

**VOLUME TWO OF TWO**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

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

---

**RECEIVED**

SEP 19 2012

BOBBY SHEY RATHBURN,

**S.C. Supreme Court**  
PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2011-199414

---

APPENDIX

---

DAVID ALEXANDER  
Appellate Defender

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

ATTORNEY FOR PETITIONER

**VOLUME TWO**  
**PAGES 501-665**

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

ROBERT D. CORNEY  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX..... i

TRIAL TRANSCRIPT ..... 1

FINAL BRIEF OF APPELLANT .. 471

FINAL BRIEF OF RESPONDENT..... 482

OPINION NO. 2009-UP-286, FILED JULY 8, 2009 ..... 498

REMITTITUR ..... 500

APPLICATION FOR POST-CONVICTION RELIEF..... 501

RETURN ..... 507

POST-CONVICTION RELIEF HEARING TRANSCRIPT . 513

PLAINTIFF’S EXHIBIT 1, DISCOVERY CHECKLIST ..... 567

ORDER OF DISMISSAL ..... 568

INDICTMENTS ..... 581

SENTENCING SHEETS ... 589

STATE’S EXHIBIT 4, PHOTOGRAPH .. 592

STATE’S EXHIBIT 5, PHOTOGRAPH . 593

STATE’S EXHIBIT 6, PHOTOGRAPH..... 594

STATE’S EXHIBIT 7, PHOTOGRAPH ..... 595

STATE’S EXHIBIT 8, PHOTOGRAPH. . . 596

STATE’S EXHIBIT 9, PHOTOGRAPH..... 597

STATE’S EXHIBIT 10, PHOTOGRAPH..... 599

STATE’S EXHIBIT 12, PHOTOGRAPH.....600

STATE’S EXHIBIT 13, PHOTOGRAPH. ....601

STATE’S EXHIBIT 14, PHOTOGRAPH.....602

STATE’S EXHIBIT 15, PHOTOGRAPH.....603

STATE’S EXHIBIT 16, PHOTOGRAPH. ....604

STATE’S EXHIBIT 17, PHOTOGRAPH.....605

STATE’S EXHIBIT 18, PHOTOGRAPH.....606

STATE’S EXHIBIT 19, PHOTOGRAPH....607

STATE’S EXHIBIT 20, PHOTOGRAPH.....608

STATE’S EXHIBIT 21, PHOTOGRAPH.....609

STATE’S EXHIBIT 22, PHOTOGRAPH ....610

STATE’S EXHIBIT 23, PHOTOGRAPH.....611

STATE’S EXHIBIT 24, PHOTOGRAPH....612

STATE’S EXHIBIT 25, PHOTOGRAPH.....613

STATE’S EXHIBIT 26, PHOTOGRAPH.....614

STATE’S EXHIBIT 27, PHOTOGRAPH.....615

STATE’S EXHIBIT 28, PHOTOGRAPH. ....616

STATE’S EXHIBIT 29, PHOTOGRAPH ...617

STATE’S EXHIBIT 30, PHOTOGRAPH.....618

STATE’S EXHIBIT 31, PHOTOGRAPH.....619

STATE’S EXHIBIT 32, PHOTOGRAPH.....620

STATE’S EXHIBIT 40, FOREST ACRES POLICE DEPARTMENT INTERROGATION·  
ADVICE OF RIGHTS .....621

STATE’S EXHIBIT 41, FOREST ACRES POLICE DEPARTMENT INTERROGATION.  
ADVICE OF RIGHTS .....622

STATE’S EXHIBIT 42, STATEMENT..... ..623

STATE’S EXHIBIT 43, PHOTOGRAPH... ..624

STATE’S EXHIBIT 44, PHOTOGRAPH..... ..625

STATE’S EXHIBIT 45, PHOTOGRAPH..... ..626

STATE’S EXHIBIT 46, PHOTOGRAPH..... ..627

STATE’S EXHIBIT 47, PHOTOGRAPH... ..628

STATE’S EXHIBIT 48, PHOTOGRAPH. ....629

STATE’S EXHIBIT 49, PHOTOGRAPH..... ..630

STATE’S EXHIBIT 50, PHOTOGRAPH..... ..631

STATE’S EXHIBIT 51, PHOTOGRAPH.....632

STATE’S EXHIBIT 52, PHOTOGRAPH..... ..633

STATE’S EXHIBIT 53, PHOTOGRAPH... ..634

STATE’S EXHIBIT 54, PHOTOGRAPHS . ....635

COURT’S EXHIBIT 1, JUROR NOTE..... ..636

COURT’S EXHIBIT 2, JURY CHARGE..... ..637

COURT’S EXHIBIT 3, JUROR NOTE..... ..661

COURT’S EXHIBIT 4, JUROR NOTE..... ..662

COURT’S EXHIBIT 5, JUROR NOTE. . . . .663

COURT’S EXHIBIT 6, JUROR NOTE.. .....664

COURT’S EXHIBIT 7, EVALUATION PAGE . . . . .665

2009CP40262 <sup>501</sup>

STATE OF SOUTH CAROLINA )

In the Court of Common Pleas

County of Richland )

Bobby Shey Rathburn 32081 )

Full name and prison number, if any, of applicant )

v. )

State of South Carolina )

Name of Respondent )

APPLICATION FOR

POST-CONVICTION RELIEF

2009 AUG - 7 AM 10:35  
JEANETTE W. McBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legible, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention McCormick Correctional Institute

2. Name and location of Court which imposed sentence Richland County Courthouse  
1701 Main St Columbia SC 29201

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) ~~I-290684~~ Domestic Violence 05-2997

(b) I-290687 - Kidnapping 05-~~2997~~

(c) I-290685 - CSC 2<sup>nd</sup> Degree 05-2998

4. The date upon which sentence was imposed and the terms of the sentence:

(a) 4/4/07 Two 14 year sentences run concurrent

(b) \_\_\_\_\_

(c) \_\_\_\_\_

5. Check whether a finding of guilty was made

- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty  \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

6. Did you appeal from the judgment of conviction or the imposition of sentence? yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. The State of South Carolina Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

- i. Affirmed - relief denied
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. June 1st 2009
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Opinion Number 2009-UP-386 1 June 2009
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) \_\_\_\_\_
- (b) N/A
- (c) \_\_\_\_\_

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Deficient performance and representation by Counsel
- (b) Brady-Rule 5 violation / state withheld evidence
- (c) TRIAL COURT ERROR

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) Court Appointed Attorneys failed to "assist the defendant", and did not agree or consult the defendant on critical issues of defense.
- (b) The state withheld vital exculpatory evidence and did not reveal its existence until the day of sentencing
- (c) The Court failed to grant a motion for a new trial when evidence of the Brady violation was made known to the judge

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

NO

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify.

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) \_\_\_\_\_
- (b) N/A
- (c) \_\_\_\_\_

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? no
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?  
yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? no

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Stacey Owens 1701 Main St Columbia SC 29201
- ii. Wanda Carter 1330 Lady St Suite 401 Columbia SC 29201
- iii. Danielle Payne 1701 Main St Columbia SC 29201

(b) the proceedings at which each such attorney represented you:

- i. Stacey Owens - trial, sentencing
- ii. Wanda Carter - Direct Appeal
- iii. \_\_\_\_\_

18. State clearly the relief you seek in filing this application.

Avacated Sentence and A PCR Evidentiary hearing  
under SCRPC 43 (A)(E)

19. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA )  
COUNTY OF Richland ) VERIFICATION

I, Bobby Shey Rathburn, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Bobby Shey Rathburn  
Bobby Shey Rath

Sworn to and subscribed before me  
This 03 day of August, 2009

Jimmie C Franklin, S.  
Notary Public for South Carolina  
My Commission Expires 01-31-2010

RICHLAND COUNTY  
FILED  
2009 AUG - 7 AM 10:36  
JEANETTE W. HOBBS  
C.C.P. & G.S.

**APPLICATION TO PROCEED WITHOUT PREPAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Bobby Shey Rathburn, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Bobby Shey Rathburn  
Applicant  
Bobby Shey Rath

Sworn to and subscribed before me  
This 03 day of August, 2009

Jimmie C Franklin  
Notary Public for South Carolina  
My Commission Expires: 01-31-2010

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND )

2009-CP-400-5622

RATHBURN Bobby S , )  
#321081 )

Applicant, )

v. )

RETURN

State of South Carolina, )

Respondent.)

JEANE L. W. McBRIDE  
C.C.P. & G.S.  
2010 MAY 21 AM 8:49

The Respondent, making its Return to the Application for Post-Conviction Relief filed August 7 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by Danielle Payne, Esquire. The Applicant was convicted following a jury trial on on April 4 2007, with the Honorable John C. Few. The Applicant was indicted for and/or convicted of: Criminal Domestic Violence High and Aggravated Nature and Criminal Sexual Conduct 1st Degree and Kidnapping - 2005-GS-40-2997;98;3000. According to the South Carolina Department of Corrections (SCDC), the Applicant is serving a 14 year sentence for "Kidnapping "

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the

Applicant's records from the Department of Corrections, the Applicant's trial transcript, and [if applicable] the Applicant's appellate records.

## II.

The Applicant interprets each of the Applicant's allegations as a claim of ineffective assistance of counsel.

## III

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674 The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

## IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

## V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

## VI.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.


The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Charlie Jay Johnson, Jr., Esquire regarding when the hearing should be set.<sup>1</sup>

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

BRIAN T. PETRANO  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737  
[bpetrano@scag.gov](mailto:bpetrano@scag.gov)

May 10, 2010

---

<sup>1</sup> See. [http //www scattorneygeneral.com/inside/pcr.html](http://www.scattorneygeneral.com/inside/pcr.html) for current and archived PCR rosters.



STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF RICHLAND ) 2009-CP-40-05622

Bobby Shey Rathburn, )  
 )  
 Plaintiff/Applicant, )  
 )  
 vs. ) TRANSCRIPT OF RECORD  
 )  
 The State of South Carolina, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

October 18, 2010  
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

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

MARK E. SCHNEE, ESQUIRE  
Attorney for Plaintiff/Applicant

BRIAN T. PETRANO, ESQUIRE  
Attorney for the State

Crystal Holmes  
Official Court Reporter

E X H I B I T S

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
2				
3	A-1	Discovery Checklist		11
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				



1 THE COURT: You mean Judge Few only gave the  
2 Defendant 14 years?

3 MR. PETRANO: Believe it or not.

4 THE COURT: Okay, Mr. Petrano, you may  
5 proceed, sir.

6 MR. PETRANO: Your Honor, thank you. This is  
7 2009-CP-40-05622. This is a Richland County P-C-R. It  
8 was filed on August 7th, 2009.

9 This was a jury trial, as Your Honor said, by  
10 Judge Few on April 4th, 2007. He was represented by the  
11 PD's office, Ms. Stacey Owings. She is here and  
12 present.

13 The Applicant had been indicted by the June  
14 2005 term of the Richland County Grand Jury. Four  
15 charges in total, 2005-GS-40-02997 was a C-D-V-H-A-N and  
16 he was acquitted of that and found guilty of the lesser  
17 offense of criminal domestic violence, just a plain C-D-  
18 V, got 30 days for that. 2005-GS-40-02998, was indicted  
19 as a criminal sexual conduct in the first degree but was  
20 in fact found guilty instead of second degree sexual  
21 conduct. 2999 was a first degree burglary, he was  
22 acquitted of that and 3000 is a kidnapping. He received  
23 14 years for the C-S-C second and the kidnapping, and  
24 like I said, 30 days for the C-D-V-H-A-N.

25 There was a direct appeal, that was affirmed,

1 2009-UP-386. That was on July 24th, 2009.

2 On that, I will turn it over to Mr. Mark  
3 Schnee, the Applicant's current counsel of record.

4 Thank you, Judge.

5 THE COURT: All right.

6 MR. SCHNEE: May it please the Court. I call  
7 Bobby Rathburn to the stand.

8 THE COURT: Come around, Mr. Rathburn.

9 (BOBBY SHEY RATHBURN, Applicant, having first  
10 been duly sworn, testified as follows:)

11 THE COURT: All right, please take a seat,  
12 sir. Tell me your full name and spell your last name  
13 for the record.

14 THE WITNESS: Bobby Shey Rathburn, R-a-t-h-b-  
15 u-r-n.

16 (Pause.)

17 MR. SCHNEE: Judge, there...

18 MR. PETRANO: Judge, it's my fault. If you'll  
19 notice in your packet, originally I had mistakenly made  
20 copies of the record on appeal. Sometimes the entire  
21 transcript is not in the record on appeal. We did  
22 correct that later. Opposing counsel does have the  
23 actual transcript. I have one that I'm working from and  
24 there -- there's only some portions missing. We can  
25 take it as it goes if Your Honor needs to read those

1 pages here today and I will of course supplement the  
2 record. But the transcript itself, which is the record  
3 on appeal, just a couple of things are missing.

4 THE COURT: Is that right, Mr. Schnee?

5 MR. SCHNEE: Yes, Your Honor, I just want to  
6 check briefly ---

7 THE COURT: Take your time.

8 MR. SCHNEE: --- because I think the main part  
9 of the transcript that I need to go through I might  
10 have.

11 THE COURT: All right. Do you have my copy?

12 MR. SCHNEE: I have a couple of lists of pages  
13 ---

14 THE COURT: Okay, I might have what you need  
15 here.

16 MR. SCHNEE: Right ---

17 MR. PETRANO: I apologize for the confusion.

18 THE COURT: Oh, no, no, no.

19 MR. PETRANO: I just try to keep the records  
20 consistent all the way up so the page numbers stay the  
21 same.

22 MR. SCHNEE: I believe ---

23 (Pause.)

24 THE COURT: All right, all right.

25 MR. SCHNEE: Do you have pages 284 through

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

7

1 327?

2 THE COURT: 284 to 327?

3 MR. SCHNEE: Yes, sir.

4 THE COURT: No. No, I don't.

5 MR. PETRANO: You should have those. I'll  
6 hand you mine.

7 MR. SCHNEE: It should be the entire testimony  
8 of ---

9 THE COURT: What we have goes up to 297 --  
10 298, I'm sorry. Is there a supplemental?

11 MR. PETRANO: You can take this one. Take  
12 this one, Judge, I'm sorry about that.

13 THE COURT: What pages, Mr. Schnee?

14 MR. SCHNEE: 284 through 327.

15 THE COURT: Okay. What happened to Danielle  
16 Payne, Ms. Owings, do you know?

17 MS. OWINGS: Yeah, she -- I think she is with  
18 an insurance defense firm in Forest Acres.

19 THE COURT: Okay.

20 MS. OWINGS: She's still around.

21 THE COURT: All right. We're all ready then?

22 MR. SCHNEE: Yes, sir.

23 THE COURT: All right. Go ahead, Mr. Schnee.

24 DIRECT EXAMINATION

25 BY MR. SCHNEE:

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

8

1 Q Good afternoon, sir. First I want to address one  
2 of the issues that happened during sentencing,  
3 which I hope the Judge has.

4 THE COURT: What page, Mr. Schnee?

5 (Pause.)

6 MR. PETRANO: 461.

7 MR. SCHNEE: 461.

8 THE COURT: Page 461?

9 MR. SCHNEE: Yes.

10 THE COURT: Well, of course, I don't have that  
11 either.

12 MR. PETRANO: I apologize, we'll supplement  
13 that.

14 THE COURT: All right. Go ahead, Mr. Schnee.

15 MR. SCHNEE: Okay.

16 THE COURT: I can listen.

17 MR. SCHNEE: Okay. Just very briefly.

18 THE COURT: Maybe not very well.

19 MR. SCHNEE: Very briefly regarding that  
20 sentencing phase of this.

21 THE COURT: Okay.

22 MR. SCHNEE: There was an interview with the  
23 child witness. The victim is my client's girlfriend,  
24 fiancé, whatever. There was a child in the house and  
25 apparently that child was sent to the ARC for a forensic

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

9

1 interview to see what she saw, if anything.

2 THE COURT: Okay. And how old was the child  
3 at the time?

4 MR. SCHNEE: I believe three years old?

5 THE APPLICANT: Yes, sir.

6 THE COURT: A three year old witness?

7 MR. SCHNEE: Yes.

8 THE COURT: All right, go ahead.

9 DIRECT EXAMINATION CONTINUES

10 BY MR. SCHNEE:

11 Q Based on what we just discussed, Mr. Rathburn ---

12 A Uh-huh.

13 Q The ARC interview, were you ever aware there was an  
14 ARC interview prior to the sentencing hearing?

15 A No, sir.

16 Q I believe your attorney discussed that they had  
17 never received one and the Solicitor, Ms. Fent, on  
18 page 461 said half way through, if you want to see  
19 it, Your Honor.

20 THE COURT: Sure.

21 Q Explaining ---

22 THE COURT: Line 10?

23 MR. SCHNEE: Yes.

24 Q Explained that it was provided in the discovery.  
25 Is that your recollection?

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

10

1 A Yes, sir.

2 Q I believe also the Solicitor mentioned that it  
3 might not have been provided to your current trial  
4 attorney but had originally to your first attorney?

5 A Yes, sir.

6 Q Okay.

7 MR. SCHNEE: If I may approach ---

8 THE COURT: All right, slow down. Was that  
9 Danielle Payne ---

10 MR. SCHNEE: It was Deborah Ahrens -- Deborah  
11 Ahrens.

12 THE COURT: Okay. Yeah, go ahead. I remember  
13 Ms. Ahrens.

14 Q Have you seen that document before?

15 A Yes.

16 Q Okay. And what exactly is that?

17 A A discovery checklist. I found this in my copies  
18 of my motion for discovery.

19 Q Okay. And at the bottom, who is the receiving  
20 attorney?

21 A Deborah Ahrens.

22 Q And is there a stamp next to that who physically  
23 received it?

24 A Yes, sir.

25 Q What's the date on that?

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

11

1 A May 13th, 2005.

2 Q Okay. Was that shortly after you were arrested?

3 A Yes, I was -- yes, April 5th, yes.

4 Q Okay. And does that stamp have a signature copied  
5 with it?

6 A Yes, sir.

7 Q Can you read that?

8 A It looks like Patricia Davies or Davis.

9 Q Davis, okay.

10 MR. SCHNEE: Just for the record, that is the

11 ---

12 THE COURT: Receiving party at the PD's  
13 office?

14 MR. SCHNEE: It's the receptionist on the  
15 first floor. I would ask that ---

16 THE COURT: At the Public Defender's office?

17 MR. SCHNEE: Yes, sir.

18 THE COURT: Okay.

19 MR. SCHNEE: I would ask this be made an  
20 exhibit of the Court.

21 THE COURT: All right, any objection.

22 MR. PETRANO: None.

23 THE COURT: All right.

24 (Whereupon, Applicant's Exhibit Number 1,

25 Discovery Checklist, was admitted into

1 evidence.)

2 Q And here's an extra copy for you.

3 A Thank you,

4 Q Now, on that list, did it mention anything about  
5 the ARC interview?

6 A No, sir.

7 Q Okay. Did it list a number of warrants on there?

8 A Yes, sir.

9 Q Okay. And an incident report, investigative notes,  
10 booking report, a couple of statements, advice of  
11 rights, chains of custody and a forensic nurse  
12 exam, the SANE nurse, and a few other minor things,  
13 right?

14 A Yes, sir.

15 Q Okay. But the ARC interview is not listed on  
16 there?

17 A No, sir.

18 Q Now, at the time of your sentencing, when this was  
19 first brought up, your attorney objected to it?

20 A Yes, she did.

21 Q Okay. And is it your recollection that your  
22 attorney had never heard or received this ARC  
23 interview?

24 A Not by the way she reacted, she had never seen it.

25 Q Okay. And I believe she asked for a new trial

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

13

1 based on that?

2 A Right there on the spot.

3 Q Okay and that was denied by the Judge?

4 A Denied, yes, sir.

5 Q Okay. Now, to your recollection, did the Judge  
6 read that ARC interview prior to hearing this  
7 issue?

8 A I ---

9 Q Handed up to him?

10 A Yes, he did read it. Yes, before sentencing, yes.

11 Q And to this day have you ever been provided a copy  
12 of that?

13 A No, sir.

14 Q Have any of your attorneys, to your knowledge, been  
15 provided a copy of that?

16 A No, sir.

17 Q Okay. Now -- and do you even know what the ARC is?

18 A After -- afterword I found out and I guess it's  
19 like a therapist or something maybe for a child?

20 Q Okay.

21 A I'm not sure, that's just what I've heard. I'm not  
22 sure what it is.

23 Q Are you aware that they videotape there?

24 A I was not aware of that.

25 Q Okay. Okay, I would like to turn your attention to

1 the transcript, I think it's 284, specifically  
2 dealing with the same nurse -- I'm sorry, let me  
3 backup. The original charges were burglary first  
4 degree, kidnapping, criminal sexual conduct in the  
5 first degree, criminal -- criminal sexual conduct  
6 in the first and criminal domestic violence high  
7 and aggravated nature.

8 A Yes, sir.

9 Q Okay. Now, the only person that testified as an  
10 eyewitness against you was the alleged victim?

11 A Sure, yes, sir.

12 Q And the jury found you not guilty of burglary  
13 first?

14 A Yes, sir.

15 Q Didn't find you guilty of the lesser included?

16 A No, sir.

17 Q So just for the burglary, the jury obviously did  
18 not believe her testimony?

19 A Yes, sir.

20 Q That would be the assumption?

21 A Yes, sir.

22 THE COURT: I believe beyond a reasonable  
23 doubt they didn't find him guilty of burglary first  
24 degree. I assume this is an abode that they both  
25 shared together prior to this incident?

