELIEVE BEARS ON THE VOLUNTARINESS OF THE
25 DEFENDANT'S STATEMENT. IF THE DEFENDANT WAS IN CUSTODY AT

1 THE TIME THE STATEMENT WAS MADE, THEN YOU SHOULD ALSO
2 CONSIDER THE PLACE AND LENGTH OF HIS CUSTODY AND WHETHER OR
3 NOT HE WAS GIVEN AND WHETHER OR NOT HE UNDERSTOOD HIS
4 CONSTITUTIONAL RIGHTS OR WHAT ARE COMMONLY REFERRED TO AS HIS
5 MIRANDA RIGHTS, AND THOSE RIGHTS ARE: THAT HE HAS THE RIGHT
6 TO REMAIN SILENT, THAT ANY STATEMENT THAT HE DOES MAKE CAN
7 AND WILL BE USED AGAINST HIM IN A COURT OF LAW, THAT HE HAS
8 THE RIGHT TO CONSULT A LAWYER BEFORE AND DURING ANY
9 QUESTIONING, THAT IF HE CANNOT AFFORD A LAWYER THE COURT WILL
10 APPOINT ONE TO REPRESENT HIM AT NO COST TO HIM, AND THAT HE
11 HAS THE RIGHT TO EXERCISE THESE RIGHTS AT ANY TIME AND
12 TERMINATE QUESTIONING OR NOT ANSWER ANY QUESTIONS OR MAKE ANY
13 STATEMENT. NOW, REGARDING CUSTODY, I FIND AS A MATTER OF LAW
14 THAT THE DEFENDANT WAS IN CUSTODY AT THE TIME THE ALLEGED
15 STATEMENTS WERE MADE.

16 THE STATE HAS CHARGED THE DEFENDANT WITH CRIMINAL SEXUAL
17 CONDUCT IN THE FIRST DEGREE. IN ORDER TO CONVICT THE
18 DEFENDANT OF THIS CRIME, THE STATE MUST PROVE TWO ELEMENTS,
19 EACH BEYOND A REASONABLE DOUBT. THE FIRST ELEMENT WHICH THE
20 STATE MUST PROVE IS THAT THE DEFENDANT ENGAGED IN SEXUAL
21 BATTERY WITH THE VICTIM. OUR CODE OF LAWS DEFINES SEXUAL
22 BATTERY TO INCLUDE SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO,
23 ANAL INTERCOURSE, OR ANY INTRUSION, HOW EVER SLIGHT, OF ANY
24 PART OF A PERSON'S BODY OR OF ANY OBJECT INTO THE GENITAL OR
25 ANAL OPENINGS OF A PERSON'S BODY EXCEPT WHEN SUCH INTRUSION

1 IS ACCOMPLISHED FOR MEDICALLY-RECOGNIZED TREATMENT OR
2 DIAGNOSTIC PURPOSES.

3 NOW, THERE ARE TWO ALTERNATIVE WAYS IN WHICH THE STATE
4 CAN PROVE THE SECOND ELEMENT. WHILE THE STATE MUST PROVE ONE
5 OF THESE ALTERNATIVES BEYOND A REASONABLE DOUBT, THE STATE
6 NEED NOT PROVE BOTH OF THESE ALTERNATIVES. THE FIRST
7 ALTERNATIVE WAY IN WHICH THE STATE MAY PROVE THE SECOND
8 ELEMENT IS TO PROVE THAT THE DEFENDANT USED AGGRAVATED FORCE
9 TO ACCOMPLISH THE SEXUAL BATTERY. OUR CODE OF LAWS DEFINES
10 AGGRAVATED FORCE TO MEAN THAT THE ACTOR USED PHYSICAL FORCE
11 OR PHYSICAL VIOLENCE OF A HIGH AND AGGRAVATED NATURE TO
12 OVERCOME THE VICTIM. FORCE OR VIOLENCE OF A HIGH AND
13 AGGRAVATED NATURE CAN INCLUDE THE THREAT OR USE OF A DEADLY
14 WEAPON.

15 THE SECOND ALTERNATIVE WAY IN WHICH THE STATE MAY PROVE
16 THE SECOND ELEMENT IS TO PROVE THAT THE VICTIM SUBMITTED TO
17 SEXUAL BATTERY BY THE DEFENDANT UNDER CIRCUMSTANCES WHERE THE
18 VICTIM WAS ALSO THE VICTIM OF FORCIBLE CONFINEMENT,
19 KIDNAPPING, OR BURGLARY. I WILL DEFINE KIDNAPPING AND
20 BURGLARY FOR YOU IN JUST A MINUTE.

21 NOW, I'M GOING TO SAY A COUPLE OF THINGS RIGHT NOW.
22 FIRST OF ALL, THERE'S A LOT TO DIGEST HERE, AND I REALIZE
23 THAT IT'S GOING TO BE VERY DIFFICULT FOR YOU ALL TO REMEMBER
24 ALL OF THESE ELEMENTS. I WANT YOU TO CONTINUE TO LISTEN VERY
25 CAREFULLY, BUT I'M GOING TO TELL YOU THAT YOU WILL HAVE A

1 COPY OF THE WRITTEN VERSION OF THE CHARGE WITH YOU IN THE
2 JURY ROOM WHEN YOU ARE DELIBERATING.

3 NOW, SEVERAL TIMES DURING THIS CHARGE I WILL GIVE YOU
4 ALTERNATIVE WAYS IN WHICH THE STATE CAN PROVE AN ELEMENT OF
5 THE CRIME SUCH AS I JUST DID WITH THE SECOND ELEMENT OF
6 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. IN THESE
7 SITUATIONS THE JURY MUST UNANIMOUSLY AGREE THAT THE STATE HAS
8 PROVEN AT LEAST ONE OF THE ALTERNATIVES BEYOND A REASONABLE
9 DOUBT. IT IS NOT SUFFICIENT THAT SEVERAL JURORS BELIEVE THE
10 STATE HAS PROVEN ONE ALTERNATIVE AND THE REST OF THE JURY
11 BELIEVES THE STATE HAS PROVEN THE OTHER ALTERNATIVE. THE
12 JURY MUST UNANIMOUSLY AGREE THAT THE STATE HAS PROVEN AT
13 LEAST ONE OF THE ALTERNATIVES.

14 IF YOU FIND THAT THE STATE HAS FAILED TO PROVE THE
15 DEFENDANT GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE FIRST
16 DEGREE, THEN YOU SHOULD CONSIDER WHETHER THE STATE HAS PROVEN
17 THE DEFENDANT GUILTY OF THE LESSER INCLUDED OFFENSE OF
18 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE. IN ORDER TO
19 CONVICT THE DEFENDANT OF THIS CRIME, THE STATE MUST PROVE TWO
20 ELEMENTS, EACH BEYOND A REASONABLE DOUBT. THE FIRST ELEMENT
21 WHICH THE STATE MUST PROVE IS THAT THE DEFENDANT ENGAGED IN
22 SEXUAL BATTERY WITH THE VICTIM. NOW, THAT'S -- I'VE ALREADY
23 DEFINED SEXUAL BATTERY FOR YOU JUST A MINUTE AGO. THE SECOND
24 ELEMENT WHICH THE STATE MUST PROVE IS THAT THE DEFENDANT USED
25 AGGRAVATED COERCION TO ACCOMPLISH THE SEXUAL BATTERY.

1 OUR CODE OF LAWS DEFINES AGGRAVATED COERCION TO MEAN
2 THAT THE ACTOR THREATENED -- THAT THE ACTOR THREATENED TO USE
3 FORCE OR VIOLENCE OF A HIGH AND AGGRAVATED NATURE TO OVERCOME
4 THE VICTIM OR ANOTHER PERSON IF THE VICTIM REASONABLY
5 BELIEVES THAT THE ACTOR HAS THE PRESENT ABILITY TO CARRY OUT
6 THE THREAT OR THE DEFENDANT THREATENS TO RETALIATE IN THE
7 FUTURE BY THE INFLICTION OF PHYSICAL HARM, KIDNAPPING, OR
8 EXTORTION UNDER CIRCUMSTANCES OF AGGRAVATION AGAINST THE
9 VICTIM OR ANY OTHER PERSON.

10 NOW, THE DEFENDANT IS ALSO CHARGED WITH KIDNAPPING. IN
11 ORDER TO CONVICT THE DEFENDANT OF THIS CRIME, THE STATE MUST
12 PROVE FOUR ESSENTIAL ELEMENTS, EACH BEYOND A REASONABLE
13 DOUBT. FIRST, THE STATE MUST PROVE THAT THE DEFENDANT
14 SEIZED, CONFINED, KIDNAPPED, ABDUCTED, OR CARRIED AWAY
15 ANOTHER PERSON. SECOND, THE STATE MUST PROVE THAT THE
16 DEFENDANT DID SO UNLAWFULLY. THIRD, THE STATE MUST PROVE
17 THAT THE DEFENDANT DID SO KNOWINGLY AND, FOURTH, THE STATE
18 MUST PROVE THAT THE DEFENDANT DID SO WITHOUT THE AUTHORITY OF
19 LAW.

20 NOW, LET ME DEFINE SOME OF THESE TERMS THAT I JUST USED
21 IN THE FIRST ELEMENT. SEIZE, OF COURSE, MEANS TO TAKE HOLD
22 OF SUDDENLY OR FORCIBLY. CONFINE MEANS TO LIMIT, RESTRICT,
23 OR ENCLOSE WITHIN BOUNDS, TO IMPRISON, TO SHUT OR KEEP IN.
24 KIDNAP IS TO REMOVE A PERSON AGAINST HER WILL BY UNLAWFUL
25 FORCE OR BY FRAUD. ABDUCT MEANS TO CARRY OFF SECRETLY OR BY

1 FORCE FOR AN ILLEGAL PURPOSE.

2 NOW, REGARDING THE SECOND ELEMENT, TO DO AN ACT
3 UNLAWFULLY IS TO DO THE ACT WHEN ONE KNOWS IT IS AGAINST THE
4 LAW. REGARDING THE THIRD ELEMENT, KNOWINGLY MEANS WITH
5 KNOWLEDGE, CONSCIOUSLY, NOT ACCIDENTALLY. REGARDING THE
6 FOURTH ELEMENT, SOMETHING DONE WITHOUT THE AUTHORITY OF LAW
7 IS SOMETHING THAT THE LAW DOES NOT SANCTION, PERMIT; ALLOW,
8 CONDONE, OR PROVIDE JUSTIFICATION FOR.

9 THE DEFENDANT IS ALSO CHARGED WITH BURGLARY IN THE FIRST
10 DEGREE. IN ORDER TO CONVICT THE DEFENDANT OF THIS CRIME, THE
11 STATE MUST PROVE FOUR ESSENTIAL ELEMENTS, EACH BEYOND A
12 REASONABLE DOUBT. FIRST, THE STATE MUST PROVE THAT THE
13 DEFENDANT ENTERED A DWELLING. SECOND, THE STATE MUST PROVE
14 THAT THE DEFENDANT DID NOT HAVE PERMISSION TO ENTER THE
15 DWELLING. THIRD, THE STATE MUST PROVE THAT THE DEFENDANT
16 ENTERED THE DWELLING WITH THE INTENT TO COMMIT A CRIME WHILE
17 INSIDE AND, FOURTH, THE STATE MAY PROVE THE FOURTH ELEMENT IN
18 EITHER OF TWO ALTERNATIVE WAYS. WHILE THE STATE MUST PROVE
19 ONE OF THESE ALTERNATIVES BEYOND A REASONABLE DOUBT, THE
20 STATE NEED NOT PROVE MORE THAN ONE.

21 THE ALTERNATIVES ARE: FIRST, WHILE EFFECTING ENTRY,
22 WHILE IN THE DWELLING OR WHILE IN IMMEDIATE FLIGHT, THE
23 DEFENDANT OR ANOTHER PARTICIPANT IN THE CRIME CAUSED PHYSICAL
24 INJURY TO A PERSON WHO IS NOT A PARTICIPANT IN THE CRIME.
25 THE SECOND ALTERNATIVE IS THAT THE DEFENDANT ENTERED OR

COURT'S CHARGE ON THE LAW TO THE JURY

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1 REMAINED IN THE DWELLING IN THE NIGHTTIME. REMEMBER THAT THE
2 JURY MUST UNANIMOUSLY AGREE THE STATE HAS PROVEN AT LEAST ONE
3 OF THESE ALTERNATIVES.

