

ORIGINAL

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

DeAndrea G. Benjamin, Circuit Court Judge

RECEIVED

APR 03 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MELVIN P. STUKES,

APPELLANT

APPELLATE CASE NO. 2012-212628

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

MARY S. WILLIAMS
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192
(803) 576-1800

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
<u>JACKSON V. DENNO TESTIMONY</u>	
BRIAN GODFREY	
Examination by Mr. Goldberg	23
Examination by Ms. Dyar	34
GENE MINCEY	
Examination by Mr. Goldberg	38
Examination by Mr. Shealey	43
TESTIMONY	
MISTY LYNN SHEALY MILLENDER (IN CAMERA)	
Proffered Examination by Mr. Goldberg	94
Proffered Examination by Ms. Pinnock	101
OPENING STATEMENT BY MS. ASHTON	112
OPENING STATEMENT BY MR. SHEALEY	120
MISTY LYNN SHEALY MILLENDER	
Direct Examination by Mr. Goldberg	136
Cross Examination by Ms. Pinnock	155
Redirect Examination by Mr. Goldberg	180
JACQUELINE BRUTON	
Direct Examination by Ms. Ashton	181
Cross Examination by Mr. Shealey	184
Proffered Examination by Mr. Shealey	187
Cross Examination by Mr. Shealey resumes	188
BRIAN METZ	
Direct Examination by Ms. Ashton	199
Cross Examination by Mr. Shealey	203
Redirect Examination Ms. Ashton	208

MICHAEL D. PEARSON, II	
Direct Examination by Ms. Ashton	210
Cross Examination by Mr. Dyar	215
Redirect Examination by Ms. Ashton.....	217
DONNA SHARPE	
Direct Examination by Mr. Goldberg	226
Cross Examination by Ms. Pinnock.....	249
HARRIET CHILDERS EVANS	
Direct Examination by Ms. Ashton	261
KELLYE HENDRICK	
Direct Examination by Ms. Ashton	263
DEANNA MOORE	
Direct Examination by Ms. Ashton	265
TENA GOFF	
Direct Examination by Ms. Ashton	267
MARILYN FITZPATRICK	
Direct Examination by Ms. Ashton	270
Cross Examination by Ms. Pinnock.....	273
JENNIFER CLAYTON	
Direct Examination by Ms. Ashton	274
RAY A. LIVINGSTON	
Direct Examination by Ms. Ashton	277
Cross Examination by Ms. Pinnock.....	279
STAN RICHARDS	
Voir Dire Examination by Mr. Goldberg	280
Voir Dire Examination by Ms. Pinnock	281
Direct Examination by Mr. Goldberg	283
Cross Examination by Ms. Pinnock.....	290
Redirect Examination by Mr. Goldberg	297
BRANDON LANDRUM	
Voir Dire Examination by Mr. Goldberg	298
Direct Examination by Mr. Goldberg	300
Cross Examination by Ms. Pinnock.....	302
ANTHONY BRANHAM	
Direct Examination by Ms. Ashton	305
Cross Examination by Mr. Shealey	319

STEVE GRIFFEY	
Direct Examination by Mr. Goldberg	339

PATTY WEED	
Direct Examination by Mr. Goldberg	341

JACKSON V. DENNO TESTIMONY

ANDREW CALDWELL	
Examination by Ms. Ashton	344
Examination by Mr. Shealey	350
Further Examination by Ms. Ashton.....	356

TESTIMONY

ANDREW CALDWELL	
Direct Examination by Ms. Ashton	367
Cross Examination by Mr. Shealey	375

AMY STEPHENS	
Direct Examination by Mr. Goldberg	391

SHEREE BROWN	
Direct Examination by Mr. Goldberg	393

RHONDA FIELDS	
Voir Dire Examination by Ms. Ashton.....	396
Direct Examination by Ms. Ashton	397
Cross Examination by Ms. Pinnock.....	408

BRIAN GODFREY	
Direct Examination by Mr. Goldberg	411
Cross Examination by Mr. Shealey	450
Redirect Examination by Mr. Goldberg	488
Recross Examination by Mr. Shealey	490

MELVIN STUKES	
Direct Examination by Ms. Pinnock.....	502
Cross Examination by Mr. Goldberg.....	515
Redirect Examination by Ms. Pinnock	523

LAWRENCE MCNEELY	
Direct Examination by Ms. Pinnock.....	525
Proffered Examination by Ms. Pinnock.....	527
Direct Examination by Ms. Pinnock resumes	536
Cross Examination by Mr. Goldberg.....	537

DIRECTED VERDICT MOTION.....	539

CLOSING ARGUMENT BY MS. PINNOCK	554
CLOSING ARGUMENT BY MR. GOLDBERG.....	579
CHARGE ON THE LAW	601
VERDICT	641
SENTENCING	651
COURT’S EXHIBIT #1 (Motion to Prevent Reference to S.C. Code § 16-3-557 and Memorandum in Support	654
COURT’S EXHIBIT #2 (Arrest Warrants)	686
COURT’S EXHIBIT #3 (Jury Question).....	688
COURT’S EXHIBIT #4 (Jury Charges)	689
COURT’S EXHIBIT #5 (Jury Question).....	703
COURT’S EXHIBIT #6 (Jury Question).....	704
COURT’S EXHIBIT #7 (Jury Question).....	705
COURT’S EXHIBIT #8 (Jury Question).....	706
INDICTMENT	707
CERTIFICATE OF COUNSEL.....	711

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Melvin P. Stukes, Jr.,)
)
 Defendant.)
)
)

July 24, 25, 26, 27, 2012
Columbia, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Judge, and a Jury

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

Kathryn C. Ashton, Esquire, Assistant Solicitor
Daniel R. Goldberg, Esquire, Assistant Solicitor
Attorneys for the State

Tracy E. Pinnock, Esquire
Brian R. Shealey, Esquire
Alicia Dyar, Esquire
Attorneys for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E XWitness/DescriptionPage No.*TUESDAY, JULY 24, 2012**Jackson vs. Denno Hearing*

Brian Godfrey

Examination by Mr. Goldberg 23

Examination by Ms. Dyar 34

Gene Mincey

Examination by Mr. Goldberg 38

Examination by Mr. Shealey 43

Hearing Concludes

Jury Voir Dire 65

Jury Selection 80

In-camera Jury Voir Dire 93

Misty Lynn Shealy Millender

Proffered Examination by Mr. Goldberg 144

Proffered Examination by Ms. Pinnock 151

Opening Remarks by the Court 156

Opening by Ms. Ashton 162

Opening by Mr. Shealey 170

State's Case in Chief

Misty Lynn Shealy Millender

Direct Examination by Mr. Goldberg 186

Cross-examination by Ms. Pinnock 205

Redirect Examination by Mr. Goldberg 230

Jacqueline Bruton

Direct Examination by Ms. Ashton 231

Cross-examination by Mr. Shealey 234

Proffered Examination by Mr. Shealey 237

Cross-examination by Mr. Shealey Resumes 238

WEDNESDAY, JULY 25, 2012

Brian Metz

Direct Examination by Ms. Ashton 249

Cross-examination by Mr. Shealey 253

Redirect Examination by Ms. Ashton 258

Michael D. Pearson, II

Direct Examination by Ms. Ashton 260

Cross-examination by Ms. Dyar 265

Redirect Examination by Ms. Ashton 267

Donna Sharpe

Direct Examination by Mr. Goldberg 276

1	Donna Sharpe	
2	Cross-examination by Ms. Pinnock	299
3		
4	Harriet Childers Evans	
5	Direct Examination by Ms. Ashton	311
6		
7	Kellye Hendrick	
8	Direct Examination by Ms. Ashton	313
9		
10	Deanna Moore	
11	Direct Examination by Ms. Ashton	315
12		
13	Tena Goff	
14	Direct Examination by Ms. Ashton	317
15		
16	Marilyn Fitzpatrick	
17	Direct Examination by Ms. Ashton	320
18	Cross-examination by Ms. Pinnock	323
19		
20	Jennifer Clayton	
21	Direct Examination by Ms. Ashton	324
22		
23	Ray A. Livingston	
24	Direct Examination by Ms. Ashton	327
25	Cross-examination by Ms. Pinnock	329

1	Stan Richards	
2	Voir Dire Examination by Mr. Goldberg	330
3	Voir Dire Examination by Ms. Pinnock	331
4	Direct Examination by Mr. Goldberg	333
5	Cross-examination by Ms. Pinnock	340
6	Redirect Examination by Mr. Goldberg	347
7		
8	Brandon Landrum	
9	Voir Dire Examination by Mr. Goldberg	348
10	Direct Examination by Mr. Goldberg	350
11	Cross-examination by Ms. Pinnock	325
12		
13	Anthony Branham	
14	Direct Examination by Ms. Ashton	355
15	Redirect Examination by Mr. Shealey	369
16		
17	Steve Griffey	
18	Direct Examination by Mr. Goldberg	389
19		
20	Patty Weed	
21	Direct Examination by Mr. Goldberg	391
22		
23	<i>Jackson vs. Denno Hearing</i>	
24	Andrew Caldwell	
25	Examination by Ms. Ashton	394

1	Andrew Caldwell	
2	Examination by Mr. Shealey	400
3	Further Examination by Ms. Ashton	406
4	<i>Hearing Concludes</i>	
5		
6	Andrew Caldwell	
7	Direct Examination by Ms. Ashton	417
8	Cross-examination by Mr. Shealey	425
9		
10	Gene Mincey	
11	Direct Examination by Mr. Goldberg	430
12	Cross-examination by Mr. Shealey	438
13		
14	Amy Stephens	
15	Direct Examination by Mr. Goldberg	441
16		
17	Sheree Brown	
18	Direct Examination by Mr. Goldberg	443
19		
20	Rhonda Fields	
21	<i>Voir Dire</i> Examination by Ms. Ashton	446
22	Direct Examination by Ms. Ashton	447
23	Cross-examination by Ms. Pinnock	458
24		
25		

THURSDAY, JULY 26, 2012

Brian Godfrey

Direct Examination by Mr. Goldberg 461

Cross-examination by Mr. Shealey 500

Redirect Examination by Mr. Goldberg 538

Recross-examination by Mr. Shealey 540

End of State's Case in Chief

Case by Defense

Melvin Stukes

Direct Examination by Ms. Pinnock 552

Cross-examination by Mr. Goldberg 565

Redirect Examination by Ms. Pinnock 573

Lawrence McNeely

Direct Examination by Ms. Pinnock 575

Proffered Examination by Ms. Pinnock 577

Direct Examination by Ms. Pinnock Resumes 586

Cross-examination by Mr. Goldberg 587

End of Defendant's Case

FRIDAY, JULY 27, 2012

Closing by Ms. Pinnock 604

Closing by Mr. Goldberg 629

Jury Charge 651

1	Verdict	691
2	Polling of the Jury	692
3	Sentence of the Court	701
4	Certificate Page	703

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

E X H I B I T S

No.	Description	I.D.	Ev.
S-1	Advice of Rights Form	12	478
S-2	Statement	12	-
S-3	Consent to Search	12	481
S-4	Photograph	12	335
S-5	Photograph	12	335
S-6	Photograph	12	335
S-7	Photograph	12	335
S-8	Photograph	12	335
S-9	Photograph	12	335
S-10	Photograph	12	335
S-11	Photograph	12	335
S-12	Photograph	12	335
S-13	Photograph	12	335
S-14	Photograph	12	335
S-15	Photograph	12	335
S-16	Photograph	12	328
S-17	Photograph	12	328
S-18	Photograph	12	328
S-19	Photograph	12	328
S-20	Photograph	12	328
S-21	Photograph	12	328
S-22	Bag of Clothing	293	294
S-23	Sexual Assault Kit	295	-

10			
1	No.	Description	I.D. Ev.
2	S-24	Packet Containing Underwear	387 452
3	S-25	Redacted Statement	460 496
4	S-26	Enlarged Map	460 482
5			
6			
7			
8	D-1	Photograph	12 207
9	D-2	Photograph	12 207
10	D-3	Photograph	12 207
11	D-4	Photograph	12 207
12	D-5	Photograph	12 207
13	D-6	Photograph	12 216
14	D-7	Photograph	12 216
15	D-8	Photograph	12 216
16	D-9	Photograph	12 216
17	D-10	Photograph	12 216
18	D-11	Photograph	12 216
19	D-12	Photograph	12 216
20	D-13	Photograph	12 216
21	D-14	Photograph	12 -
22	D-15	Photograph	12 228
23	D-16	Photograph	12 228
24	D-17	Photograph	12 228
25	D-18	Photograph	12 228

			11
1	No.	Description	Ev.
2	C-1	Defense Motion <i>in Limine</i>	125
3	C-2	Arrest Warrants	412
4	C-3	Jury Question	668
5	C-4	Jury Question	668
6	C-5	Jury Charge Request	670
7	C-6	Jury Question	685
8	C-7	Jury Question	688
9	C-8	Jury Question	688
10	C-9	Verdict Form	691
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

TUESDAY, JULY 24, 2012

(ADVICE OF RIGHTS FORM MARKED AS STATE'S EXHIBIT
NUMBER 1 FOR IDENTIFICATION.)