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

15

1 MR. SCHNEE: Quite a few weeks before  
2 according to the transcript, my client moved out.

3 THE COURT: Okay, that makes sense.

4 MR. SCHNEE: And there were -- there were  
5 still some issues dealing with the child and visitation.

6 THE COURT: Okay.

7 Q Now, for the criminal sexual conduct charge, there  
8 were two witnesses against, is that right?

9 A (There was no response.)

10 Q There was the victim?

11 A Yes.

12 Q Then there was the nurse?

13 A Oh, okay, the nurse, yes, sir.

14 Q So there's one eyewitness and then one -- the  
15 nurse?

16 A Yes, sir.

17 Q Okay. Now, do you remember the nurse testifying?

18 A Most of it, yes.

19 Q Okay. Do you remember the nurse describing how she  
20 collected evidence?

21 A Most of it, yeah, some of it.

22 Q Okay. I'd like to start -- actually, let's just  
23 start with this. I turn your attention to page  
24 284, this is where the nurse is first called to  
25 testify?

1 A Yes, sir.

2 Q Okay. Now, was -- was the nurse ever qualified as  
3 an expert, to your recollection?

4 A I can't remember. I want to say she was, but I  
5 can't remember.

6 Q Okay.

7 A I believe later on they did -- they did qualify  
8 her.

9 Q Okay, later on?

10 A Yeah.

11 (Pause.)

12 Q Okay. I'd like for you take a look at page 310,  
13 starting near the middle of it, I believe that's  
14 where the Judge says that the nurse if an -- is an  
15 expert witness.

16 A Yes, sir.

17 Q Okay.

18 A Line 16.

19 Q Line 16 and 17?

20 A Yes, sir.

21 Q Okay. All right. And I believe the reason that  
22 the Solicitor, directly before that, wanted this  
23 person admitted as an expert is to determine if the  
24 wounds are consistent with rape?

25 A Yes, sir.

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

17

1 Q And that's what you remember from the trial, isn't  
2 it?

3 A Yes, sir.

4 (Pause.)

5 MR. SCHNEE: I Apologize, Judge.

6 THE COURT: That's all right, you're  
7 making me nervous. What are you thinking?

8 MR. SCHNEE: I just mixed up my pages.

9 THE COURT: Can I help you?

10 MR. SCHNEE: No, I just mixed up my pages.

11 THE COURT: That's all right, Mr. Schnee. You  
12 know, take your time.

13 MR. SCHNEE: Yes, sir.

14 All right. I'd like to go over page 286, this  
15 is still near the beginning of the testimony.

16 THE COURT: Number 286.

17 MR. SCHNEE: Number 286?

18 THE COURT: It goes from 284 to 287. Oh  
19 here's 286 here, I found 286.

20 MR. SCHNEE: Okay.

21 THE COURT: Well, Will found 286. What line?

22 MR. SCHNEE: Right in the middle, line 16 is  
23 an answer but above that ---

24 THE COURT: 16 -- is line 16 the Court, hold  
25 on, hold on, hold on? I'm confused.

1 MR. SCHNEE: No, sir.

2 THE COURT: 286 of this trial is -- it's not  
3 -- it looks like the court is saying, hold on, hold on,  
4 hold on.

5 MR. SCHNEE: Not in my transcript, Your Honor.

6 THE COURT: Take a look or just show me what  
7 you're looking at. That's what 286 -- that's what I  
8 have.

9 MR. SCHNEE: Oh, okay. Judge, I apologize.  
10 The number is for the page number that you're looking at  
11 is the small ones up here.

12 THE COURT: Well, no wonder.

13 MR. SCHNEE: That would explain that.

14 THE COURT: That would explain everything.

15 MR. SCHNEE: Not the big one.

16 MR. PETRANO: Just for the purposes of the  
17 record, so we're on the same page on the appeal, we're  
18 going to be consistently referring to the page numbers  
19 as the actual trial transcript page numbers not the page  
20 numbers, not the Bates numbers from the record on  
21 appeal.

22 THE COURT: Okay. So 286 would be -- 286 will  
23 be 196. I think so, yeah. All right, we're on the same  
24 page now, I believe.

25 MR. SCHNEE: Okay.

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

19

1 THE COURT: And it's page 286 not 196.

2 MR. SCHNEE: 286 which is the direct exam by

3 Ms. Fent.

4 THE COURT: Okay.

5 MR. SCHNEE: All right.

6 Q On line number -- starting on line number 11, Ms.  
7 Fent is asking the nurse to explain to the jury  
8 what unique aspects of concern in terms of an exam  
9 for a victim of sexual assault.

10 A Uh-huh.

11 Q In terms of a standard victim of assault ---

12 A Yes.

13 Q Okay. Now, could you please read the first few --  
14 the first sentence or so, that answer?

15 A Of 16?

16 Q Yeah, I'm on line 16 through 18?

17 A It says, answer is, right. What will happen now is  
18 when a rape victim comes, it's very involved to  
19 take care of one and to do what they call the rape  
20 kit and to collect evidence from the body.

21 Q Okay. Now, from your recollection, is this based  
22 on the assertion that the victim in this case is a  
23 victim of rape?

24 A Yes, sir.

25 Q Okay. So she's -- so the nurse is insinuating that

1 her job is different in this case because of the  
2 allegations?

3 A Yes, sir.

4 Q Okay. Okay, on the following page Ms. Fent starts  
5 asking about ---

6 THE COURT: What line, Mr. Schnee?

7 MR. SCHNEE: 15.

8 THE COURT: 287, line 16, so, you're set up in  
9 treating -- is that the line?

10 MR. SCHNEE: Yes.

11 THE COURT: All right.

12 Q It talks about how the treatment of rape --  
13 allegedly rape victims is different. And then on  
14 line 20, the answer, could you please read through  
15 that?

16 A Read the answer on 20?

17 Q Yes, sir.

18 A Right, many times as rape victims, a lot of the  
19 injuries may not be evident to someone who doesn't  
20 look very fine and closely.

21 Q Okay. And the same thing on the next page -- okay,  
22 goes on on page 288, lines 13 through 16, could you  
23 read that?

24 A Okay. And is that related to how many exams you  
25 require your SANEs, in order to be certified, to

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

21

1 complete? The answer, you're taught more to go by  
2 the history of an assault rather than just what the  
3 box says and the protocol says.

4 Q So the nurse is testifying that you go by what the  
5 victim ---

6 A Yes.

7 Q --- more than anything else?

8 A Yes.

9 Q Okay. Page 289, near the very top on line three,  
10 it asks -- the question is, and you were called to  
11 Richland Hospital to do a sexual assault  
12 examination. The answer was, yes. Line number  
13 six, and who was the victim in that sexual assault?  
14 And then could you read line number 11 where the  
15 answer is?

16 A Number 12 -- 11?

17 Q 11 and 12.

18 A Okay. 11 is, I just want to make sure I'm quoting  
19 everything correctly, it was Tabitha Brazell'  
20 (phonetic).

21 Q Okay. So at this point, the same nurse is  
22 testifying that Tabitha Brazell is the victim of  
23 sexual assault?

24 A Yes, sir.

25 Q And as we discussed, this is not an expert in the

1 field until way into page 310?

2 A Yes, sir.

3 Q Okay. Okay and on page 290, there Ms. Fent is  
4 asking about various types of injuries that would  
5 not be seen by normal examination. And am I  
6 correct in reading that the answer is, it's very  
7 unusual ---

8 THE COURT: What line, Mr. Schnee?

9 MR. SCHNEE: Number 12.

10 THE COURT: All right.

11 Q It's very unusual they do have acute -- acute  
12 injuries, that's what the nurse is answering?

13 A Yes.

14 Q Okay. And once again this is still way before  
15 she's qualified as an expert in anything?

16 A Yes, sir.

17 Q Okay. I would like for you to turn to page 292,  
18 the very top starting on line two, the nurse is  
19 giving a history of what the victim claims. Could  
20 you please read the first few lines of that?

21 A Well, she had gave me the history that he choked  
22 her with both of his hands, so I want to look at  
23 her neck very closely. Keep going?

24 Q Yeah, keep going.

25 A Also making sure she doesn't have any hoarseness,

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

23

1 any airway obstruction. He/she had hit her in the  
2 chest, so we're looking at her chest to make sure  
3 there was no bruising or any internal injuries  
4 there.

5 Q Okay. And then skipping down to line 12, continue  
6 on.

7 A Well, you know, he was pulling her by her hair. So  
8 I'm looking at her hair very closely and looking at  
9 her scalp, any bald areas, any loose hairs that I  
10 might find.

11 Q One more sentence.

12 A He also pulling her by her arms -- he was also  
13 pulling her by her arms.

14 Q Okay and skip down to the question on number 19,  
15 line 19.

16 A Okay. In terms of the sexual assault, what was the  
17 history in terms of what type of sexual assault it  
18 was?

19 Q Keep going.

20 A Okay, he had performed oral sex on her. He also  
21 had penetrated her vaginally and he also had forced  
22 her to perform oral sex on him.

23 Q Okay. Once again, this was before she is qualified  
24 as an expert?

25 A Yes, sir.

1 Q And at any of these points does your attorney  
2 object to hearsay or bolstering or any other  
3 objection?

4 A I don't remember.

5 Q Okay. Is there anything in the transcript that you  
6 saw -- at this point in the trial?

7 A No.

8 Q Okay.

9 A No, sir.

10 (Pause.)

11 MR. SCHNEE: I'm just trying to skip over some  
12 minor things, Your Honor.

13 THE COURT: I ain't going to stop you  
14 Mr. Schnee.

15 Q Okay, on page 296, read the question only at line  
16 19.

17 A Do you need to know if there was any other  
18 witnesses to the incident?

19 Q Okay. Now, the only other potential witness would  
20 have been the daughter.

21 A Yes, sir.

22 Q That you're aware of?

23 A Yes, sir.

24 Q Okay. And what's the answer at line 21?

25 A We always ask that question and it could be

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

25

1           pertinent to the investigation. With her, her  
2           daughter was in the house.

3 Q       And the daughter would be?

4 A       LB

5 Q                    The same daughter that we don't have the  
6           ARC interview for?

7 A       Correct, sir.

8           (Pause.)

9 Q       Okay. Let me go back to page 310 where this  
10       witness has been qualified as an expert, very  
11       briefly.

12                    On lines 19 through 22, this is where the  
13       Judge is instructing the Solicitor on how to phrase  
14       the questions to make sure nothing is improper.  
15       Could you please read that section?

16 A       Do you have an opinion as to such and such and then  
17       you answer that question, yes or no. Don't then  
18       give the opinion. That gives the defense counsel a  
19       chance to make an objection if they have one.

20 Q       Okay. So in other words -- so the Solicitor is  
21       supposed to ask, do you have an opinion about this,  
22       yes or no, and then if there's no objection  
23       continue on with the question?

24 A       Yes, sir.

25 Q       Okay. Going on to page 318, starting with line

1 number eight, could you read that question?

2 A In the training that you have received, are you  
3 able to reach an opinion, yes or no, as to whether  
4 or not, I guess first, whether or not this dye,  
5 what you observed, tells you something about the  
6 sexual contact?

7 Q Okay and a couple of lines down, your attorney  
8 objects to it.

9 A Yes.

10 Q Okay. At that point the Judge dismisses the jury  
11 and it goes to -- goes to an in camera hearing?

12 A Yes -- yes, sir.

13 Q Okay. Okay, if you could page -- on page 320,  
14 after a number of issues there is -- starting on  
15 line 10, the Court asks this witness a question.  
16 Could you please read the question and answer?

17 A Does your -- do your ---

18 THE COURT: 320, what line?

19 MR. SCHNEE: I apologize, line 10.

20 THE COURT: Line 10?

21 MR. SCHNEE: Yes, sir.

22 THE COURT: All right.

23 A Does your -- do your observations regarding this  
24 dye enable you to differentiate between a  
25 consensual sexual act and a forced sexual act?

BOBBY SHEY RATHBURN -- DIRECT BY MR. SCHNEE:

27

1 Q And what's the answer from the witness?

2 A No, it doesn't, sir.

3 Q Okay.

4 (Pause.)

5 A Okay. Now, the Judge essentially just asked the  
6 witness, can the witness differentiate between  
7 forced sexual acts or consensual acts?

8 A Yes, sir.

9 Q And the answer was that...

10 A She could not, yes, sir.

11 Q I would like you to take a look from page 232  
12 through 326, which would be the cross-examination  
13 by your attorney. Is there anywhere in there in  
14 front of the jury that that question was asked,  
15 starting page 323, line 16 through 326, line 12.  
16 Just skim through that and see if you see that  
17 question there.

18 (Pause.)

19 A Right here, she says in front of the jury ---

20 Q Okay. So your attorney asked if there were  
21 injuries?

22 A Yes.

23 Q Does she ever ask if it's consistent with  
24 consensual sex?

25 (Pause.)

1 Q Okay. Do you see that anywhere in there?

2 A No, sir.

3 Q Okay.

4 MR. SCHNEE: You heard the answer?

5 THE COURT: (Affirmative response.)

6 MR. SCHNEE: Okay.

7 (Pause.)

8 Q And is it your belief that this nurse's testimony  
9 contributed substantially to your conviction of  
10 criminal sexual conduct?

11 A Yes, sir.

12 Q Do you think without various opinions that were  
13 offered, that you would have had a much better  
14 chance of being found not guilty of that  
15 charge?

16 A I believe so, sir, yes.

17 MR. SCHNEE: I have no further questions at  
18 this time, Your Honor.

19 THE COURT: Brief timeout, don't go anywhere.

20 (Whereupon, a short recess was held.)

21 THE COURT: Mr. Petrano, you may proceed.

22 CROSS-EXAMINATION

23 BY MR. PETRANO:

24 Q You said you've never seen the ARC interview  
25 transcript?

BOBBY SHEY RATHBURN -- CROSS BY MR. PETRANO:

29

1 A Correct.

2 Q Do you have any idea what's in it?

3 A None at all, sir. It was never shown to me or my  
4 attorneys.

5 Q All right. Well, that's not true now, is it? They  
6 see it when it gets handed to them but you make the  
7 objection when it gets handed to the Judge at the  
8 sentencing, right?

9 A Maybe she did at the time. I've never seen it,  
10 excuse me.

11 Q Okay.

12 THE COURT: Is that a part of this record?

13 MR. PETRANO: Not yet. I don't know if it's  
14 going to be. No, it's not. The references obviously  
15 are part of the transcript. The actual transcript of  
16 the interview itself, as far as I know, is not going to  
17 be part nor is it currently.

18 THE COURT: Okay.

19 MR. PETRANO: Sorry about that, sir.

20 Q Were there any plea offers in this case?

21 A No, sir.

22 Q So you were going to trial the whole time?

23 A Yes, sir.

24 Q Okay. One thing I noticed is you didn't take the  
25 stand, can you kind of tell us about that?

1 A Well, we had a generalized statement of mine that  
2 was out there. We felt that it was -- that  
3 basically told a story, I didn't go over there to  
4 do any damage or do any harm. Just a fight  
5 happened and things got out of hand and the story  
6 was blown out of proportion.

7 Q That's kind of the way I saw it too, that your side  
8 of the story was basically able to be told from  
9 statements from the officers when that came in  
10 without you having to take the stand and risk the  
11 prior offense coming in, right?

12 A To some point, yeah.

13 Q Okay. And so the risk of the prior offense coming  
14 in was certainly part of your analysis?

15 A I personally didn't care about the prior offense.  
16 And I don't say that like crime's not a bad thing,  
17 it's -- yeah, maybe it doesn't make sense to  
18 anybody else but the arresting officer, she grew up  
19 beside of, bought a truck off of, they knew her,  
20 her family. Even the Judge coached her in  
21 softball. So, I mean, I didn't know how that would  
22 help me in court. But I wasn't worried about  
23 stating that I was arrested for a simple assault or  
24 pled to a simple assault because of that.

25 Q Okay. Thank you for answering that and explaining

BOBBY SHEY RATHBURN -- CROSS BY MR. PETRANO:

31

1 that. I didn't know all of those details.

2 MR. PETRANO: Your Honor, can I have just one  
3 more moment.

4 THE COURT: Yes, sir.

5 MR. PETRANO: I think I'm done, I just want to  
6 make sure.

7 (Pause.)

8 MR. PETRANO: Nothing further, thank you.

9 THE COURT: Anything on redirect?

10 MR. SCHNEE: No, sir.

11 THE COURT: All right, you may step down, sir.

12 (The witness leaves the witness stand.)

13 THE COURT: Anything further, Mr. Schnee.

14 MR. SCHNEE: No, Your Honor.

15 THE COURT: All right. Mr. Petrano.

16 MR. PETRANO: The State calls Ms. Stacey  
17 Owings to the stand.

18 THE COURT: Come around, Mr. Owings.

19 (STACEY OWINGS, having first been duly sworn,  
20 testified as follows:)

21 DIRECT EXAMINATION

22 BY MR. PETRANO:

23 Q Ma'am, do you recall your representation of this  
24 Applicant?

25 A Yes, I do.

1 Q And just for the purposes of the record, you've  
2 been here for his testimony?

3 A Yes, sir.

4 Q Okay. Will you walk us through how you got this  
5 case and when you met with him and how those  
6 meetings went, were there any negotiations?

7 A Yes, I got this case from April Sampson (phonetic),  
8 she left the Public Defender's office. The cases  
9 were transferred out. He was actually on bond so I  
10 think that -- let's see. Yes, this case was  
11 transferred to me. It was April's recommendation  
12 that I get the file so Doug transferred it to me.

13 Now, he was on bond and so I didn't see him as  
14 much as I would see a jail client because I didn't  
15 -- I mean, I would have to wait on him to come in  
16 and see me. And I think I got this case fairly  
17 close to the trial. I left the Public Defender's  
18 office the day after this case was finished. And I  
19 remember that April left in -- April left in  
20 October, early November. So I got it probably in  
21 early November and I think I probably met with him  
22 a few times, and I can't really tell, prior to  
23 trial. Everything was ready for me. I mean, April  
24 handed me a file that was ready for trial.

25 Q And as far as the outcome here, I'm looking at

STACEY OWINGS -- DIRECT BY MR. PETRANO:

33

1 about a 60/40 win for you. You've got a couple of  
2 acquittals here. Could you walk us through?

3 A Yes, we did. He was charged with C-D-V-HAN. We  
4 got simple C-D-V. The burglary first, which I was  
5 the most worried about because it carries a  
6 possible life sentence, he was acquitted of. The  
7 C-S-C first was reduced down to a C-S-C second. And  
8 then the kidnapping, that kidnapping is for the  
9 State, it's not a hard element to prove,  
10 unfortunately. And you know at the end with our  
11 Judge, I thought he got a pretty fair sentence. I  
12 was worried that he was going to get a lot more.

13 But yeah, I mean, we got some of the big  
14 charges taken off the table.

15 Q Okay. And I'm going to jump right to the ARC  
16 interview that's been referenced. While it's not  
17 evidence, I've never seen it, have you?

18 A No, I remember -- I remember hearing about it. We  
19 were in the sentencing phase of the trial and  
20 whenever Margaret was giving -- whenever the victim  
21 and Margaret were giving their statement to the  
22 Judge, Margaret mentions the ARC interview and it  
23 threw me for a loop and Bobby's right, I was  
24 absolutely shocked when I heard it. We had never  
25 seen this.

1           And I remember they were going through their  
2           notebooks trying to prove that I was given it and  
3           they couldn't find proof of it either. And I think  
4           that at the time we were talking to Judge Few, they  
5           handed it over to me and I had a chance to read it  
6           very quickly before it was passed up to Judge Few.  
7           But that was the only time I ever saw it.

8 Q       Okay. And could you summarize it for us, what is  
9           it, I mean, what does it say?

10 A       I don't remember. All I remember was that the  
11           basis of it was that the child told ARC that she  
12           witnessed some type of altercation between her  
13           parents. But that's the most I remember. I mean,  
14           I really read it very quickly and it was kind of a  
15           panic moment for us.

16 Q       Okay. Now, I'm not trying to be crude or anything,  
17           but the way you remember it, was it that the child  
18           witnessed some type of sex act, whether that be  
19           consensual or not, or some type of fight, I'm just  
20           trying to...

21 A       I don't remember because it wasn't the full ARC  
22           file. It was just a very short summary that they  
23           had done.

24 Q       Okay.

25 A       So it wasn't in depth.

STACEY OWINGS -- DIRECT BY MR. PETRANO:

35

1 Q And I'm basically just seeing your defense here as  
2 a he said/she said kind of thing?

3 A Right.

4 Q There's been some criticism here a few minutes ago  
5 about the SANE nurse and how you didn't object to a  
6 few things and whether you may or may not have  
7 addressed at closing. You want to outline any of  
8 that?

9 A I did reread the interview with the SAND nurse and  
10 I saw -- I read the questions that Mr. Schnee  
11 referred to that I didn't object to. And I read  
12 through a couple of them and there are a certain  
13 instance where I probably wouldn't have objected  
14 because I think you start to -- you kind of grapple  
15 with things with the jury. And I remember that we  
16 knew that she was pretty qualified to do what she  
17 was doing and we wanted to get her off the stand.  
18 I also wanted to get out from her what I needed for  
19 closing and I would never try to draw conclusions  
20 from cross that I know I could draw.

21 This lady was a professional. She knew what  
22 she was doing and if I tried to get her to say, and  
23 this is not consistent with sexual assault, I was  
24 worried I was going to get an answer out of her  
25 that I then couldn't deal with in closing.

1           So on cross I got her to confirm that there  
2           were no BRATS. There were not bruiseness (sic),  
3           redness, abrasions, tearing or -- I don't remember  
4           the S, swelling. There were none of those things.  
5           And then Margaret then on redirect got her to say  
6           that the abrasion that she saw was a mounting  
7           abrasion. Well, that was great for me because on  
8           closing I could say, well, what she saw was  
9           absolutely consistent with sex. They mounted. I  
10          mean it's crude but it's just the way it is.

11          And so I got out of the SANE nurse what I  
12          thought I needed to draw my conclusions in closing  
13          that it was consensual sex, that there's no proof  
14          there was an assault. And that was my he said/she  
15          said defense.

16 Q       And the same -- did the same analysis that you just  
17       outlined go for the -- when the nurse outlines her  
18       extensive procedure on when it's an alleged rape  
19       victim as far as photographs and everything?