4 WITH REGARD TO THE FIRST ELEMENT OF BURGLARY, THE TERM
5 DWELLING MEANS ANY HOUSE, APARTMENT, OR BUILDING IN WHICH AN
6 OWNER OR TENANT SLEEPS. WITH REGARD TO THE THIRD ELEMENT OF
7 BURGLARY, THE INTENT TO COMMIT A CRIME: THE MERE ENTRY INTO
8 A DWELLING WITHOUT CONSENT IS NOT BURGLARY. IF THE INTENT TO
9 COMMIT A CRIME IS FORMED AFTER THE ENTRY INTO THE DWELLING,
10 IT IS NOT BURGLARY. ON THE OTHER HAND, IF THE DEFENDANT
11 INTENDED TO COMMIT A CRIME AT THE TIME OF THE ENTRY, IT IS
12 BURGLARY EVEN IF THE INTENT WAS ABANDONED AFTER THE ENTRY.
13 IT DOES NOT MATTER THAT THE INTENDED CRIME WAS NOT COMPLETED.
14 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND
15 ANY OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND
16 REASONABLY INFER INTENT.

17 THE DEFENDANT IS ALSO CHARGED WITH CRIMINAL DOMESTIC
18 VIOLENCE OF A HIGH AND AGGRAVATED NATURE. IN ORDER TO
19 CONVICT THE DEFENDANT OF THIS CRIME, THE STATE MUST PROVE
20 BEYOND A REASONABLE DOUBT ONE OF THE FOLLOWING ALTERNATIVE
21 ELEMENTS. WHILE THE STATE MUST PROVE ONE OF THESE
22 ALTERNATIVES BEYOND A REASONABLE DOUBT, THE STATE NEED NOT
23 PROVE MORE THAN ONE. AND THE ALTERNATIVES ARE, FIRST, THAT
24 THE DEFENDANT CAUSED PHYSICAL HARM OR INJURY TO A MEMBER OF
25 THE DEFENDANT'S OWN HOUSEHOLD WHICH INVOLVED THE USE OF A

1 DEADLY WEAPON OR RESULTED IN SERIOUS BODILY INJURY TO THE
2 VICTIM OR THE SECOND ALTERNATIVE AND THIS IS TRUE WHETHER --
3 THIS MAY BE PROVEN, WHETHER THE DEFENDANT CAUSED PHYSICAL
4 HARM OR INJURY TO THE VICTIM OR NOT, THE ALTERNATIVE IS, THAT
5 THE DEFENDANT THREATENED OR ATTEMPTED TO CAUSE PHYSICAL HARM
6 OR INJURY TO THE DEFENDANT'S OWN HOUSEHOLD MEMBER WITH THE
7 APPARENT PRESENT ABILITY TO COMPLETE THE PHYSICAL HARM OR
8 INJURY UNDER CIRCUMSTANCES REASONABLY CREATING FEAR OF
9 IMMINENT SERIOUS BODILY INJURY OR DEATH. NOW, REMEMBER THAT
10 THE JURY MUST UNANIMOUSLY AGREE THAT THE STATE HAS PROVEN AT
11 LEAST ONE OF THESE ALTERNATIVES.

12 A HOUSEHOLD MEMBER INCLUDES A SPOUSE, A FORMER SPOUSE,
13 PERSONS WHO HAVE A CHILD IN COMMON, AND A PERSON OF THE
14 OPPOSITE SEX WITH WHOM THE DEFENDANT IS COHABITING OR HAS
15 COHABITED IN THE PAST. A DEADLY WEAPON IS ANY OBJECT OR
16 SUBSTANCE WHICH IS USED IN SUCH A WAY THAT IT -- THAT IT IS
17 REASONABLY LIKELY TO CAUSE DEATH OR SERIOUS BODILY INJURY.

18 AS TO BODILY INJURY, IT IS UP TO YOU TO DETERMINE
19 WHETHER OR NOT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT
20 THAT ANY INJURY SUSTAINED BY A VICTIM IN THIS CASE WERE
21 SERIOUS. IF YOU FIND THAT THE STATE HAS FAILED TO PROVE
22 CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE,
23 YOU SHOULD CONSIDER WHETHER OR NOT THE STATE HAS PROVEN
24 BEYOND A REASONABLE DOUBT THE LESSER INCLUDED OFFENSE OF
25 CRIMINAL DOMESTIC VIOLENCE.

1 IN ORDER TO CONVICT THE DEFENDANT OF CRIMINAL DOMESTIC
2 VIOLENCE, THE STATE MUST PROVE ONE OF THE FOLLOWING ELEMENTS:
3 FIRST, THE STATE MAY PROVE THAT THE DEFENDANT CAUSED PHYSICAL
4 HARM OR INJURY TO THE DEFENDANT'S OWN HOUSEHOLD MEMBER OR,
5 THE SECOND ALTERNATIVE, THE STATE MAY PROVE THAT THE
6 DEFENDANT THREATENED OR ATTEMPTED TO CAUSE PHYSICAL HARM OR
7 INJURY TO THE DEFENDANT'S OWN HOUSEHOLD MEMBER WITH THE
8 PRESENT -- THE APPARENT PRESENT ABILITY TO COMPLETE THE
9 PHYSICAL HARM OR INJURY UNDER CIRCUMSTANCES REASONABLY
10 CREATING FEAR OF IMMINENT DANGER.

11 NOW, THESE ELEMENTS SOUND THE SAME AS THE ELEMENTS FOR
12 CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE,
13 BUT I'M GOING TO TAKE A MOMENT TO POINT OUT THE DIFFERENCE.
14 TO SATISFY THE FIRST ELEMENT OF CRIMINAL DOMESTIC VIOLENCE OF
15 A HIGH AND AGGRAVATED NATURE, THE STATE MUST PROVE THAT
16 PHYSICAL HARM OR INJURY INVOLVED THE USE OF A DEADLY WEAPON
17 OR RESULTED IN SERIOUS BODILY INJURY. ONLY PHYSICAL HARM OR
18 INJURY NEED BE PROVEN FOR CRIMINAL DOMESTIC VIOLENCE.

19 AS TO THE SECOND ELEMENT FOR CRIMINAL DOMESTIC VIOLENCE
20 OF A HIGH AND AGGRAVATED NATURE, THE STATE MUST PROVE THE
21 FEAR REASONABLY CREATED IN THE MIND OF THE VICTIM WAS FEAR OF
22 IMMINENT SERIOUS BODILY INJURY OR DEATH. FOR CRIMINAL
23 DOMESTIC VIOLENCE, THE STATE NEED PROVE ONLY THAT THE FEAR
24 REASONABLY CREATED WAS FEAR OF IMMINENT DANGER.

25 YOU HAVE HEARD EVIDENCE THAT THE DEFENDANT MIGHT HAVE

1 BEEN INTOXICATED. THE VOLUNTARY USE OF DRUGS OR ALCOHOL IS
2 NOT A DEFENSE TO A CRIME. A PERSON WHO VOLUNTARILY BECOMES
3 INTOXICATED IS JUST AS RESPONSIBLE FOR THE ACTS COMMITTED
4 WHILE INTOXICATED AS WHEN THE PERSON IS NOT INTOXICATED.

5 NOW, LADIES AND GENTLEMEN, YOUR VERDICT IN THIS CASE
6 MUST BE UNANIMOUS AS TO EACH OF THE FOUR INDICTMENTS. YOU
7 MUST SEPARATELY DELIBERATE AS TO EACH INDICTMENT. IT IS
8 POSSIBLE THAT YOUR VERDICTS WOULD BE DIFFERENT ON ONE
9 INDICTMENT THAN THEY ARE ON THE OTHER, BUT NEVERTHELESS THE
10 VERDICTS MUST BE UNANIMOUS. IN JUST A SECOND I'M GOING TO
11 SEND YOU BACK INTO THE JURY ROOM. I'M GOING TO ASK YOU NOT
12 YET TO BEGIN YOUR DELIBERATION BECAUSE I MAY HAVE SOME
13 MATTERS OF LAW THAT I NEED TO TAKE UP WITH THE ATTORNEYS.

14 WHILE I AM DOING THAT, I WOULD LIKE FOR YOU ALL TO
15 SELECT A FOREPERSON TO SERVE THE JURY. THE JOB OF THE
16 FOREPERSON IS TO PRESIDE OVER THE DELIBERATIONS AND THEN WHEN
17 IT BECOMES NECESSARY TO COMMUNICATE WITH THE COURT, AND ALL
18 OF THOSE COMMUNICATIONS WILL HAVE TO BE IN WRITING.

19 NOW, ONE OF THE TIMES WHEN YOU'LL HAVE TO COMMUNICATE
20 WITH THE COURT IS WHEN YOU HAVE REACHED A VERDICT, AND YOU
21 WILL HAVE WITH YOU IN THE JURY ROOM THE FOUR INDICTMENTS. ON
22 THE BACK OF EACH INDICTMENT IN THE LOWER LEFT-HAND CORNER YOU
23 WILL SEE THE WORD VERDICT, AND BELOW THAT THERE ARE FOUR
24 BLANK LINES. WHEN THE JURY HAS UNANIMOUSLY REACHED A VERDICT
25 AS TO THAT PARTICULAR INDICTMENT, THEN THE FOREPERSON WOULD

1 WRITE THE VERDICT ON ONE OF THOSE FOUR BLANK LINES AND THEN
2 SIGN IT AND DATE IT, AND THEN WHEN YOU'VE REACHED A VERDICT
3 ON ALL FOUR, YOU NOTIFY THE BAILIFF THAT YOU HAVE REACHED A
4 VERDICT AND WE WILL GET YOU BACK OUT HERE INTO THE COURTROOM
5 TO RECEIVE YOUR VERDICTS.

6 NOW, I'M GOING TO SAY A LITTLE BIT ABOUT WHAT YOUR
7 VERDICT OPTIONS ARE, AND THEN I'M GOING TO SAY A LITTLE BIT
8 ABOUT THE SELECTION OF THE FOREPERSON AND THEN I'M GOING TO
9 SEND YOU ALL BACK THERE FOR THE COVETED PRIVILEGE OF EATING
10 LUNCH AND ALSO TO SELECT THE FOREPERSON. YOUR VERDICT
11 OPTIONS ARE THESE: AS TO CRIMINAL SEXUAL CONDUCT IN THE
12 FIRST DEGREE, YOU HAVE THREE OPTIONS AND I'M GOING TO LIST
13 THESE IN NO PARTICULAR ORDER. OPTION ONE WOULD BE GUILTY OF
14 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. OPTION TWO
15 WOULD BE GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE SECOND
16 DEGREE, AND OPTION THREE WOULD BE NOT GUILTY.

17 NOW, AS TO THE KIDNAPPING CHARGE, YOUR VERDICT OPTIONS
18 ARE GUILTY OR NOT GUILTY. AS TO BURGLARY IN THE FIRST
19 DEGREE, YOUR OPTIONS FOR VERDICT ARE GUILTY OR NOT GUILTY.
20 AND AS TO CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED
21 NATURE, YOUR VERDICT OPTIONS ARE GUILTY OF CRIMINAL DOMESTIC
22 VIOLENCE OF A HIGH AND AGGRAVATED NATURE, AND THEN OPTION TWO
23 IS GUILTY OF CRIMINAL DOMESTIC VIOLENCE, AND THEN OPTION
24 THREE IS NOT GUILTY.

25 NOW, YOU ALL HAVE BEEN TOGETHER FOR MOST OF TWO DAYS AND

1 SOME OF TODAY AND YOU HAVE GOTTEN TO KNOW EACH OTHER, I'M
2 SURE. IN TERMS OF SELECTING A FOREPERSON, I WOULD ENCOURAGE
3 EACH ONE OF YOU WHO BELIEVES YOU WOULD BE AN EFFECTIVE
4 FOREPERSON TO VOLUNTEER FOR THE JOB AND THEN YOU ALL MAY
5 SELECT THE PERSON BY -- THE ACTUAL FOREPERSON BY VOTE, BUT
6 SELECT SOMEONE WHOSE JUDGMENT YOU BELIEVE YOU CAN TRUST AND
7 SOMEONE WHO YOU BELIEVE WILL PRESIDE OVER THE DELIBERATIONS
8 IN AN ORGANIZED AND EFFECTIVE FASHION.