(STATEMENT MARKED AS STATE'S EXHIBIT NUMBER 2 FOR
IDENTIFICATION.)

(CONSENT TO SEARCH MARKED AS STATE'S EXHIBIT NUMBER 3
FOR IDENTIFICATION.)

(PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS 4
THROUGH 21 FOR IDENTIFICATION.)

(PHOTOGRAPHS MARKED INDIVIDUALLY AS DEFENDANT'S
EXHIBITS 1 THROUGH 18 FOR IDENTIFICATION.)

THE COURT: All right. Yes, sir.

MR. GOLDBERG: Thank you, Your Honor. Pleases the
court? This is the matter of *State vs. Melvin P. Stukes*,
indictment 2010-GS-42-700, criminal sexual conduct first
degree. 2010-GS-42-701, burglary first degree.

THE COURT: All right, and I have defendant's witness
list, state's potential witness list, and the indictments,
and is there any, is there any -- you all have any *voir*
dire?

MR. GOLDBERG: Nothing specific.

THE COURT: Other than the ---

MR. GOLDBERG: Just your standard from the state.

THE COURT: All right. Any additional from the
defense?

1 MR. SHEALEY: We do, Your Honor. I'll hand up some of
2 this information. We have -- and we're, we're going to be
3 proposing standard *voir dire*, very traditional, and also
4 individual *voir dire* in this case, Your Honor.

5 You -- we've all tried CSC cases before, and they're
6 some of the more sensitive cases, Judge. Last year, in
7 fact, Ms. Ashton and I tried a CSC case in front of Judge
8 Cooper, and he thought it was prudent to do individual *voir*
9 *dire* because there's a lot of things that, you know -- and
10 you'll see the individual aspects of it are more sensitive
11 questions to the panel, and often these issues and the, the
12 panel does not feel comfortable addressing them. And so we
13 think it's prudent to avoid, you know, mistrial issues as
14 far as somebody getting onto the twelve here that have, you
15 know, preconceived ideas about CSC issues.

16 THE COURT: And I did this -- the last one I tried was
17 a CSC and we did the same thing. Any -- y'all have any --
18 I think what he did was we, we picked, like, five extra
19 alternates or something, and then I brought everybody in
20 individually.

21 MR. SHEALEY: Yes, Your Honor, and I think I was aware
22 of that. The way Judge Cooper did it, he had the panel in
23 here, and we picked our twelve and our alternates, and then
24 once we had them seated, he left the panel in here for a
25 little bit, and then one attorney from each side went back

1 into a jury room with, with Your Honor -- with His Honor in
2 that case and asked individual questions of the twelve and
3 the alternates while still having the panel here. Just in
4 case some issue came up, we could quickly call someone
5 else, and then that was done fairly expeditiously, and then
6 he released the panel back, or that's how he did. But, you
7 know, you may have different ---

8 THE COURT: I think the last time, I think whoever it
9 was from your office and your office somehow agreed or
10 suggested picking, like, three or four extra alternates and
11 then I released them as soon as we finished. But I'll be
12 glad to hear from Mr. Goldberg.

13 MR. GOLDBERG: Yes, you released them as soon as we
14 finished with jury selection.

15 THE COURT: What we did is we picked -- I can't
16 remember. We picked -- it was either three extra
17 alternates or five extra alternates, and then I brought the
18 twelve and the two alternates back into my chambers, asked
19 them these questions. There was somebody from both sides
20 in, in the -- in there also, and in that case everybody
21 said no, no, no, no. The answers were mainly the same.
22 The -- so, we just released the extra four or five people.

23 MR. GOLDBERG: At that time.

24 THE COURT: After, after that I let them go. The plan
25 was that we would take -- if somebody disclosed something

1 once they got back in chambers, we would take the first
2 alternate, move them into the, you know -- and then the
3 second one would move in, and then the first one. But it
4 was all in order based on the picking.

5 MR. GOLDBERG: I don't have any problem with that
6 procedure.

7 THE COURT: It just keeps you from having to draw
8 another jury because, if not, we'll be here all day.

9 MR. GOLDBERG: Right.

10 THE COURT: Because you'll have to do it again with
11 the next twelve that you pick.

12 MR. SHEALEY: Yes, Your Honor, and that way we can get
13 the panel out of here, and hopefully when we pick the five
14 alternates, the extras we'll call them, hopefully there
15 won't be so many people back there to have issues.
16 Hopefully not.

17 THE COURT: Yeah.

18 MR. SHEALEY: I -- we're fine with that.

19 MR. GOLDBERG: That's fine. No problem with that
20 procedure. I do have some issues with the particular
21 individual requested *voir dire*, though, that I would like
22 to address. Specifically the, the relevance in this
23 particular instance of questions four and five about
24 religious or moral views on premarital sex and premarital
25 sexual relationships. And also on number six about any

1 reason why they could not be completely objective or
2 unbiased in the trial concerning premarital sex seems a
3 little duplicative, especially when you're going to ask the
4 question of any reason, in general, why anyone couldn't be
5 objective or unbiased. But I just -- I don't -- I'm not
6 really seeing the connection on the religious or moral
7 views regarding premarital sex and how that's relevant to
8 this situation.

9 MR. SHEALEY: And, Your Honor, that actually was
10 inserted based on experience of your last trial here. I
11 think there was somebody that was back there that actually
12 mentioned some issues with his own moral belief system
13 regarding premarital sex, and it caused some concern.
14 That's my understanding. So, I think that was thrown in
15 there out of an abundance of caution.

16 You know, obviously if he -- if, if the potential
17 juror still says I can be fair, impartial, objective,
18 that's fine. But I think that was kind of added as a stop
19 gap just from our, our last experience I think Ms. Pinnock
20 had before Your Honor. I think that was a concern that an
21 individual juror had in, in relationship to a CSC type
22 case. So, I think that's why it was included. We feel
23 like it's appropriate, and we'll leave it up to Your Honor.

24 THE COURT: He -- we did have -- I can't remember. We
25 had one person that said that they had a issue with it, but

1 then once I asked could he be fair and impartial, I mean,
2 at that point, I don't know if the answer -- had she known
3 that earlier, she probably could have -- I mean, I can ask
4 if she could have, you know, if she probably could have
5 struck them if she didn't know that. But, but by that time
6 he said he could be fair and impartial, was -- I mean, at
7 that point I don't see any ---

8 MR. SHEALEY: Yes, Your Honor.

9 THE COURT: I don't see a whole lot I can do about it.

10 MR. SHEALEY: I guess, I guess the defense's position
11 is the more caution that can be exercised in this process
12 is going to be the better because in this county, on CSC
13 cases, I think there's been at least, I know at least two
14 and three probably that since 2011 to this date where at
15 the end of the CSC trial it becomes a mistrial issue
16 because there is information that comes forward from a
17 juror from the ---

18 THE COURT: I will ask the questions, but I don't know
19 about -- I'll -- let me look at number -- he's, he has an
20 interest. His concern is four, five, and six.

21 MR. SHEALEY: Yes, Your Honor.

22 THE COURT: I don't know any of the allegations in
23 this case other than what's in the indictment. That case
24 involved two teenagers, and I don't -- I mean, I'm not sure
25 if this one does.

1 MR. GOLDBERG: Just for the court's information, the
2 allegations in the case involved essentially, as the state
3 would allege them, would be an incident involving two
4 strangers where the victim was at home, was about to leave
5 for work, got a knock at the door, the man enters, pushes
6 her inside, assaults her, and leaves, and she can't
7 identify him or anything like that.

8 MR. SHEALEY: Your Honor, we'll be happy to, on
9 number six, that teenage sex, we'll be happy to strike that
10 from it if that's -- I mean, I think that may have been
11 more of a scrivener's error than anything because it, in
12 this case, has nothing to do with underage sex or anything
13 like that.

14 THE COURT: All right. All right. Well, right, I'll
15 ask one of them. I'm not going to ask -- I'll ask number
16 four. Number five I think is the same question, premarital
17 sexual relationships. I'm not sure if that's any different
18 from number four, and number six ---

19 MR. GOLDBERG: I guess number six would only come up
20 if somebody said yes, I have a particular view on
21 premarital sex, and then you would ask them anyway whether
22 they could be unbiased or not.

23 THE COURT: Yeah, I'll ask six if -- now, the only
24 problem with number six is the way it's worded is if in a
25 trial concerning premarital sex -- and see, and that -- the

1 reasons those questions were asked in that trial is those
2 two kids had previously had sex and that -- and everybody
3 agreed on that. I'm not sure if everybody agrees on here
4 and -- agrees that this case, trial concerns premarital
5 sex. So, we may -- we can try to work with the words on
6 that second part of the question.

7 MR. SHEALEY: However you want to do it, Judge.
8 However you want to do that.

9 THE COURT: All right. I may just ask, and if they
10 say yes, is there any reason why you could not be
11 completely objective or unbiased if or, you know, if the,
12 if issues in this trial come up regarding premarital sex or
13 -- and unless -- I'll fix, I'll fix that. All right.

14 MR. SHEALEY: Thank you, Your Honor. Just to be
15 clear, so we'll be picking twelve, we'll have our two
16 alternates, and then we're going to have three extras or
17 we're going to have five extras in addition to the ---

18 THE COURT: What did we do this last time?

19 MS. PINNOCK: Your Honor, I think we just filled up
20 the box and we just kind of -- so, we ---

21 THE COURT: Were you with me on the last one?

22 BAILIFF: Yes, ma'am.

23 THE COURT: So -- okay.

24 MS. PINNOCK: Yeah, I think we, we picked all of
25 them ---

1 BAILIFF: Yeah. We had one, two, three, four, five,
2 six chairs back there to seat them.

3 THE COURT: Okay. All right. So, we'll just pick
4 three extras and, and go from there. All right, and then
5 y'all have a Denno?

6 MR. GOLDBERG: Yes, ma'am, but also I just wanted to
7 address the standard *voir dire* that defense has handed up
8 and ask in regards to -- just ask for reciprocal if it
9 applied. Number two references the Solicitor's Office and
10 any member of their family being employed there. I would
11 ask the same in regards to the Public Defenders's Office or
12 the Federal Public Defender's Office. Again, there's a, a
13 number four about victim's rights groups, that sort of
14 thing. Would ask for reciprocal on that as well, and also
15 number five asks about ---

16 THE COURT: Which groups are you asking about?

17 MR. GOLDBERG: Just if there's any sort of ---

18 MR. SHEALEY: There are none.

19 MR. GOLDBERG: Innocence Project, anything like that.

20 MR. SHEALEY: Very good. Very good.

21 THE COURT: Innocence Project.

22 MR. SHEALEY: Without objection, Judge. That's fine;
23 we have no problem with that.

24 MR. GOLDBERG: And number five asked if, if anyone's
25 ever testified for the state. I would ask if anyone's ever

1 testified on behalf of a criminal defendant.

2 MR. SHEALEY: We have no objection at all.

3 THE COURT: All right. I think the panel's supposed
4 to be here at 10:30 because I think we had intended on
5 hearing the motions first, and we can do that. Now, you
6 have -- I know there's a *Denno*, and then you all have some
7 motions as well?

8 MR. GOLDBERG: We have a *Denno* as well as a motion *in*
9 *limine* to, to enforce the compliance with Rape Shield ---

10 THE COURT: All right.

11 MR. GOLDBERG: --- Law, acceptance to that.

12 MS. PINNOCK: And, Your Honor, we have a few.

13 THE COURT: All right. Well, what I'll do is I'll
14 start hearing the motions. I'm going to, just for
15 scheduling purposes, and if the jurors are coming in at
16 11:00, we'll pick. We'll stop at 11:00, pick the jury.
17 I'll -- some of the bailiffs, I'm not sure if I'm going to
18 have a funeral to go to. The rest are going. I'm not sure
19 if I'm going, but we'll, we'll probably stop so they can go
20 to that.

21 But I can always, always do the -- we can go in -- are
22 you going also? Were you planning on going? I can do the
23 questioning in the back during that time, and then we'll
24 let the jurors go to lunch, and then maybe come back and
25 swear them after that. I don't think it's going to --

1 well, I don't know how long it's going to last. Probably
2 start back around 2:00. How long do y'all think this is
3 going to take?

4 MR. GOLDBERG: There's a possibility, depending upon
5 how fast we get through jury selection and pretrial, that
6 the state could rest at the end of the day tomorrow, but
7 it's ---

8 THE COURT: Okay.

9 MR. GOLDBERG: If not, then it would be pretty early
10 on Thursday that we could rest. I know that Sergeant
11 Godfrey has a, a conflict late tomorrow afternoon that
12 might have to put him up first thing Thursday.

13 THE COURT: All right.

14 MR. GOLDBERG: Depending upon how fast we're going.

15 THE COURT: All right. So, the plan will be --
16 hopefully we can get the jurors in and pick them, finish by
17 11:30 or so, let them go to the funeral, and then we can --
18 I'll do individual *voir dire* in my office, and then we'll,
19 whatever time that we have to go, we'll take a lunch break
20 and then start back maybe about 2:00.