20 A       Right, I mean, she was going through -- I read  
21       through that I didn't object whenever he --  
22       whenever she said, the victim or any of those  
23       things. And I didn't think of it at the time but I  
24       guess -- I think I assumed that it was admissible  
25       because she was basing -- she was telling what she

STACEY OWINGS -- DIRECT BY MR. PETRANO:

37

1 was told in order to know what she had to do to do  
2 her job. So that's why I didn't object to it. If  
3 I was wrong, then I was wrong.

4 Q And in fact, when she explains -- the nurse  
5 explains that when there's an alleged rape victim  
6 comes in, she photographs everything that could  
7 possibly be, and that's something you exploit.

8 A Right. I used it in my closing because I wanted to  
9 show how thorough she was. This nurse was so  
10 thorough that she found no evidence of a sexual  
11 assault, all she saw was a mounting abrasion. And  
12 she -- and so I used her professionalism against  
13 her and I used her thoroughness against her in  
14 closing. And that was -- that was how I used her  
15 testimony.

16 Q There was some sort of claim about the Applicant  
17 throwing her into a nightstand and there being a  
18 big hole in the wall, that's one of those as well,  
19 that asked, well, where are the bruises?

20 A Right. They were claiming that that was part of  
21 the proof of sexual assault was that tables were  
22 thrown around and broken. Well, she didn't have  
23 anything like that. She -- my argument was that if  
24 she was thrown against a table so much that it put  
25 a hole in the wall, that she should have some kind

1 of a bruise or a large mark on her. I think they  
2 found a small red spot. It was nothing consistent  
3 with being thrown against a table so hard it puts a  
4 hole in the wall.

5 (Pause.)

6 Q And do you have anything else you want to ---

7 A I don't think so, no, 'sir.

8 MR. SCHNEE: Thank you, Judge, nothing  
9 further.

10 THE COURT: Anything further, Mr. Schnee.

11 MR. SCHNEE: Yes, Your Honor, very briefly,  
12 or perhaps not.

13 CROSS-EXAMINATION

14 BY MR. SCHNEE:

15 Q I'd like to start with the ARC interview.

16 A Yes.

17 Q You said you -- I believe a few minutes ago you  
18 mentioned that you saw a couple of paragraphs, the  
19 summary?

20 A Yes, I was -- I had never seen an ARC interview  
21 before. This was not something that we commonly  
22 get in discovery. But it was a -- it was -- it  
23 looked -- as I remember, I think it was handwritten  
24 but I really don't know, Mr. Schnee. It was a very  
25 short interview summary. It was one page.

STACEY OWINGS -- CROSS BY MR. SCHNEE:

39

1 Q Okay.

2 A They really didn't have much ---

3 Q Okay.

4 A --- to go on.

5 Q You are aware of the procedures of what happens in  
6 ARC interviews?

7 A Not really, no, because I've never done a lot of  
8 child cases. So this was new to me. I assumed  
9 there was probably a lengthy file that we could  
10 have gotten had we known that existed to begin  
11 with. But all we were shown in court was just the  
12 one sheet.

13 Q Okay. Now you said you left the office the date  
14 after the trial?

15 A Yes.

16 Q Danielle Payne was your second seat at the trial?

17 A Yes.

18 Q Did she -- were you aware that she filed a motion  
19 for a new trial in writing?

20 A Yes.

21 Q Okay.

22 MR. SCHNEE: If I could approach, Your Honor?

23 Q Is this the motion?

24 A I never saw it. But it says, Notice of Motion and  
25 Motion for a New Trial and it's signed by Danielle

1 Payne.

2 Q Okay. And in the body of that it discusses the  
3 Brady Rule 5 violation for the ARC?

4 A Yes.

5 Q Okay. Now, would you consider the ARC interview,  
6 the entire file, video, everything else, if you  
7 could have gotten it, would you have considered  
8 that important in your preparation of the case?

9 A Yes and no.

10 Q Okay. What do you mean?

11 A I don't think it would have helped Bobby at all,  
12 not for his trial.

13 Q Okay.

14 A I think that it may have been something that would  
15 have encouraged him to think about a plea because  
16 we never really talked about that. But I think it  
17 also could have hurt him on sentencing. But then  
18 the Judge knew about that when he sentenced him and  
19 he still got 14, so maybe not.

20 But I don't think it would have helped his  
21 defense at all.

22 Q Okay. But you also don't know the content of it  
23 specifically?

24 A No, you're right, I don't. I don't know and there  
25 could have been things in there that were

STACEY OWINGS -- CROSS BY MR. SCHNEE:

41

1 inconsistent with what Tabitha told us. It could  
2 have been something we could have used with Tabitha  
3 when we were questioning her or the police  
4 officers. We just don't know. We have no idea  
5 what's in that report.

6 Q To this day you've never seen it?

7 A No.

8 Q Okay. As for the testimony of the SANE nurse, you  
9 would agree there is a lot of information that she  
10 is relaying as to what the victim had told her  
11 could be hearsay?

12 A Right.

13 Q A lot of bolstering in terms of, these are the  
14 injuries I saw, the hair pulling, I pulled out ---

15 A Uh-huh.

16 Q --- things of that nature. Now, it's your  
17 testimony that it was your strategy to let that in?

18 A Well, I don't know that I -- I don't know that I  
19 could have kept it out. I mean, she was testifying  
20 as to what she did in order to do her examination.  
21 I don't know if I was right or wrong on that. But  
22 also it was -- it was never my practice when I  
23 tried cases to -- I was always really careful, I  
24 didn't want to object too much to things I didn't  
25 think I was going to win because then you start to

1 alienate the jury and they hate you. And I needed  
2 them -- I needed them to like me. I needed them to  
3 pay attention to what I had to say on Bobby's  
4 behalf.

5 And so, I reread that I -- I don't know still  
6 now if I would have objected, I don't know.

7 Q Okay. And I know it's difficult in the abstract.

8 A (Affirmative response.)

9 Q Looking at it going backwards but you would agree  
10 with me what Bobby had testified to earlier that it  
11 was very much whether the jury believed the victim  
12 or not?

13 A Yes.

14 Q It was really based on her testimony?

15 A The nurse?

16 Q No, no, no, the victim, the victim's testimony in  
17 terms of a conviction?

18 A If they believed the nurse -- if they believed  
19 Tabitha, then he was convicted, yes, yes.

20 Q Okay. And you would also agree that the reasonable  
21 assumption would be they had trouble believing her  
22 in certain aspects because the burglary was a  
23 straight not guilty.

24 A Right.

25 Q Okay.

STACEY OWINGS -- CROSS BY MR. SCHNEE:

43

1 A Yes.

2 MR. SCHNEE: I have no further questions.

3 THE COURT: Anything further?

4 REDIRECT EXAMINATION

5 BY MR. PETRANO:

6 Q Did -- did the nurse ever say, Tabitha told me  
7 Bobby did it?

8 A No, not that I recall, no.

9 MR. PETRANO: Nothing further.

10 THE COURT: Mr. Schnee?

11 MR. SCHNEE: No, Your Honor.

12 THE COURT: Did the nurse ever offer her  
13 opinion prior to the time of being qualified as an  
14 expert?

15 THE WITNESS: No, I think Margaret was getting  
16 to that and that's the point they did it. And Judge Few  
17 would not let her offer opinion ---

18 THE COURT: Until he qualified her -- what  
19 I've read of the transcript suggests factual  
20 observation, I saw this, what she saw ---

21 THE WITNESS: Yes, sir.

22 THE COURT: --- but she didn't say, my opinion  
23 within a reasonable degree of medical certainty.

24 THE WITNESS: No, sir. No, sir.

25 THE COURT: All right, thank you.

1 THE WITNESS: Thank you.

2 (The witness leaves the witness stand.)

3 THE COURT: Anything further, gentlemen?

4 MR. PETRANO: No witnesses, just rebuttal  
5 arguments.

6 THE COURT: Well, you've got to let Mr. Schnee  
7 go first.

8 MR. PETRANO: That's why I say rebuttal.

9 THE COURT: All right, Mr. Schnee.

10 MR. SCHNEE: May it please the Court. First  
11 I'd like to address the ARC interview.

12 THE COURT: I beg your pardon?

13 MR. SCHNEE: The ARC interview.

14 THE COURT: All right.

15 MR. SCHNEE: As Your Honor I'm sure is aware,  
16 when they do an ARC interview, they take a video  
17 recording ---

18 THE COURT: This wasn't offered in the State's  
19 case in chief, was it?

20 MR. SCHNEE: No, sir, but it was offered as  
21 part of sentencing.

22 THE COURT: Okay. And how is that different  
23 from a victim, instead of saying how she felt, she  
24 submitted an affidavit or a letter that says how I feel  
25 because this is what happened?

1 MR. SCHNEE: It is different in the sense that  
2 this was done right after the time of the alleged  
3 offenses.

4 THE COURT: I understand that. But if it  
5 wasn't used in the case in chief, what obligation would  
6 the State have to turn it over? You're not required to  
7 identify necessarily -- what you intend to ---

8 MR. SCHNEE: No but under Brady and Rule 5  
9 you're required to turn over anything that deals with  
10 guilt or innocence, anything that would deal with  
11 sentencing, anything that's exculpatory, anything for  
12 impeachment.

13 Your Honor, based on my experience with  
14 various ARC interviews, they are very lengthy, they go  
15 into a lot of detail. They're hours long on videotape.

16 THE COURT: This is a three year old child.

17 MR. SCHNEE: And I'll admit that, that it is  
18 problematic, that that child might not even be able to  
19 testify anyway. However, if the child is relaying  
20 information, which we don't know because we don't have  
21 it, in terms of the events that occurred that night, it  
22 might be exculpatory evidence. Even if it is damaging  
23 for sentencing in terms of Bobby beating her up or  
24 anything else, it might undermine the ---

25 THE COURT: Well, that's not going to be

1 cumulative to what the victim herself testified to from  
2 the stand?

3 MR. SCHNEE: If ---

4 THE COURT: Anything the daughter could have  
5 said, the victim said when she testified from the stand,  
6 I would assume.

7 MR. SCHNEE: If there were any differences in  
8 terms of what happened, they might have shown it was  
9 consensual sex.

10 THE COURT: All right.

11 MR. SCHNEE: So I would simply argue that it  
12 is an issue. I think the Judge had read it for  
13 sentencing and I think it's problematic, whether it's  
14 bad for Mr. Rathburn, it shouldn't be considered at  
15 sentencing. If there was anything useful, then it's a  
16 violation of Brady Rule 5 in terms of exculpatory for  
17 impeachment evidence.

18 THE COURT: All right.

19 MR. SCHNEE: As for the testimony from the  
20 SANE nurse, I think if you read the totality of it, for  
21 the larger portions of it, the nurse is describing what  
22 the victim's telling her, in terms of great detail how  
23 she had been assaulted and raped and harmed. Not merely  
24 describing, well, I was looking at the hair because  
25 sometimes there is evidence there or I was looking on

1 the throat, or I was looking here, I was looking there.  
2 The testimony that I can read because I wasn't there,  
3 what I can read, it is a very bolstering nature of the  
4 victim's testimony.

5 THE COURT: All these interviews are that way.

6 MR. SCHNEE: Well, they are. However, if  
7 we're talking about the actual law on C-S-C, if you look  
8 at the law for C-S-C with a minor, the only thing they  
9 can testify is time and place. They can't corroborate  
10 any of the actual physical events. They can't describe  
11 any of that.

12 In this particular case, this nurse who is on  
13 page after page after page describing the exact injuries  
14 that she was looking for and how it's ---

15 THE COURT: Because of what the victim told  
16 her.

17 MR. SCHNEE: Right.

18 THE COURT: And some she found and some she  
19 didn't find.

20 MR. SCHNEE: Right. But it's -- it's a very  
21 large bolstering of the witness.

22 I would find that -- it's my opinion that --  
23 that should have been objected to much earlier on.  
24 There should have been a qualification as an expert much  
25 earlier on, that she was going to go into all those

1 things. I understand in the abstract it's hard to --  
2 hard to go back and see what you would have done at  
3 trial, what the strategy was, what the tone was in  
4 actual person. I think by reading the transcript, I  
5 think it drastically harmed Bobby Rathburn in the sense  
6 that the jury found him not guilty of burglary first,  
7 didn't find him guilty of any lesser. It was burglary  
8 first, not guilty, all based on Tabitha, the victim's  
9 statement. But also based on that statement they said,  
10 C-S-C first, we're finding him not guilty, we're going  
11 to find him guilty of C-S-C second. And I think in  
12 large part that's due to the bolstering that was done by  
13 the SANE nurse ---

14 THE COURT: All right.

15 MR. SCHNEE: --- describing clumps of hair  
16 being yanked out from the roots -- had to pull hair out,  
17 things of that nature. I think it drastically affected  
18 how the trial went in terms of the jury was concerned.

19 THE COURT: All right. Thank you, Mr. Schnee.

20 All right, Mr. Petrano.

21 MR. PETRANO: Regarding the ARC interview,  
22 Your Honor, I don't see how the P-C-R can be granted on  
23 that. There's nothing here but speculation. We don't  
24 know what it says and if there was anything more than a  
25 summary. They might have just brought her in -- I'm

1 speculating because that's all we've got so far. They  
2 might have just brought her in and said, you know what,  
3 we tried to talk to her, she was just, you know,  
4 lollypops, she's three years old. Here's the summary.  
5 We don't know. We don't have that here.

6 But what we do know is that it was nothing  
7 exculpatory and that it wasn't used for sentencing. If  
8 you look at 463, which I know Your Honor does not have  
9 yet and I will supplement it, Judge Few says, I'm not  
10 going to enter this in part of the sentencing. He says  
11 that I think two or three times, not just once. There's  
12 no confusion here. That did not go into his impact,  
13 whatever it said.

14 THE COURT: So whatever Judge Few said, this  
15 is not going to affect my decision on sentencing, this  
16 ARC interview, is that clear on the record?

17 MR. PETRANO: That's the way I read it, Judge.

18 THE COURT: Okay, okay.

19 MR. PETRANO: Now, there's nothing  
20 exculpatory, Judge Few asked that several times. The  
21 defense team concedes that there is nothing exculpatory.  
22 And then more importantly as far as the Brady analysis  
23 here, the Brady claim, is to whether it's even material  
24 to the defense. They only thing that was articulated on  
25 the stand as to how the ARC interview might have been

1 material to the defense was that maybe it would have got  
2 him to plead guilty.

3           Now, I'm just foreseeing one of the possible  
4 outcomes here, either today or on P-C-R appeal, he had a  
5 fair trial so there's no real right to plead guilty.  
6 And I know that was not a claim, I just wanted to put  
7 that on the record as far as analysis of the conclusion  
8 because that was one of the only real arguments made as  
9 to how the Brady violation, the alleged Brady violation,  
10 could have been material. Well, he might have pled.  
11 I'll just try to put that out there. That's not an  
12 actual claim. He had a fair trial.

13           Second, as far as the nurse, I think you  
14 surmised it correctly, she was just relaying her input.  
15 There was nothing -- a lot of the cases that limit the  
16 time and place restrictions for the hearsay for the  
17 nurse interviews is the C-S-C cases that were mentioned,  
18 usually C-S-C with a minor, because it's the don't relay  
19 when the little girl comes in and says, yes, daddy did  
20 all that. They want to keep that out and let that come  
21 from just the -- the victim and not be corroborated by  
22 the nurse. Well, the identity of the actual perpetrator  
23 was never brought out by the nurse here so I don't think  
24 those cases apply directly on point.

25           And again, as the transcript itself explains

1 and as counsel explained, the theory here was to use her  
2 thoroughness against her. Get that nurse to come up,  
3 that nurse with 25 years experience, was pretty much  
4 bullet proof, get her to go through all of her  
5 procedures, what she does even in the worst rape case  
6 there is. She's going to photograph everything that's  
7 out of place. She's going to do all these things. Take  
8 all that, don't ask her the guideline questions because  
9 you don't know the answers, that's what counsel said she  
10 didn't want to do. And instead, use all that in  
11 closing. That's what you have here.

12           The reason why the burglary was an acquittal,  
13 several times it's been mentioned, well they just didn't  
14 believe the victim. I submit the opposite, they just  
15 believed -- the attorney did a great job here. That's  
16 what saved this being a burglary first, a C-S-C first,  
17 C-D-V-HAN. It's not the other way around. The  
18 acquittals are what demonstrate the effective assistance  
19 of counsel, not ineffective.

20           Thanks, Judge, that's all I have.

21           THE COURT: Yeah, I remember judges used to  
22 say that a lot. You know you're a good lawyer because  
23 you just got an acquittal, so try the next one right  
24 away.

25           Anything further, Mr. Schnee?

1 MR. SCHNEE: Nothing further.

2 THE COURT: Thank you again, gentlemen, both.  
3 I'll think about this and I'll let you know my decision  
4 in due course.

5 MR. PETRANO: And I'll supplement the record

6 ---

7 THE COURT: Okay, that's fine.

8 MR. SCHNEE: Thank you, Your Honor.

9 THE COURT: Thank you all.

10 ----- END OF TRANSCRIPT OF RECORD -----

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

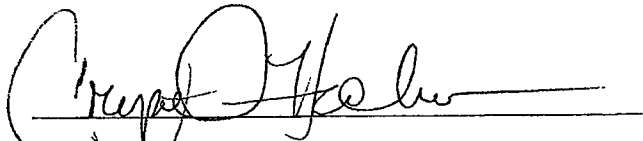
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA        )  
COUNTY OF RICHLAND            )

I, Crystal Holmes, 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 the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 18th day of October, 2010.

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

April 15, 2012

  
Crystal Holmes, Court Reporter

RECEIPT FOR EXHIBITS

Case No 2009-CP-40-51022  
Plaintiff Bobby Rathburn  
Defendant State of NC  
Date Trial Started 10/18/10

Judge L. Manning  
Plt's Atty Mark Shae  
Def's. Atty. Brian Petrano  
Date Trial Ended \_\_\_\_\_

Received of Crystal Holwerx Court Reporter for the above case, these exhibits:  
DL

	Clerk of Court Use
1 <u>Discovery checklist</u>	✓
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

This 19th day of October 20 10.

Page 1 of 1

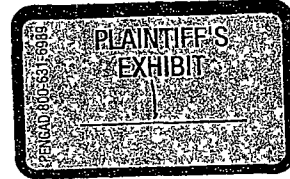
By JDW

Richland County Clerk of Court

Clerk should retain white copy in Civil cases, yellow copy in Criminal cases

**DISCOVERY CHECKLIST****State v. Bobby Rathburn**

1. Warrant: I-290686, 1 page
2. Warrant: I-290684, 1 page
3. Warrant: I-290685, 1 page
4. Warrant: I-290687, 1 page
5. FAPD Incident Report, 1 page
6. Investigative Notes, 3 pages
7. Investigative Officer's Report, 1 page
8. Booking Report, 1 page
9. Statement of Tabatha Brazzell, 4 pages
10. Statement of Laura Weidman, 2 pages
11. FAPD Property/Chain of Custody Form, 1 page
12. Master Person Information, 1 page
13. Advice of Rights, 1 page
14. Advice of Rights, 1 page
15. Statement of Bobby Shey Rathburn, 1 page
16. Incident Report, 1 page
17. Supplemental, 2 pages
18. SLED Sexual Assault Examination Protocol, 4 pages
19. Forensic Nurse ("SANE") Examiners Adult Form, 7 pages
20. Criminal History



Prepared by Rain Hazelton,  
Margaret Fent, Assistant Solicitor, # 92

Receiving Attorney: Deborah Ahrens

MAY 13 2005  
*Patricia Davis*

---

Please sign and date

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 )  
 )  
 Rathburn, Bobby Shey #326081, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2009CP4005622

ORDER OF DISMISSAL

RICHLAND COUNTY  
 FILED  
 2011 AUG 31 AM 10:51  
 JEANETTE W. McBRIDE  
 C.C.P. & G.S.

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 7, 2009. The Respondent made its Return on or about May 21, 2010. An evidentiary hearing into the matter was convened on October 18, 2010 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Mark E. Schnee, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Stacy Owings, Esquire, also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings

**SCANNED**

against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.<sup>1</sup>

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by Stacy Owings, Assistant Public Defender. On April 4, 2007, after a jury trial with the Honorable John C. Few, the Applicant was convicted and sentenced to the following:

Stand July Term	Attachment Number	Charged Offense CDR - SC Codes	Potential Sentence	Offense Description	Sentence Received	Alternative Punishment
6-05	2005GS4002997	2988 16-25-0085 * 10 * Domestic / CDVHAN			30 days	Yes
Sentenced to 2671 16-25-0020(B) * 30days * Domestic / Criminal Domestic Violence : as a lesser offense.						
6-05	2005GS4002998	0160 16-03-0852(2) * 30 * Sex / Criminal sexual conduct - First degree			14	Yes
Sentenced to 0161 16-03-0853(2) * 20 * Sex / Criminal sexual conduct - Second degree : as a lesser offense.						
6-05	2005GS4002999	0079 16-11-0311 * 15-L * Burglary / Burglary (After June 20, 1985) - First degree			Not Guilty	No
6-05	2005GS4003000	0095 16-03-0910 * 30 * Kidnapping / Kidnapping			14	No
NOTES					TOTAL	POSSIBLE

The Applicant appealed his plea. The South Carolina Court of Appeals denied the appeal.<sup>2</sup> State v. Bobby Shea Rathburn, Op. No. 2009-UP-386 (S.C. Ct. App. filed July 8, 2009). The Remittitur was dated July 24, 2009.

In the PCR application, the Applicant made the following allegations:

<sup>1</sup> This Court notes that the Record on Appeal was originally submitted to this Court; however, it only has portions of the trial transcript. Accordingly, the Respondent supplemented the record with the entire trial transcript. A few copies of the trial transcript were available during the PCR hearing.