9 SO AT THIS TIME I'M GOING TO SEND YOU BACK INTO THE JURY
10 ROOM. WHEN YOU HAVE SELECTED A FOREPERSON, PLEASE ALLOW --
11 PLEASE LET US KNOW WHO THAT IS, AND WHEN WE SEND BACK TO YOU
12 THE EVIDENCE THAT HAS BEEN ADMITTED AND THE INDICTMENTS, YOU
13 MAY AT THAT TIME BEGIN YOUR DELIBERATIONS. DO NOT BEGIN
14 DELIBERATING UNTIL WE HAVE -- UNTIL THE BAILIFF HAS
15 SPECIFICALLY TOLD YOU THAT YOU MAY DO SO AND YOU HAVE WITH
16 YOU THE INDICTMENTS AND THE EVIDENCE. NOW, IT MAY TAKE ME A
17 LITTLE BIT LONGER TO FINALIZE THE JURY CHARGE ITSELF, BUT YOU
18 WILL EVENTUALLY BE BROUGHT A COPY OF THE JURY CHARGE WHICH
19 YOU MAY REFER TO DURING YOUR DELIBERATIONS. YOU CAN GO BACK
20 TO THE JURY ROOM AT THIS TIME. THE TWO ALTERNATES, PLEASE
21 REMAIN SEATED.

22 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
23 11:57 A.M.)

24 THE COURT: ANY EXCEPTIONS TO THE CHARGE?

25 MS. FENT: WE NOTICED WHEN YOU WERE READING THE BEYOND A

1 REASONABLE DOUBT THERE WAS A SENTENCE YOU LEFT OUT - THAT
2 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH
3 ABSOLUTE CERTAINTY. BUT IF YOU ARE SENDING BACK THE WRITTEN
4 CHARGE...

5 THE COURT: I'M GOING TO CUT THAT OUT. THAT'S A -- THAT
6 IS AN EXPLANATORY SENTENCE THAT I USE THAT I ROUTINELY DELETE
7 WHEN SOMEBODY BEATS ME TO THE PUNCH OF MAKING THAT
8 EXPLANATION WHICH YOU EFFECTIVELY DID. SO I'M -- THAT'S WHY
9 I TOOK THAT OUT. IN FACT, I'VE ALREADY TAKEN IT OUT. ANY
10 OTHER EXCEPTIONS FROM THE STATE?

11 MS. FENT: NO, YOUR HONOR.

12 THE COURT: FROM THE DEFENSE?

13 MS. OWINGS: NO, SIR.

14 THE COURT: ALL RIGHT. THEN YOU ALL PLEASE TAKE SOME
15 TIME TO VERIFY THAT THE -- THAT WE HAVE THE PROPER SET OF
16 EXHIBITS TO GO BACK, AND I'M GOING TO -- I THINK I'M JUST
17 GOING TO -- I DON'T THINK I NEED TO MAKE ANY CHANGES TO THIS
18 CHARGE, BUT I'M GOING TO LET Y'ALL REVIEW THE -- YOU'VE
19 ALREADY REVIEWED IT, SO YOU KNOW THERE ARE SOME SLIGHT NON-
20 SUBSTANTIVE DIFFERENCES BETWEEN WHAT I SAID AND WHAT IS
21 WRITTEN, BUT I WANT YOU TO REVIEW THIS NEVERTHELESS TO MAKE
22 SURE THAT YOU HAVE NO OBJECTION TO WHAT IS WRITTEN HERE.

23 DO YOU HAVE A STAPLER? SOMEBODY HAND ME ONE OF THOSE
24 STAPLERS DOWN THERE. THAT IS PERHAPS THE LONGEST COMBINATION
25 OF CLOSING ARGUMENT BY THE STATE AND CLOSING ARGUMENT BY THE

1 DEFENSE AND JURY CHARGE THAT I HAVE EVER SUFFERED THROUGH.
2 BUT, NO, ACTUALLY I THOUGHT Y'ALL BOTH MADE GOOD CLOSING
3 ARGUMENTS AND I COMMEND YOU FOR IT. ALL RIGHT.

4 (PAUSE IN PROCEEDINGS.)

5 THE COURT: NOW, Y'ALL HAVE AGREED THAT WHAT THE
6 BAILIFFS ARE TAKING BACK TO THE JURY ROOM IS THE PROPER SET
7 OF EXHIBITS; CORRECT?

8 MS. OWINGS: YES, SIR.

9 MS. SHIPLEY: YES, SIR.

10 THE COURT: ALL RIGHT. HAVE YOU LOOKED OVER THE CHARGE?

11 MS. FENT: YES, SIR.

12 THE COURT: AND YOU HAVE NO OBJECTION TO IT?

13 MS. FENT: NO OBJECTION.

14 MS. PAYNE: NO OBJECTION.

15 THE COURT: ALL RIGHT. HERE -- AND HERE ARE THE
16 INDICTMENTS. SO SEND ALL THAT BACK AND TELL THEM --
17 ACTUALLY, WE SHOULD TAKE THAT CHARGE AND HAVE IT MARKED AS A
18 COURT'S EXHIBIT.

19 MS. SHIPLEY: COURT'S EXHIBIT NUMBER 2?

20 (COURT'S EXHIBIT 2 WAS MARKED FOR IDENTIFICATION ONLY.)

21 THE COURT: ALL RIGHT. SEND IT BACK, AND AS SOON AS
22 THEY TELL YOU WHO THE FOREPERSON IS, THEY CAN BEGIN THEIR
23 DELIBERATIONS.

24 BAILIFF: YES, SIR.

25 MS. SHIPLEY: WHERE ARE THE ALTERNATES?

COLLOQUY

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1 THE COURT: THEY'RE DOWN THE HALL IN A SEPARATE ROOM.
2 (WHEREUPON, THE JURY BEGAN DELIBERATING AT 12:03 P.M.)
3 THE COURT: I NEED TO SEE THE LAWYERS IN THE OTHER CASE.
4 (COURT'S EXHIBIT 3 WAS MARKED FOR IDENTIFICATION ONLY.)
5 THE COURT: TODD. IS YOUR NAME TODD?
6 MR. WAGGONER: YES.
7 THE COURT: COME ON DOWN HERE. Y'ALL LOOK AT THIS AND
8 SEE IF YOU AGREE TO THIS.
9 MS. OWINGS: WE HAVE MORE QUESTIONS IN RICHLAND COUNTY.
10 YEAH, THAT'S FINE.
11 THE COURT: OKAY. SEE IF YOU AGREE WITH THAT. ADMIT
12 IT, PLEASE, DAPHNE.
13 MR. WAGGONER: THEY'RE ON THEIR WAY.
14 THE COURT: NO, YOU HAVE TO ANSWER IT.
15 MR. WAGGONER: I THINK THAT'S AN APPROPRIATE ANSWER.
16 THE COURT: OKAY. BOTH SIDES -- BOTH SIDES AGREE WITH
17 THE ANSWER. PLEASE SEND THAT BACK TO THE JURY ROOM AND LET
18 THEM CONTINUE THEIR DELIBERATIONS.
19 THE CLERK: YES, SIR.
20 (PAUSE IN PROCEEDINGS AS THE JURY CONTINUED TO
21 DELIBERATE.)
22 THE COURT: I HAVE TWO QUESTIONS. FIRST OF ALL, THEY
23 ELECTED OR SELECTED STEVE DRYDEN, NUMBER 60, TO BE -- TO BE
24 THE FOREPERSON. THE FIRST QUESTION IS: CAN WE HAVE THE
25 COURT TRANSCRIPTS? AND THE SECOND QUESTION IS: ARE THE

1 DETAILS OF THE ACTUAL LAWS FORTHCOMING? SO...

2 MS. OWINGS: I DON'T UNDERSTAND THAT QUESTION.

3 THE COURT: I THINK THEY MUST NOT REALIZE THAT WE SENT
4 IT BACK AT THE SAME TIME. IT PROBABLY IS BURIED IN A STACK
5 OF EXHIBITS AND THEY DON'T KNOW IT'S THERE OR MAYBE THEY'VE
6 DISCOVERED IT SINCE THEN. I DON'T KNOW. AND THEY DIDN'T
7 KNOW WHAT TO LOOK FOR. THEY MIGHT NOT HAVE KNOWN THAT'S WHAT
8 THEY HAD.

9 SO WHAT I PROPOSE IS TO GET THEM OUT HERE AND TELL THEM
10 THAT -- THAT WE DON'T HAVE THE TRANSCRIPTS, THAT IF THEY HAVE
11 A SPECIFIC PORTION OF THE TESTIMONY THAT THEY TRULY BELIEVE
12 THEY NEED TO HEAR, WE CAN MAKE ARRANGEMENTS TO PLAY IT FOR
13 THEM. I ALWAYS ENCOURAGE THEM NOT TO TAKE SUCH A PRIVILEGE
14 LIGHTLY, AND SO I'LL EXPLAIN THAT AND THEN I ALSO WILL TELL
15 THEM THAT THEY'VE ALREADY GOT THE JURY CHARGE. ANY OBJECTION
16 TO ME DOING THAT OR ANY PROPOSED BETTER ALTERNATIVE?

17 MS. FENT: NO, SIR.

18 THE COURT: ALL RIGHT. BRING IN THE JURY, PLEASE.

19 MS. SHIPLEY: YOUR HONOR, WE DON'T HAVE THE INMATE.

20 MS. PAYNE: THEY'VE GOT HIM BACK IN THE CELL.

21 THE COURT: ALL RIGHT. HOLD ON. WHEN HE GETS IN HERE,
22 YOU ALL TAKE A MINUTE TO EXPLAIN WHAT'S ABOUT TO HAPPEN, AND
23 IF THAT CHANGES YOUR POSITION, LET ME KNOW.

24 MS. OWINGS: YES, SIR.

25 (WHEREUPON, MR. RATHBURN WAS BROUGHT INTO THE COURTROOM.

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1 COURT'S EXHIBITS 4 AND 5 WERE MARKED FOR IDENTIFICATION ONLY.
2 THE JURY WAS BROUGHT INTO OPEN COURT AT 1:36 P.M.)

3 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, LET ME
4 ADDRESS THE QUESTIONS THAT YOU HAVE SENT TO ME. YOU ASKED IF
5 YOU COULD SEE THE COURT TRANSCRIPTS. WE DON'T HAVE THE
6 TRANSCRIPTS. NOW, AS YOU CAN SEE, THE COURT REPORTER IS HERE
7 AND SHE TAKES DOWN EVERYTHING THAT'S SAID. THERE IS ALSO AN
8 AUDIO RECORDING OF EVERYTHING THAT'S SAID, BUT IT HAS NOT YET
9 BEEN -- IT TAKES SOME TIME AND SOME EFFORT TO ACTUALLY PUT IT
10 INTO THE FORM OF A WRITTEN TRANSCRIPT. SO WE DON'T HAVE
11 THOSE AVAILABLE FOR YOU ALL TO USE.

12 NOW, IF YOU HAVE A SPECIFIC PORTION OF THE TESTIMONY
13 THAT YOU HEARD DURING THE TRIAL THAT YOU WANT TO HEAR, THEN
14 WE CAN MAKE ARRANGEMENTS TO PLAY THAT FOR YOU. NOW, I WANT
15 YOU TO FIRST UNDERSTAND THAT WE CAN DO THAT, BUT SECONDLY
16 UNDERSTAND THAT I DO NOT WANT YOU TO MAKE SUCH A REQUEST
17 LIGHTLY BECAUSE IT'S VERY DIFFICULT TO PLAY JUST ONE LITTLE
18 PIECE OF TESTIMONY. GENERALLY WE HAVE TO PLAY THE TESTIMONY
19 OF THE ENTIRE WITNESS, BOTH DIRECT AND CROSS-EXAMINATION. IT
20 USUALLY TAKES LONGER TO TRY TO FIND A SPECIFIC PART THAT
21 YOU'RE LOOKING FOR AND THEN PLAY IT FOR YOU THAN IT DOES JUST
22 TO PLAY THE WHOLE THING.