21 All right, all right, but I'll -- we can go ahead
22 since we have thirty minutes, to go ahead and I'll start --
23 you want to start with your motions?

24 MR. GOLDBERG: Sure.

25 THE COURT: And we've already dealt with one of

B. GODFREY - EXAMINATION BY MR. GOLDBERG

23

1 theirs.

2 MR. GOLDBERG: Well, as far as *Jackson vs. Denno*,
3 state calls Sergeant Godfrey.

4 BRIAN GODFREY, BEING DULY SWORN,
5 TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Thank you. Have a seat in the
7 witness stand, please. State your name for the record.

8 WITNESS: Brian Godfrey.

9 THE COURT: Solicitor.

10 MR. GOLDBERG: Thank you, Your Honor. Please the
11 court?

12 EXAMINATION BY MR. GOLDBERG:

13 Q. Sergeant Godfrey.

14 THE COURT: Solicitor.

15 MR. GOLDBERG: Thank you, Your Honor. Please the
16 court?

17 Q. Sergeant Godfrey, can you give us a little bit of
18 background on your experience and training?

19 A. I've been with Richland County Sheriff's Department
20 since 1998, where I graduated from the Criminal Justice
21 Academy. I've been in several units, investigative units.
22 I think I got into investigations in 2000. I've been with
23 several units to include narcotics, special victim's units
24 where we investigated sexual assaults and crimes against
25 children and vulnerable adults, major crimes, burglary. I

B. GODFREY - EXAMINATION BY MR. GOLDBERG

24

1 think I've done just about the gamut, and at some point I
2 was assigned to the Cold Case Unit as well.

3 Q. When you say Cold Case Unit, what do you mean by that?

4 A. We investigate unsolved aggravated crimes such as
5 sexual assault, armed robberies, and murders.

6 Q. And at some point did you become involved with the
7 investigation of the case against Melvin Stukes?

8 A. I did.

9 Q. What was the approximate incident date of the
10 allegations involving Mr. Stukes?

11 A. I want to say it was May 10, 2004.

12 Q. And when did you get involved in the case?

13 A. March 11, 2010.

14 Q. At some point did you make contact with Mr. Stukes?

15 A. I did.

16 Q. How did you end up coming into contact with him?

17 A. He was apprehended by the fugitive team.

18 Q. What was -- what was he apprehended for at that time?

19 A. The warrant for this case that we're here for today.

20 Q. CSC first and burg first?

21 A. Yes, sir.

22 Q. Where did you make contact with Mr. Stukes initially?

23 A. I initially made contact with him at Alvin S. Glenn
24 Detention Center.

25 Q. And what happened when you came in contact with him?

B. GODFREY - EXAMINATION BY MR. GOLDBERG

25

1 A. I received information from Sergeant Caldwell that he
2 had apprehended him. As a result, later on that morning
3 myself and Investigator Mincey went and picked him up from
4 the Alvin S. Glenn. Initially advised him of his rights in
5 the vehicle verbally and then ---

6 Q. When you say you verbally advised him, what did you
7 say to him?

8 A. He had the right to remain silent. Anything you say
9 can and will be used against you in a court of law. You
10 have right to an attorney. If you cannot afford an
11 attorney, one will be appointed for you before any
12 questions if you wished. You always have the right to stop
13 answering questions at any time until you talk to an
14 attorney. I asked him if he understood that, he said that
15 he did, and he agreed to talk with us.

16 Q. And at that time, did you engage in a discussion with
17 him?

18 A. No. No, sir.

19 Q. Where did you go from there?

20 A. We went from the sally port to the Richland County
21 Sheriff's Department.

22 Q. About how long of a ride is that?

23 A. Ten, fifteen minutes maybe.

24 Q. Was there any discussion about the case during the car
25 ride?

B. GODFREY - EXAMINATION BY MR. GOLDBERG

26

1 A. No, sir.

2 Q. What happened once you got back to the sheriff's
3 department?

4 A. I did a written Miranda warning.

5 Q. Let me show you what's been marked as State's Number 1
6 for identification purposes. Do you recognize that?

7 A. I do.

8 Q. And what do you recognize that to be?

9 A. The advice of rights form that I went over with Mr.
10 Stukes that morning.

11 Q. And were -- who else was present with you when you
12 advised him of his rights?

13 A. Investigator Mincey.

14 Q. Okay, and when you -- can you tell the court exactly
15 how you went through that advisement of rights with the
16 defendant?

17 A. I filled out the top portion of it, location, myself,
18 the officers that were present was Mincey and Godfrey, the
19 date, May 5th, 2010, at 10:30 in the morning. I read the
20 rights, each one out loud, checked it as I went through it.
21 You want me to read it?

22 Q. Yes, please.

23 A. I asked him:

24 Before we ask you any questions, you must
25 understand your rights. You have the right to

B. GODFREY - EXAMINATION BY MR. GOLDBERG

27

1 remain silent. Anything you say can be used
2 against you in court. You have the right to talk
3 to a lawyer for advice before we ask you any
4 questions, and to have a lawyer with you during
5 any questioning. If you cannot afford a lawyer,
6 one will be appointed for you before any
7 questioning if you wish, and if you decide to
8 answer questions now without a lawyer present,
9 you still have the right to stop answering at any
10 time. You also have the right to stop answering
11 at any time until you talk to a lawyer.

12 Q. Did Mr. Stukes understand those rights?

13 A. He did and he signed, and it was witnessed by myself
14 and Investigator Mincey.

15 Q. And how did you note on the form that he understood
16 those rights or that you had gone over them with him?

17 A. I checked each one as I went through them.

18 Q. Okay, and did he, in fact, waive those rights?

19 A. He did. There's a waiver portion of the bottom where
20 I read out loud. I also checked that box. I read:

21 I have read the statement of my rights, and I
22 understand what my rights are. I am willing to
23 talk and answer questions. I understand and know
24 what I am doing. No promises have been made to
25 me, and no pressure or coercion of any kind has

1 been used against me.

2 He signed that as well, and it was witnessed by myself
3 and Investigator Mincey.

4 Q. All right, and at that time did Mr. Stukes appear to
5 be under the influence of any drugs or alcohol?

6 A. No, sir.

7 Q. Were any offers of leniency made to him?

8 A. No, sir.

9 Q. Any threats of violence?

10 A. No, sir.

11 Q. Was he denied any comforts such as food, restroom,
12 anything of that nature?

13 A. No, sir. I think we actually provided him with
14 McDonald's that day and, and water and restroom breaks.

15 Q. Once he waived his rights, did you then conduct an
16 interview with Mr. Stukes?

17 A. I did.

18 Q. Was it oral or written at that time?

19 A. Oral. Written at the end, but oral in the beginning.

20 Q. Okay, and after the oral interview took place, what
21 did you do after that?

22 A. I took a DNA swab and then I also drove him around the
23 Ashton Park Apartments locations where he, where he
24 identified several location that's he frequented.

25 Q. State's Number 3 for ID, do you recognize that?

B. GODFREY - EXAMINATION BY MR. GOLDBERG

29

1 A. I do.

2 Q. And what is that document?

3 A. This is a consent to search for DNA evidence as a
4 waiver for a Buccal swab for DNA purposes.

5 Q. And did you read it to Mr. Stukes or did he read it
6 himself?

7 A. I read it.

8 Q. And what does it say?

9 A. It gives a date, May 5, 2010. The location again is
10 5623 Two Notch Road, which is the sheriff's department.

11 Says:

12 I, Melvin Stukes, do hereby consent to the search
13 of my person without a search warrant by
14 Godfrey/Mincey, investigators for the Richland
15 County Sheriff's Department. This investigator
16 is authorized by me to take from my person any
17 materials or other property which he/she may
18 desire. This search shall be made of my person
19 for the purpose of obtaining a Buccal oral swab
20 for DNA evidence. I am aware that any evidence
21 obtained as a result of this search can be used
22 against me in a court of law. This written
23 permission is given -- is being given by me to
24 the above-named investigator freely, voluntarily,
25 and without threats or promises of any kind.

1 He then signed it and then I was -- it was witnessed
2 by myself and Investigator Mincey.

3 Q. And did you, in fact, obtain a Buccal swab from him?

4 A. I did.

5 Q. Okay, and you said after you got the swab from him
6 that you, you drove around a little bit. Is that what you
7 said?

8 A. That's correct.

9 Q. Where did you go?

10 A. I went to the Ashton Park Apartments off of Longcreek
11 Drive.

12 Q. And what was the purpose of going there?

13 A. He was -- help me identify several locations that he
14 frequented. I believe back then he was staying at The Park
15 Apartments, a couple of apartments that he knew individuals
16 in, and -- well, I went by and pointed out the victim's
17 apartment even though -- without telling him it was the
18 victim's apartment. He says he didn't -- wasn't familiar
19 with that location.

20 Q. After riding through those apartment complexes, did
21 you then return to the sheriff's department?

22 A. We did.

23 Q. And what did you do once you got back to the
24 department?

25 A. We took a written statement.

B. GODFREY - EXAMINATION BY MR. GOLDBERG

31

1 Q. I show you what's been marked as State's Number 2 for
2 ID. Do you recognize that?

3 A. I do.

4 Q. And what do you recognize that to be?

5 A. The statement taken from Melvin Stukes on May 5, 2010,
6 at about 1:20 in the afternoon.

7 Q. Okay, and is there some language at the top of that
8 statement about Mr. Stukes's rights?

9 A. That's correct. This is a Miranda warnings again.

10 Q. And can you tell the judge how you went through that
11 with Mr. Stukes?

12 A. Initially I typed this up, so he doesn't see this
13 initially. I type it up as we, as we ask the questions and
14 he answers it, and then he goes back and, and I read the
15 entire thing back over to him.

16 Q. You read the entire statement to him?

17 A. I did.

18 Q. And including the first part about his rights?

19 A. Yes, sir.

20 Q. And what does the first part about his rights say on
21 the statement?

22 A. It tells where the statement was taken at, in the
23 presence of myself and Mincey again, and it says:

24 I, Melvin Stukes, Jr., understood that I have the
25 right to remain silent. Anything I say can be

1 used against me in court. I have the right to
2 talk to a lawyer for advice before you ask me any
3 questions and to have a lawyer with me during any
4 questioning. If I cannot afford a lawyer, one
5 will be appointed for me before any questioning
6 if I wish. If I decide to answer questions now
7 without a lawyer present, I still have the right
8 to stop answering at any time. I also have the
9 right to stop answering at any time until I talk
10 to a lawyer.

11 And then it says: Do make the following statement. It
12 signifies Q as Godfrey/Mincey, and A as -- is for answer
13 for Stukes.

14 Q. And you said you typed the entire statement, correct?

15 A. I, I did.

16 Q. And you read it back to him?

17 A. I did.

18 Q. And did he sign on that statement indicating that he
19 had freely and voluntarily given that statement?

20 A. Yes, sir. It's actually two places to sign on each
21 page, and totality, totality of four pages. The first
22 place he signs says:

23 I have made this -- I have made the foregoing
24 statement freely and voluntarily without fear,
25 threat, promise, or reward, or hope of any kind.

B. GODFREY - EXAMINATION BY MR. GOLDBERG

33

1 And the second one says:

2 This is certified I have read or have had read to
3 me the foregoing statement consisting of four
4 pages and ---

5 COURT REPORTER: Slow down, please.

6 A. I'm sorry.

7 This is certified that I have read or have read
8 to me the foregoing statement consisting of four
9 pages, and a true copy has been given to me this
10 5th day of May, 2010.

11 Q. Mr. Stukes signed in both places?

12 A. That's correct.

13 Q. On each of the four pages?

14 A. That's correct.

15 Q. For a total of eight signatures?

16 A. That's correct. Mincey witnessed and I notarized it.

17 Q. Upon completion of the statement, where did you go
18 with Mr. Stukes?

19 A. Before ---

20 Q. Did you take him back to the jail?

21 A. Before -- yeah. I took him to McDonald's, and then we
22 went to the jail.

23 Q. Okay. At any time did he indicate that he wanted to
24 speak to an attorney?

25 A. No, sir.

B. GODFREY - EXAMINATION BY MS. DYAR

34

1 Q. Did he ever indicate that he wanted to stop talking to
2 you?

3 A. No, sir.

4 Q. Was he cooperative?

5 A. He was.

6 Q. Did he answer your questions?

7 A. He did.

8 Q. Did you have any problems communicating with him
9 whatsoever?

10 A. No, sir.

11 Q. At any point, did he indicate to you that he did not
12 understand what was going on?

13 A. No, sir.

14 MR. GOLDBERG: All right. Thank you, sir. That's
15 all.

16 THE COURT: Please answer any questions that Ms. Dyar
17 may have.

18 MS. DYAR: Thank you.

19 EXAMINATION BY MS. DYAR:

20 Q. Good morning.

21 A. Hey. Good morning.

22 Q. Okay, so let's see here. Now, can you tell me the
23 length of time this took from the time that he was picked
24 up at Alvin S. Glen until the time he was returned to Alvin
25 S. Glen?

B. GODFREY - EXAMINATION BY MS. DYAR

35

1 A. Let's see. We got to the sheriff's department about
2 10:30. So, I'd say I probably picked him up maybe fifteen,
3 twenty minutes prior to that, and then until -- he gave a
4 statement at 1:30. So, 10:30 to 1:30. I'd say totality
5 maybe four, four hours.