<sup>2</sup> Anders v. California, 386 U.S. 738 (1967)

*Rathburn, Bobby Shea - Order of Dismissal (2009CP4005622)*

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Deficient performance and representation by Counsel
- (b) Brady-Rule 5 violation / state withheld evidence
- (c) TRIAL COURT ERROR

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) Court Appointed Attorneys failed to "assist the defendant", and did not agree or consult the defendant on critical issues of defense.
- (b) The state withheld vital exculpatory evidence and did not reveal its existence until the day of sentencing.
- (c) The Court failed to grant a motion for a new trial when evidence of the Brady violation was made known to the judge.

18. State clearly the relief you seek in filing this application

Avacated Sentence and A PCR evidentiary hearing under SCRCP 43 (A)(E)

At the evidentiary hearing, Applicant proceeded on the allegations stated in the application for post-conviction relief.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

### Relevant Facts

Applicant and the victim dated on and off for about five years, and had a daughter together. (R. p. 79, lines 12-21). The Applicant abused the victim physically and sexually for much of the relationship, often after he had been drinking. (See R. p. 80-89). When the victim finally grew weary of the abuse from the Applicant, she directed her efforts towards getting out of the relationship with him. (R. p. 97-101). Around March 18<sup>th</sup> or 19<sup>th</sup> of 2005, he moved out of the home they rented together and turned over his key to her. (R. p. 97, lines 17 – p. 98, 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. 100, line 18 – p. 101, line 24). In the two-week period after moving out, however, Applicant 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. 98, line 9 – p. 100, line 17). The victim would not allow him inside. (R. p. 100, lines 2-3). On April 3, 2005,

Applicant was able to get inside the house because the victim's friend left the glass outer door unlocked, and Applicant refused to leave and then physically and sexually assaulted the victim. (See R. p. 149-79).

During the course of the investigation of this incident, Applicant made two statements to police, both of which were introduced at trial after Jackson v. Denno hearings were held. (R. p. 116, 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.<sup>3</sup> (R. p. 51, lines 15-16). In the second, a written statement, Applicant 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. 336, lines 11-18). He said that once he was inside, he got upset and a verbal altercation ensued, but then he grabbed her in the kitchen and pulled her hair.<sup>4</sup> (R. p. 336, 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. 337, 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. 337, lines 9-12). He admitted that the victim did ask him to leave when he first grabbed her, (R. p. 337, lines 18-19), but stated that he never forced his way into the house. (R. p. 337, lines 23-24).

---

<sup>3</sup> In the pre-trial hearing, Applicant denied that he told police he choked her. (R. p. 68, lines 7-10)

<sup>4</sup> Clumps of hair were found in the kitchen and were later introduced at trial (R. p. 255, lines 11-22).

Finally, a third statement was admitted against the Applicant at trial, this one made by Applicant to the victim on the night of the assault. The victim testified that that during the assault, the Applicant “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.” He also threatened that if he did go to jail, he would “come back and finish the job.” On the day of the incident, when police first interviewed her, the victim informed law enforcement about these threats. (R. p. 102, line 11 – p. 103, line 3). The threats were memorialized in a written statement given to police by the victim on that same day. (R. p. 102, lines 11-18).

The PCR hearing was on October 18, 2010.

The Applicant testified that during the sentencing phase of the trial it was revealed that a transcript existed of the interview of his (and the victim’s) daughter at the ARC.<sup>5</sup> A transcript was provided to the trial court during sentencing. (Transcript, p. 461).<sup>6</sup> The Applicant also alleged counsel was ineffective for failing to object when the SANE nurse was explaining her procedures and generically referred to her patients as rape victims.<sup>7</sup> (Transcript, p. 286 L. 16 – 17). The Applicant also alleged that counsel was ineffective for failing to object when the SANE nurse claimed that the victim was a victim of “sexual assault” before the

---

<sup>5</sup> Assessment & Resource Center (ARC)

<sup>6</sup> This Court notes that the child is not a victim in this case.

<sup>7</sup> Sexual Assault Nurse Examiner (SANE).

SANE nurse was technically qualified as an expert. (Transcript, p. 289).<sup>8</sup> The Applicant also claimed that the SANE nurse testified regarding details about the assailant that went beyond time and place.

Trial counsel testified that the Applicant was out on bond prior to the trial. Trial counsel explained that when she reviewed the ARC interview transcript there was nothing helpful and that if the Applicant had seen the interview prior to the trial he may have pled guilty. Trial counsel was present during the PCR hearing while the Applicant expressed his allegations, specifically regarding the testimony of the SANE nurse. Trial counsel testified that this particular SANE nurse was very experienced, well qualified, and a good witness. Trial counsel testified that her strategy was to use the nurse's thoroughness to their advantage. Counsel explained that they needed the SANE nurse to meticulously explain her procedures, both standard and specific, so that the deficiencies in the actual evidence retrieved supported the defense theory, i.e. nothing more than consensual sex. In addition, trial counsel explained that she also did not want to alienate the jury and object too often during the nurse's testimony. Counsel explained that she needed the jury to listen to her (counsel) and that it was absolutely crucial that she did not alienate the jury by constantly objecting to small issues of little consequence.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441,

---

<sup>8</sup> The SANE nurse was qualified "as an expert sexual assault nurse examiner" (Transcript, p 310 L. 12 - 13)  
*Rathburn, Bobby Shey - Order of Dismissal (2009CP4005622)*

334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms" Cherry, 300 S.C. at 117, 385 S.E.2d at

625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Trial counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

Regarding the ARC interview transcript, there is no evidence that the transcript was favorable to the Applicant. (Transcript, p. 462 L. 6 – 11). The child was not a victim. In addition, the trial court made it clear that the ARC transcript would not be considered for sentencing purposes. (Transcript, p. 463 L. 8). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

A *Brady* claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was

favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.

Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999).

Accordingly, the Applicant has failed to satisfy his burden of proof and demonstrate that counsel's performance, concerning the ARC interview, was deficient or that the Applicant was prejudiced from not being provided the transcript any earlier.

The next issue is the SANE nurse. Trial counsel testified it was her strategy to agree that this SANE nurse was well qualified and that her examination was incredibly thorough. Trial counsel explained that the strategy was to show that despite an extremely thorough examination, by a highly qualified nurse, there was no medical evidence that this was nothing more than consensual sex, i.e. a "mounting injury." (Transcript, p. 325 – 326, p. 416 L. 15 – p. 417 L. 6, p. 422 L. 21 – p. 424 L. 20, ). Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Trial counsel articulated valid strategic reasons for not objecting to the SANE nurse and in fact wanted her testimony regarding her excellent qualifications and the thoroughness of her examination and procedures. The Applicant has not shown that counsel was deficient in that choice of tactics.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional

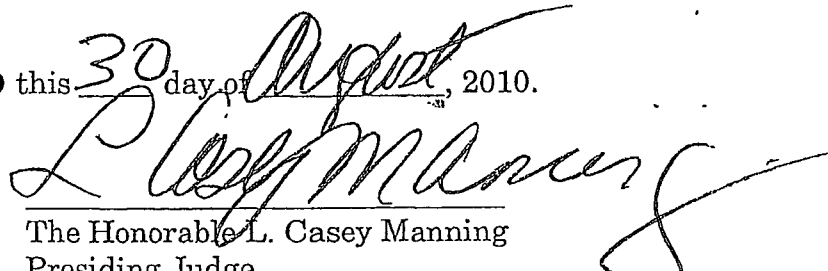
relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of August, 2010.

  
 The Honorable L. Casey Manning  
 Presiding Judge  
 Fifth Judicial Circuit

, South Carolina.

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-05622

JEANETTE W. McBRIDE  
C.C.P. & G.S.

2011 SEP 15 PM 12:58

FILED

Bobby S. Rathburn, #326081, .....Petitioner,

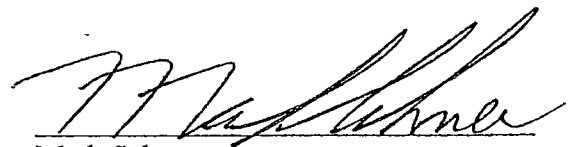
v.

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

PROOF OF SERVICE

I hereby certify that a true copy of the Notice of Intent to Appeal in the above-referenced case has been served upon opposing counsel by delivering same this date to his office at the Office of the Attorney General, P.O. Box 11549, Columbia, South Carolina, 29211.

September 15, 2011



Mark Schnee  
The Schnee Law Firm  
1720 Main Street, Suite 202  
Columbia, South Carolina 29201  
(803) 771-0075  
Attorney for Petitioner

Other Counsel of Record:

Assistant Attorney General Brian Petrano  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

WITNESSES

(S) C.L. Varn, Forest Acres

(S) Tabatha Brazell  
Road

Forest Acres, SC 29204

*Presented by Bryant Henderson*

ARREST WARRANT NUMBER

1-290684

ACTION OF GRAND JURY

**TRUE BILL**

*[Signature]*

Foreperson of Grand Jury  
Date:

AUG 18 2006

VERDICT

*Guilty of Criminal  
Domestic Violence.*

*Not Guilty of Criminal Domestic Violence  
High and Aggravated Nature.*

Foreperson of Petit Jury  
Date: 4-4-07

DOCKET NO. 2005-GS-40-2997

Amended  
The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2005

92

THE STATE  
vs.

BOBBY SHEY RATHBURN

Indictment for

CRIMINAL DOMESTIC VIOLENCE  
HIGH AND AGGRAVATED NATURE

SC Code: 16-25-85  
CDR Code: 2988  
Class FEL/D

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

Defendant

I hereby appear in my own pro  
guilty to the within indictment

Defendant

Witness:

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

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
*[Signature]*  
C.C.C. P. & G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )

INDICTMENT

At a Court of General Sessions, convened on JUNE 15, 2005, the Grand Jurors of Richland County present upon their oath

**CRIMINAL DOMESTIC VIOLENCE HIGH AND AGGRAVATED NATURE**

That BOBBY SHEY RATHBURN did in Richland County on or about APRIL 3, 2005 unlawfully cause physical harm or injury to his/her own household member, TABATHA BRAZELL, or did offer or attempt to cause physical harm or injury to his/her own household member, TABATHA BRAZELL, with apparent present ability under circumstances reasonably creating fear of imminent peril, accompanied by circumstances of aggravation, to wit: the defendant did intentionally commit an assault and battery which involved the use of a deadly weapon or resulted in serious bodily injury to and/or the defendant did intentionally commit an assault, with or without a battery, which would reasonably cause a person to fear imminent serious bodily injury or death; all in violation of S.C. Code of Laws § 16-25-65.

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

  
 WARREN B. GIESE, SOLICITOR

WITNESSES

(S) C.L. Varn, Forest Acres

ARREST WARRANT NUMBER

I-290685

ACTION OF GRAND JURY

TRUE BILL

*Gene K. McClelland*  
Foreperson of Grand Jury  
Date: JUN 17 2005

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2005-GS-40-2998

The State of South Carolina  
County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2005

92

THE STATE  
vs.

BOBBY SHEY RATHBURN

Indictment for

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

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

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY  
DO NOT REPRODUCE  
*Gene K. McClelland*  
C.C.C.P. & G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

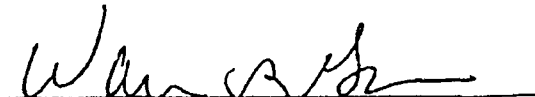
INDICTMENT

At a Court of General Sessions, convened on JUNE 15, 2005, the Grand Jurors of Richland County present upon their oath:

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

That BOBBY SHEY RATHBURN did in Richland County on or about APRIL 3, 2005, engage in sexual battery, to wit: sexual intercourse, upon and with the body of TABATHA BRAZELL without her consent, such sexual battery accomplished by the use of force of a high and aggravated nature and/or the victim submitted to such battery while being kidnapped and/or forcibly confined; all in violation of SC Code of Laws § 16-3-652.

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

  
WARREN B. GIESE, SOLICITOR

WITNESSES

(S) C.L. Vam, Forest Acres

ARREST WARRANT NUMBER

I-290666

ACTION OF GRAND JURY

TRUE BILL

*Jay Chee*  
Foreperson of Grand Jury

Date: MAR 23 2007

VERDICT

NOT GUILTY OF  
Burglary 1<sup>st</sup> Degree

*[Signature]*  
Foreperson of Petit Jury  
Date: 4-4-2007

DOCKET NO. 2005-GS-40-2999

Amended  
The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2005

92

THE STATE

vs.

BOBBY SHEY RATHBURN

Indictment for

BURGLARY (AFTER 6/20/85)  
1<sup>ST</sup> DEGREE

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )

INDICTMENT

At a Court of General Sessions, convened on JUNE 15, 2005, the Grand Jurors of Richland County present upon their oath:

**BURGLARY/(AFTER 6/20/85) - 1ST DEG**

That BOBBY SHEY RATHBURN did in Richland County on or about APRIL 3, 2005, unlawfully enter the dwelling of TABATHA BRAZELL, without consent and with the intent to commit a crime therein and while effecting entry and/or while in the dwelling and/or in immediate flight, the defendant or another participate in the crime did cause physical injury to another person who was not a participant in the crime, to-wit: TABITHA BRAZELL; all in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

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

  
 Warren B. Glese, SOLICITOR

WITNESSES

(S) C.L. Varn, Forest Acres

ARREST WARRANT NUMBER

I-290687

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury  
Date: JUN 17 2005

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2005-GS-40-3000

The State of South Carolina  
County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2005

92

THE STATE  
vs.

BOBBY SHEY RATHBURN

Indictment for  
KIDNAPPING

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

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
Sheela W. McLeod  
C.C.C. & G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

INDICTMENT

At a Court of General Sessions, convened on JUNE 15, 2005, the Grand Jurors of Richland County present upon their oath:

**KIDNAPPING**

That BOBBY SHEY RATHBURN did in Richland County on or about APRIL 3, 2005, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, TABATHA RATHBURN, by any means whatsoever without authority of law; all in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

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

  
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF Richland )  
 STATE VS. )  
Bobby Shey Rathburn )  
 AKA )  
 Race W Sex M Age: )  
 DOB 11/77 SS# [REDACTED] )  
 Address 175 Dorian Dr. )  
 City, State, Zip Lexington, SC 29033 )  
 DL# SID# )

IN THE COURT OF GENERAL SESSIONS

05 INDICTMENT/CASE# 2997  
 -GS- 40  
 A/W#: I 290684  
 Date of Offense: 4/3/05  
 S C Code §: 16-25-65  
 CDR Code #: 2191818  
 CASE RESTORED  
**SENTENCE SHEET**  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO Criminal Domestic Violence 1st offense 2671 in violation of § 16-25-20 of the S.C. Code of Laws, bearing CDR Code # 1121416  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC  §17-25-45 w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury \_\_\_\_\_ (Defendant initial)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State

ATTEST  
Margaret Jett Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 30 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_, plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference

CONCURRENT or  CONSECUTIVE to sentence on \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION  Heard,  Waived,  Ordered  
 Total \$ \_\_\_\_\_ plus 20% fee. \$ \_\_\_\_\_  
 Payment Terms \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED \_\_\_\_\_  
 Attend Voc Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling \_\_\_\_\_  
 Random Drug/Alcohol Testing \_\_\_\_\_  
 Fine may be pd in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other \_\_\_\_\_

Recipient		
*Fine.		\$
§14-1-206 (Assessments 107 5%)		\$
§14-1-211(A)(1) (Conv Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35 13 (Public Def/Prob)	\$500	\$
§73 3, 1B TP (Law Enforce. Funding)	\$25	\$
§33 7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$ 3.75	\$
TOTAL		\$ 128.75

Appointed PD or appointed other counsel, §35 13 TP  
 Requires \$500 be paid to Clerk during probation  
 CERTIFIED TRUE COPY.

Barbara A. Scott Clerk of Court/ Deputy Clerk  
D. Helms Court Reporter

PRESIDING JUDGE [Signature]  
 Judge Code \_\_\_\_\_  
 Sentence Date \_\_\_\_\_  
 C.C.C.P. & G.S.  
 RICHLAND COUNTY  
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland  
STATE VS

Bobby Shrey Rothburn

AKA:  
Race: W Sex: M Age: \_\_\_\_\_  
DOB: 1/1/77 SS# \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
DL# \_\_\_\_\_ SID# \_\_\_\_\_

COURT OF GENERAL SESSIONS

05 INDICTMENT/CASE# 2998  
-GS- 80

AW# I 290685  
Date of Offense: 4/3/05  
S.C. Code §. 16-3-652  
CDR Code #: 0111610  
 CASE RESTORED  
 SENTENCE SHEET  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO. Criminal Sexual Conduct Second Degree  
in violation of § 16-3-653 of the S.C. Code of Laws, bearing CDR Code # 0111611  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC w/minor 1<sup>st</sup> or Lewd Act)  \$17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (Defendant initial)

The plea is  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State

ATTEST:

Margaret Felt  
Solicitor

Defendant

[Signature]  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 14 ~~months~~ years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on. \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
Total \$ \_\_\_\_\_ plus 20% fee. \$ \_\_\_\_\_

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

Payment Terms \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

Obtain GED \_\_\_\_\_  
Attend Voc. Rehab or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd in equal, consecutive weekly/monthly  
prmts of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other \_\_\_\_\_

Recipient		
*Fine		\$ _____
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211(A)(1) (Conv Surcharge)	\$100	\$ _____ ✓
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§35-13 (Public Def/Prob)	\$500	\$ _____
§73-3, 1B TP (Law Enforce Funding)	\$25	\$ _____ ✓
§33-7, 1B TP (Drug Court Surcharge)	\$100	\$ _____
§50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)		\$ <u>3.75</u>
TOTAL		\$ <u>28.75</u>

Appointed PD or appointed other counsel, §35-13 TP  
Requires \$500 be paid to Clerk during probationary

Barbara A. Scott  
Clerk of Court/ Deputy Clerk  
Court Reporter D. Helus

PRESIDING JUDGE \_\_\_\_\_  
Judge Code \_\_\_\_\_  
Sentence Date \_\_\_\_\_

[Signature]  
C.C.P. & S.  
RICHLAND COUNTY  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
 COUNTY OF Richland )  
 STATE VS. )  
Bobby Shery Rathburn )  
 AKA )  
 Race: W Sex: M Age: )  
 DOB: 11/177 SS#: [REDACTED] )  
 Address )  
 City, State, Zip )  
 DL# SID# )

IN THE COURT OF GENERAL SESSIONS

05 INDICTMENT CASE#: 3000  
 -GS- 40  
 A/W# F 290687  
 Date of Offense: 4-3-05  
 S.C. Code §: 16-3-910  
 CDR Code #: 0101915  
 CASE RESTORED  
**SENTENCE SHEET**  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Kidnapping in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC)  §17-25-45 w/minor 1<sup>st</sup> or Lewd Act

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (Defendant initial)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST

Margaret Felt Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 14 ~~days/months~~/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_, plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference

CONCURRENT or  CONSECUTIVE to sentence on \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION  Heard,  Waived,  Ordered  
 Total \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_  
 Payment Terms \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

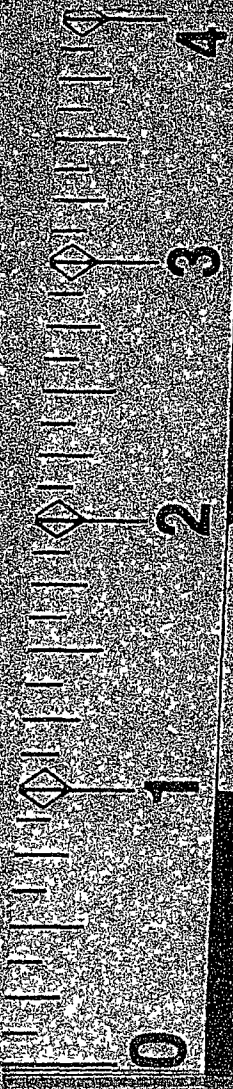
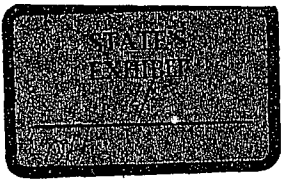
PTUP \_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED \_\_\_\_\_  
 Attend Voc. Rehab or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling \_\_\_\_\_  
 Random Drug/Alcohol Testing \_\_\_\_\_  
 Fine may be pd in equal, consecutive weekly/monthly pmts of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_

Recipient		
*Fine		\$
§ 14-1-206 (Assessments 107 5%)		\$
§ 14-1-211(A)(1) (Conv Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35 13 (Public Def/Prob)	\$500	\$
§ 73 3, 1B TP (Law Enforce Funding)	\$25	\$
§ 33 7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75
TOTAL		\$ 728.75

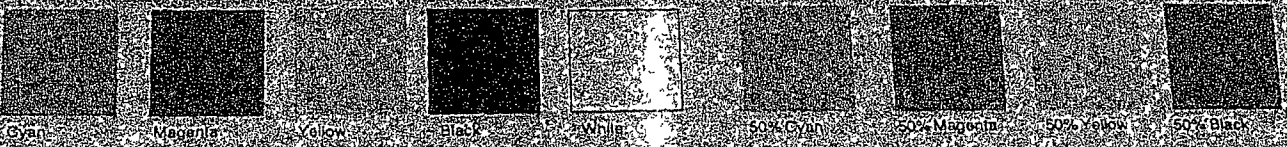
Appointed PD or appointed other counsel, §35 13 TP Requires \$500 be paid to Clerk during probation

Barbara A. Scott Clerk of Court/ Deputy Clerk  
 Court Reporter D. Helms

PRESIDING JUDGE [Signature]  
 Judge Code: 2  
 Sentence Date: 2005-04-03  
 CERTIFIED TRUE COPY OF ORIGINAL FILED  
[Signature]  
 RICHLAND COUNTY SOUTH CAROLINA