23 SO WE DO FROM TIME TO TIME PLAY WITNESS TESTIMONY BACK.
24 IT'S NOT DONE ROUTINELY, BUT IT CAN BE DONE IF THAT'S
25 SOMETHING THAT YOU REALLY FEEL THE JURY NEEDS TO HEAR. IF

1 YOU DO, THEN YOU CAN WRITE OUT SUCH A REQUEST AND SUBMIT IT
2 TO ME, AND THEN I WILL DECIDE AFTER GETTING THE REQUEST
3 WHETHER OR NOT TO ALLOW YOU TO HEAR THAT TESTIMONY.

4 NOW, THERE WAS ALSO A NOTE THAT SAID YOU WANTED TO KNOW
5 IF THE DETAILS OF THE LAWS WERE FORTHCOMING. I ALREADY SENT
6 THAT BACK TO YOU. IT WAS ACTUALLY INCLUDED IN THE ORIGINAL
7 MATERIALS THAT WE SENT AND IT LOOKS LIKE THIS. IT HAS THE
8 CAPTION OF THE CASE - THE STATE OF SOUTH CAROLINA VERSUS
9 BOBBY SHEY RATHBURN - AND IT'S IN ALL CAPS. IT'S ABOUT 20
10 PAGES AND IT'S STAPLED. IT HAS A YELLOW STICKER ON THE FRONT
11 OF IT. IT SAYS COURT'S EXHIBIT 2, I BELIEVE. ALL RIGHT? SO
12 I THINK THAT ANSWERS YOUR QUESTIONS. I HOPE YOU ALL ENJOYED
13 YOUR LUNCH, AND I WILL SEND YOU BACK INTO THE JURY ROOM NOW
14 TO RESUME YOUR DELIBERATIONS.

15 (WHEREUPON, JURY WAS EXCUSED FROM OPEN COURT AT 1:39
16 P.M. TO CONTINUE WITH DELIBERATIONS.)

17 THE COURT: ANY EXCEPTIONS TO MY COMMENTS?

18 MS. FENT: NO, YOUR HONOR.

19 MS. OWINGS: NO, SIR.

20 THE COURT: ALL RIGHT. THEN WE WILL BE IN RECESS IN
21 THIS CASE UNTIL WE HEAR FROM THE JURY.

22 (PAUSE IN PROCEEDINGS WHILE THE JURY CONTINUES TO
23 DELIBERATE. COURT'S EXHIBIT 6 WAS MARKED FOR IDENTIFICATION
24 ONLY.)

25 THE COURT: BE SEATED. OKAY. I UNDERSTAND THE JURY HAS

VERDICTS PUBLISHED

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1 REACHED VERDICTS, SO WE WILL BRING THEM IN.

2 THE CLERK: YES, YOUR HONOR.

3 (WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH
4 VERDICTS AT 3:20 P.M.)

5 THE COURT: MR. FOREMAN, HAS THE JURY REACHED A VERDICT?

6 FOREMAN: YES, WE HAVE.

7 THE COURT: PASS THE INDICTMENTS TO THE BAILIFF, PLEASE.
8 ALL RIGHT. PUBLISH THE VERDICTS, PLEASE.

9 THE CLERK: YES, YOUR HONOR.

10 THE COURT: JIM, LET ME SEE THAT.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD BETWEEN THE
12 COURT AND THE CLERK.)

13 THE CLERK: IN THE STATE OF SOUTH CAROLINA IN THE COUNTY
14 OF RICHLAND IN THE COURT OF GENERAL SESSIONS, INDICTMENT
15 NUMBER 2005-GS-40-2998, THE STATE OF SOUTH CAROLINA VERSUS
16 BOBBY SHEY RATHBURN, AN INDICTMENT FOR CRIMINAL SEXUAL
17 CONDUCT IN THE FIRST DEGREE. THE VERDICT IS GUILTY OF
18 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE, NOT GUILTY OF
19 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

20 INDICTMENT NUMBER 2005-GS-40-3000, THE STATE OF SOUTH
21 CAROLINA VERSUS BOBBY SHEY RATHBURN, AN INDICTMENT FOR
22 KIDNAPPING. THE VERDICT IS GUILTY OF KIDNAPPING.

23 INDICTMENT NUMBER 2005-GS-40-2997, THE STATE OF SOUTH
24 CAROLINA VERSUS BOBBY SHEY RATHBURN, AN INDICTMENT FOR
25 CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE.

1 THE VERDICT IS GUILTY OF CRIMINAL DOMESTIC VIOLENCE, NOT
2 GUILTY OF CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED
3 NATURE.

4 INDICTMENT NUMBER 2005-GS-40-2999, THE STATE OF SOUTH
5 CAROLINA VERSUS BOBBY SHEY RATHBURN, AN INDICTMENT FOR
6 BURGLARY IN THE FIRST DEGREE. THE VERDICT IS NOT GUILTY OF
7 BURGLARY IN THE FIRST DEGREE. MR. FOREMAN, ARE THESE YOUR
8 VERDICTS AND THE VERDICTS OF THE ENTIRE JURY?

9 FOREMAN: YES, THEY ARE.

10 THE CLERK: THANK YOU, SIR.

11 MS. OWINGS: POLL THE JURY, PLEASE.

12 THE CLERK: PROCEED, YOUR HONOR?

13 THE COURT: (NODDED HEAD UP AND DOWN.)

14 THE CLERK: LADIES AND GENTLEMEN OF THE JURY, I NOW HAVE
15 TWO QUESTIONS TO ASK YOU. THE QUESTIONS WILL BE: WERE THESE
16 YOUR VERDICTS AND ARE THEY STILL YOUR VERDICTS? WHEN I CALL
17 OUT YOUR NAME, PLEASE ANSWER YES OR NO. STEPHEN DRYDEN, WERE
18 THESE YOUR VERDICTS?

19 JUROR DRYDEN: YES.

20 THE CLERK: ARE THEY STILL YOUR VERDICTS?

21 JUROR DRYDEN: YES.

22 THE CLERK: JAYMIA STEVENS, WERE THESE YOUR VERDICTS?

23 JUROR STEVENS: YES.

24 THE CLERK: ARE THEY STILL YOUR VERDICTS?

25 JUROR STEVENS: YES.

POLLING OF THE JURY

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1 THE CLERK: ARTHUR KENNEDY, WERE THESE YOUR VERDICTS?
2 JUROR KENNEDY: YES.
3 THE CLERK: ARE THEY STILL YOUR VERDICTS?
4 JUROR KENNEDY: YES.
5 THE CLERK: SHARON WHITE, WERE THESE YOUR VERDICTS?
6 JUROR WHITE: YES.
7 THE CLERK: ARE THEY STILL YOUR VERDICTS?
8 JUROR WHITE: YES.
9 THE CLERK: JAMES JONES, WERE THESE YOUR VERDICTS?
10 JUROR JONES: YES.
11 THE CLERK: ARE THEY STILL YOUR VERDICTS?
12 JUROR JONES: YES.
13 THE CLERK: KATHERINE GOODSON, WERE THESE YOUR VERDICTS?
14 JUROR GOODSON: YES.
15 THE CLERK: ARE THEY STILL YOUR VERDICTS?
16 JUROR GOODSON: YES.
17 THE CLERK: RICHARD FRITTS, WERE THESE YOUR VERDICTS?
18 JUROR FRITTS: YES.
19 THE CLERK: ARE THEY STILL YOUR VERDICTS?
20 JUROR FRITTS: YES.
21 THE CLERK: JOHN SUBER, WERE THESE YOUR VERDICTS?
22 JUROR SUBER: YES.
23 THE CLERK: ARE THEY STILL YOUR VERDICTS?
24 JUROR SUBER: YES.
25 THE CLERK: LEO HARRIS, WERE THESE YOUR VERDICTS?

1 JUROR HARRIS: YES.

2 THE CLERK: ARE THEY STILL YOUR VERDICTS?

3 JUROR HARRIS: YES.

4 THE CLERK: THOMAS NEWBOULT, WERE THESE YOUR VERDICTS?

5 JUROR HARRIS: YES, SIR.

6 THE CLERK: ARE THEY STILL YOUR VERDICTS?

7 JUROR HARRIS: YES, SIR.

8 THE CLERK: BEULAH RAUCH, WERE THESE YOUR VERDICTS?

9 JUROR RAUCH: YES.

10 THE CLERK: ARE THEY STILL YOUR VERDICTS?

11 JUROR RAUCH: YES.

12 THE CLERK: JANIE MORRISON, WERE THESE YOUR VERDICTS?

13 JUROR MORRISON: YES. YES.

14 THE CLERK: ARE THEY STILL YOUR VERDICTS?

15 JUROR MORRISON: YES.

16 THE CLERK: THANK YOU. THE JURY HAS BEEN POLLED, YOUR
17 HONOR.

18 THE COURT: ANYTHING FURTHER BEFORE WE MOVE INTO
19 SENTENCING?

20 MS. OWINGS: YOUR HONOR, BEFORE I MAKE MY POST-TRIAL
21 MOTIONS, MAY I HAVE A LOOK AT THE INDICTMENTS---

22 THE COURT: CERTAINLY.

23 MS. OWINGS: ---THAT WERE IN QUESTION?

24 THE COURT: LET ME SEE THE ATTORNEYS UP HERE, INCLUDING
25 MR. STRICKLER.

1 (THE FOLLOWING BENCH CONFERENCE TOOK PLACE AT THE SIDE
2 BAR IN THE PRESENCE OF THE COURT, THE COURT REPORTER, THE
3 ATTORNEYS INVOLVED IN THE TRIAL, AND ALSO DOUGLAS STRICKLER.)

4 MR. STRICKLER: SORRY, JUDGE.

5 THE COURT: THAT'S ALL RIGHT.

6 MR. STRICKLER: I HAVE NEVER SEEN IT CLEAR.

7 THE COURT: DO WE THINK THIS IS CLEAR? I WANT TO MAKE
8 SURE THIS ONE, THIS ONE ON C.D.V., AND THIS ONE FOR CRIMINAL
9 SEXUAL CONDUCT -- AND I THINK IT'S CLEAR, BUT I WANTED TO
10 MAKE SURE EVERYBODY AGREES.

11 MS. OWINGS: WE AGREE. I JUST WANTED TO MAKE SURE...

12 MR. STRICKLER: THAT'S WHY I WANTED TO ASK TO TAKE A
13 LOOK.

14 (THE BENCH CONFERENCE CONCLUDED.)

15 MS. OWINGS: YES, YOUR HONOR. I WOULD LIKE TO RENEW ALL
16 PREVIOUSLY-MADE OBJECTIONS, ANY THAT WERE OVERRULED, ANY
17 PREVIOUS MOTIONS THAT WE MAY HAVE MADE THAT WERE OVERRULED,
18 AND I ALSO HAVE A MOTION FOR A NEW TRIAL ON THE GROUNDS OF
19 THE SOLICITOR BASICALLY BACK-DOORING IN MR. RATHBURN'S PRIOR
20 RECORD DURING HER CLOSING AFTER YOU SPECIFICALLY TOLD US WHAT
21 CERTAIN STATEMENTS WERE TO BE ADMITTED FROM AFTER WE DID
22 HOURS WORTH OF HEARINGS ON MONDAY TO DETERMINE WHAT WAS GOING
23 TO COME IN AND HOW IT WAS GOING TO COME IN AND THAT HE DID
24 NOT TAKE THE STAND TO PREVENT ANY OF THAT HAPPENING. THAT
25 WAS PART OF HIS REASONING, AND SHE DIRECTLY CONNECTED

1 CRIMINAL DOMESTIC VIOLENCE WITH THE LAST TIME. AND I THINK
2 HER EXACT STATEMENT WAS: HE WAS TRYING TO WORD HIS STATEMENT
3 TO GET C.D.V. SO THAT JUST LIKE THE LAST TIME HE WOULDN'T
4 HAVE TO TAKE THOSE BULLSHIT -- HE WOULD JUST GO TO JAIL AND
5 THEN TAKE THOSE BULLSHIT CLASSES. AND I THINK THAT WAS
6 ENTIRELY PREJUDICIAL, AND I'M ASKING FOR A NEW TRIAL ON THOSE
7 GROUNDS.