6 Q. Okay..

7 A. It's just a guesstimation.

8 Q. And this entire time was he shackled, belly chained,
9 the whole get up?

10 A. Yes, ma'am.

11 Q. And you said he was cooperative with you?

12 A. Yes, ma'am.

13 Q. And while you're driving around, is it, is it both you
14 and the -- Officer Mincey?

15 A. Uh-huh.

16 Q. Okay.

17 A. Yes, ma'am.

18 Q. Anyone else at any other time present during any
19 interrogation?

20 A. No, ma'am.

21 COURT REPORTER: Keep your voice up, please.

22 A. No, ma'am.

23 Q. And you said you went to -- first went to the
24 sheriff's department. After leaving the sheriff's
25 department, you went to the Ashton Park Apartments?

1 A. Yes, ma'am.

2 Q. Okay, and were you both armed this entire time?

3 A. Yes, ma'am.

4 Q. Okay.

5 A. Other than when we went into jail.

6 Q. Okay.

7 A. We obviously didn't have our weapons then.

8 MS. DYAR: Beg the court's indulgence.

9 (A PAUSE.)

10 Q. So, the statement given at Richland County Sheriff's
11 Department, you typed that, correct?

12 A. Yes, ma'am.

13 Q. Okay. You never actually typed it or saw what you
14 typed until it was read back to him?

15 A. That's correct.

16 Q. Correct? Okay, and can you explain the set up to me
17 at the Richland, at the sheriff's department, exactly how,
18 how you guys were set up while the statement was being
19 given?

20 A. Just ---

21 Q. The size of the room, the way it was set up, where you
22 were in relation to ---

23 A. Well, it's a -- it's kind of like an interview room.
24 It's got one table in it and a couple of chairs.

25 Q. Okay.

B. GODFREY - EXAMINATION BY MS. DYAR

37

1 A. Nothing really special. I don't remember anything
2 being on the walls or anything. It's just a ---

3 Q. Okay, and, and were you sitting down?

4 A. Yes, ma'am.

5 Q. Where you were sitting -- okay. Where was Mr. Stukes?

6 A. He would have been on the other side of the table. It
7 would have been me and Mincey on one side of the table.

8 Q. Okay. So, you were both on one side of the table?

9 A. Yes, ma'am.

10 Q. Nobody was sitting next to him?

11 A. No, ma'am.

12 Q. Okay.

13 A. Not, not that I remember at any time did we sit next
14 to him.

15 MS. DYAR: Okay. No further questions.

16 THE COURT: All right. Anything ---

17 MR. GOLDBERG: No, ma'am.

18 THE COURT: --- further? Any, anything further from
19 the state of this witness?

20 MR. GOLDBERG: Ma'am, one additional witness.

21 THE COURT: All right. I'm sorry.

22 Sir, you may step down.

23 MR. GOLDBERG: State calls Investigator Mincey.

24 GENE MINCEY, BEING DULY SWORN,

25 TESTIFIES AS FOLLOWS:

1 CLERK OF COURT: Thank you. Have a seat in the
2 witness stand.

3 CLERK OF COURT: State your name for the record.

4 WITNESS: Gene Mincey.

5 EXAMINATION BY MR. GOLDBERG:

6 Q. Investigator Mincey, tell the court a little bit about
7 your background, training, employment.

8 A. I started out in 1962 with the Columbia Police
9 Department. While I was at the Columbia Police Department
10 for seventeen years, I walked the beat, I rode a traffic
11 motorcycle unit, I was investigations. I left the Columbia
12 Police Department in 1978 and went to work for a, a bank to
13 do internal white collar crime investigations for them.

14 I returned to the Richland County Sheriff's Department
15 in 1986 and I'm still at the, at the sheriff's department
16 till this date, and I've worked uniform officer, traffic,
17 criminal investigation, and I'm -- I was promoted to
18 sergeant and started the Internal Affairs Unit back in --
19 when Sheriff Lott took over. I retired in 2001, came back
20 and worked cold cases part-time.

21 Q. And are you currently doing that now?

22 A. Yes, sir.

23 Q. Were you doing that back in May of 2010?

24 A. Yes, sir.

25 Q. Did you have an opportunity to come in contact with

G. MINCEY - EXAMINATION BY MR. GOLDBERG

39

1 the defendant, Melvin Stukes, on May the 5th, 2010?

2 A. Yes, sir.

3 Q. Where did you come into contact with him?

4 A. Myself and Investigator -- at that time Sergeant
5 Godfrey excuse me, went to the Alvin Glenn Detection Center
6 and picked Mr. Stukes up to interview him. Drove him to
7 headquarters.

8 Q. Was Mr. Stukes advised of his rights in your presence?

9 A. He was.

10 Q. Was that done by Investigator Godfrey?

11 A. Investigator Godfrey asked before we left the Alvin
12 Glenn Detention Center orally.

13 Q. Orally?

14 A. No, no written statement.

15 Q. Did Mr. Stukes indicate whether he wanted to waive
16 those rights?

17 A. He did.

18 Q. Okay, and then once you got to the sheriff's
19 department, was Mr. Stukes advised again?

20 A. He was advised again by Investigator -- by Sergeant
21 Godfrey and orally -- and then he gave him the form to fill
22 out and sign, and he signed that and myself and, and
23 Sergeant Godfrey witnessed it, or I witnessed and he
24 notarized it.

25 Q. I show you State's Number 1 for ID. Do you recognize

1 that?

2 A. Yes, sir.

3 Q. And what is that document?

4 A. That's the advice of rights form.

5 Q. And did Sergeant Godfrey go through each and every one
6 of those rights in addressing Mr. Stukes?

7 A. He did.

8 Q. And did Mr. Stukes indicate that he wanted to waive
9 those rights?

10 A. He did.

11 Q. And that he understood those rights?

12 A. He did.

13 Q. And did you actually sign off on that document as a
14 witness?

15 A. I witnessed it, yes, sir.

16 Q. Okay. At any time, did Mr. Stukes indicate that he
17 did not wish to speak to you?

18 A. No, sir, he did not. He spoke freely.

19 Q. Was he cooperative?

20 A. Yes, sir.

21 Q. At any point, did he indicate that he wanted to speak
22 to an attorney?

23 A. No, sir.

24 Q. Was he deprived of any comforts of bathroom break,
25 food, water, or anything of that nature?

G. MINCEY - EXAMINATION BY MR. GOLDBERG

41

1 A. No, sir. We offered him food, drinks, and I think it
2 was at the end of our interrogation he was purchased food
3 from McDonald's.

4 Q. At some point, he was driven to the location offsite.
5 Is that correct?

6 A. Yes, sir.

7 Q. At any time during that trip, did he indicate he
8 didn't want to continue talking to investigators?

9 A. No, sir. He was freely pointing out places that he
10 recognized and ones that he did not.

11 Q. And then upon return to the sheriff's department,
12 the statement was typed up by Sergeant Godfrey. Is that
13 right?

14 A. Yes, sir, in my presence.

15 Q. Okay, and was Mr. Stukes, upon completion, given an
16 opportunity to review that statement?

17 A. Yes, sir.

18 Q. Was it read back to him?

19 A. Sergeant Godfrey read, read it back to him and handed
20 him the form to read and sign.

21 Q. Okay. You recognize State's Number 2 for ID?

22 A. Yes, sir.

23 Q. And what do you recognize that to be?

24 A. That's Mr. Stukes's written, sworn statement.

25 Q. Okay, and did you sign off on this document as a

1 witness as well?

2 A. I did.

3 Q. Did Mr. Stukes seem to understand the document as it
4 was read back to him?

5 A. Yes, sir.

6 Q. Did he ask to make any changes or corrections to the
7 document?

8 A. No, sir, he did not.

9 Q. Did he ever appear as though he was not being
10 voluntary or freely giving information to you all?

11 A. No, sir. I thought he was cooperative, but I didn't
12 see any problem with it.

13 Q. Okay. I want to show you State's Number 3 for ID. Do
14 you recognize that?

15 A. Yes, sir.

16 Q. And what is that?

17 A. That's his consent -- our consent to search Mr. Stukes
18 for his DNA.

19 Q. And did Mr. Stukes consent to that search?

20 A. He did.

21 Q. Did you sign off on that document?

22 A. I did.

23 Q. Any offers of leniency made to Mr. Stukes?

24 A. Was any offer of what?

25 Q. Were there any offers of leniency made to Mr. Stukes?

G. MINCEY - EXAMINATION BY MR. SHEALEY

43

1 A. No, sir.

2 Q. Any ---

3 A. You mean by the investigators?

4 Q. Yes, sir.

5 A. No, sir.

6 Q. Any threats of violence made towards him?

7 A. No, sir.

8 Q. Any problems communicating with him whatsoever?

9 A. No, sir.

10 Q. At any point, did he indicate that he didn't
11 understand the conversation that was taking place?

12 A. No, sir, he did not.

13 MR. GOLDBERG: All right. Thank you, sir. That's all
14 I have.

15 MR. SHEALEY: Briefly, Your Honor.

16 THE COURT: All right.

17 EXAMINATION BY MR. SHEALEY:

18 Q. Sir, so you were present with Investigator Godfrey
19 down at the jail to go pick up Mr. Stukes, right?

20 A. Yes, sir.

21 Q. Okay, and y'all took him around in a car to take him
22 to the Park Apartments and some other apartments, right?

23 A. After we left -- after we got to headquarters, we left
24 and went down to the apartments, yes, sir.

25 Q. Okay. What kind of car was this?

1 A. Well, I believe it was in Mr. Godfrey's and I think he
2 had a Ford Explorer, I believe ---

3 Q. Okay. Was he sitting ---

4 A. --- at the time.

5 Q. Did he sit in the front or back? Do you remember?

6 A. I'm not sure.

7 Q. Okay. That's fine.

8 A. I'm not sure.

9 Q. Now, Investigator Godfrey, was it Sergeant Godfrey who
10 typed up the report?

11 A. Yes, sir.

12 Q. Okay, but you witnessed it?

13 A. Yes, sir.

14 Q. You witnessed the advice of rights being signed?

15 A. Yes, sir.

16 Q. Do y'all ask him about his educational levels?

17 A. We asked him if he could read and write.

18 Q. Okay, and he stated that he, he could read and write?

19 A. That he could, yes.

20 Q. Okay, and after the report was typed up, after the
21 interrogation ---

22 A. Let me check that and make sure because that was one
23 of the questions we asked, and I want to make sure I'm
24 correct on that last question. A question -- the first
25 question on the second page:

G. MINCEY - EXAMINATION BY MR. SHEALEY

45

1 Do you have the ability to read and write? Yes.

2 Q. What are you referencing, sir?

3 A. A copy of my -- of Mr. Stukes's statement.

4 Q. I see. Okay. Did you take any notes in this case?

5 A. No, sir.

6 Q. And you didn't do a report ---

7 A. No, sir.

8 Q. --- in the case? Okay.

9 A. But we only do one report when we got two
10 investigators ---

11 Q. I see.

12 A. --- and Sergeant Godfrey was the lead investigator on
13 this case. So, I was there to assist him.

14 Q. I understand. So, after -- when you were
15 interrogating him at headquarters, I believe Investigator
16 Godfrey or Sergeant Godfrey testified that he was across
17 the table, and were you across the table from the
18 defendant, or were you positioned at a different angle?

19 A. I never sat beside the defendant. I only sat where I
20 can see his eyes and his reactions.

21 Q. I'm ---

22 A. I was sitting at an angle. I think Godfrey was
23 sitting directly across from him, and I was sitting kind of
24 on the side of the desk where Godfrey was typing.

25 Q. Okay. So, if this, if this table, for example, is a

1 rectangular table -- I'm not sure if you can see this. If
2 you were Sergeant Godfrey and I am Mr. Stukes, you, you
3 might have been over here?

4 A. I, I would have been here or either over on this side
5 where ---

6 Q. I understand.

7 A. --- I could see his face.

8 Q. Okay, and then that statement was read to him?

9 A. The, the -- his statement that he gave?

10 Q. Yes, sir.

11 A. Godfrey, Godfrey read it to him, and he said he --
12 that was correct. Godfrey gave him the original to read
13 and to sign.

14 Q. Okay. Good.

15 MR. SHEALEY: Beg the court's indulgence.

16 (A PAUSE.)

17 MR. SHEALEY: No further questions, Judge.

18 THE COURT: Anything else from the state?

19 MR. GOLDBERG: No, ma'am.

20 THE COURT: All right, sir. You may step down.

21 (THE WITNESS EXITS THE STAND.)

22 THE COURT: All right. Yes, sir.

23 MR. GOLDBERG: No additional witnesses for the state
24 on this matter, Your Honor.

25 THE COURT: All right. Anything further?

1 MR. SHEALEY: Nothing further, Judge.

2 THE COURT: All right. Yes, sir.

3 MR. GOLDBERG: Thank you, Your Honor. Please the
4 court? At this time the state would believe that we've
5 offered enough evidence to show that the statement was
6 freely, knowingly, intelligently, and voluntarily made by
7 Mr. Stukes.