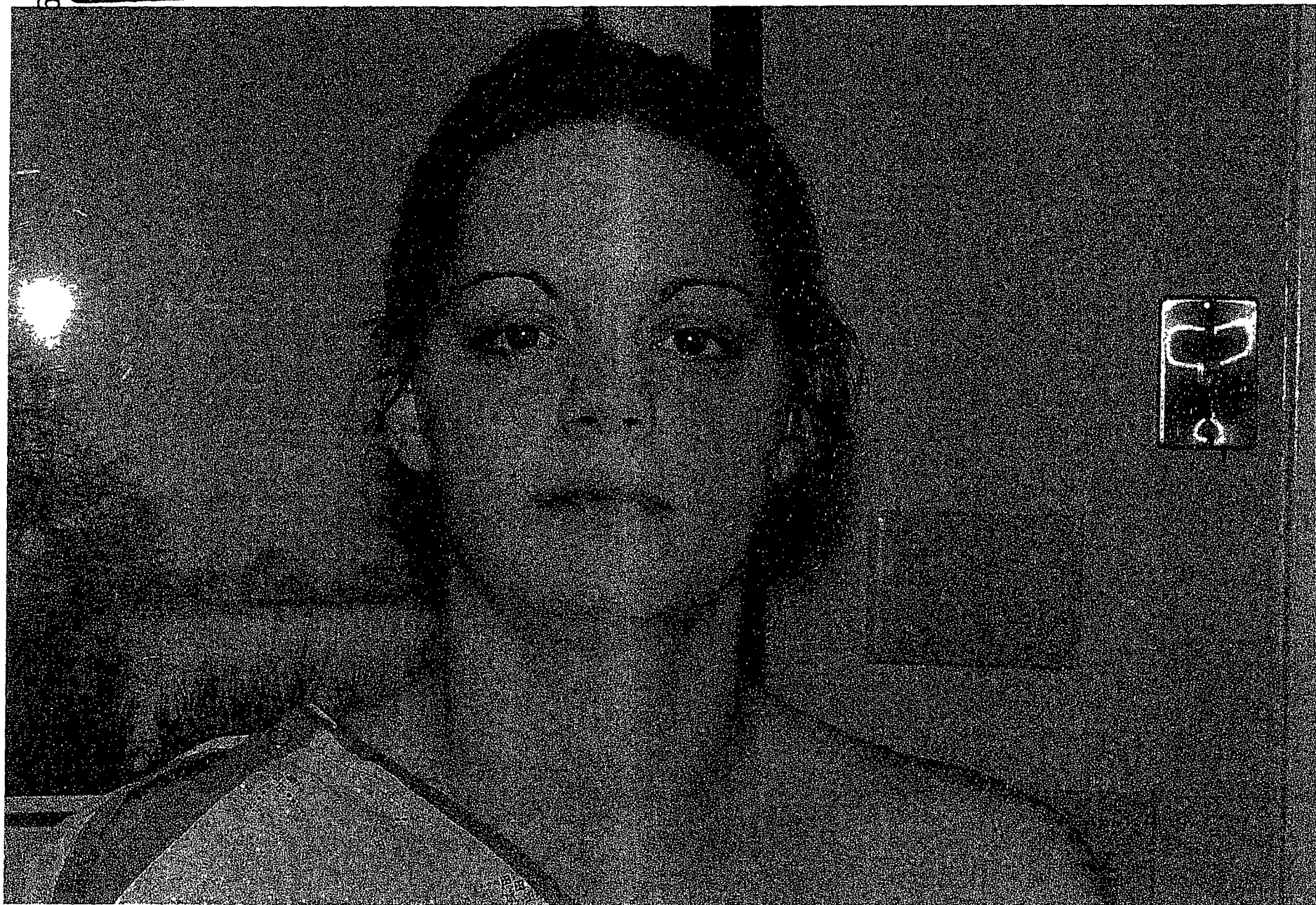
DATE/ TIME	4/3/05 1850
AGENCY	Forest Acres
CASE #	065939024
PHOTOGRAPHER BY	T. Casto RN, SANE

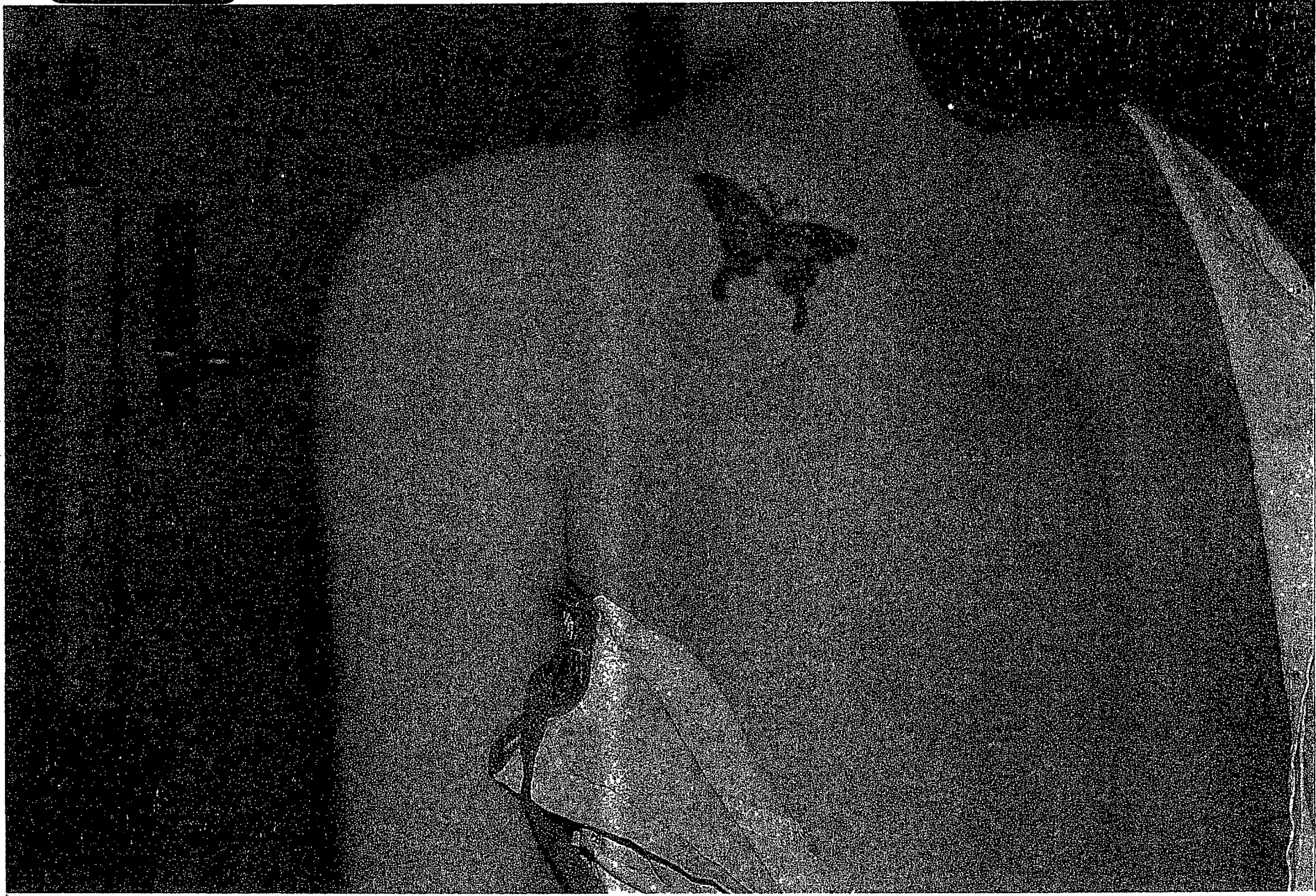


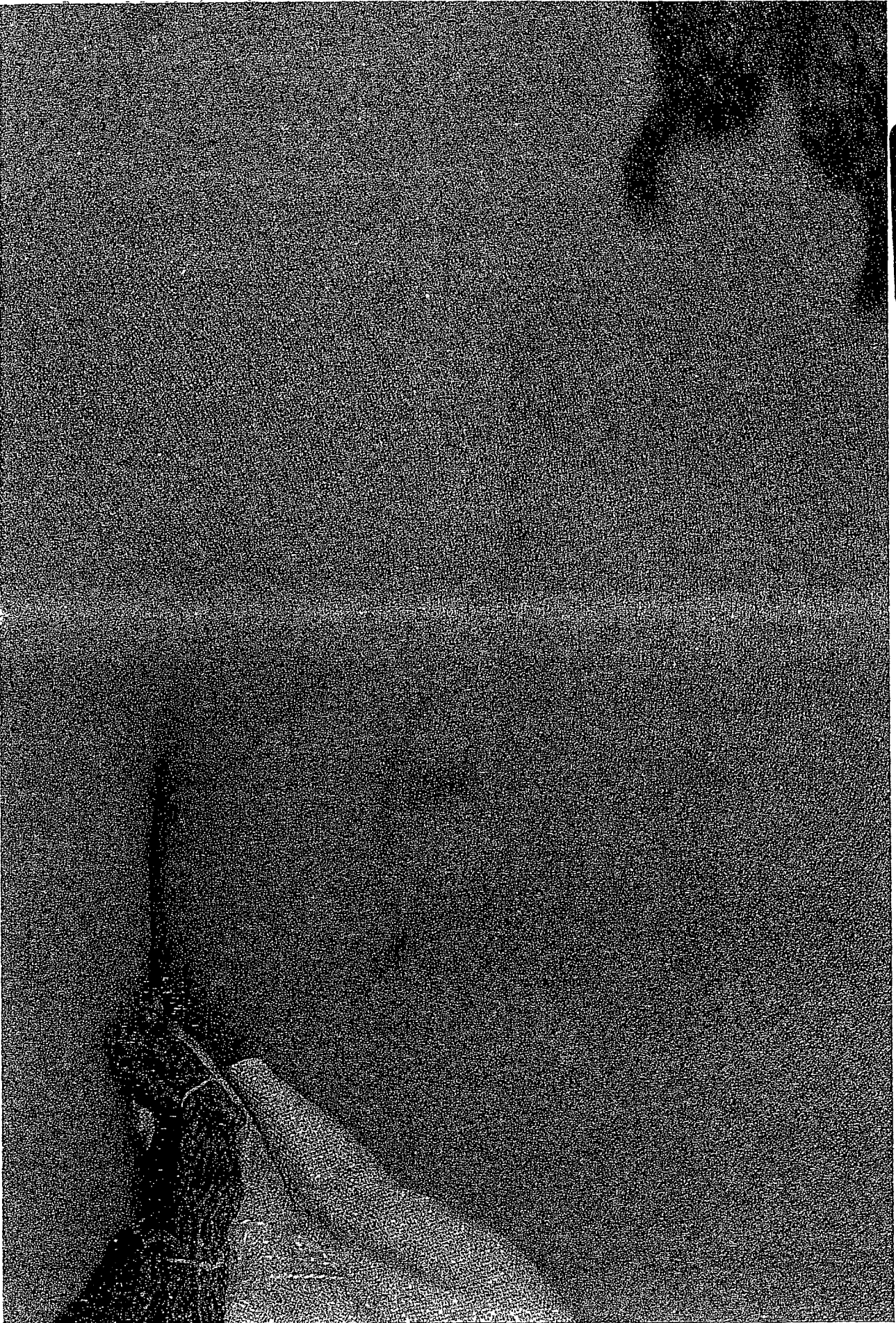
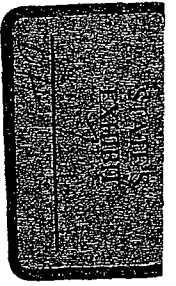
Lightning Powder Co., Inc. Salem, Oregon 97302-2171 800-352-0300

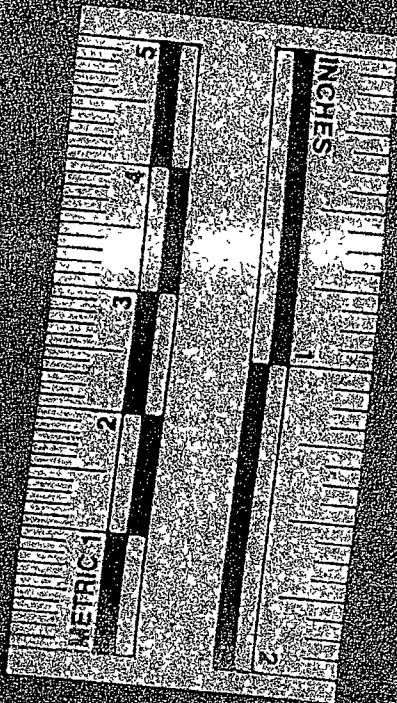
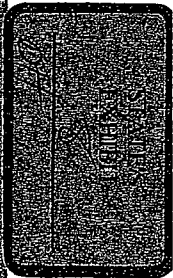
CAT# NO 16-3874

593

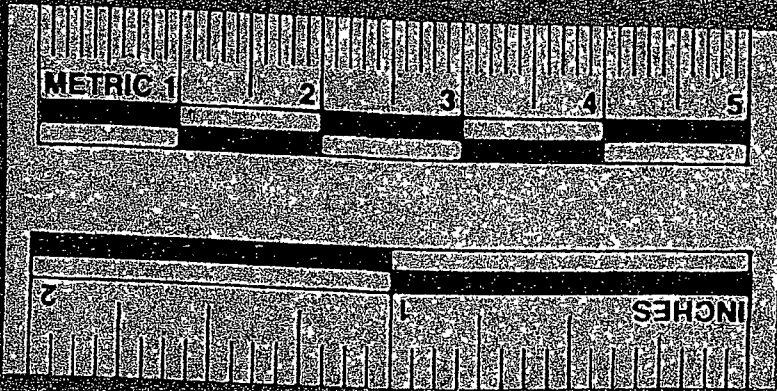


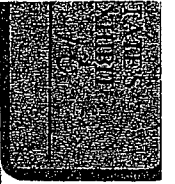


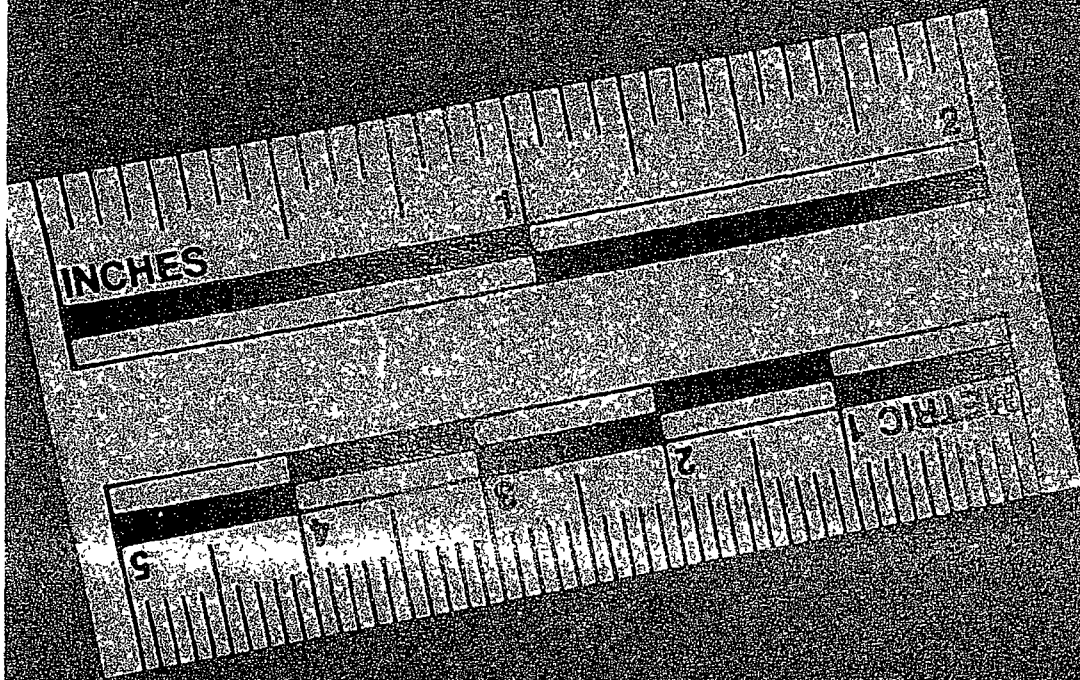




97







600

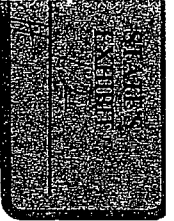
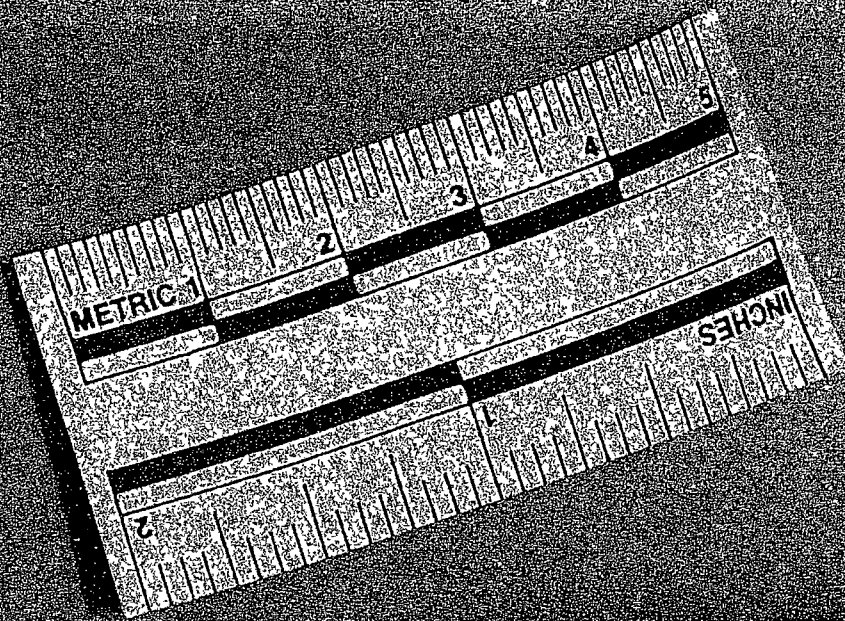
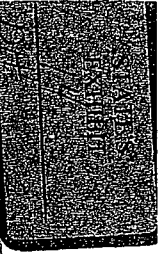