8 THE COURT: ALL RIGHT. AS FAR AS YOUR PREVIOUSLY-MADE
9 MOTIONS, I DENY THOSE MOTIONS. AS FAR AS THE MOTION FOR A
10 NEW TRIAL, AS I SAID OUTSIDE THE JURY'S PRESENCE DURING THE
11 CLOSING ARGUMENT IMMEDIATELY AFTER THAT COMMENT WAS MADE, I
12 DID NOT FEEL AS THOUGH IT HAD DIRECTLY IMPLICATED A PRIOR
13 CONVICTION, AND I ASKED YOU AT THAT TIME IF THERE WAS
14 ANYTHING ELSE YOU WANTED ME TO DO ABOUT IT AND YOU SAID NO.
15 YOU GAVE THE REASON, AND IT'S A LEGITIMATE REASON. I THINK
16 -- I THINK YOU MADE A WISE CHOICE, BUT YOU -- YOUR REASON WAS
17 THAT YOU DID NOT WANT TO BRING ANY FURTHER ATTENTION TO IT BY
18 ASKING ME TO CLARIFY IT OR TO DO ANYTHING LIKE THAT. THOSE
19 OBVIOUSLY WERE NOT YOUR EXACT WORDS, BUT THAT'S -- AND THE
20 RECORD WILL REFLECT WHAT YOU SAID.

21 BUT THE TIME FOR ME TO ADDRESS THAT WOULD HAVE BEEN
22 RIGHT THEN, AND HAVING NOT BEEN ASKED TO ADDRESS IT --
23 ADDRESS IT RIGHT THEN, I AM PROBABLY WITHOUT POWER TO ADDRESS
24 IT RIGHT NOW, BUT EVEN TO THE EXTENT THAT I DO HAVE THE POWER
25 TO ADDRESS IT NOW, I DO NOT BELIEVE THAT THE COMMENT WAS --

1 DID WHAT YOU -- DID WHAT YOU SUGGEST IT DID, AND I DENY THE
2 MOTION FOR A NEW TRIAL. ANYTHING FURTHER?

3 MS. OWINGS: NO, SIR. NO, SIR.

4 THE COURT: BRING HIM AROUND, PLEASE.

5 MS. OWINGS: WE HAVEN'T DONE HIS PAPERWORK YET, YOUR
6 HONOR.

7 THE COURT: OKAY.

8 MS. SHIPLEY: YOUR HONOR, DO YOU HAVE A CODE BOOK -- THE
9 SECTION FOR CRIMINAL SEXUAL CONDUCT SECOND DEGREE?

10 THE COURT: FOR A C.D.R. CODE?

11 MS. SHIPLEY: YES, SIR, C.D.R. CODE AND ALSO THE SECTION
12 OF THE STATUTE.

13 THE COURT: THE STATUTE SECTION IS 16-3-653.

14 MS. SHIPLEY: THANK YOU, YOUR HONOR.

15 THE COURT: AND I'LL HAVE THE C.D.R. CODE IN A SECOND.

16 MS. SHIPLEY: THANK YOU.

17 THE COURT: THE C.D.R. CODE FOR CRIMINAL SEXUAL CONDUCT
18 SECOND DEGREE IS 161.

19 MS. SHIPLEY: AND, YOUR HONOR, COULD YOU PLEASE LOOK IT
20 UP FOR THE CRIMINAL DOMESTIC VIOLENCE FIRST OFFENSE?

21 THE COURT: WHEN DID THE -- WHEN DID THE PENALTY
22 PROVISION CHANGE?

23 MS. FENT: JANUARY 1ST OF '06 WAS THE CHANGES IN
24 PENALTY.

25 THE COURT: SO FOR THIS CRIME C.D.V. SECOND OFFENSE?

1 MS. FENT: IT WOULD NOT BE A SECOND OFFENSE BECAUSE HIS
2 FIRST -- HE WAS CHARGED WITH C.D.V. BUT PLED TO AN ASSAULT
3 AND BATTERY. SO THIS IS A C.D.V. FIRST.

4 THE COURT: OH.

5 MS. FENT: FIRST OFFENSE.

6 MS. SHIPLEY: YOUR HONOR---

7 THE COURT: WELL, I THINK THAT IT'S 1246, BUT I CAN'T BE
8 SURE BECAUSE THIS DOESN'T GIVE THE -- THE DATES.

9 MS. SHIPLEY: YOUR HONOR, I HAVE -- I IMAGINE THE -- ARE
10 YOU ON THE WEB SITE, YOUR HONOR?

11 THE COURT: YES.

12 MS. SHIPLEY: I THINK THAT IS THE CORRECT C.D.R. CODE
13 BECAUSE I HAVE THE 2005 DOUG STRICKLER BOOK AND IT IS 2671
14 BACK IN 2005. SO I DO KNOW THAT THE C.D.R. CODE CHANGED WHEN
15 THE PENALTY CHANGED.

16 THE COURT: 2671 IS THE CURRENT C.D.R. CODE FOR A CRIME
17 CONVICTED AFTER THE PENALTY PROVISION CHANGE.

18 MS. SHIPLEY: OH, OKAY.

19 THE COURT: BUT I THINK THAT 1246 IS THE C.D.R. CODE
20 BEFORE THE PENALTY PROVISION CHANGED. OUR SYSTEM OF TRACKING
21 ALL THIS STUFF USES THESE CODES, AND SO THE CODE HAS TO BE
22 CORRECT WHEN THIS INFORMATION GOES TO THE DEPARTMENT OF
23 CORRECTIONS OR THEY DON'T KNOW EXACTLY WHAT TO DO WITH -- IT
24 RELATES TO HOW THEY CLASSIFY THE CRIMES. IT ALSO RELATES TO
25 THE RECORDKEEPING HERE IN THE SOLICITOR'S OFFICE AND ALSO AT

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1 THE STATE OFFICE OF COURT ADMINISTRATION. SO THAT'S WHY
2 WE'RE TRYING TO MAKE SURE WE HAVE THESE CODES RIGHT BECAUSE
3 IF WE DON'T, THEN ALL OF US ARE GOING TO END UP BEING ON
4 PHONE CALLS AND RESPONDING TO LETTERS AT SOME POINT IN THE
5 FUTURE TO TRY TO GET THEM RIGHT. SOCIAL SECURITY NUMBER?

6 MR. RATHBURN: 240-41-6049.

7 THE COURT: DATE OF BIRTH?

8 MR. RATHBURN: JANUARY THE 1ST, 1977.

9 THE COURT: ALL RIGHT. ANYTHING ELSE FROM THE STATE?

10 MS. FENT: YES, YOUR HONOR. IT WAS MENTIONED IN THE
11 TRIAL THAT THEIR THREE-YEAR-OLD DAUGHTER, L B HAD GONE
12 TO THE ASSESSMENT RESOURCE CENTER TO BE INTERVIEWED, AND
13 DURING THAT INTERVIEW -- AND A COPY OF THAT INTERVIEW WAS
14 PROVIDED TO THE DEFENSE.

15 MS. OWINGS: NO, YOUR HONOR. I'VE NEVER SEEN A COPY OF
16 THIS EVER.

17 MS. FENT: IT WAS IN THE DISCOVERY.

18 MS. OWINGS: I'VE NEVER SEEN IT AND I WANT TO SEE IT
19 BEFORE SHE ADDRESSES IT BECAUSE I HAVE NEVER SEEN IT, AND I'M
20 THE THIRD LAWYER TO HAVE THE CASE.

21 THE COURT: ALL RIGHT.

22 MS. OWINGS: SO I THINK THAT'S...

23 (MS. FENT HANDS A DOCUMENT TO MS. OWINGS.)

24 MS. OWINGS: THANK YOU. THE PRIOR ATTORNEY ON THE CASE
25 NEVER SAW IT, YOUR HONOR, BUT I'VE SEEN IT NOW, AND IF THAT

1 HAD BEEN PROVIDED, THERE MAY HAVE BEEN SOME OTHER DECISIONS
2 MADE ON THE CASE.

3 THE COURT: LET ME SEE IT, PLEASE.

4 (MS. FENT HANDS A DOCUMENT TO THE COURT.)

5 MS. FENT: THE PAGE THAT I AM REFERRING TO IS THAT ONE.

6 THE COURT: OKAY. WELL, THIS DOES NOT SEEM TO ME TO BE
7 EXCULPATORY. DOES IT TO YOU?

8 MS. OWINGS: NO, YOUR HONOR, AND IF I HAD BEEN IN
9 POSSESSION OF SOMETHING LIKE THAT WHENEVER I WAS TALKING TO
10 MY CLIENT, IT MAY HAVE -- OUR NEGOTIATIONS AND OUR
11 DISCUSSIONS MAY HAVE BEEN DIFFERENT. I STILL THINK I SHOULD
12 HAVE BEEN GIVEN IT. I THINK THAT IS SIGNIFICANT. AN A.R.C.
13 INTERVIEW OF A CHILD IN THIS TYPE OF A CASE, I THINK THAT IS
14 SIGNIFICANT AND I THINK THAT HIS ATTORNEY SHOULD HAVE BEEN
15 PROVIDED THIS, ESPECIALLY NOW THAT IT'S GOING TO BE GIVEN --
16 AND USED AGAINST HIM IN SENTENCING. I DO THINK I SHOULD HAVE
17 BEEN GIVEN THAT, YOUR HONOR. RESPECTFULLY, I THINK I SHOULD
18 HAVE BEEN GIVEN THAT. YOUR HONOR, INDEPENDENT OF WHETHER OR
19 NOT IT'S EXCULPATORY, IT'S STILL MATERIAL TO THE CASE, AND I
20 SHOULD HAVE BEEN PROVIDED IT UNDER RULE 5.

21 THE COURT: WELL, I'M NOT -- I'M NOT ADDRESSING THE
22 QUESTION OF WHETHER OR NOT YOU SHOULD HAVE BEEN GIVEN IT --
23 GIVEN TO IT. I'M SIMPLY TRYING TO SEE IF THERE'S ANY ISSUE
24 THAT IT NOW -- THAT IT NOW BRINGS UP, AND I THINK AT THIS
25 POINT IN THE CASE IF IT'S NOT EXCULPATORY, THEN IT DOESN'T

1 RAISE ANY LEGAL ISSUES. AM I MISTAKEN ABOUT THAT?

2 MS. OWINGS: YOUR HONOR, I THINK IT'S SIGNIFICANT THAT
3 HIS DEFENSE ATTORNEYS WERE NOT PROVIDED WITH MATERIAL
4 DISCOVERY. I THINK IT IS SIGNIFICANT, AND I WANT IT ON THE
5 RECORD THAT IT WAS NOT PROVIDED TO ME AND IT SHOULDN'T BE
6 RELEVANT TO HIS SENTENCING.

7 THE COURT: ALL RIGHT. WELL, WE'LL MAKE IT A PART OF
8 THE RECORD, AND I WILL EXCLUDE IT FROM THE SENTENCING HEARING
9 UNLESS YOU CAN SHOW ME THAT IT WAS -- THAT IT WAS, IN FACT,
10 PRODUCED. AND I'M NOT -- I'M NOT ACCUSING YOU OF NOT
11 PRODUCING IT. I'M SIMPLY TRYING TO FIND A FAIR RESOLUTION OF
12 THIS DISPUTE.

13 MS. FENT: CORRECT.

14 THE COURT: AND I THINK THAT THE FAIR WAY TO HANDLE THIS
15 IS TO EXCLUDE IT FROM THE SENTENCING HEARING GIVEN MS.
16 OWINGS' STATEMENT THAT SHE DID NOT KNOW ABOUT IT BEFORE JUST
17 NOW. IT COULD BE THAT IT WAS PRODUCED AND IN THE SHUFFLE OF
18 LAWYERS THAT HAS APPARENTLY OCCURRED OVER THE TIME WHICH THIS
19 CASE WAS PENDING IT WAS -- IT WAS MISPLACED. I'M DEFINITELY
20 NOT SAYING THAT ANYBODY HAS DONE ANYTHING WRONG. I'M SIMPLY
21 TRYING TO FIND A FAIR WAY TO ADDRESS THIS. SO UNLESS YOU
22 HAVE SOMETHING COMPELLING THAT WILL SHOW ME THAT MS. OWINGS
23 ACTUALLY DID KNOW ABOUT THIS, THEN I THINK THE FAIR THING TO
24 DO IS TO MARK IT AND EXCLUDE IT.