8 There's testimony from Sergeant Godfrey and
9 Investigator Mincey about the procedure which they
10 undertook to speak to Mr. Stukes. He had been taken into
11 custody. He was at the Alvin S. Glenn Detention Center.
12 They made contact with him, advised of his rights, advised
13 him of his rights on multiple occasions both orally and
14 written. He did indicate, by virtue of his signature on
15 the written advisement of rights, that he understood those
16 rights and waived them. It was, again, on the statement
17 and, therefore, we would ask that the statement be admitted
18 into evidence.

19 MR. SHEALEY: Your Honor, we, you know, we tend to
20 agree with the voluntary nature of that statement.
21 However, we are going to disagree on the actual statement
22 coming into evidence until it's redacted for portions of
23 questioning regarding drug usage, drug content. We
24 discussed with Mr. Goldberg this issue in advance of this
25 hearing. We presented to him our redacted, suggested

1 redacted statement.

2 Your Honor, we feel it's absolutely appropriate to
3 redact this drug questioning and, and discussion of drugs
4 according to *State vs. Bryant*, *State vs. Smith*, *State vs.*
5 *Gentry*, and these are cases saying that this has no
6 purpose.

7 In this case, the relevance issue -- it is not
8 relevant. It's not, you know, drug usage and drug --
9 questioning about drugs is not anything for truthfulness,
10 and it's reversible error if it comes in in a case of this
11 nature. So, I think -- I don't think that should be an
12 issue.

13 However, you know, we reserve the right to object to
14 that and we are doing at this time, and I haven't seen any
15 redacted version they have yet. So, I'm just, just
16 cautioning the court before any statement comes in until
17 it's been redacted.

18 THE COURT: Yes, sir.

19 MR. GOLDBERG: Perhaps it will make it easier if you
20 actually had an opportunity to view the statement.

21 THE COURT: Yes, sir.

22 MR. GOLDBERG: If I may approach?

23 THE COURT: Yes, sir.

24 MR. GOLDBERG: We believe the references that Mr.
25 Shealy's referring to are on Page 1, each question on that

1 page except for where were you born, and then on Page 3 at
2 the bottom, the last few questions. On Page 1, the
3 question is -- the first question is:

4 Are you currently under the influence of any
5 drugs or alcohol?

6 Answer: No. The last time I used some drugs was
7 the other day, a little marijuana.

8 As Your Honor's aware, the state has to prove, not
9 only to Your Honor but to the jury, that this statement was
10 made freely, voluntarily, and knowingly, and intelligently,
11 and I think it's a relevant question as to whether or not
12 Mr. Stukes was under the influence of any drugs or alcohol
13 at the time.

14 I would ask that the question remain intact because it
15 does demonstrate that Mr. Stukes was not under the
16 influence at the time and he did know what he was doing
17 when he waived his rights and agreed to give the statement
18 to law enforcement. Same thing with question number three,
19 where the question is:

20 Do you currently use drugs? I smoke marijuana.

21 That's about it. Drink any alcohol, too.

22 Actually I'll concede to -- that one can be redacted.

23 THE COURT: Yeah, I was going to say the first one is
24 kind of ---

25 MR. GOLDBERG: Yeah, it's kind of the same thing.

1 I'll concede number, number three there. Question number
2 four:

3 When was the last time you used crack cocaine?

4 It has been a long time; it's been years now.

5 Same argument as to the fact that he hasn't -- wasn't
6 under the influence at the time. But I guess that's
7 addressed by the first question as well.

8 THE COURT: And it suggests that he used ---

9 MR. GOLDBERG: Right.

10 THE COURT: --- he never answered that he used crack
11 cocaine.

12 MR. GOLDBERG: Right, I think it's ---

13 THE COURT: Yeah.

14 MR. GOLDBERG: I think it's covered by the first
15 question, and I'll, I'll agree to that one. I'll come back
16 to the last question there. Skipping ahead to Page 3: Have
17 you ever sold drugs? I'll concede that that's not proper,
18 and: When was the first time you ever used crack? I'll
19 concede that one as well.

20 Going back to Page 1, I'm sorry for jumping around,
21 the last question: Were you using crack cocaine or any
22 other drugs in May of 2004? Answer: Just smoking weed,
23 that's it. Obviously the defense does, does not have to
24 indicate what the defense in the case is going to be. I'm
25 not asking them to do that. But I would point out to the

1 court that if there's going to be some allegation at some
2 point on behalf of the defense, whether it be by, by way of
3 cross-examination or direct testimony in their case,
4 however it may be, that the defendant was intoxicated in
5 some way back in 2004 -- did not remember having an
6 incident, an encounter with the victim, something to
7 suggest that there could have been some sort of sexual
8 encounter between the two of them, but he didn't remember
9 it -- then I would argue that that makes this question
10 relevant in that it is asking him about whether or not he
11 had a propensity for being intoxicated at the time under
12 crack cocaine or any other drugs.

13 Essentially it, it, it goes towards to the issue of
14 the -- if the assertion's going to be made, well, did you
15 ever have sex with the victim, well; not to my knowledge.
16 Well, I think if, if that's going to be asserted at some
17 point, not to my knowledge, then that does bring back in
18 the question of, well, why was it not to his knowledge.
19 Was he intoxicated at some point, or does he just not
20 remember? I think it makes it relevant at that point.
21 Obviously not asking him to explain what the defense is
22 going to be, but I do see why -- that is my explanation why
23 that could be an issue.

24 MR. SHEALEY: And if I may, Your Honor? I think it's
25 clear under *State vs. Smith* -- that's 39 SC 442 -- that was

1 a murder case they reversed. Any mention of drug usage or
2 questioning of drug use that was elicited through the
3 course of that trial, they found that a proper -- it's bad
4 character evidence. In that case, it doesn't -- it's not
5 -- it doesn't hold any value for truthfulness.

6 In this case, there was a line and you can see it's a,
7 it's a -- I mean, half this statement is about drug use,
8 and I think at that time -- I don't think Investigator
9 Godfrey was trying to determine a potential defense. I
10 think there's just a line of questioning that's improper.
11 And I think putting it in front of a jury prejudices Mr.
12 Stukes.

13 It doesn't any bearing in this case. As far as I can
14 tell in the discovery, there's no information all about
15 anybody using drugs. I do think it's reversible error for
16 -- our courts are clear on that. It's not probative. It's
17 prejudicial.

18 *State vs. Smith* also references *State v. Coleman*. The
19 function of evidence concerning the defendant's use of
20 illegal drugs was to demonstrate bad character and social
21 irresponsibility. The admission of such evidence was legal
22 error. I think, based on the *Denno* hearing we just had,
23 there's not going to be any kind of issue of was this a
24 voluntary statement. You know, I think that statement's
25 coming in. We ask that it not come in with, with

1 impermissible bad character drug line of questioning that
2 potentially has us trying this case all over again in three
3 years or something like that.

4 I think it's very clear. It's impermissible and we --
5 and I understand that the state is conceding, I think,
6 pretty much all but the first one. I think that -- the
7 signature with a waiver page, the, the testimony from
8 Godfrey and, and Mincey will be all that's necessary for
9 the state to establish that this is a voluntary statement
10 without introducing bad character evidence with drug issues
11 that had nothing to do with this case, and I think the case
12 law is clear on the issue, and we just ask that all of that
13 be redacted, including the first question.

14 THE COURT: All right. I'm going to read the cases I
15 guess when we take a break, but as far as admissibility of
16 the statement, I find that the defendant was read his
17 Miranda rights, signed the advisement of rights form. He
18 also signed once again denoting his voluntariness in
19 signing the statement. Based on the conduct and the
20 evidence, I find that the statement was given voluntarily
21 and that the statement is admissible as to its
22 voluntariness.

23 I will -- as to the mentions of drug use, I think
24 we're looking at just page 1, the fifth question, and the
25 first question. I, I'm, I'm going to read the case law

1 quickly. Also on page 3 there's a question about -- are
2 y'all objecting to that, about blacking out after using
3 drugs and alcohol? I'm guessing that you are.

4 MR. SHEALEY: You know, I -- he, he just -- there's no
5 answer to the issue of -- this is not going to be -- I
6 think we're all aware of voluntary intoxication and the
7 state of the law in this case. I'm not -- beg the court's
8 indulgence.

9 (A PAUSE.)

10 MR. SHEALEY: I, I have no problem with that question
11 in particular, Judge. I think it's answered affirmatively
12 and I think it may give -- you know, I think it's directly,
13 it should say. I think it gives guidance to potentially
14 how we should be dealing with this first question: Are you
15 currently under the influence of any drugs or alcohol. No.
16 Without the commentary of: The last time I used drugs was
17 the other day, a little marijuana. I think that satisfies
18 the state's issue as to the voluntariness. He's not under
19 the influence.

20 Without the bad character evidence -- and just for the
21 record, I think I've already put *State vs. Smith* on the, on
22 the record. It's 309 SC 442. I'm also, in support of our
23 argument, Judge, and bad character evidence, *State vs.*
24 *Bryant*, which is 369 SC 511. Not to mention 403 as not
25 being probative. It's highly prejudicial, and 404 as bad

1 character evidence.

2 THE COURT: All right.

3 MR. GOLDBERG: Your Honor, I'm in agreement with
4 question number one that as long as the question remains in
5 there and the answer no is present, then that's fine. We
6 can redact out the portion that says the last time I used
7 some drugs was the other day, was marijuana.

8 THE COURT: What about question five?

9 MR. GOLDBERG: I stand by my position on that in that
10 if there's going to be some insinuation at some point about
11 his state of mind around the time of the incident, I
12 believe it does make it relevant. It could be that it
13 comes up in an impeachment situation. But I do believe
14 that that makes it relevant if there's some, if it's -- if
15 the door is opened to it. I guess I'll put it that way.

16 THE COURT: All right. Anything in response?

17 MR. SHEALEY: Judge, we just feel strongly, based on
18 the case law, you know, if he wants to address it for
19 impeachment purposes at a later time, if the door's opened
20 to it, I understand that motion perfectly.

21 But as far as the initial statement coming in, you
22 know, I'm still strongly stressing that under the case law
23 and the rules that I've cited, it's impermissible.

24 THE COURT: Well, it sounds like y'all are in
25 agreement that he's saying for impeachment purposes. If

1 you, if you bring it up in his defense that he was, that he
2 was under the use of some drugs or something and he doesn't
3 remember, then he can bring it in for impeachment purposes
4 at that point, but in its case in chief ---

5 MR. SHEALEY: I think everyone's aware ---

6 MR. GOLDBERG: Unless ---

7 MR. SHEALEY: --- about voluntary intoxication in the
8 law in this state as well.

9 MR. GOLDBERG: Unless there was something that comes
10 out. I don't know what it would be that would come out
11 during the cross-examination and during our case that would
12 lead me to believe that makes it relevant at that point.

13 THE COURT: All right, and we'll deal with it at that
14 time.

15 MR. GOLDBERG: Yes, ma'am.

16 THE COURT: But I guess, for purposes of the case in
17 chief, we'll ---

18 MR. GOLDBERG: Yes, ma'am.

19 THE COURT: It will be redacted from the statement,
20 and he will have to also redact the last part of that
21 sentence on the first question.

22 MR. GOLDBERG: Yes, ma'am.

23 THE COURT: All right. All right, and it look likes
24 it's 11:00. Are the jurors ready?

25 CLERK OF COURT: I'll have to call downstairs.

1 THE COURT: Okay. Can you check real quick? All
2 right, and then your other motion, while she's doing that,
3 is the, is the Rape Shield Statute?

4 MS. ASHTON: Yes, Your Honor. We filed, and I believe
5 we provided -- the defense has a copy and a copy might be
6 either in the clerk's file or up there with you. But we
7 did file a motion *in limine* to enforce compliance with the
8 Rape Shield Statute, and, of course, we would ask that
9 exclusion of any reference made to the victim in any
10 specific instance of the victim's sexual conduct, opinion
11 evidence of the victim's sexual conduct, and reputation of
12 her sexual conduct not being referenced either at that time
13 during cross-examination of any state's witness, during
14 their opening, during closings.

15 And as far as the specifics of this case that we
16 noticed that could potentially be referenced by the defense
17 counsel, any reference to Misty's sexual preference, Your
18 Honor, the victim's sexual preference, any reference -- in
19 our medical records, there's two references to -- one to
20 previous pregnancies. We ask that that not be brought up,
21 a reference by defense counsel, and also from the nurse who
22 examined Misty at the hospital asked her about the previous
23 sexual intercourse in the week prior. She did state that
24 she had had -- I believe the exact answer was that she had
25 had sexual intercourse within the last seven days, but that

1 there was no vaginal penetration, and any of those
2 references not be made in this case, Your Honor, by defense
3 counsel. Also ---

4 THE COURT: All right. Yes, ma'am.

5 MS. PINNOCK: Please the court, Your Honor? Your
6 Honor, the Rape Shield Statute is specifically designed to,
7 you know, bar any sort of fishing expedition or any sort of
8 moral attack on the alleged victim in a criminal sexual
9 conduct case.