EXHIBIT  
100-100000-100000

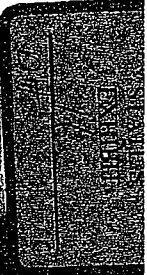


100-100000-100000





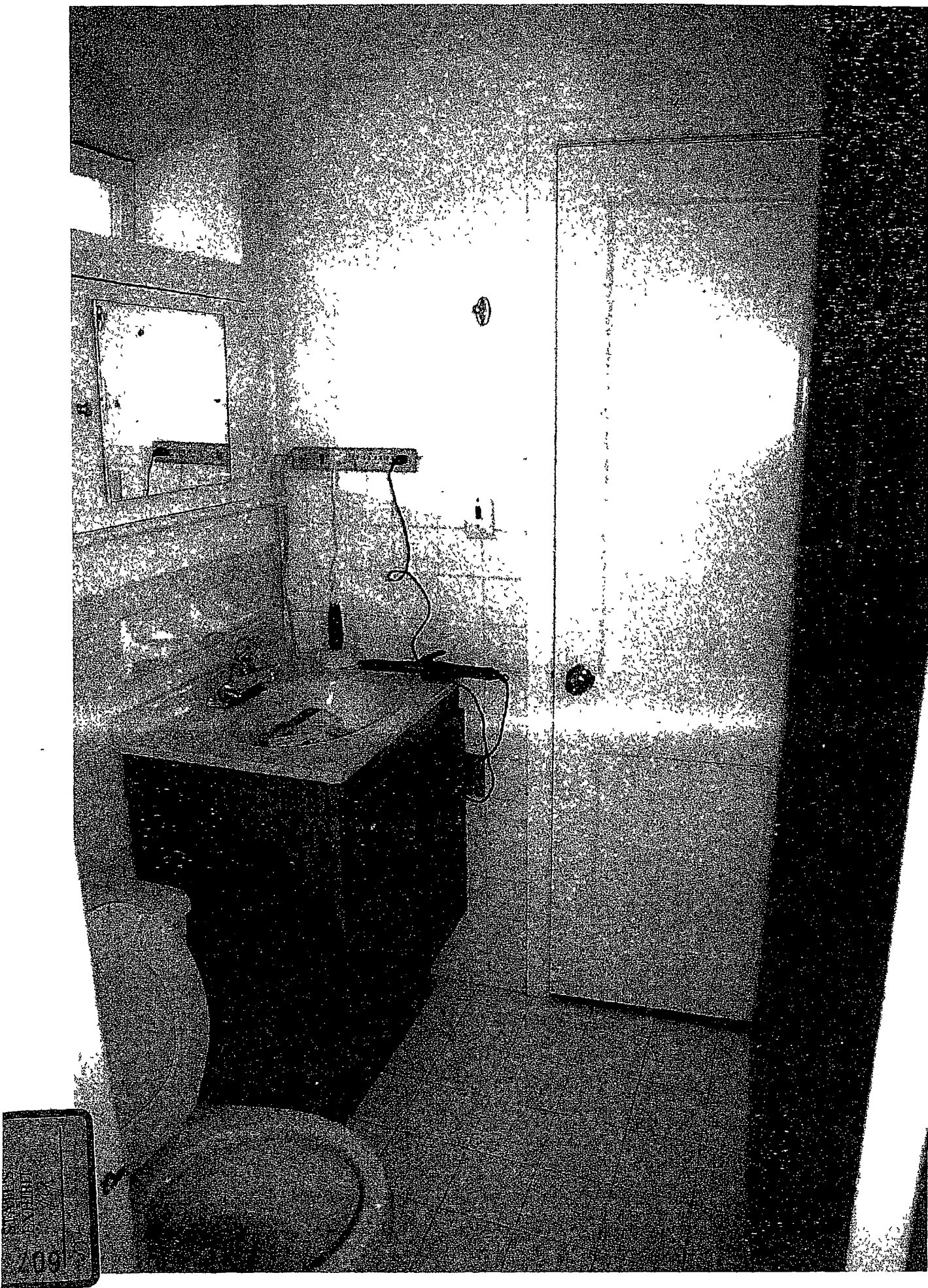
1  
KODAK SAFETY FILM







606

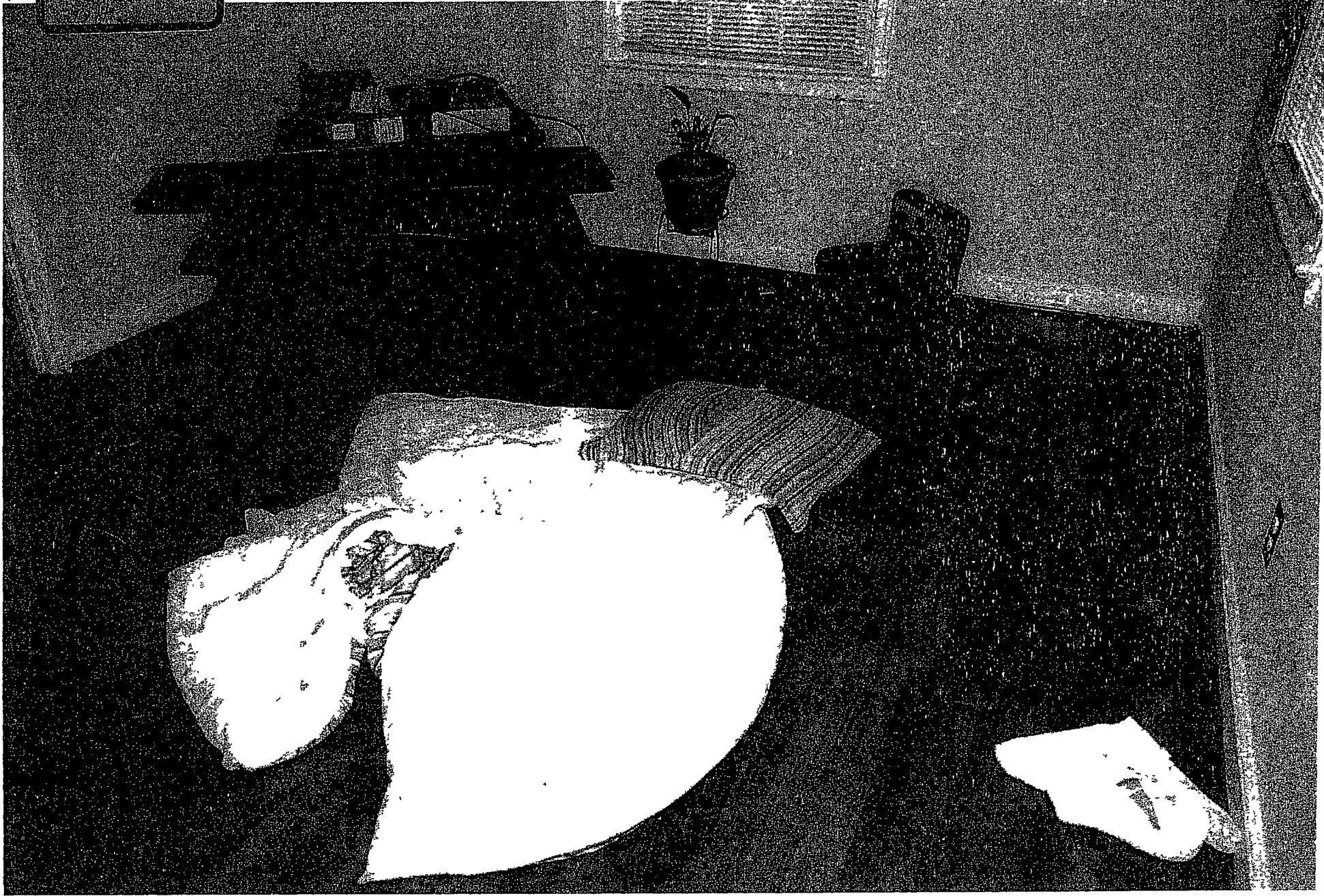


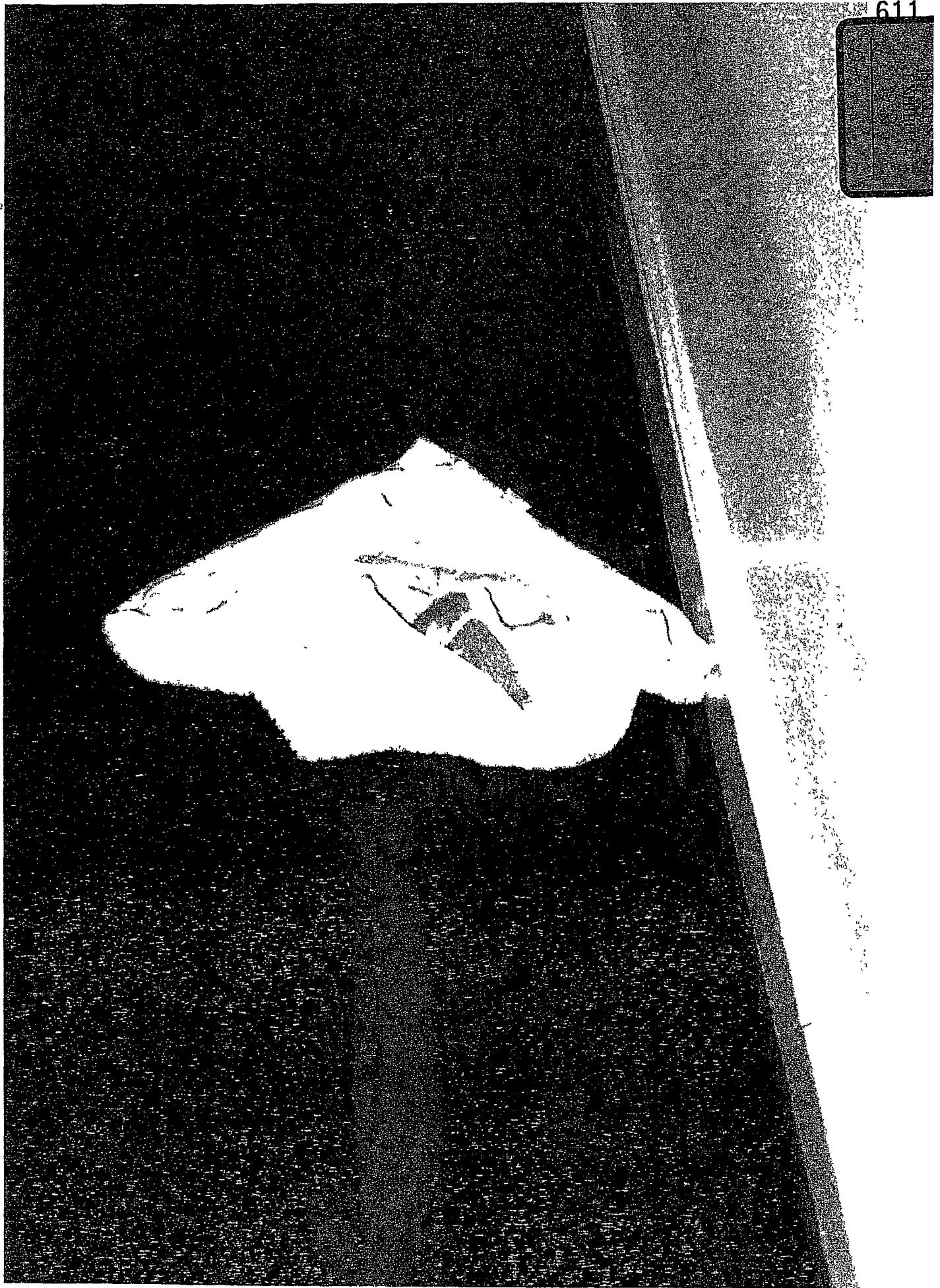


600  
600



STAY  
SAFE  
6577110

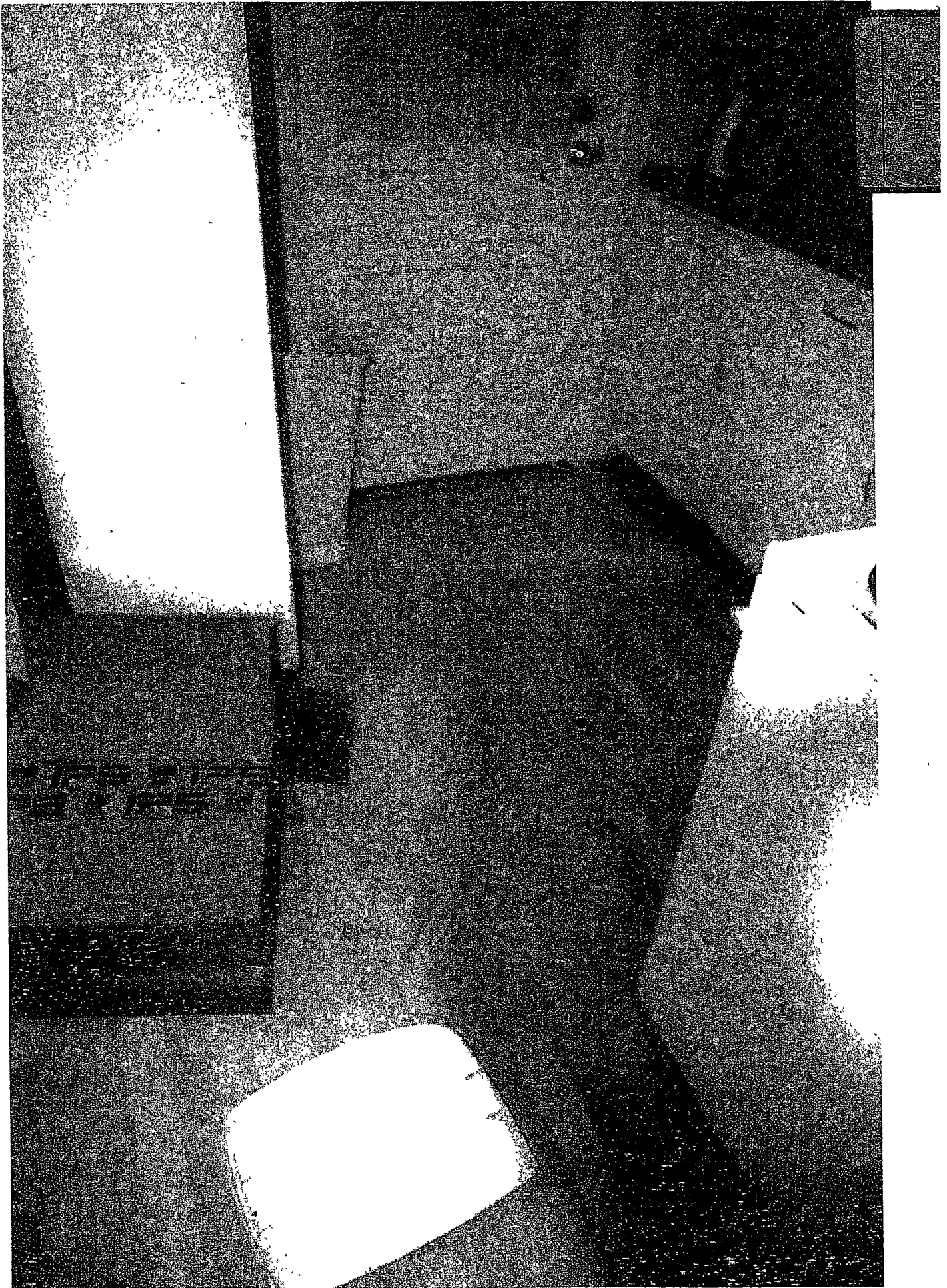


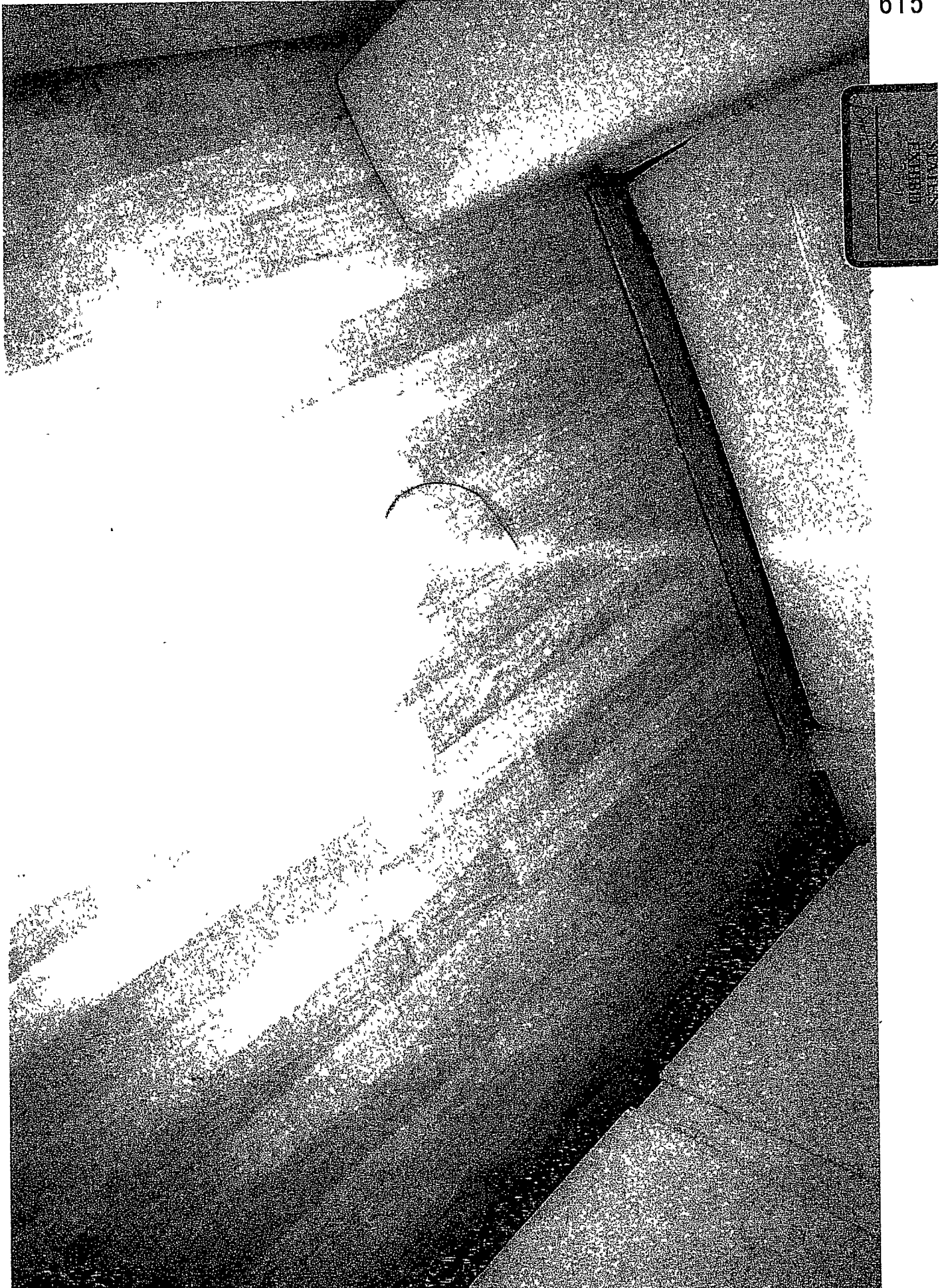




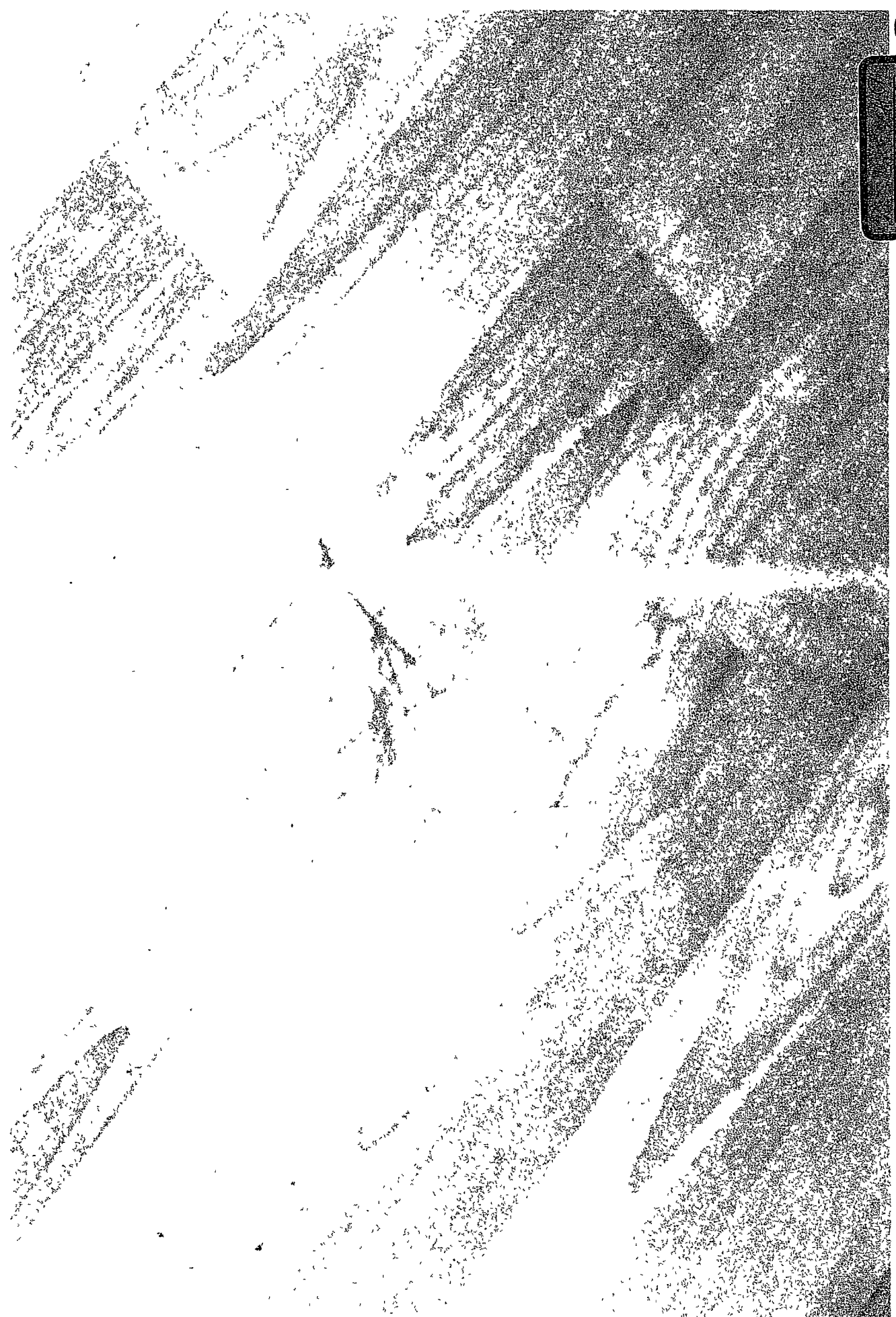


613





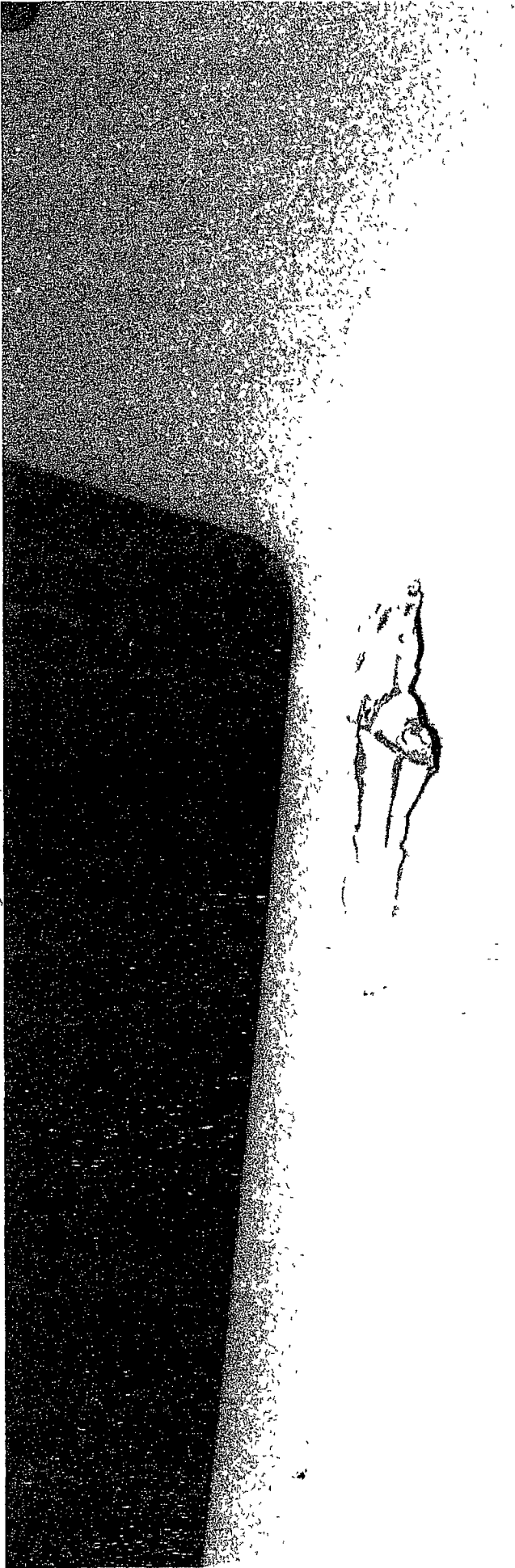






619



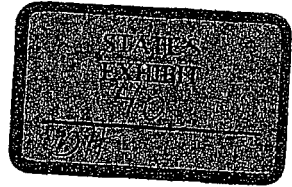


FOREST ACRES POLICE DEPARTMENT

INTERROGATION: ADVICE OF RIGHTS

Name: Bobby Sheg Rathburn Place: 409 Maple St  
 Address: 409 Maple St Date: 4-05-05, 20  
 City: Columbia State: SC Time: 0845  
 Social Security No.: 240-41-6049 Date of Birth: 1-1-77

YOUR RIGHTS



Before we ask any questions, you must understand you rights.