25 MS. FENT: I CANNOT SHOW YOU ANY DOCUMENT AT THIS POINT

1 THAT I HAVE PRODUCED IT. I WOULD JUST LIKE TO SAY THAT EVEN
2 IF THIS CHILD HAD NOT BEEN INTERVIEWED AT THE A.R.C., IT IS
3 CLEAR FROM THE EVIDENCE THAT SHE WAS PRESENT AND---

4 THE COURT: WELL, LET'S FINISH ADDRESSING THIS FIRST.

5 MS. FENT: OKAY.

6 THE COURT: I THINK WE'VE -- I THINK WE'VE DONE THAT.

7 MS. FENT: IT WAS ADDITIONALLY MENTIONED IN TESTIMONY BY
8 LIEUTENANT HINSON THAT THIS CHILD WAS REFERRED TO THE -- TO
9 THE A.R.C. FOR AN INTERVIEW.

10 (COURT'S EXHIBIT 7 WAS MARKED FOR IDENTIFICATION ONLY.)

11 THE COURT: ALL RIGHT.

12 MS. FENT: BASICALLY THE OTHER INFORMATION THAT WE
13 BELIEVE IS RELEVANT TO TELL YOU ABOUT IS LEADING UP TO THE
14 COUPLE OF MONTHS PRIOR TO THIS FINAL BREAK-UP, ONE -- THERE
15 WERE MANY THINGS THAT WERE HAPPENING I GUESS BETWEEN THE
16 DEFENDANT AND TABITHA THAT WERE CAUSING HER TO MAKE THIS
17 DECISION TO MAKE THIS FINAL BREAK. ONE OF THEM WAS, IN FACT,
18 AN ACT OF ASSAULT. THAT WAS IN REFERENCE TO THE PRIOR
19 ASSAULT AND BATTERY, HIS CONVICTION.

20 THE DEFENDANT HAD GONE TO INTERVIEW FOR A JOB AND WAS
21 GIVEN THAT JOB, WAS GIVEN AN OFFER, BUT THEY HAD TO RUN A
22 CRIMINAL RAP SHEET. WHEN THEY RAN HIS RAP SHEET AND THEY SAW
23 THE ASSAULT AND BATTERY CONVICTION ON HIS RECORD, THEY CALLED
24 AND TOLD HIM THAT HE DID NOT NO -- HE NO LONGER HAD THAT JOB.
25 THEY WERE NOT MAKING THAT OFFER.

1 HE CAME AND PICKED UP THE VICTIM FROM HER PLACE OF WORK,
2 AND WHEN SHE GOT IN THE CAR, HE SLAPPED HER AND SAID THAT IT
3 WAS HER FAULT HE DID NOT GET THIS JOB BECAUSE SHE COULD NOT
4 TAKE, QUOTE, AN ASS-WHIPPING, LIKE A REAL WOMAN COULD. AND
5 IT WAS ONE OF THESE EVENTS THAT LED HER UP TO THIS ON MID
6 MARCH TO FINALLY MAKE THAT BREAK WITH THE DEFENDANT. TABITHA
7 WOULD LIKE TO ADDRESS THE COURT, YOUR HONOR.

8 THE COURT: YES, MA'AM.

9 MS. WEISS: YOUR HONOR, I JUST WANT TO SAY THAT THIS IS
10 NOT ENDING HERE TODAY BECAUSE IT'S SOMETHING THAT I HAVE TO
11 LIVE WITH. WE HAVE A DAUGHTER TOGETHER, AND IT'S SOMETHING
12 THAT I HAVE TO EXPLAIN TO HER. SHE STILL REMEMBERS THIS
13 HAPPENING. SHE STILL ASKS ME ABOUT IT, AND I'M THE ONE -- I
14 WAS THE VICTIM AND SHE WAS THE VICTIM, AND WE'RE HAVING TO
15 DEAL WITH THIS THE BEST WAY THAT WE CAN. SO IT'S NOT EASY --
16 NONE OF THIS HAS BEEN EASY FOR ME, BUT I STILL FEEL LIKE I'M
17 A VICTIM. I STILL FEEL LIKE I HAVE TO LOOK OVER MY SHOULDER.

18 WHEN HE IS RELEASED OUT OF JAIL, I FEEL LIKE HE'S GOING
19 TO COME AND RETALIATE BECAUSE I WENT THROUGH FIVE YEARS OF
20 THIS JUST BRUTAL -- JUST BEATINGS AND IT WAS MY FAULT THAT I
21 DIDN'T STEP UP FORWARD, BUT NOW I FINALLY DID BECAUSE I DON'T
22 -- I DON'T WANT TO BE A VICTIM ANYMORE. I WANTED TO BE A
23 SURVIVOR, AND I FEEL LIKE THAT I AM A SURVIVOR, BUT JUST KNOW
24 THAT THIS WAS NOTHING OF MALICE OR ANYTHING THAT I DID TO
25 KEEP HIM FROM SEEING HIS DAUGHTER. I WOULD NEVER DO THAT,

1 BUT HE HAD BEEN DOING THIS TO US FOR FIVE -- WELL, NOT HER,
2 BUT ME FOR FIVE YEARS AND THEN SHE BEGAN TO WITNESS IT AND IT
3 HAD AN IMPACT ON HER. SHE HAD TO GO TO COUNSELING BECAUSE
4 SHE REMEMBERED THE EVENTS, AND I JUST WANTED YOU TO KNOW
5 THAT. THANK YOU.

6 THE COURT: THANK YOU. ANYTHING ELSE FROM THE STATE?

7 MS. FENT: NOTHING ELSE, YOUR HONOR.

8 THE COURT: MS. OWINGS?

9 MS. OWINGS: THANK YOU, YOUR HONOR. IF IT PLEASES THE
10 COURT, SHEY IS STANDING BEFORE YOU RIGHT NOW. FIRST OF ALL,
11 I WANT TO THANK YOU FOR ALL OF YOUR PATIENCE WITH US THIS
12 WEEK. THIS HAS BEEN A ROUGH TRIAL I THINK FOR EVERYONE
13 INVOLVED.

14 THERE'S SOME THINGS I WANT YOU TO KNOW ABOUT SHEY. SHEY
15 HAS BEEN ON BOND SINCE FIVE MONTHS AFTER THIS HAPPENED. HE
16 WAS IN JAIL FOR ABOUT FIVE MONTHS AND THEN HE BONDED OUT.
17 SINCE THAT TIME HE HASN'T HAD ANY PRIOR ARRESTS OR ANY
18 ARRESTS. HE HASN'T BEEN IN ANY TROUBLE. AND UNTIL TODAY --
19 UNTIL MONDAY HE HASN'T BEEN BACK IN JAIL.

20 HE HAS WORKED THROUGHOUT HIS LIFE. RIGHT NOW HE WORKS
21 AT SOX AND SON. HE RUNS BULLDOZERS. HE OPERATES HEAVY
22 MACHINERY, AND THIS IS THE KIND OF WORK HE'S DONE FOR PRETTY
23 MUCH ALL HIS LIFE. HE'S 30 YEARS OLD, AND STANDING WITH HIM
24 IS HIS WIFE, NATASHA. THEY'VE BEEN MARRIED FOR A YEAR AND A
25 HALF, AND THEY HAVE A FIVE-MONTH-OLD. HIS NAME IS NICKOLI

1 (PHONETIC), BUT THEY CALL HIM NICK. MS. PAYNE WOULD ALSO
2 LIKE TO ADDRESS YOU.

3 MS. PAYNE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
4 COURT? I'VE HAD THE PLEASURE TO KNOW SHEY FOR THE PAST FEW
5 MONTHS EVEN BEFORE STACY TOOK OVER THE CASE. I WAS SITTING
6 WITH APRIL. AND HE'S BEEN VERY ACTIVE IN HIS CASE. HE'S
7 BEEN VERY ACTIVE WITH OUR OFFICE WHICH, AS YOU KNOW, IN OUR
8 OFFICE THAT DOESN'T HAPPEN VERY OFTEN. BUT FOR THE PAST TWO
9 YEARS HE HAS COME TO COURT RELIGIOUSLY. HE'S WANTED TO BE A
10 PART OF IT. THIS IS SOMETHING THAT HAS AFFECTED HIS LIFE,
11 HIS WIFE, AND NOW HIS SON.

12 YOUR HONOR, HE IS NOT THE TYPICAL CLIENT OF OURS. HE'S
13 MADE SOME POOR CHOICES. HE IS STANDING HERE NOW HAVING TO
14 ACCEPT THEM AND DEAL WITH THEM AND TAKE RESPONSIBILITY FOR
15 THEM, AND I RESPECT HIM, NOT ONLY AS OUR CLIENT, BUT AS A
16 HUMAN BEING AND AS A CITIZEN, AND WE JUST ASK YOU FOR
17 LENIENCY.

18 MS. OWINGS: WE ASK YOU TO CONSIDER A SENTENCE IN THE
19 RANGE OF FIVE YEARS, YOUR HONOR, GIVEN THE ASPECT THAT THESE
20 CHARGES DO CARRY 85 PERCENT AND THEY'RE NOT PAROLE-ELIGIBLE
21 AND HE IS GOING TO HAVE TO REGISTER AS A SEX OFFENDER AS A
22 RESULT OF THESE CHARGES. I'D JUST ASK YOU TO TAKE THE FULL
23 RANGE OF THE PUNISHMENT HE'S LOOKING AT INTO ACCOUNT, NOT
24 JUST WHAT HE'S FACING AS A RESULT OF TIME IN PRISON.

25 MS. PAYNE: YOUR HONOR, HIS WIFE WOULD LIKE TO ADDRESS

1 THE COURT.

2 MRS. RATHBURN: I'D JUST LIKE TO SAY THAT SHEY IS A
3 GREAT PERSON, AND I'VE NEVER SEEN ANY KIND OF BEHAVIOR THAT
4 Y'ALL TALKED ABOUT TODAY. HE LOVES HIS SON. HE'S GREAT TO
5 ME. HE WORKS ALL THE TIME, AND I KNOW HE'S A GOOD PERSON AND
6 I KNOW IN MY HEART HE IS NOT GUILTY. HE'S NOT.

7 THE COURT: MR. RATHBURN, IS THERE ANYTHING YOU WANT TO
8 SAY?

9 MR. RATHBURN: YEAH. I DON'T -- I'VE JUST GOT TO LET
10 EVERYTHING SOAK IN. I DON'T KNOW. I'M ALSO ASKING FOR
11 LENIENCY AS MUCH AS YOU POSSIBLY CAN. NOT ONLY HAVE I LOST
12 MY DAUGHTER OVER THIS -- I'VE BEEN FOUND GUILTY, SO I CAN'T
13 SAY ANYTHING ABOUT IT. I'VE LOST MY DAUGHTER. I DON'T WANT
14 TO LOSE MY SON. I'M NOT VIOLENT. IF THERE'S ANY WAY YOU CAN
15 BE AS LENIENT AS POSSIBLE IN THIS CASE, I WOULD GREATLY
16 APPRECIATE IT. WE JUST BOUGHT A HOME, EVERYTHING, AND NOW
17 SHE'LL PROBABLY LOSE IT BECAUSE OF ME GOING TO PRISON. IF
18 THERE'S ANY WAY YOU CAN PLEASE HELP ME OUT WITH LENIENCY, I
19 WOULD GREATLY APPRECIATE IT.

20 MS. OWINGS: THAT IS THE EXTENT OF OUR PRESENTATION.

21 THE COURT: ANYTHING FURTHER?

22 MS. OWINGS: NO, SIR.

23 THE COURT: THE SENTENCE ON THE CRIMINAL SEXUAL CONDUCT
24 SECOND DEGREE IS 14 YEARS. THE SENTENCE ON THE KIDNAPPING IS
25 14 YEARS. THIRTY DAYS ON THE CRIMINAL DOMESTIC VIOLENCE.