10 However, the, the high courts have addressed the issue
11 of what it does not apply to. The courts have said in a
12 number of cases, Your Honor, that the defense is not
13 limited to a line of questioning that would potentially
14 bring up, you know, personal topics of the alleged victim's
15 sexual activities. Not on a specific level, but if you're
16 trying to accomplish something that does not have to do
17 with destroying her character.

18 Your Honor, I would cite two cases, three cases for
19 you. I have *State vs. Lange*, Your Honor. That is 304 SC
20 300. It's a 1991 case. I have *State vs. Finley*. It's
21 300 SC 196, Your Honor, and then *State vs. Tenant*, Your
22 Honor. That's 394 SC 5. That's a 2011 case.

23 Your Honor, what these cases say, starting with
24 *Finley*, that the convictions in that case were reversed and
25 the case was remanded because the court in that trial did

1 bar the defense from bringing up a sexual act by the
2 victim. The court went on to say that because of the
3 defense, the defendant's position and what his defense to
4 the charge was, he was not going after the complaint -- the
5 alleged victim's character at that point. He was trying to
6 get into her information that would allow him to complete a
7 full and fair defense in his case, and the denial of that
8 testimony was a reversible error, Your Honor. So, they
9 reversed the convictions, remanded it for a new trial.

10 Your Honor, not only are we -- would we not be going
11 into that information that we were provided by the state in
12 discovery to attack Ms. Shealy's character, under the Sixth
13 and Fourteenth Amendments, Your Honor, Mr. Stukes's right
14 to present a full and complete defense to these charges, to
15 these allegations -- they're very serious allegations and
16 he has a right to, to present a defense, if we so choose,
17 without crossing that line, Your Honor.

18 Your Honor, it also violates Rule 608, 608(c), Your
19 Honor, which allows testimony or evidence that would show
20 bias, prejudice, or any other motives to misrepresent, and
21 we could use that information to impeach the witness.

22 So, Your Honor, we're not trying to attack Ms.
23 Shealy's credibility, character. We're not trying to talk
24 about specific acts of conduct. But I do believe the
25 information that we've been provided in the medical records

1 and statements made to the investigators in this case
2 through the discovery process should -- we should be
3 allowed to, to bring those up.

4 THE COURT: All right. Well, what is it specifically
5 that you think you want to bring up?

6 MS. PINNOCK: Your Honor, the statements made to the
7 nurse at the hospital about the sexual intercourse I
8 believe we would be able to go into.

9 THE COURT: Seven days before?

10 MS. PINNOCK: Your Honor, I believe it was five days.
11 She asked if there was any, any recent sexual intercourse
12 by Ms. Shealy, and I believe she said that she had sexual
13 intercourse on the 5th of May. She was at the hospital on
14 the 10th. So, that would be five days prior, but she did
15 indicate that there was no vaginal penetration.

16 Sorry, Your Honor. Also she -- there's other comments
17 made to Investigator Godfrey that she was in a relationship
18 with a female at the time. Another lay witness that the
19 state I'm assuming is intending to call made, made a
20 statement about her, her preferences at the time when it,
21 when it comes to relationships.

22 We would not be going to attack her morality. We
23 would be -- as part of our, as part of our defense, I
24 believe we have the right to establish that she was in a
25 relationship. That's the only reason we would be trying to

1 get into this information. I believe we are entitled to
2 get to the information. We're not attacking her character;
3 we're not calling her a bad person. It's part of our
4 defense, Your Honor, and the Rape Shield Statute and Rule
5 412 of the Rules of Evidence do not bar that type of
6 inquiry.

7 THE COURT: Yes, ma'am.

8 MS. ASHTON: Thank you, Your Honor. The -- first
9 addressing the case that she cited, *State vs. Finley*, in
10 that case the victim had had the allegations where the
11 victim had a sexual encounter with a third party in front
12 of the defendant's presence, and then later made a phone
13 call to the defendant after her charges were filed,
14 indicating that she would drop the charges if he paid her
15 money. So, the -- there *State vs. Finley* had a issue that
16 was directly related to the actual allegation, and the
17 court deemed relevant to her account of the sexual assault
18 that night, which is why they ruled it reversible error
19 that the defense was not allowed to cross-examine her about
20 that. So, it's completely different from this case.

21 Ms. -- the victim's sexual preference is completely
22 irrelevant in this case, Your Honor. Jack -- the lay
23 witness's statement to the investigator about that is, is,
24 is not relevant to this case and not relevant to the
25 allegations in this case.

1 Also, under the Rape Shield Statute, if defense
2 counsel did, does intend on introducing evidence that would
3 relate to her reputation or her, her specific instances of
4 past sexual conduct, they have to file a written, a written
5 motion related to that, which they have not done, as well
6 as proffer the testimony before it's admissible, admissible
7 in court, and it's also, it's also still subject to the
8 probative versus prejudicial effect, Your Honor, and any
9 reference to her, any reference to her sexual preference or
10 what she stated to the nurse about intercourse is not
11 relevant to this case and would be more prejudicial than
12 probative, Your Honor.

13 THE COURT: Well, based on the Rape Shield Statute,
14 and I've looked over the case, I -- her sexual preference
15 is not relevant in this case, and it's not admissible under
16 the Rape Shield Statute.

17 Also, the fact that she had sex five days beforehand,
18 I think, is, is what -- in reading, even in reading the
19 case that you've cited in *State vs. Tenant*, the most recent
20 case in 2011, the Rape Shield, the court once again
21 affirmed that the -- her having sex five days earlier is
22 not relevant to this case, and under the -- and is exactly
23 what the Rape Shield Statute was designed to do, to protect
24 the victim. So, I'm not going to allow that in. All
25 right.

1 MS. PINNOCK: If I could put something ---

2 THE COURT: Yes, ma'am.

3 MS. PINNOCK: --- just on record about this issue,
4 Your Honor? I do believe it is a reversible error not to
5 allow this inquiry. The fact that Ms. Shealy was in a
6 relationship is an issue in this case. It is our ability
7 to put up, put up a complete and full defense for our
8 client, denying us the ability to go into that information.
9 Not to attack her morally, but to establish that she was in
10 a relationship.

11 The solicitor's office is fully aware of it. The
12 investigators are aware of it. We got this information
13 through discovery. It is -- it can go under 608 to
14 establish a bias on behalf of the, of the witness's
15 testimony. So, Your Honor, I do believe we are going to be
16 denied the right to present a full ---

17 THE COURT: How is it, how is it relevant that she's
18 in a relationship with a -- I'm guessing she said she's in
19 a relationship with another woman. How is that relevant to
20 this case?

21 MS. PINNOCK: Your Honor, it can go to a bias or a
22 motive to lie.

23 THE COURT: A bias because she's in a homosexual
24 relationship?

25 MS. PINNOCK: Begging the court's indulgence.

1 (A PAUSE.)

2 MS. PINNOCK: Your Honor, after conferring with Mr.
3 Shealey, if we are able to go into the fact that she is in
4 a relationship, I believe we could still move forward with
5 the ability to put on our defense. We just don't want to
6 be barred at this point from the ability to say that she
7 was in a relationship. It was an established relationship.
8 The investigators knew about it. We -- if Your Honor,
9 based on your ruling -- we will not question ---

10 THE COURT: Well, my ruling is that you can't go into
11 her, I guess her choice as far as sexuality. Now, you can
12 ask if she was in a relationship.

13 MS. PINNOCK: We can, we can get into that she's in a
14 relationship?

15 THE COURT: But you can't get into the fact that -- I
16 mean, you can ask if she's in a relationship. She -- I
17 mean, and she can say yes or no, and -- but as far as
18 whether or not it was a, a relationship with a woman or a
19 relationship with a man, y'all can't go any further.

20 MS. PINNOCK: Yes, Your Honor.

21 MS. ASHTON: And, Your Honor, just so we're clear, our
22 conversation with the victim indicated she was not in a
23 relationship at the time, and I am unsure about what she's
24 referring to. Investigator Godfrey interviewed the third-
25 party witness that she was -- I believe is referring to six

1 CLERK OF COURT: All right, and I've got -- remember
2 the regular panel.

3 MR. GOLDBERG: Right.

4 CLERK OF COURT: Number 23 on the left will be your
5 twelve, and then number 24 or 26 will be your alternate.

6 MS. PINNOCK: Right.

7 CLERK OF COURT: Okay. All right.

8 (OFF THE RECORD.)

9 THE COURT: All right. Any more motions from the
10 state? I think I've ruled on yours already.

11 MR. GOLDBERG: No, ma'am.

12 THE COURT: All right. I'll be glad to hear from the
13 defense.

14 MR. SHEALEY: May it please the court? Your Honor, at
15 this time we'll just take up number one. We'll start with
16 or renew our Rule 5 in this case. If -- Your Honor, we
17 filed a Rule 5 and just want to make sure that, at this
18 point in the proceedings, that we have all discovery that
19 the state has available. I've -- I believe we do.

20 The only, I think, outstanding little bit of
21 information, there was a photo ID or photograph, photograph
22 shown to Mr. Stukes at some point when he was interviewed
23 by law enforcement of the alleged victim in this case. I
24 don't, I don't know -- when we were seeking information
25 about this photograph, what, what is the photograph? Which

1 photograph is it? I think it's appropriate at this time
2 for us to go ahead and get a copy of that before we proceed
3 any further. I think everything else has been complied
4 with.

5 THE COURT: All right. Yes, sir.

6 MR. GOLDBERG: It's a, the photo that was shown to her
7 -- shown to him was from her driver's license photo. I
8 believe that was turned over in discovery.

9 MR. SHEALEY: Okay. We just didn't know which one.
10 So, it's that exact photograph?

11 MR. GOLDBERG: Yes, sir.

12 THE COURT: Okay.

13 MR. SHEALEY: Your Honor, that's fine. Moving on to
14 the ---.

15 MS. ASHTON: Actually to -- when we spoke with Misty,
16 our victim, on Friday afternoon, she did indicate to us two
17 things that were not in her statement. One is she -- there
18 was a mailbox, mailbox incident where she thinks she had an
19 interaction with the defendant back in 2004. Very brief.
20 Just a -- I think she, she thinks she remembers him saying
21 hey shorty, and she just sort of ignored him and walked
22 away. That was not in her statement.

23 In addition, when we were speaking with her on Friday
24 afternoon and going over her, both of her statements, one
25 to Investigator Branham and one to Investigator Godfrey,

1 when -- at one point she told Investigator Godfrey in her
2 statement in 2010 that she didn't think that she had had
3 any sexual relationships with a male for about, for
4 approximately a year prior to this incident. She said that
5 she had one physical relationship with a male several
6 months prior to the incident. But in light of -- but we
7 still take the position still that that statement related
8 to her to, to the -- to us related to her relation, her one
9 physical relationship with a male on one occasion a couple
10 months prior is still showing under the Rape Shield
11 Statute, Your Honor.

12 MR. SHEALEY: Your Honor, I appreciate, and I'm -- she
13 kind of beat me to the punch and I do appreciate that. I
14 think that's her duty.

15 Under *Osment vs. Riddle*, Your Honor, if that's the
16 case, then I'm sure we're all aware of, well aware of in
17 that case, it was a murder case, and there was no physical
18 evidence but for the testimony of a co-defendant who was a
19 slightly, slightly mentally ill brother. The -- in
20 discovery was one account of how they got away from the
21 crime scene.

22 Interviewing was done, as often is done, by the state
23 in preparation for a trial. In that case, it was disclosed
24 that an entirely different way of leaving the scene
25 occurred, and the state chose to not turn that over, and it

1 could have been used for great effect by the defense for
2 impeachment and everything else. Basically the, the tenet
3 of that case is that any new information that comes to
4 light is not meant for the private deliberations of the
5 state alone, but it's meant to be disclosed regardless of
6 any kind of open-file policy. It's their duty. It's their
7 burden. So, we do appreciate that and that's the law of
8 the land, Your Honor.

9 As far as *Riddle*, it just doesn't apply just to
10 written information or documentation. It also applies,
11 applies to, as Ms. Ashton just provided us, conversation
12 that is different. So, at this point, you know, I believe
13 that they're attempting to go ahead and comply with *Riddle*
14 in regards to Ms. Shealy. That's the first person in this
15 case that I will ask that everything subject to *Riddle*, at
16 this point, be disclosed.

17 My understanding is that they've given us these two
18 pieces of information, and my general request under *Riddle*
19 is going to be for information that's different from what
20 is already been provided in discovery, and I think they're
21 attempting to do that. And I appreciate that so that we
22 avoid any kind of mistrial scenario if she says anything
23 outside of what she said before that is in the knowledge of
24 the state, and I think they're complying with that. And so
25 at this time if there's anything else on Ms. Shealy, I

1 think it would be appropriate. If there's not anything
2 else, then ---

3 MS. ASHTON: Your Honor, those are the only two
4 statements that she made to us that were not previously in
5 the discovery. But, again, we believe that the second
6 statement related to she had a physical relationship with a
7 male months prior to the incident is still protected by the
8 Rape Shield Statute.