         You have the right to remain silent  
Initial

         Anything you say can be used against you in court.  
Initial

         You have the right to talk to a lawyer for advice before we ask you any  
Initial questions and to have him/her with you during questioning

         If you cannot afford a lawyer, one will be appointed for you before any  
Initial questioning if you wish.

         If you decide to answer questions now without a lawyer present, you will  
Initial still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind had been used against me.

Signature: \_\_\_\_\_  
(Person waiving rights)

Witness: \_\_\_\_\_  
(Forest Acres Police Department)

read on the scene, suspect hand called.



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
CITY OF FOREST ACRES

STATEMENT

DATE: 04-05-05  
TIME 0940

Personally appeared before me, this date, an officer duly authorized to administer oaths in this state, comes one Shey Rathburn, who resides at 409 Maple Street, Columbia, Sc 29205

Home Telephone #:                      Business Telephone #:                      Pager #:

Mobile Telephone # 528-5528      Social Security #:                      Date of Birth 1-1-77

The following is a sworn statement under oath by the above named individual

Q. On 04-03-05, did you go to                      Road to see Tabitha Brazell?

A. No, I went there late on the third and stayed all night

Q. How did you get into the house?

A. I opened the glass door and knocked on the wooden door and she opened the door and I walked in.

Q. Once you were inside why did you get upset?

A. At first we were fine and when she would not tell me where she was moving my daughter to I got upset.

Q. What did you do when you got upset.

A. At first I was just verbal and she was yelling at me to. We then went into the kitchen and I grabbed her and pushed her against the fridge and had my hand around her neck yet I never applied any pressure and I believe I pulled her hair. I then let her go and walk back into the living room where I was still crying and sitting down, a short time later Tabitha walks into the living room and began kissing me. Tabitha then goes to the back and gets a comforter and pillows and we made love and then go to the bedroom and we go to sleep. Tabitha set the alarm clock for me and I got up played with my daughter and then left for work.

Q. Did you force Tabitha to have sex with you?

A. No.

Q. Did you prevent Tabitha from ever leaving is she wanted to?

A. No

Q. Did Tabitha ever ask you to leave?

A. When I first grabbed her

Q. What else would you like to tell R/O about this case?

A. I was over at this house two nights before and had sex that night and spend the night. My main concern was knowing where my daughter was going to be living not hurting Tabitha. I never forced my way into this house

This statement was made in the presence of, B.W. Hinson                      an employee of the Forest Acres Police Department. I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me god. I received a copy of this statement at \_\_\_\_\_ hours on \_\_\_\_\_

*[Signature]*

Signed: *+ Shey Rathburn*

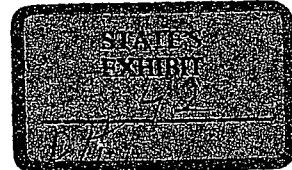
Witness: *[Signature]*

Witness: *B.W. Hinson*

Sworn to and subscribed before me  
This 5 day of April, 2005  
Notary Public for South Carolina  
My Commission Expires

*06/16/2010*

Page \_\_\_ of \_\_\_

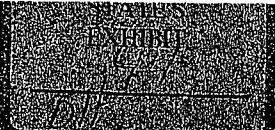


13



624

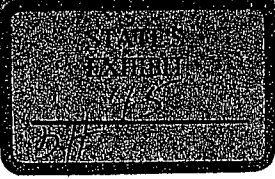
12 14 03

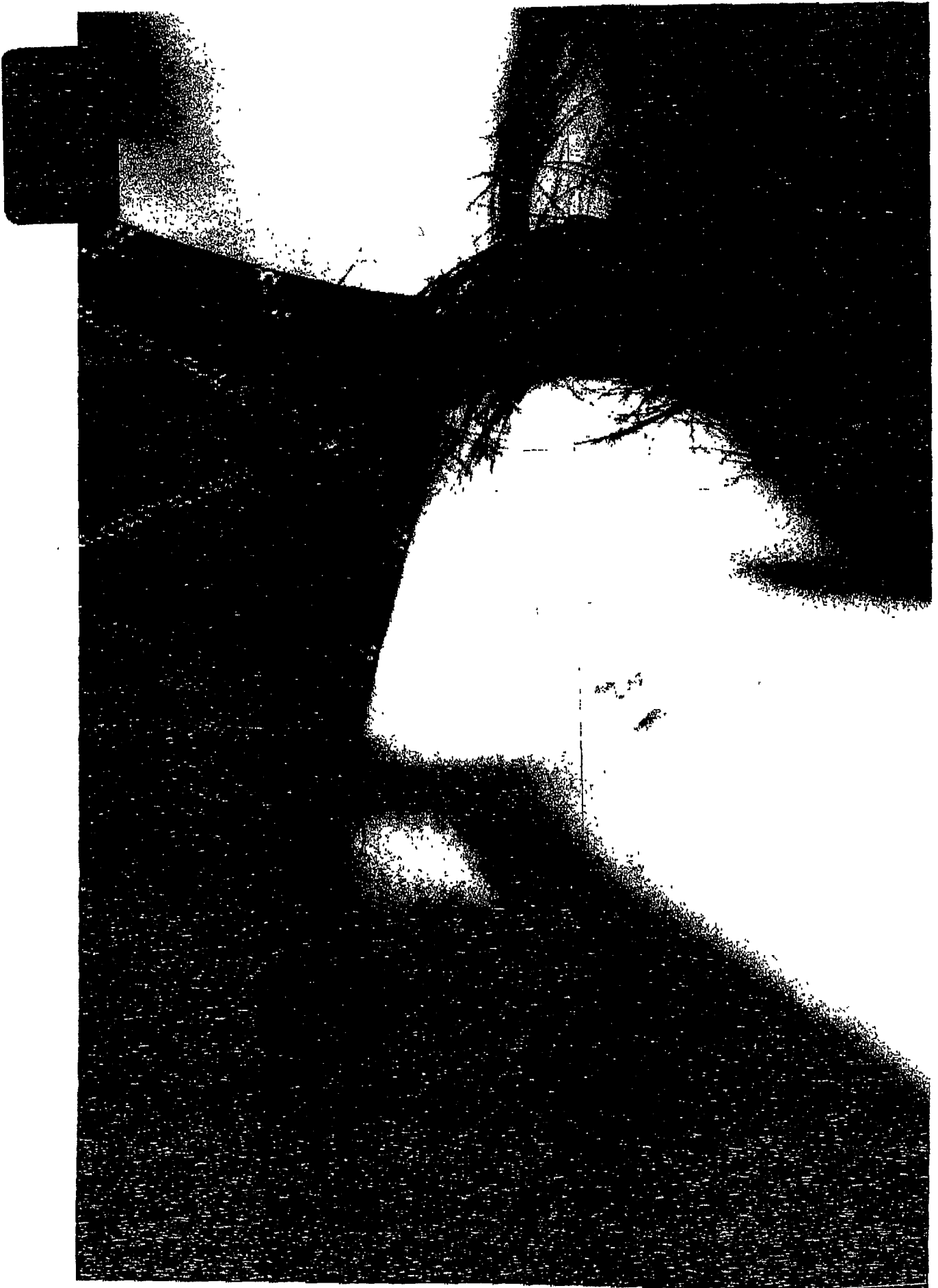


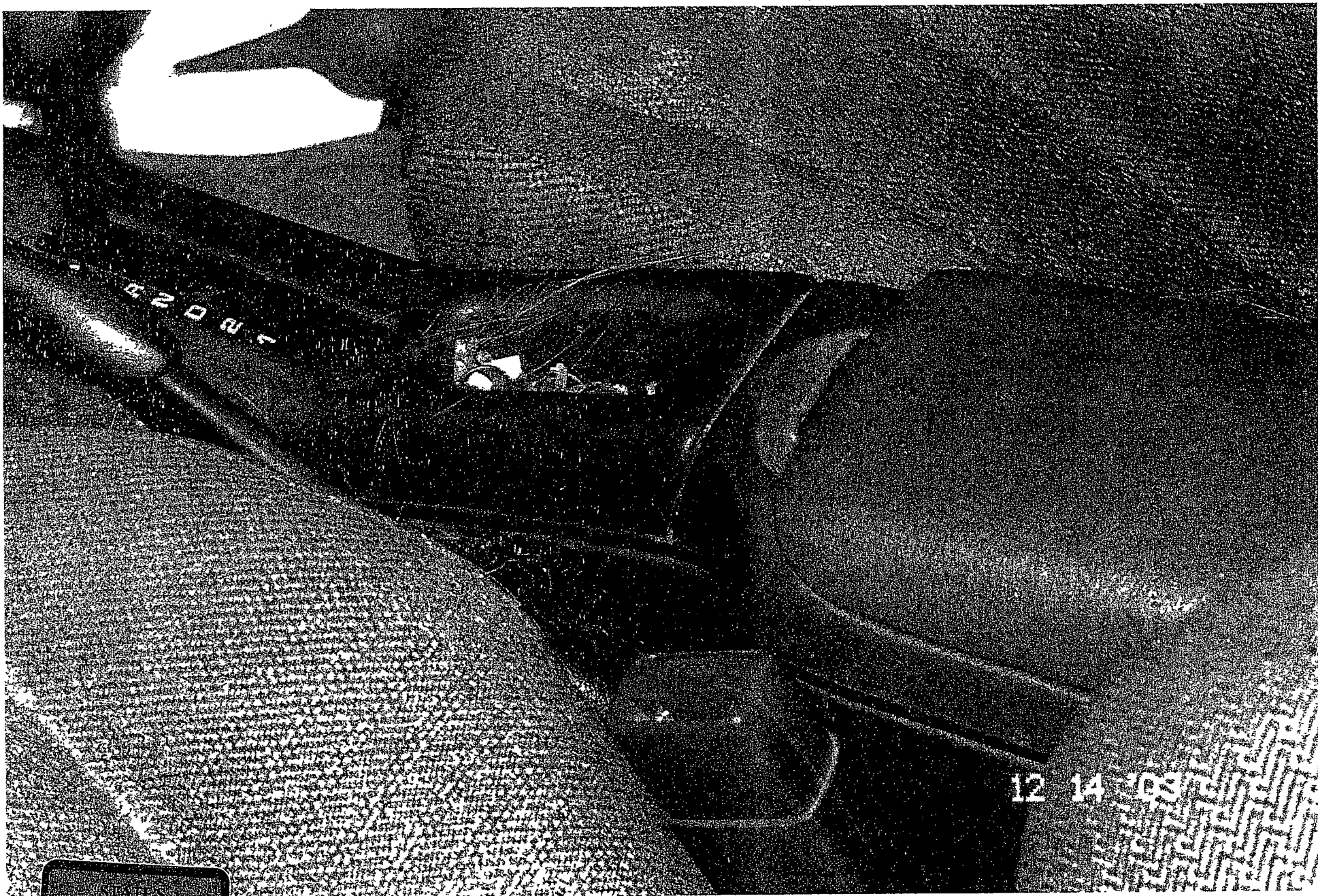
12 14 708



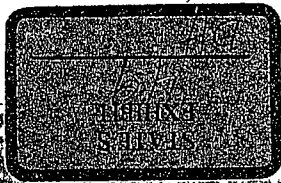
12 14 '03





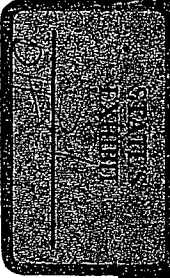






12 14 03



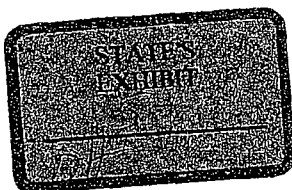
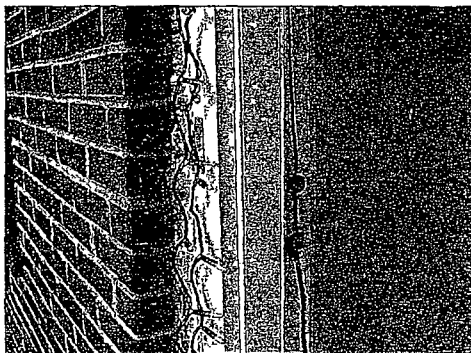
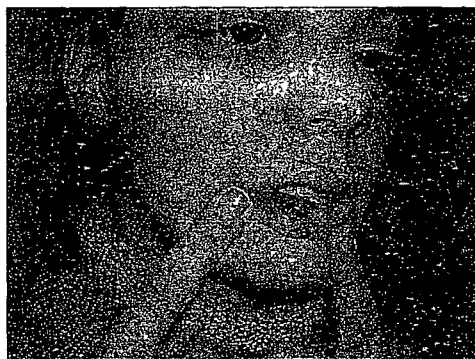
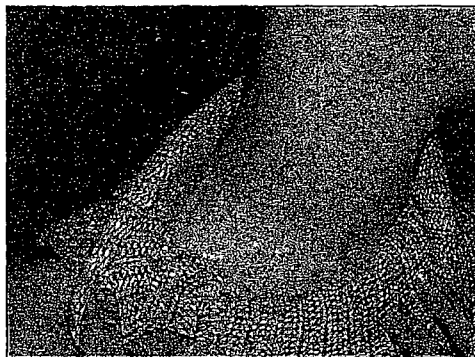
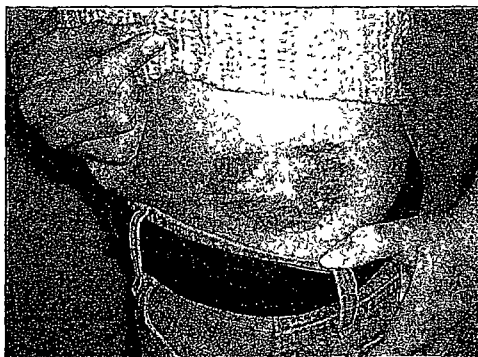


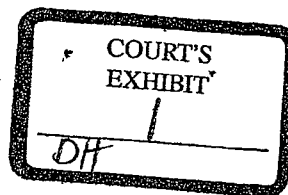
20





CDV Case #12-03-2364





Need to see 1

I may need to  
Step down

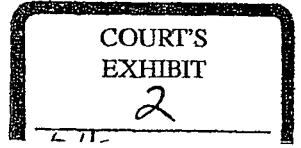
# 103 Leo HARRIS

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	
STATE	)	2005-GS-40-2997
	)	2005-GS-40-2998
VS.	)	2005-GS-40-2999
	)	2005-GS-40-3000
BOBBY SHEY RATHBURN,	)	
	)	
DEFENDANT.	)	<b>JURY CHARGE</b>
	)	

NOW THAT YOU HAVE HEARD THE EVIDENCE AND THE ARGUMENTS OF BOTH THE STATE AND THE DEFENDANT, I WILL EXPLAIN THE LAW TO YOU THAT APPLIES TO THIS CASE.

THE JURY: FINDERS OF THE FACTS

UNDER OUR CONSTITUTION AND CODE OF LAWS, ONLY THE JURY CAN MAKE THE FINDINGS OF FACT IN THIS CASE. I AM NOT PERMITTED TO INDICATE TO YOU HOW I MIGHT FEEL ABOUT THE FACTS. SO, IF I HAVE SAID ANYTHING OR DONE ANYTHING IN THIS CASE THAT MIGHT INDICATE TO YOU THAT I HAVE AN OPINION ABOUT THE FACTS OF THIS CASE, THEN YOU SHOULD DISREGARD THAT. THIS JURY MUST INDEPENDENTLY WEIGH THE EVIDENCE PRESENTED IN THIS TRIAL AND RENDER



A VERDICT BASED SOLELY ON THAT EVIDENCE.

CREDIBILITY

TO DETERMINE THE FACTS IN THIS CASE, YOU WILL HAVE TO EVALUATE THE CREDIBILITY, WHICH MEANS THE BELIEVABILITY, OF EACH WITNESS. SOME OF THE THINGS YOU MAY WISH TO CONSIDER AS YOU DECIDE WHETHER OR NOT TO BELIEVE A WITNESS' TESTIMONY ABOUT A PARTICULAR MATTER INCLUDE THE FOLLOWING:

THE MANNER AND APPEARANCE OF THE WITNESS WHO TESTIFIED, WAS HE OR SHE STRAIGHTFORWARD, OR HESITANT, IN ANSWERING THE QUESTIONS?

WAS THE TESTIMONY OF A WITNESS CONSISTENT, OR INCONSISTENT?

HOW DID THE WITNESS COME TO KNOW THE FACTS THAT HE OR SHE IS TESTIFYING TO? AND WHAT WAS HIS ABILITY TO KNOW THESE FACTS?

IS THERE SOME REASON A WITNESS WOULD WANT TO GIVE TESTIMONY WHICH WOULD HELP, OR HURT, ONE SIDE OR THE

OTHER? IN OTHER WORDS, IS THE WITNESS BIASED TOWARD OR AGAINST ONE SIDE OR THE OTHER?

IS THE TESTIMONY OF THE WITNESS STRENGTHENED, OR WEAKENED, BY OTHER TESTIMONY OR EVIDENCE?

YOU CAN BELIEVE AS MUCH OR AS LITTLE OF EACH WITNESS' TESTIMONY AS YOU THINK IT IS PROPER TO DO. YOU MAY BELIEVE THE TESTIMONY OF A SINGLE WITNESS AGAINST THE TESTIMONY OF ALL THE OTHERS, OR YOU MAY DO JUST THE OPPOSITE. YOU ARE NOT REQUIRED TO ACCEPT TESTIMONY AS TRUE EVEN IF IT IS UNCONTRADICTED.

#### EXPERT

YOU HAVE HEARD THE TESTIMONY OF AN EXPERT WITNESS. EXPERT WITNESSES ARE THOSE WITNESSES WHO HAVE SPECIAL KNOWLEDGE, SKILL, EXPERIENCE, TRAINING OR EDUCATION IN A PARTICULAR PROFESSION OR OCCUPATION. BECAUSE OF THOSE SPECIAL QUALIFICATIONS, EXPERTS ARE ALLOWED TO GIVE OPINIONS AS TO MATTERS WITHIN THEIR AREA OF EXPERTISE. IN DETERMINING THE WEIGHT TO BE

GIVEN OPINIONS GIVEN BY EXPERTS, YOU SHOULD CONSIDER THE QUALIFICATIONS AND CREDIBILITY OF THE EXPERT AND THE REASONS GIVEN FOR HIS OPINION. YOU ARE NOT BOUND BY SUCH OPINION. GIVE IT THE WEIGHT, IF ANY, TO WHICH YOU BELIEVE IT IS ENTITLED.

#### STIPULATION

THERE HAVE BEEN SEVERAL STIPULATIONS ENTERED INTO EVIDENCE IN THIS CASE. A STIPULATION IS AN AGREEMENT AS TO A FACT. FACTS WHICH ARE STIPULATED BECOME ESTABLISHED FOR PURPOSES OF THE CASE, AND CANNOT BE QUESTIONED OR CONTRADICTED.

#### THE JUDGE: INSTRUCTOR OF THE LAW

THE SAME CONSTITUTION AND CODE OF LAWS THAT DESIGNATE YOU THE EXCLUSIVE JUDGES OF THE FACTS, ALSO MAKE ME THE EXCLUSIVE JUDGE OF THE LAW. SO, IF YOU HAVE SOME IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW SHOULD BE, AND IF THAT DIFFERS FROM WHAT I NOW TELL YOU THE LAW IS, THEN YOU ARE OBLIGATED UNDER THE OATH YOU

HAVE TAKEN AS JURORS TO SET YOUR NOTION OF THE LAW ASIDE, AND TO ACCEPT AND APPLY THE LAW PRECISELY AS I NOW EXPLAIN IT TO YOU.

CHARGE, ARREST, INDICTMENT NOT EVIDENCE

THE FACT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE, IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THE INDICTMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGE OR CHARGES MADE AGAINST A DEFENDANT. IT SERVES AS THE FORMAL DOCUMENT BY WHICH THIS CASE IS PROCESSED AND BROUGHT INTO THIS COURT.

PRESUMPTION OF INNOCENCE

THE DEFENDANT HAS PLEADED NOT GUILTY TO THIS INDICTMENT, AND THAT PLEA CASTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. A PERSON CHARGED WITH COMMITTING

A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

IT IS AN IMPORTANT RULE OF THE LAW OF THIS COUNTRY THAT THE DEFENDANT IN A CRIMINAL TRIAL WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH HE IS INDICTED UNLESS AND UNTIL HIS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL CONSTITUTIONAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED. THIS PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANT FROM THE TIME HE IS CHARGED THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED UPON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

DEFENDANT DID NOT TESTIFY

LADIES AND GENTLEMEN, I INSTRUCT YOU NOW, AND I EMPHASIZE TO YOU, THAT THE FACT THE DEFENDANT DID NOT

TESTIFY MUST NOT BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS. THE DEFENDANT HAS A CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE EXERCISE OF THAT CONSTITUTIONAL RIGHT CANNOT AND MUST NOT BE HELD AGAINST THE DEFENDANT. UNDER THE OATH YOU HAVE TAKEN AS JURORS, YOU ARE TO DRAW NO INFERENCE AND DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT DID NOT TESTIFY. DO NOT EVEN DISCUSS THIS FACT IN THE JURY ROOM. THE DEFENDANT IS NOT REQUIRED TO PROVE ANYTHING. THE BURDEN OF PROOF REMAINS UPON THE STATE TO PROVE THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT

A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST, SINCERE, CONSCIENTIOUS JUROR IN SEARCH OF THE TRUTH IN THE CASE TO HESITATE TO ACT. PROOF BEYOND A REASONABLE DOUBT MUST THEREFORE BE PROOF OF SUCH A CONVINCING CHARACTER THAT A REASONABLE PERSON

WOULD NOT HESITATE TO RELY AND ACT ON IT IN THE MOST IMPORTANT OF HIS OR HER OWN AFFAIRS.