SENTENCING

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1 THEY'RE ALL CONCURRENT WITH CREDIT FOR TIME SERVED.

2 MS. OWINGS: THANK YOU.

3 MS. PAYNE: THANK YOU, YOUR HONOR.

4 MS. FENT: YOUR HONOR, ALSO REGISTRY AS A SEX OFFENDER
5 AS A RESULT OF THE KIDNAPPING?

6 THE COURT: THAT FLOWS AUTOMATICALLY FROM THE CONVICTION
7 ON THE C.S.C.

8 MS. FENT: I WILL BRING YOU AN ORDER. THANK YOU, YOUR
9 HONOR.

10 THE COURT: LADIES AND GENTLEMEN, I'M GOING TO ASK YOU
11 ALL TO STEP BACK INTO THE JURY ROOM FOR JUST A FEW MINUTES,
12 AND I'M GOING BACK THERE AND SPEAK TO YOU BEFORE I DISMISS
13 YOU.

14 (WHEREUPON, THE JURY WAS EXCUSED FROM THE TRIAL OF THE
15 CASE, AND THE PROCEEDINGS WERE CONCLUDED.)

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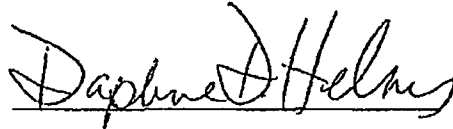
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I, THE UNDERSIGNED DAPHNE D. HELMS, OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 2ND THROUGH 4TH DAYS OF APRIL, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

OCTOBER 4, 2007

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

DAPHNE D. HELMS, COURT REPORTER

STATE OF SOUTH CAROLINA,

IN THE COURT OF APPEALS

Appeal from Richland County

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY SHEY RATHBURN,

APPELLANT

FINAL BRIEF OF APPELLANT

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Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

The trial judge erred in allowing prior crime evidence via the victim's testimony and per the solicitor's closing argument to be considered by the jury because this evidence was improper character evidence.

STATEMENT OF THE CASE

Appellant Bobby Shey Rathburn was convicted of second degree criminal sexual conduct, kidnapping, and criminal domestic violence during the April 2007 term of the Richland County General Sessions Court before the Honorable John C. Few, Judge. Appellant was sentenced to imprisonment for an aggregate period of fourteen years. Appellant appealed. This brief follows.

ARGUMENT

The trial judge erred in allowing prior crime evidence via the victim's testimony and per the solicitor's closing argument to be considered by the jury because this evidence was improper character evidence.

At trial, Tabitha Ruth Weiss testified that on March 18 -19, 2005, she and appellant, who was her on and off live-in boyfriend since the year 2000, moved out of the residence. Then, around 4:00 a.m. on April 3, 2005, appellant showed up at the house. Weiss stated that when she opened the door, appellant came inside the house. Weiss stated that thereafter, he pulled her hair, choked her, forced her to have oral sex and intercourse, and that he left hours later thereafter in time to get to work. R. p. 49, l. 19 - p.104, l.13.

Appellant described the incident in his statement. He stated that Weiss let him inside the house and that when she did not tell him where she was moving, he got upset and pulled her hair and placed his hand around her neck (but applied no pressure), and then he stopped, went to the living room and started to cry. Then, Weiss came to him and kissed him and they made love and went to sleep, and thereafter he went to work. Appellant stated that he did not force sex upon Weiss and that he did not prevent her from leaving. R. p. 246, line 9 – p 248, line 8.

Weiss testified at trial that during the events, appellant stated “you want to call the cops . . then go ahead and call the cops . . . you know I’ll just get a slap on the hand like I did last time and have to go to you know bullshit classes and, you know, if I do go to jail, I will come back and finish the job ” R p. 80, lines 4 – 10. Prior to trial, the defense objected to the inclusion of this testimony on the ground that this brought out his prior criminal record (appellant was previously charged with criminal domestic violence, but plead to

assault), and this information was prejudicial more so than probative under SCRE Rule 404. R. 23, line 12 – p. 28, line 12; R. p. 36, line 22 – p. 37, line 11. The trial judge ruled that these statements held more probative value than prejudicial value and that the same would be admissible. R. p. 46, line 4 – p. 48, line 8. When Weiss testified at trial, she stated to the jury that appellant made these statements. R. p. 80, lines 3-10.

Then later during closing argument, the solicitor made reference to appellant's comments that "just like last time, I'll get a slap on the hand and have to go to those bullshit classes." R. p. 286, lines 1 – 5. Counsel objected to the solicitor's remark on the ground that this was an improper use of appellant's prior record, but the lower court overruled the objection. R. p. 286, lines 11 - 25. Counsel renewed the objections to Weiss' testimony and the solicitor's closing argument regarding this issue at the close of the case. R. p. 289, l. 15 – p. 291, l. 3.

As a rule, where a prior offense is similar to the offense for which the defendant is on trial, the danger of unfair prejudice to the defendant weighs against its admission. State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000). In Colf, the court held that in considering whether to admit prior convictions, a trial judge should consider "the impeachment value of the prior crime, the point in time of the conviction, the similarity of the past crime and the charged crime, the importance of the defendant's testimony, and the centrality of the credibility issue.

Here, appellant did not testify, which meant he had not placed in character in issue (see Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989)), and therefore there was no need for this type of impeachment with this prior record. Also, note that this case boiled down to a swearing contest between Weiss and appellant, which meant that credibility was

an issue, which in turn meant that the prejudicial value outweighed the probative value of the jury knowing that appellant committed a similar crime in the past. Again, there is a danger of admitting evidence of a prior crime that is similar to the crime charged because of the prejudice, i.e., as it more than likely raises the inference that appellant has a bad character and a predisposition to commit the similar crime charged as well as other connected crimes as well.

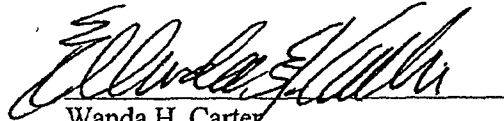
See the reversal in State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006), where the court held that it was error to admit the defendant's prior conviction for unlawful possession of a weapon while he was on trial for murder and unlawful possession of a weapon where the state sought to show that the defendant got in trouble every two years had nothing to do with the defendant's credibility and because the evidence was more prejudicial than probative. Additionally, the Bryant Court held that the error was not harmless error because the defendant's credibility was essential to his defense of self-defense. Here, in the case at bar, appellant's prior record was not harmless error because appellant's credibility (via the swearing contest between him and the victim) was key to the case. Finally, the error was exacerbated after being punctuated by the solicitor's mention of the prior record at closing argument.

The trial judge erred in allowing prior crime evidence via the victim's testimony and per the solicitor's closing argument to be considered by the jury because this evidence was improper character evidence in violation of appellant's right to a fair trial guaranteed under the fourteenth amendment due process clause and article 1, §14 of the South Carolina State Constitution.

CONCLUSION

Based on the following argument, appellant would request a reversal in the case and a new trial held.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wanda H. Carter", written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

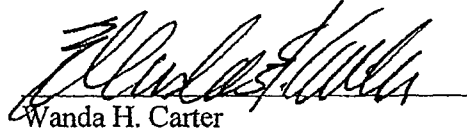
ATTORNEY FOR APPELLANT.

July 2, 2008

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

July 2, 2008

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

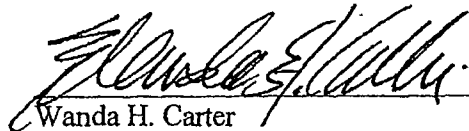
V.

BOBBY SHEY RATHBURN,

APPELLANT

CERTIFICATE OF SERVICE

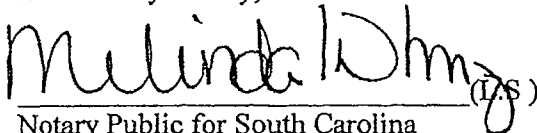
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina Catoe, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 2nd day of July, 2008.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 2nd day of July, 2008.



Notary Public for South Carolina

My Commission Expires: November 16, 2008.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richmond County
The Honorable John C. Felt, Circuit Court Judge

THE STATE OF SOUTH CAROLINA

RESPONDENT

ROBERT STEVEN HUBBARD

APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly admitted a threatening statement, not specifically referencing any prior conviction, made by Appellant to the victim on the night of the incident.

STATEMENT OF THE CASE

Appellant was indicted by the Richland County Grand Jury for criminal sexual conduct in the first degree, burglary in the first degree, kidnapping, and criminal domestic violence of a high and aggravated nature. (See R. p. 287, line 13 – p. 288, line 7; p. 294-97). He proceeded to jury trial on April 2-4, 2007, before the Honorable John C. Few. (R. p. 1). Appellant was convicted of criminal sexual conduct in the second degree, kidnapping, and criminal domestic violence, and was sentenced to two fourteen-year sentences and a thirty-day sentence, respectively, with all sentences to run concurrently. (See R. p. 287, line 4 – p. 288, line 3; p. 292, line 23 – p. 293, line 7). A Notice of Appeal was timely served on April 5, 2007. This appeal follows.

ARGUMENT

Relevant Facts

Appellant and the victim dated on and off for about five years, and had a daughter together. (R. p. 11, lines 12-21). The Appellant abused the victim physically and sexually for much of the relationship, often after he had been drinking. (See R. p. 12-21). When the victim finally grew weary of the abuse from the Appellant, she directed her efforts towards getting out of the relationship with him. (R. p. 29-33). Around March 18th or 19th of 2005, he moved out of the home they rented together and turned over his key to her. (R. p. 29, lines 17 – p. 30, line 8). She made plans to also move out of the house, to change jobs, and to change her cell phone number, so that he would not be able to find her. (R. p. 32, line 18 – p. 33, line 24). In the two-week period after moving out, however, Appellant came by the house several times in the middle of the night, appearing to be intoxicated, yelling and demanding to see his daughter. (R. p. 30, line 9 – p. 32, line 17). The victim would not allow him inside. (R. p. 32, lines 2-3). On April 3, 2005, Appellant was able to get inside the house because the victim's friend left the glass outer door unlocked, and Appellant refused to leave and then physically and sexually assaulted the victim. (See R. p. 67-97). Their daughter, around age three at the time, was in the bedroom with the door open at the time. (R. p. 83, lines 3-17). Appellant was arrested two days later at his apartment. (See R. p. 2-4).

During the course of the investigation of this incident, Appellant made two statements to police, both of which were introduced at trial after Jackson v. Denno hearings were held. (R. p. 48, lines 9-22). In the first, an oral statement, he spontaneously stated to arresting officers that he choked the victim, but claimed the sex

was consensual.¹ (R. p. 4, lines 15-16) In the second, a written statement, Appellant acknowledged that he went to the victim's house on the date in question, and stated that he walked inside when she opened the wooden door. (R. p. 246, lines 11-18). He said that once he was inside, he got upset and a verbal altercation ensued, and then he grabbed her in the kitchen and pulled her hair.² (R. p. 246, lines 22-25). He also pushed her against the refrigerator and had his hand around the victim's neck, but "never applied any pressure;" he then "let her go." (R. p. 247, lines 5-8). The statement also indicated that shortly thereafter, in the living room, he and the victim "made love" and then went to the bedroom to go to sleep. (R. p. 247, lines 9-12). He admitted that the victim did ask him to leave when he first grabbed her, (R. p. 247, lines 18-19), but stated that he never forced his way into the house. (R. p. 247, lines 23-24).

Finally, a third statement was admitted against the Appellant at trial, this one made by Appellant to the victim on the night of the assault. The victim testified that that during the assault, the Appellant "taunted" her with his cell phone, telling her to go ahead and call the cops, because he would just get a slap on the hand like he did last time and have to go to those "bullshit classes." (R. p. 80, lines 3-9). He also threatened that if he did go to jail, he would "come back and finish the job." (R. p. 80, lines 9-10). On the day of the incident, when police first interviewed her, the victim informed law enforcement about these threats. (R. p. 34, line 11 – p. 35, line 3). The threats were memorialized in a written statement given to police by the victim on that same day. (R. p. 34, lines 11-18).