9 MR. SHEALEY: And just had we gone -- and that's fine.
10 We understand the court's ruling on that issue. We won't
11 get into any kind of specific instances of sexual conduct.
12 However, we are allowed to ask about a relationship. In
13 the discovery in Investigator Godfrey's report, it is
14 outlined in great detail that she was in a relationship at
15 that time. I assume under *Riddle* that has not changed or
16 else the state would be notifying us of any kind of change
17 in that regard, and I guess that's a specific *Riddle*
18 request that I'm making at this time.

19 MS. ASHTON: Your Honor, in Investigator Godfrey's
20 summary of the conversation with Misty, it's, again, six
21 years after the incident. She did -- he did write down
22 that she thought she was in a relationship at the time. On
23 Friday she did indicate to us that she was not in a
24 relationship at the time. Again, though, it's given in her
25 statement six, six years after the incident. It's still

1 protected ---

2 MR. SHEALEY: And I ---

3 MS. ASHTON: --- under the Rape Shield.

4 MR. SHEALEY: And, again, I appreciate that and that's
5 absolutely what *Riddle* demands is that kind of information,
6 and I'm glad it just came out now or else we'd be dealing
7 with some other issues if that was different up there.
8 Anything else regarding Ms., Ms. Shealy that is going to
9 be different from what she gave to law enforcement?
10 Anything else that the state's aware of at this time is
11 what I'm looking for under *Riddle*.

12 THE COURT: I believe that's all.

13 MR. SHEALEY: Okay. *Riddle* as well, Your Honor, in
14 its application to Ms. Bruton, it was the defense's
15 understanding through -- is it Sergeant or Investigator?
16 Sergeant?

17 SERGEANT GODFREY: Either one, Sergeant.

18 MR. SHEALEY: I just want to call you the appropriate
19 title. Sergeant?

20 SERGEANT GODFREY: Sergeant.

21 THE COURT: Sergeant Godfrey's report about speaking
22 to Ms. Bruton, is there anything other than -- any new
23 information that the state has learned since speaking with
24 her and interviewing her recently in preparation for trial
25 that is different from the report?

1 MS. ASHTON: No, Your Honor.

2 THE COURT: All right. Are we going to go through
3 every witness?

4 MR. SHEALEY: No, Your Honor. That's my ---

5 THE COURT: Okay.

6 MR. SHEALEY: Those are my two specific requests.

7 THE COURT: Okay.

8 MR. SHEALEY: I think they're pertinent on the
9 subject. We'll move on. I think number two at this time
10 is -- okay. I'll -- we'll get to number three if we may at
11 this time, Your Honor. This just, under rule ---

12 THE COURT: To sequestered witnesses?

13 MR. SHEALEY: 615, we would ask to sequester ---

14 THE COURT: I think they ---

15 MR. SHEALEY: --- the lay witnesses.

16 THE COURT: I think they consent.

17 MR. SHEALEY: Sure.

18 MR. GOLDBERG: Your Honor, with the exception of the
19 victim and the lead investigator.

20 MR. SHEALEY: That's fine.

21 THE COURT: Okay.

22 MR. SHEALEY: That's exactly what I'm asking for.

23 THE COURT: All right.

24 MR. SHEALEY: I think number two, Your Honor, we'll
25 take up now.

1 MS. PINNOCK: If it's all right, if we could go ahead
2 and settle the record of the lay witnesses the state
3 intends to call? The only criminal history that we've,
4 that we've received is of Misty Shealy. They have a number
5 of lay witnesses listed on their witness list, Your Honor,
6 and we don't know if they criminal histories, and if they
7 do, we've not been provided a copy.

8 MR. GOLDBERG: Ms. Bruton has no criminal history. A
9 witness, Deanna Moore, has no prior convictions. She was
10 arrested and the case was a non-conviction, not guilty, and
11 I'll get a copy of that, but I don't believe it's anything
12 that can be used. And if any other potential lay witnesses
13 that the state has to offer -- I'm not aware of any
14 criminal history.

15 THE COURT: All right, and just, before they're called
16 as witnesses, just check it.

17 MR. GOLDBERG: All right.

18 THE COURT: If there's anybody, just run a rap sheet
19 and get it to them. All right, number four.

20 MS. PINNOCK: We are -- as far as Ms. Shealy's record
21 goes, the solicitor is in agreement, agreement that her
22 convictions are admissible during cross-examination or if
23 he wants to address those.

24 MR. GOLDBERG: And just for the court's information,
25 there is prior record that, yes, we're in agreement of

1 fraudulent check 2005, financial transaction card theft and
2 fraud in 2010, shoplifting in 2010, and use of vehicle
3 without permission, like, two counts in 2011. Those are
4 the only ones. Is that right?

5 THE COURT: Those are all convictions?

6 MR. GOLDBERG: Ma'am?

7 THE COURT: Those are all convictions?

8 MR. GOLDBERG: Yes, ma'am, since 2005.

9 THE COURT: Okay.

10 MR. GOLDBERG: I beg the court's indulgence.

11 (A PAUSE.)

12 MR. GOLDBERG: I believe that would be the only --
13 yes. Yes, ma'am, those would be the only ones.

14 THE COURT: All right.

15 MR. GOLDBERG: Your Honor, actually I would like to
16 add, it's not a prior conviction. But there is reference
17 in the discovery, I believe, when Sergeant Godfrey is
18 talking to some of the lay witnesses trying to track down
19 the victims during his investigation in 2010. He
20 references that he talked to a neighbor who said that the
21 victim was in the Orangeburg County Detention Center for
22 child abandonment. She was never charged or convicted with
23 that, and I would like to clear up for the record that
24 there not be any mention of that in front of the jury.

25 THE COURT: Yes, ma'am.

1 MS. PINNOCK: Your Honor, we weren't planning on
2 getting into it unless the talk comes up through the
3 witnesses that they call.

4 THE COURT: All right.

5 MR. GOLDBERG: Thank you.

6 THE COURT: All right. Number four.

7 MS. PINNOCK: Number four, Your Honor, we can --
8 depending on what the state intends to use in their
9 opening, we can either address that now or later on before
10 charges.

11 THE COURT: This is the thing. The statute that says
12 that the ---

13 MS. PINNOCK: The victim's testimony need not be
14 corroborated.

15 THE COURT: No corroboration under the statute.

16 MS. PINNOCK: Yes, ma'am.

17 THE COURT: I'll be glad to hear from you on it, but I
18 think you already know my ruling on that. It's, if the
19 statute -- there's a case that says that, you know, it is
20 what it is. It's the law. Are y'all going to bring it up
21 in your opening?

22 MS. ASHTON: Your Honor, I had not planned on bringing
23 it up in the opening. I think it's more appropriate for a
24 closing argument. So, we can address that then unless you
25 want to rule on it now.

1 THE COURT: All right. We'll, we'll address it at
2 that time.

3 MS. PINNOCK: Before closing, before charges?

4 THE COURT: Yes.

5 COURT REPORTER: Is this Court's 1?

6 MR. SHEALEY: Yes.

7 THE COURT: All right.

8 (DEFENSE MOTION *IN LIMINE* MARKED INTO EVIDENCE AS
9 COURT'S EXHIBIT NUMBER 1.)

10 MS. PINNOCK: Your Honor, our next motion is a motion
11 to exclude any reference to any alleged mental trauma or
12 behavioral changes in Ms. Shealy. From conversations with
13 the solicitor, from information that we've been provided
14 through discovery about conversations with lay witnesses,
15 we're anticipating that because some of these peoples'
16 names are listed on their witness list, they're going to
17 try and elicit testimony about -- excuse me -- some
18 behavioral changes that the, that, you know, family and
19 friends were noticing.

20 Your Honor, we would argue that that, just that
21 inadmissible testimony through a lay witness, we've not
22 been given any notice about any experts who are going to be
23 called to talk about the subject. I don't believe it is
24 admissible testimony, Your Honor. So, we're guessing at
25 this point. We don't know what these witnesses are going

1 to testify about. But if the solicitor intends on trying
2 to elicit this testimony, Your Honor, we'd ask for a ruling
3 on it now.

4 THE COURT: Yes, sir.

5 MR. GOLDBERG: Your Honor, we plan to elicit testimony
6 through the victim about what's happened to her since the
7 date of the incident. The incident happened in, alleged
8 incident happened in 2004. As you've gathered by now, an
9 arrest was not made until 2010. And as you heard her prior
10 record just recently, all of it took place after the
11 incident allegedly took place. The case that I've been
12 able to find that deals most closely with this is *State vs.*
13 *Alexander*.

14 THE COURT: I already have it.

15 MR. GOLDBERG: Okay. Thank you. Well, if you already
16 have it, then you already know what it says. That
17 precisely this kind of information is, in fact, relevant to
18 the case in a prosecution of criminal sexual conduct, and
19 the bigger question, it appears, is going to be the 403
20 question about whether or not any probative value comes
21 from it substantially outweighed from -- by the danger of
22 any unfair prejudice. I don't know if you want to hear
23 from me or Ms. Pinnock about that first.

24 THE COURT: All right. Are you familiar with *State*
25 *vs. Alexander*?

1 MS. PINNOCK: Yes, Your Honor. I pulled that case as
2 well, and it, it is a situation in that case where the, the
3 alleged victim in the case was saying that the sexual
4 intercourse was forced. The defendant in that case was
5 saying that it was consensual. The court did determine
6 that the testimony from the victim was probative to the
7 case, but it did not pass the 403 balancing test. And,
8 Your Honor, the holding in that case was they reversed the,
9 they reversed the conviction, and Mr. Allen was given a new
10 trial.

11 The only cases that I've been able to come up, that
12 I've been able to come across after *Alexander* all
13 referenced the fact that even though the evidence is
14 considered probative, it should not be admitted unless Your
15 Honor finds on the record that it, that the probative
16 value, substantially outweighs the prejudicial effect under
17 403.

18 And, Your Honor, the cases that I've come across have
19 all dealt, mostly dealt with child cases and cases where
20 there is an expert being qualified to testify in court. I
21 do believe that the *Alexander* case is, is separated. It's
22 distinct from the cases that follow and very similar to
23 this one.

24 They're not trying to offer this evidence through an
25 expert. The issue in this case is whether or not Ms.

1 Shealy is going to be seen as credible. So, I would say
2 that it's extremely similar to the *Alexander* case. I think
3 with the, with the facts in this case, it's considered on a
4 fact, on a case-by-case basis. I don't believe that the,
5 the probative value would be -- would outweigh any
6 prejudicial effect, Your Honor, because I believe the
7 testimony, it's our position that that testimony coming
8 from Ms. Shealy, since she is the only person who's
9 offering any testimony, any evidence that something
10 criminal could have happened would leave the jury to make a
11 determination on a unfair basis. We do think it would play
12 to the passions and prejudice of the jury, place their
13 emotions hearing this testimony come from -- from her
14 mouth.

15 Your Honor, we -- I don't -- it's our position that it
16 does not pass the 403 balancing test. So, any testimony
17 along those lines, behavioral changes or drug use or
18 getting arrested, all of that should be excluded.

19 THE COURT: Yes, sir.

20 MR. GOLDBERG: *Alexander*, I guess we're conceding that
21 in this instance is relevant, and the issue is only 403,
22 and if that's the case I'll take up 403. The court in
23 *Alexander* does not go into any specific commentary or
24 analysis about the facts of that case and how it applies
25 under 403. It simply says in the first part about

1 relevance that it is relevant, and then it moves on to the
2 prejudicial effect, and all it states is that:

3 Applying the test to the unique facts of the
4 case, we hold that the emotional trauma is unduly
5 prejudicial and should have been excluded.

6 I think those, those -- the word unique makes
7 Alexander a completely different ball game than the case
8 we're dealing with here: By definition of the word, the
9 court's saying that's a unique set of circumstances. It
10 makes it different from the case at bar here.

11 And, in this instance, the state's position that you
12 would, you would have testimony from Ms. Shealy about drug
13 use, arrest, problems with the law that she's had since the
14 day of the incident, lost her job, had about eight to ten
15 different jobs, lived in about eight to ten different
16 places, never felt comfortable being around strangers,
17 things of that effect. We believe it's probative of the
18 brutality of the assault and the fact that there was a lack
19 of consent involved.

20 There would be some testimony to support the notion
21 that the incident actually took place, especially if the
22 defense is going to be that Mr. Stukes is denying it was
23 any sexual conduct took place. I don't believe that it,
24 it's substantially outweighed by the danger of unfair
25 prejudice. That testimony does not suggest a decision to

1 the jury based on an improper basis.

2 Again, in, in *Alexander*, that was a lack of consent
3 case. Everyone agreed in that case that sex took place.
4 We don't even know if that's the case here. Don't know
5 what the defendant's position was on whether or not it was
6 consent or they just got the wrong guy because, in this
7 case, in the defendant's statement, which we do plan to put
8 into evidence, he denies that sex even took place between
9 the two of them. So, we believe it's probative of the fact
10 that the assault did take place, that there was no consent,
11 and would argue that it is more probative than prejudicial
12 in this particular instance.