PROOF BEYOND A REASONABLE DOUBT CAN ALSO BE DESCRIBED AS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND HIM GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

STATEMENT BY DEFENDANT

I HAVE ADMITTED INTO EVIDENCE IN THIS CASE STATEMENTS ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT. BEFORE YOU MAY CONSIDER THESE STATEMENTS AS EVIDENCE FOR ANY PURPOSE, YOU MUST FIND THAT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THAT THE

ANSWER IS "YES" TO BOTH OF THE FOLLOWING QUESTIONS:

- 1) DID THE DEFENDANT MAKE THE STATEMENT?
- 2) WAS THE STATEMENT MADE VOLUNTARILY?

THE WORD "VOLUNTARILY" MEANS THAT HE FREELY CHOSE TO MAKE THE STATEMENT AND IT WAS NOT INDUCED BY THE PRESSURE, FORCE OR INTIMIDATION. IF THE STATEMENT WAS VOLUNTARY GIVEN, IT MAY BE USED AGAINST HIM. IF THE STATEMENT IS NOT VOLUNTARY, IT CANNOT BE USED AGAINST HIM.

IN DETERMINING WHETHER OR NOT THE STATEMENT OF THE DEFENDANT WAS VOLUNTARY, YOU SHOULD CONSIDER ALL OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE STATEMENT, INCLUDING THE DEFENDANT'S AGE AND MATURITY, HIS LEVEL OF EDUCATION AND INTELLIGENCE, HIS PHYSICAL AND MENTAL HEALTH, HIS BACKGROUND AND ENVIRONMENT, THE NATURE OF ANY QUESTIONING, AND ANY OTHER EVIDENCE YOU BELIEVE BEARS ON THE VOLUNTARINESS OF THE DEFENDANT'S STATEMENT.

IF THE DEFENDANT WAS IN CUSTODY AT THE TIME THE STATEMENT WAS MADE, THEN YOU SHOULD ALSO CONSIDER THE PLACE AND LENGTH OF HIS CUSTODY, AND WHETHER OR NOT HE WAS GIVEN, AND WHETHER OR NOT HE UNDERSTOOD, HIS CONSTITUTIONAL RIGHTS, OR WHAT ARE COMMONLY REFERRED TO AS HIS MIRANDA RIGHTS. THESE RIGHTS ARE:

- A. THAT HE HAS THE RIGHT TO REMAIN SILENT.
- B. THAT ANY STATEMENT THAT HE DOES MAKE CAN AND WILL BE USED AGAINST HIM IN A COURT OF LAW.
- C. THAT HE HAS THE RIGHT TO CONSULT A LAWYER BEFORE AND DURING ANY QUESTIONING.
- D. THAT IF HE CANNOT AFFORD A LAWYER, THE COURT WILL APPOINT ONE TO REPRESENT HIM WITHOUT COST.
- E. THAT HE HAS THE RIGHT TO EXERCISE THESE RIGHTS AT ANY TIME AND TERMINATE QUESTIONING OR NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENT.

I FIND AS A MATTER OF LAW THAT THE DEFENDANT WAS IN CUSTODY AT THE TIME THE STATEMENTS WERE ALLEGEDLY MADE.

CRIMINAL SEXUAL CONDUCT  
FIRST DEGREE  
16-3-652(1)(a)

THE STATE HAS CHARGED THE DEFENDANT WITH CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. IN ORDER TO CONVICT THE DEFENDANT OF THIS CRIME, THE STATE MUST PROVE TWO ELEMENTS, EACH BEYOND A REASONABLE DOUBT.

THE FIRST ELEMENT WHICH THE STATE MUST PROVE IS THAT THE DEFENDANT ENGAGED IN "SEXUAL BATTERY" WITH THE VICTIM.

OUR CODE OF LAWS DEFINES "SEXUAL BATTERY" TO INCLUDE "SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL INTERCOURSE, OR ANY INTRUSION, HOWEVER SLIGHT, OF ANY PART OF A PERSON'S BODY OR OF ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER PERSON'S BODY, EXCEPT WHEN SUCH INTRUSION IS ACCOMPLISHED FOR

MEDICALLY RECOGNIZED TREATMENT OR DIAGNOSTIC PURPOSES."

THERE ARE TWO ALTERNATIVE WAYS IN WHICH THE STATE CAN PROVE THE SECOND ELEMENT. WHILE THE STATE MUST PROVE ONE OF THESE ALTERNATIVES BEYOND A REASONABLE DOUBT, THE STATE NEED NOT PROVE BOTH OF THESE ALTERNATIVES.

THE FIRST ALTERNATIVE WAY IN WHICH THE STATE MAY PROVE THE SECOND ELEMENT IS TO PROVE THAT THE DEFENDANT USED "AGGRAVATED FORCE" TO ACCOMPLISH THE SEXUAL BATTERY.

OUR CODE OF LAWS DEFINES "AGGRAVATED FORCE" TO MEAN THAT THE ACTOR USES PHYSICAL FORCE OR PHYSICAL VIOLENCE OF A HIGH AND AGGRAVATED NATURE TO OVERCOME THE VICTIM. FORCE OR VIOLENCE OF A HIGH AND AGGRAVATED NATURE CAN INCLUDE THE THREAT OF THE USE OF A DEADLY WEAPON.

THE SECOND ALTERNATIVE WAY IN WHICH THE STATE MAY PROVE THE SECOND ELEMENT IS TO PROVE THAT THE VICTIM SUBMITTED TO SEXUAL BATTERY BY THE DEFENDANT UNDER CIRCUMSTANCES WHERE THE VICTIM WAS ALSO THE VICTIM OF FORCIBLE CONFINEMENT, KIDNAPPING, OR BURGLARY. I WILL DEFINE KIDNAPPING AND BURGLARY IN JUST A MINUTE.

SEVERAL TIMES IN THIS CHARGE I WILL GIVE YOU ALTERNATIVE WAYS IN WHICH THE STATE CAN PROVE AN ELEMENT OF A CRIME. IN THESE SITUATIONS, THE JURY MUST UNANIMOUSLY AGREE THAT THE STATE HAS PROVEN AT LEAST ONE OF THE ALTERNATIVES BEYOND A REASONABLE DOUBT. IT IS NOT SUFFICIENT THAT SEVERAL JURORS BELIEVE THE STATE HAS PROVEN ONE ALTERNATIVE, AND THE REST OF THE JURY BELIEVES THE STATE HAS PROVEN THE OTHER ALTERNATIVE.

CRIMINAL SEXUAL CONDUCT  
SECOND DEGREE

16-3-653

IF YOU FIND THAT THE STATE HAS FAILED TO PROVE THE DEFENDANT GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, THEN YOU SHOULD CONSIDER WHETHER THE STATE HAS PROVEN THE DEFENDANT GUILTY OF THE LESSER INCLUDED OFFENSE OF CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE. IN ORDER TO CONVICT THE DEFENDANT OF THIS CRIME, THE STATE MUST PROVE TWO ELEMENTS, EACH BEYOND A REASONABLE DOUBT.

THE FIRST ELEMENT WHICH THE STATE MUST PROVE IS THAT THE DEFENDANT ENGAGED IN "SEXUAL BATTERY" WITH THE VICTIM.

THE SECOND ELEMENT WHICH THE STATE MUST PROVE IS THAT THE DEFENDANT USED "AGGRAVATED COERCION" TO ACCOMPLISH THE SEXUAL BATTERY.

OUR CODE OF LAWS DEFINES "AGGRAVATED COERCION" TO MEAN THAT THE ACTOR THREATENS TO USE FORCE OR VIOLENCE OF A HIGH AND AGGRAVATED NATURE TO OVERCOME THE VICTIM OR ANOTHER PERSON, IF THE VICTIM

REASONABLY BELIEVES THAT THE ACTOR HAS THE PRESENT ABILITY TO CARRY OUT THE THREAT, OR THE DEFENDANT THREATENS TO RETALIATE IN THE FUTURE BY THE INFLECTION OF PHYSICAL HARM, KIDNAPPING OR EXTORTION, UNDER CIRCUMSTANCES OF AGGRAVATION, AGAINST THE VICTIM OR ANY OTHER PERSON.

### KIDNAPPING

THE DEFENDANT IS CHARGED WITH KIDNAPPING. IN ORDER TO CONVICT THE DEFENDANT OF THIS CRIME, THE STATE MUST PROVE FOUR ESSENTIAL ELEMENTS, EACH BEYOND A REASONABLE DOUBT

FIRST, THE STATE MUST PROVE THAT THE DEFENDANT SEIZED, CONFINED, KIDNAPPED, ABDUCTED, OR CARRIED AWAY ANOTHER PERSON.

SECOND, THE STATE MUST PROVE THAT THE DEFENDANT DID SO UNLAWFULLY.

THIRD, THE STATE MUST PROVE THAT THE DEFENDANT DID SO KNOWINGLY.

FOURTH, THE STATE MUST PROVE THAT THE DEFENDANT DID SO WITHOUT AUTHORITY OF LAW.

LET ME DEFINE FOR YOU SOME OF THE TERMS USED IN THE FIRST ELEMENT. SEIZE MEANS TO TAKE HOLD OF SUDDENLY OR FORCIBLY.

CONFINE MEANS TO LIMIT, RESTRICT, OR ENCLOSE WITHIN BOUNDS, IMPRISON, OR SHUT OR KEEP IN.

KIDNAP IS TO REMOVE A PERSON AGAINST HIS WILL BY UNLAWFUL FORCE OR BY FRAUD.

ABDUCT MEANS TO CARRY OFF SECRETLY OR BY FORCE FOR AN ILLEGAL PURPOSE.

REGARDING THE SECOND ELEMENT, TO DO AN ACT UNLAWFULLY IS TO DO THE ACT WHEN ONE KNOWS IT IS AGAINST THE LAW.

REGARDING THE THIRD ELEMENT, KNOWINGLY MEANS WITH KNOWLEDGE, CONSCIOUSLY, NOT ACCIDENTALLY.

REGARDING THE FOURTH ELEMENT, SOMETHING DONE WITHOUT AUTHORITY OF LAW IS SOMETHING THAT THE LAW

DOES NOT SANCTION, PERMIT, ALLOW, CONDONE, OR PROVIDE JUSTIFICATION FOR.

BURGLARY

THE DEFENDANT IS CHARGED WITH BURGLARY IN THE FIRST DEGREE. IN ORDER TO CONVICT THE DEFENDANT OF THIS CRIME, THE STATE MUST PROVE FOUR ESSENTIAL ELEMENTS, EACH BEYOND A REASONABLE DOUBT.

FIRST, THE STATE MUST PROVE THE DEFENDANT ENTERED A DWELLING.

SECOND, THE STATE MUST PROVE THAT THE DEFENDANT DID NOT HAVE PERMISSION TO ENTER THE DWELLING.

THIRD, THE STATE MUST PROVE THAT THE DEFENDANT ENTERED THE DWELLING WITH THE INTENT TO COMMIT A CRIME INSIDE.

THE STATE MAY PROVE THE FOURTH ELEMENT IN EITHER OF TWO ALTERNATIVE WAYS. WHILE THE STATE MUST PROVE ONE OF THESE ALTERNATIVES BEYOND A REASONABLE DOUBT, THE STATE NEED NOT PROVE MORE THAN ONE. THE

ALTERNATIVES ARE:

- (1) WHILE EFFECTING ENTRY, IN THE DWELLING, OR IN IMMEDIATE FLIGHT, THE DEFENDANT OR ANOTHER PARTICIPANT IN THE CRIME CAUSED PHYSICAL INJURY TO A PERSON WHO IS NOT A PARTICIPANT IN THE CRIME; OR
- (2) THAT THE DEFENDANT ENTERED OR REMAINED IN THE DWELLING IN THE NIGHTTIME.

REMEMBER THAT THE JURY MUST UNANIMOUSLY AGREE THE STATE HAS PROVEN AT LEAST ONE OF THESE ALTERNATIVES.

WITH REGARD TO THE FIRST ELEMENT, THE TERM "DWELLING" MEANS ANY HOUSE, APARTMENT OR BUILDING IN WHICH AN OWNER OR TENANT SLEEPS.

WITH REGARD TO THE THIRD ELEMENT, THE INTENT TO COMMIT A CRIME, THE MERE ENTRY INTO A DWELLING WITHOUT CONSENT IS NOT BURGLARY. IF THE INTENT TO COMMIT A CRIME IS FORMED AFTER THE ENTRY, IT IS NOT

BURGLARY. ON THE OTHER HAND, IF THE DEFENDANT INTENDED TO COMMIT A CRIME AT THE TIME OF THE ENTRY, IT IS A BURGLARY EVEN IF THE INTENT WAS ABANDONED AFTER THE ENTRY. IT DOES NOT MATTER THAT THE INTENDED CRIME WAS NOT COMPLETED. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.

#### CRIMINAL DOMESTIC VIOLENCE

THE DEFENDANT IS CHARGED WITH CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE. IN ORDER TO CONVICT THE DEFENDANT OF THIS CRIME, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT ONE OF THE FOLLOWING ALTERNATIVE ELEMENTS. WHILE THE STATE MUST PROVE ONE OF THESE ALTERNATIVES BEYOND A REASONABLE DOUBT, THE STATE NEED NOT PROVE MORE THAN ONE. THE ALTERNATIVES ARE:

- (1) THAT THE DEFENDANT CAUSED PHYSICAL HARM OR INJURY TO A MEMBER OF THE DEFENDANT'S OWN HOUSEHOLD, WHICH INVOLVED THE USE OF A DEADLY WEAPON OR RESULTED IN SERIOUS BODILY INJURY TO THE VICTIM, OR
- (2) WHETHER THE DEFENDANT CAUSED PHYSICAL HARM OR INJURY TO THE VICTIM OR NOT, THAT THE DEFENDANT *THREATENED* OR *ATTEMPTED* TO CAUSE PHYSICAL HARM OR INJURY TO THE DEFENDANT'S OWN HOUSEHOLD MEMBER, WITH THE APPARENT PRESENT ABILITY TO COMPLETE THE PHYSICAL HARM OR INJURY, UNDER CIRCUCMSTANCES REASONABLY CREATING FEAR OF IMMINENT *SERIOUS* BODILY INJURY OR DEATH.

REMEMBER THAT THE JURY MUST UNANIMOUSLY AGREE THE STATE HAS PROVEN AT LEAST ONE OF THESE ALTERNATIVES.

A HOUSEHOLD MEMBER INCLUDES A SPOUSE, A FORMER

SPOUSE, PERSONS WHO HAVE A CHILD IN COMMON, AND A PERSON OF THE OPPOSITE SEX WITH WHOM THE DEFENDANT IS COHABITING, OR HAS COHABITED IN THE PAST.

A DEADLY WEAPON IS ANY OBJECT OR SUBSTANCE WHICH IS USED IN SUCH A WAY THAT IT IS REASONABLY LIKELY TO CAUSE DEATH OR SERIOUS BODILY INJURY.

AS TO BODILY INJURY, IT IS UP TO YOU TO DETERMINE WHETHER OR NOT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THAT ANY INJURIES SUSTAINED BY A VICTIM IN THIS CASE WERE SERIOUS.

IF YOU FIND THAT THE STATE HAS FAILED TO PROVE CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE, YOU SHOULD CONSIDER WHETHER OR NOT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THE LESSER INCLUDED OFFENSE OF CRIMINAL DOMESTIC VIOLENCE. IN ORDER TO CONVICT THE DEFENDANT OF CRIMINAL DOMESTIC VIOLENCE, THE STATE MUST PROVE ONE OF THE FOLLOWING ELEMENTS:

THAT THE DEFENDANT CAUSED PHYSICAL HARM OR INJURY TO THE DEFENDANT'S OWN HOUSEHOLD MEMBER; OR

THAT THE DEFENDANT THREATENED OR ATTEMPTED TO CAUSE PHYSICAL HARM OR INJURY TO THE DEFENDANT'S OWN HOUSEHOLD MEMBER, WITH THE APPARENT PRESENT ABILITY TO COMPLETE THE PHYSICAL HARM OR INJURY, UNDER CIRCUMSTANCES REASONABLY CREATING FEAR OF IMMINENT DANGER.

NOW THESE ELEMENTS SOUND THE SAME AS THE ELEMENTS FOR CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE, BUT THERE IS A DIFFERENCE. TO SATISFY THE FIRST ELEMENT OF CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE, THE STATE MUST PROVE THE PHYSICAL HARM OR INJURY "INVOLVED THE USE OF A DEADLY WEAPON, OR RESULTED IN SERIOUS BODILY INJURY." ONLY PHYSICAL HARM OR INJURY NEED BE PROVEN FOR CRIMINAL DOMESTIC VIOLENCE.

AS TO THE SECOND ELEMENT, FOR CRIMINAL DOMESTIC

VIOLENCE OF A HIGH AND AGGRAVATED NATURE, THE STATE MUST PROVE THE “FEAR” REASONABLY CREATED IN THE MIND OF THE VICTIM WAS FEAR OF IMMINENT *SERIOUS* BODILY INJURY, OR DEATH. FOR CRIMINAL DOMESTIC VIOLENCE, THE STATE NEED PROVE ONLY THAT THE “FEAR” REASONABLY CREATED WAS FEAR OF IMMINENT DANGER.

VOLUNTARY INTOXICATION

YOU HAVE HEARD EVIDENCE THAT THE DEFENDANT MIGHT HAVE BEEN INTOXICATED. THE VOLUNTARY USE OF DRUGS OR ALCOHOL IS NOT A DEFENSE TO A CRIME. A PERSON WHO VOLUNTARILY BECOMES INTOXICATED IS JUST AS RESPONSIBLE FOR THE ACTS COMMITTED WHILE INTOXICATED AS WHEN THE PERSON IS NOT INTOXICATED.

CLOSING

LADIES AND GENTLEMEN, YOUR VERDICT MUST BE UNANIMOUS. ALL TWELVE OF YOU MUST AGREE BEFORE YOU CAN WRITE A VERDICT.

FOREPERSON

EXPLAIN VERDICT FORM

CAN we obtain  
the cell phone logs used  
in the Trial AS well  
AS the charts used in  
closing Arguments?

*[Signature]*  
#60

Since these documents were not admitted into  
evidence, I cannot send those back to the jury  
room. You must make your decision in this case  
based on the testimony, and evidence that you have  
with you already.

*[Signature]*

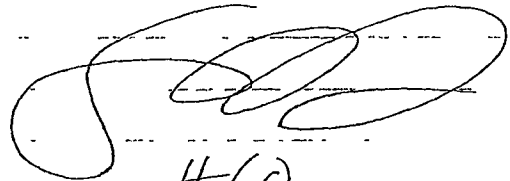
COURT'S  
EXHIBIT  
3  
DH

CAN we have the  
COURT TRANSCRIPTS?

*J.P.P.*  
#60

COURT'S  
EXHIBIT  
4  
DIT

Are the details of  
the actual laws  
forth coming?

  
#60

COURT'S  
EXHIBIT  
5  
D/7

The Jury has reached  
our Verdicts.

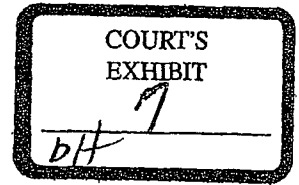
*[Handwritten Signature]*  
#60

COURT'S  
EXHIBIT  
6  
DH

15. Given all available data, this assessment is considered:

*Compelling*

*Problematic*



For the following:

For the following:

- No abuse
- Sexual Abuse
- Physical Abuse
- Psychological Abuse
- Physical Neglect
- Medical Neglect
- Other witness to domestic violence

- Sexual Abuse
- Physical Abuse
- Psychological Abuse
- Physical Neglect
- Medical Neglect
- Other \_\_\_\_\_

16. Narrative account of abuse (see video for complete interview: copy available to investigators by request)

L B was interviewed using a semi-structured interview protocol known as RATAC. Rapport was easily established and she was able to tell me about family members and friends. She reported she now lives with Aunt Cindy, Bridget, and mama but prior lived with mama and daddy. She said they had to move because "daddy was mean" and "slapped mama's face" with his hand and "pushed her in the wall". She also reported he put his hands around her throat. She indicated she saw it happen. She told interviewer daddy was banging on the door and woke them up. She said her mama said "get out" to her daddy. She was angry. Isabella said her mama started crying. She said this has happened more than one time and they would fight and it would be "ugly". She indicated they would slap each other. Q=Did daddy say anything? A=Yeah, but I can't say it Q=Why? A=Because he uses bad words L B replied she didn't know what mama or daddy said to each other after interviewer reassured her she could use any words in the room. She reported they would say things to each other but she couldn't remember what the words were She reported they got into a "little fight" and "that's why daddy moved". She told interviewer daddy does not visit anymore.

Interviewer queried where the incident happened. L B said it happened at their old house and she was in mama and daddy's room when it happened. She reported she does not remember if mama said anything to her because she was "crying again".

Isabella was asked question regarding spankings and getting in trouble. She said she doesn't get in trouble and was spanked before on her stomach but not anymore because it's "bad to get hits and spankings". She reported her father never gave her any spankings only mama one time

Interviewer queried L B about seeing people with no clothes on. She said she saw her mama and daddy with no clothes on when they were getting ready for church. She has never seen any other people with no clothes on.

Isabella became bored in the room and wanted to leave. Interviewer took a short break, returned L B to the waiting room, and staffed with law enforcement officer observing interview. Returned with L B to the interview room and inquired about seeing things break when mama and daddy fight. She reported seeing daddy break the wall with his "butt". Interviewer queried L B about hair-pulling when she saw them fight. She said she saw daddy pull mama's hair, it came out, and "she started crying again" L B could not stay focused on questions and wanted to leave the room. Interviewer thanked her for talking with me and returned her to the waiting room

Evaluator Signature:

Date

*[Handwritten signature]*

*[Handwritten date]*