¹ In the pre-trial hearing, Appellant denied that he told police he choked her (R. p. 5, lines 7-10)

² Clumps of hair were found in the kitchen and were later introduced at trial. (R. p. 165, lines 11-22).

Pre-Trial Hearing on Admissibility

After the solicitor indicated that the State sought to introduce testimony regarding prior instances of violence by Appellant against the victim, the court held a pre-trial hearing on the issue. (See R. p. 6). The State's position was that the prior instances of violence were part of the *res gestae* because they all led up to the incident in question and explained why the victim acted and reacted in certain ways. (R. p. 7, line 8 – p. 9, line 14). The solicitor contended that the evidence was probative on the issue of Appellant's entering the dwelling without consent and probative to explain why the victim submitted to the sexual assault rather than physically fighting back. (R. p. 10, lines 7-15). The trial court ruled that evidence of the prior incidents would not be admissible, since such evidence held little relevance to the crimes at issue and the prior incidents were too remote to form part of the *res gestae*. (R. p. 21, line 23 – p. 23, line 11). The court stated that the victim could not testify that the Appellant had "beat her up in the past." (R. p. 38, lines 6-9). The court did note that the prior incidents could become relevant under Rule 404(b), SCRCF. (R. p. 23, lines 1-3).

However, the court found that the actual statement made by Appellant to the victim during the course of the crime was not "prior bad act" evidence, nor was it *res gestae* evidence. (R. p. 23, line 12 – p. 24, line 6). The court also noted that it was not immediately apparent from Appellant's statement that any reference to a prior conviction was being made. (R. p. 24, lines 10-12). The defense initially objected on the ground that it was "bringing in a prior record." (R. p. 25, lines 3-5; p. 26, lines 11-13). The State argued that the statement was relevant to why the victim did not fight back, because the statement essentially taunted the victim that since Appellant was not "locked up" last

time, he would not be locked up for whatever he did this time. (R. p. 25, lines 10-19). Appellant's counsel then indicated that Appellant would not object if the part "just like last time" were removed. (R. p. 27, line 23 – p. 28, line 8; p. 46, lines 9-11).

The trial court found that the statement "just like last time, I'm going to get a slap on the wrist and have to take those B.S. classes" had a high probative value, particularly as to the issue of the victim's consent to the acts constituting the kidnapping, criminal sexual conduct, and the burglary, because of its "spiteful, vengeful component." (R. p. 47, lines 10 - p. 48, line 8). The court found that to the extent that it included a reference to character evidence under Rule 404, SCRE, the statement would be admissible as an indication of "intent and motive" under Rule 404(b). (R. p. 47, lines 13-16). However, the court ruled that the victim would not be permitted to testify about what the Appellant meant by the phrase "just like last time," and noted that "it could mean anything." (R. p. 46, lines 13-19). The court conceded that it probably would indicate some type of previous legal difficulty between the two of them, but noted that it was Appellant who included that particular language in his threat. (R. p. 46, lines 17-25). The court stated that it would be for the jurors to determine the victim's credibility and whether they believed that the defendant made the statement to her. (R. p. 47, lines 2-3). Regarding Rule 403, SCRE, the court found that the potential for unfair prejudice did not outweigh the probative value, particularly where any reference to a prior crime was unclear. (R. p. 47, lines 18-21).

Accordingly, the victim testified before the jury that Appellant "taunted [her] with his cell phone and he pulled out his cell phone and kind of, you know, does like this like "Here. You want to call the cops? Then you go ahead and call the cops. You know, I'll

just get a slap on the hand like I did last time and have to go to, you know, bullshit classes, and, you know, if I do go to jail, I will come back and finish the job ” (R. p. 80, lines 4-10). The solicitor then referred to the statement later in closing, following her argument that the defendant was trying to “backtrack” in his statement to police and trying to “soften it up.” (R. p. 285, lines 16 – p. 286, line 5). The defense objected to the solicitor’s use of the statement in that context, contending in a bench conference that it was an improper use of his prior record. (R. p. 286, line 6 – 14). The court cautioned the solicitor not to extend it any further, and Appellant’s counsel indicated that satisfied her objection, and that she did not want the court to call further attention to it at that point. (R. p. 286, line 16-25; see p. 290, lines 8-20). When defense counsel later attempted to raise the “prior record” issue in post-trial motions, the court noted that the time for the issue to be addressed was immediately after the comment was made, and that the court was probably without power to address it in a motion for a new trial. (R. p. 289, line 18 – p. 291, line 2).

The trial court properly admitted a threatening statement, not specifically referencing any prior conviction, made by Appellant to the victim on the night of the incident.

First, as the trial court noted, the statement made by Appellant did not specifically refer to any prior crime or conviction. Second, it was not used for purposes of impeachment of Appellant. Instead, it was used, as a party admission, to show: (1) the Appellant’s criminal intent to force or coerce the victim to submit to his assaults; (2) that the victim had indicated to Appellant that she did not want him there; (3) that he had committed a physical assault upon her that he could “finish” later; and (4) that because

nothing really happened to him "last time" he had motive to do it again without worrying about any consequences. Therefore, the reasoning set forth in the cases to which Appellant cites are not directly applicable. State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000), dealt with the admissibility of remote convictions for purposes of impeachment under Rule 609(b), SCRE. State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006), dealt with admissibility, also under Rule 609(b), of similar past crimes to impeach. In this case, Rule 609 is not implicated because the defendant did not testify, and the statement was not introduced for the purposes of attacking his credibility.

Furthermore, assuming that the Appellant's own statement, vaguely referencing a prior incident between himself and the victim, rises to the level of "evidence of a prior bad act," the trial court's admission of Appellant's statement under Rule 404(b), SCRE, is supported by the evidence. On appeal, the Court will not disturb the trial judge's ruling if there is "any evidence" to support the admission of bad act evidence. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001); State v. King, 349 S.C. 142, 155, 561 S.E.2d 640, 646 (2002). Here, the trial court, in fact, specifically did *not* permit the victim to testify about the underlying event that occurred "last time," even though it may have been admissible under cases such as State v. Sweat, 362 S.C. 117, 126, 606 S.E.2d 508, 513 (Ct. App. 2004) (admission of evidence of prior episode of criminal domestic violence under Rule 404(b) not error where it illustrated the defendant's intent to maliciously inflict harm).

The trial court here only permitted into evidence the statement that Appellant himself made, which was reported by the victim to law enforcement on the same day as the incident, and which was specifically reflected in her own written statement. The

statement as a whole was relevant to Appellant's intent, as discussed above, and the reference he made to the prior incident was only a small part of it. The vague reference, "just like last time" was no more harmful to the Appellant's case than previous testimony that the victim was "moving to a place where [Appellant] wouldn't be able to find [her]." (See R. p. 57, lines 1-2). More importantly, the trial court properly weighed the statement's probative value against the potential for unfair prejudice, and found that the statement had a high probative value that was not outweighed by unfair prejudice. (See R. p. 47, line 18 – p. 48, line 8).

Once the statement was admitted in evidence, the solicitor had the right to discuss it in her closing argument. A solicitor may properly state his or her version of the testimony and comment on the weight it should be given. Smith v. State, 375 S.C. 507, 522-23 654 S.E.2d 523, 531-32 (2007). Although the defense objected, on the grounds of "improper use of his prior record," the court's admonition to the solicitor not to extend that particular argument any further satisfied the objection and a curative instruction was not requested. Accordingly, since the court did not have the opportunity to remedy any possible error at that time, the issue regarding the solicitor's closing is not preserved for appellate review. See, e.g., State v. Patterson, 324 S.C. 5, 18, 482 S.E.2d 760, 766 (1997) (issue not preserved where judge ruled in appellant's favor and appellant failed to move to strike or request a curative instruction).

The Respondent would also submit that similar testimony, including "vague references" to possible past criminal conduct, has been upheld in the past. In State v. Robinson, admission of a witness's testimony that the appellant told him he was on his way to the probation office was not reversible error where the State never attempted to

prove that appellant committed some other crime. State v. Robinson, 238 S.C. 140, 119 S.E.2d 671, 676 (1961). In State v. Singleton, an officer's testimony that he told the appellant that he was under arrest for "escape," and asked him where the "correctional truck" was, did not warrant a mistrial as a reference to appellant's prior crimes because these references were "extremely vague." State v. Singleton, 284 S.C. 388, 392, 326 S.E.2d 153, 156 (1985). Finally, in State v. Council, a crime scene processor's testimony that he retrieved the appellant's fingerprint card from SLED did not warrant a mistrial based upon the "implication" that appellant had a prior criminal record. State v. Council, 335 S.C. 1, 12-13, 515 S.E.2d 508, 513-14 (1999). The Court also noted in Council that the State never attempted to introduce the defendant's prior criminal record. Id. at 13, 515 S.E.2d at 514.

Based on the foregoing, the Respondent submits that the trial court committed no error in the admission of the Appellant's threatening statement to the victim. Furthermore, any possible error in the admission of the statement must be deemed harmless. Considering all the evidence in the record, including Appellant's two admissions to law enforcement, there was no reasonable probability that the jury's verdict, which included an acquittal on the burglary charge and a "guilty" on two lesser-included offenses, was influenced by the challenged evidence. See State v. White, 372 S.C. 364, 374, 642 S.E.2d 607, 611 (Ct. App. 2007).

CONCLUSION

Respondent respectfully submits that Appellant's convictions and sentences should be affirmed.

Respectfully submitted,

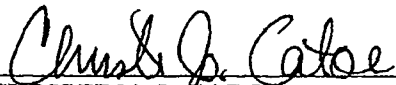
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ATTORNEYS FOR RESPONDENT

July 3, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable John C. Few, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

BOBBY SHEY RATHBURN,

APPELLANT.

CERTIFICATE OF COUNSEL

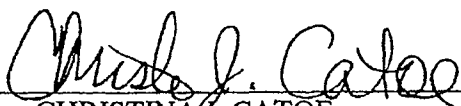
The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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ATTORNEYS FOR RESPONDENT

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Appeal from Richland County
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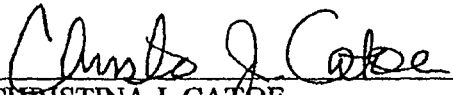
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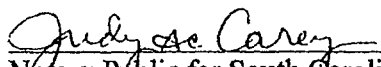
AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **Wanda H. Carter, Esquire**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this 3rd day of July, 2008.


CHRISTINA J. CATOE
Assistant Attorney General

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SWORN to before me this 3rd day of July, 2008.


Notary Public for South Carolina.
My Commission Expires: 5-11-2014

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.,

Bobby Shey Rathburn,

Appellant.

Appeal from Richland County
John C. Few, Circuit Court Judge

Unpublished Opinion No. 2009-UP-386
Submitted June 1, 2009 – Filed July 8, 2009

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,

Assistant Attorney General Christina J. Catoe, and Solicitor Warren Blair Giese, all of Columbia, for Respondent.

PER CURIAM: Bobby Shey Rathburn appeals his convictions for criminal sexual conduct in the second degree, kidnapping, and criminal domestic violence. He argues the trial court erred by admitting evidence of a prior conviction. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: Rule 404(b), SCRE (providing evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith; however, such evidence may be admissible "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent") (emphasis added); State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001) ("The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion."); State v. Beck, 342 S.C. 129, 135, 536 S.E.2d 679, 682-83 (2000) (holding the evidence of other crimes "must logically relate to the crime with which the defendant has been charged").

AFFIRMED.¹

HEARN, C.J., and THOMAS and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 24, 2009

REMITTITUR

The Honorable Jeanette W. McBride
1701 Main Street, Room 205
PO Box 2766
Columbia, SC 29202

Re: The State v. Rathburn, Bobby Shey
2005-GS-40-02998 2005-GS-40-023000

Dear Mrs. McBride:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

A handwritten signature in cursive script that reads "Jeanette F. Barber".

Jeanette F. Barber
Clerk of Court

JFB/lf

cc Wanda H. Carter, Deputy Chief Appellate Defender
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Christina J. Catoe
Warren Blair Giese, Esquire