13 If it would be helpful to the court, then obviously
14 we're prepared to proffer some testimony, if necessary.
15 And I would just also point out that in *Alexander*, if you
16 go back through it -- granted, it's under the section about
17 relevancy of the testimony, they do cite several cases,
18 granted out of Missouri and Arizona, in which this kind of
19 testimony was, in fact, allowed. Testimony about a, in one
20 case, about a victim moving to a new apartment and having a
21 nervous breakdown. Another case about dropping out of
22 school, moving to another city. The third case about the
23 defendant -- excuse me, the victim being hospitalized,
24 trying to commit suicide, things of that nature.

25 So, there is some precedence for this taking place in

1 other jurisdictions. It's just that there's not a whole
2 lot of case law that addresses the 403 issue on point here
3 in South Carolina, and we do believe it is up to the
4 court's discretion in that analysis.

5 MS. PINNOCK: And, Your Honor, if I may?

6 THE COURT: I'm listening.

7 MS. PINNOCK: Your Honor, the other jurisdictions that
8 are cited are obviously because when *Alexander* was, was
9 heard by the court, there was no precedence in the state.
10 So, they did look to other jurisdictions. Nobody is
11 disputing that the courts have said that this, the
12 testimony, is relevant under 401. That's not the
13 objection.

14 The facts, the bare facts of the case are laid out.
15 It was a consent versus a nonconsent case. When dealing
16 with *Alexander*, the, the victim's testimony in that case
17 was Ms. Hendrix testified that since the rape, since the
18 rape, she's lost sleep, she's lost her appetite, that she
19 gets emotionally upset. She cannot concentrate at work.
20 Ms. Hendrix also claims to suffer a loss of weight as a
21 result of the alleged rape. She also testified that she
22 ---

23 COURT REPORTER: Slow down, please.

24 MS. PINNOCK: I'm sorry. She also testified that she
25 has since purchased a gun to protect herself. From what

1 the solicitor said Ms. Shealy would potentially testify to
2 in, in our trial, I think it's along the same lines of what
3 the, what the, Ms. Hendrix in Alexander testified to.

4 THE COURT: Well, let me just ask you this, though.
5 But he -- in *Alexander*, she -- they were -- the state, it
6 appears, was using that to be able to show that she didn't
7 consent to the -- he said. I'm guessing he said it. They
8 consent -- she consented. They were using that to say that
9 a rape had occurred, whereas here they're using it to say,
10 from what he's arguing, that she was raped.

11 Now, I don't know what your defense is as -- but it is
12 not consent. I -- from what I can gather or guess, I'm
13 guessing that it is not consent in this case. That she,
14 that nobody is brought that up, and that -- so, I think
15 that's the difference that he's making between the two
16 cases.

17 MS. PINNOCK: Well, Your Honor, I'm not -- my argument
18 is not that this is a case directly on point. My argument
19 is that, and not to disclose what our defense is, the court
20 in the *Alexander* case laid it out, laid out that it's, it's
21 supposed to be looked at on a case-by-case basis. The
22 court in that, in the *Alexander* case decided that there was
23 something different about this case, their case, that even
24 though the, the testimony was probative -- I'm sorry,
25 relevant evidence, it did not get past 403.

1 From the facts that are provided in, in the, in the
2 case that we have, Your Honor, it is the victim in the case
3 testimony against the defendant in the case. That's the
4 evidence that we are presented with -- and I'm sorry. I'm
5 actually going to correct myself. There was other evidence
6 of, you know, sexual conduct, sexual conduct between the
7 two parties in the *Alexander* case. But the court still,
8 even with the testimony of the victim, the, the scientific
9 evidence they had, still deemed the testimony to not pass
10 403, and I, I'm going to agree with Mr. Goldberg. It
11 doesn't go into why it -- they decided that. They don't
12 address that in detail. It just said we find that there's
13 relevant evidence, but it's -- the probative, probative
14 value is, is substantially outweighed by the prejudicial
15 effect.

16 And, Your Honor, I think that would be what's going on
17 here. If we allow this testimony, Your Honor -- another
18 point, it's, the state's -- it's our argument that's the
19 state's attempt to explain away her record, try and make
20 excuses for what happened, just trying to explain away all
21 the convictions. Now, if that's the case, Your Honor,
22 through the -- that's not the proper avenue to use, and I'm
23 going to rape trauma. That's what this is. It's rape
24 trauma evidence they're trying to get through a lay witness
25 instead of calling an expert talking about rape trauma.

1 That's what this is, back-door attempt to get scientific
2 evidence on the record with nothing to support it, and a
3 way to explain away her record and a way to play on the
4 emotions of the jury. That's the only thing that this line
5 of testimony would, would accomplish.

6 So, Your Honor, our position is still it does not get
7 past the 403 balancing test. It is relevant evidence
8 obviously based on the case law in this state. But we
9 would argue that it does not get past 403, and the state
10 should be precluded from going into it.

11 THE COURT: Yes, sir.

12 MR. GOLDBERG: Thank you, Your Honor. It's not an
13 attempt to make excuses on her behalf for her conduct or to
14 back-door any scientific evidence. It's simply to elicit
15 probative testimony of the -- of what happened to her since
16 it, since the incident occurred and it goes towards, again,
17 the brutality of the assault, and the lack of consent on
18 that particular instance.

19 The other thing then I want to point out is in
20 *Alexander*, that was the Supreme Court of South Carolina.
21 This was a great opportunity for the court to make a
22 blanket finding about this 403 issue. Take the specific
23 facts of the case, talk about it, have an analysis, and put
24 it out there, and they didn't do it. They went out of
25 their way to use that word unique to separate that case

1 from this one, therefore putting it in the trial judge's
2 hands to examine on a case-by-case basis, which I believe
3 is what is before you today. And, again, it's not our --
4 it's our position that it is not going to suggest a
5 decision based on an improper basis. It's simply going to
6 support her testimony about the nature of the assault and
7 how it took place.

8 THE COURT: All right. Well, I'll proffer -- we'll
9 proffer the testimony. Is she your first witness?

10 MR. GOLDBERG: Yes, ma'am.

11 THE COURT: All right. I just hate to make them wait.
12 Let's see how far we get and we'll just take a break after
13 opening, and then we can proffer the testimony at that --
14 that part of her testimony.

15 MR. GOLDBERG: I'm sorry. So, you want to go ahead
16 and open and take a break and then put her up? Is that
17 what you're saying?

18 THE COURT: Yeah, because, I mean, I hate to make the
19 jurors sit back there.

20 MR. GOLDBERG: Okay.

21 THE COURT: But we -- I want to get through the rest
22 of their motions.

23 MR. GOLDBERG: Okay. Thank you.

24 THE COURT: All right.

25 MR. GOLDBERG: Thank you.

1 MR. SHEALEY: Your Honor, I think with the opening.

2 MR. GOLDBERG: Oh, yeah, well, that's a good point. I
3 guess it would have an impact on the opening.

4 THE COURT: All right. Well, we'll do it -- well, let
5 me see what, let me see what other motions they have and
6 then we'll do that.

7 MR. SHEALEY: Sure. We'll be finishing up shortly
8 here, Judge. Number seven is pretty simple, Judge. A case
9 like this where there's DNA information and often it's a
10 CODIS hit. We all know what that is; a lot of lay people,
11 a lot of the jurors know what that is. We're moving *in*
12 *limine* to preclude any reference to CODIS or DNA database.
13 It's a simple fix to not prejudice our client through a
14 4049(b) prior bad act situation by acknowledging, through
15 elicited testimony, that our client has a reason to be in a
16 DNA database.

17 It's a quick fix. We do it all the time. A match
18 occurred, a DNA -- we had a DNA match without referencing a
19 database, without referencing CODIS. Sergeant Godfrey can
20 say there was a DNA match occurred, and that's simple and
21 we, we will consent to that without getting into all these
22 prior bad acts and improper character evidence coming in
23 through the reference of a database or CODIS.

24 THE COURT: Any response?

25 MR. GOLDBERG: That will be fine, Your Honor. I

1 believe he would probably also go into some language about
2 a profile, a DNA profile being developed, that sort of
3 thing, but no specific reference to CODIS or database.

4 MR. SHEALEY: Yeah, yeah, that's fine. There's a
5 match; there's a profile developed. That's fine.

6 THE COURT: Okay.

7 MR. SHEALEY: Just no, no CODIS, no database, and we
8 don't have a 404 issue. Moving along, Your Honor, number
9 eight, you know, part of this investigation before there is
10 a DNA hit, you know, looking for all kinds of people in
11 this case. I think Investigator Branham initially is the
12 responding investigator. There's a series of, of, you
13 know, alleged rapes in that area at that time. They're
14 looking at this guy pretty hard, Tremaine Portee, and I
15 don't ---

16 MR. GOLDBERG: He's not going to go into that.

17 MR. SHEALEY: Yeah, if they're not going to go into
18 that, it's a moot issue.

19 THE COURT: They're not going to do it.

20 MR. GOLDBERG: We're not going there.

21 MR. SHEALEY: Great. Your Honor, I think Ms. Pinnock
22 and I might not have been on the same page with our, with
23 our pretrial motions list. Where does your list end? What
24 number?

25 THE COURT: Motion to exclude reference to photo

1 lineup.

2 MR. SHEALEY: Okay. Good. Do y'all have that?

3 MR. GOLDBERG: Yes, sir.

4 MR. SHEALEY: Okay. Good. Let's see. Your Honor,
5 there is, there is no out of, out-of-court identification
6 of the alleged attacker in this case. There never has
7 been. There were two statements and each time, those
8 statements, Ms. Shealy says that she can't identify the
9 attacker. However, in her second statement taken by
10 Sergeant Godfrey and Investigator Mincey, she does, when
11 shown a lineup, and at this point in time they have a DNA
12 CODIS hit.

13 They developed, they developed the lineup with Melvin
14 Stukes in a, in a six-pack photo array and they say can you
15 identify your attacker. No, I can't. I told you guys
16 that. Well, can you identify anybody that looks familiar?
17 Well -- and she said this guy kind of looks familiar, like,
18 you know, he may have been around the apartment complex.
19 Then the next line of questioning is, well, why would
20 anybody in this six pack be in your DNA rape kit protocol?
21 Why would they be in there? I don't know, I don't know,
22 and then she goes on to cry.

23 This is a narrative by Sergeant Godfrey. It is not --
24 and I'm, I'm touching upon this issue in case we have to
25 get into a bigger scenario. It's my assumption that

1 they're not going to try to do now an in-court
2 identification of any attacker. However, I do feel if they
3 attempt to elicit information about a DNA match and then
4 have Ms. Shealy testify to, you know, you were shown a six
5 pack and you recognized this guy from the apartments, that
6 is a paint by numbers in-court identification. And I feel
7 if, if -- I'm moving to exclude reference to here's a guy
8 that looks familiar, and I think it's powerful enough,
9 given the fact that they're going to be eliciting
10 information about a DNA match in combination with this --
11 and she never circles a face, but she tells the sergeant,
12 Sergeant Godfrey that he does look familiar to her,
13 somebody around that time that was at the apartment
14 complex. And I feel that is akin to an in-court
15 identification, and they feel they're going to do that,
16 then I think we'll need to have a *Biggers* hearing.

17 If they -- if they're not going to go that route, and
18 I am moving to exclude any testimony about, well, he looked
19 familiar. But if they feel that they're, they're going to
20 go that route with it, given the DNA match, and the idea
21 that she's telling me, the sergeant, that, you know, he
22 looks familiar, I think that's a, that is a, a bigger
23 scenario, and we'll have to address that. And I'd be
24 looking to put up Sergeant Godfrey and Ms. Shealy to answer
25 questions about the identification procedure.

1 THE COURT: All right. Yes, sir.

2 MR. GOLDBERG: There has not been any identification
3 by the victim of the defendant in this case. There's not
4 going to be an identification by her of him in-court,
5 out-of-court or otherwise. The purpose of that testimony
6 would not be for her to identify him. She would not be
7 doing that. She can't do it. We would not have Sergeant
8 Godfrey stand up, get on the witness stand and say yeah,
9 the one that she pointed to was Melvin Stukes. I agree.
10 That would be akin to an identification.

11 However, I, I do think the state is entitled to
12 demonstrate the lengths that Sergeant Godfrey went to in
13 his investigation, investigation. That he did, in fact,
14 show her a photo lineup, that she wasn't able to identify
15 anyone, and she's not going to say that she could. But
16 that one picture did look familiar as somebody who'd been
17 around the apartment complex before. Nobody was going to
18 say that that guy in the picture is Melvin Stukes. That's
19 not going to happen. But I do think we're entitled to ask
20 that question about showing her a lineup and whether she
21 recognized anybody and how she recognized them.

22 MR. SHEALEY: Well, I mean, it's clear from the
23 investigative report that -- and Sergeant Godfrey makes a
24 great inference in it. It's in bold in his report that
25 this -- that she identifies or says number two looks

1 familiar. She can't say his name. She can't say where she
2 knows him from other than the apartment complex around that
3 time. It seems to be an exciting aspect of the
4 investigation for Sergeant Godfrey. It's in bold; it's the
5 only thing that's in bold. So, I feel that if they use his
6 testimony or her testimony, if they're going to try to say,
7 well, he identified who we now know to be the defendant in
8 this case ---

9 THE COURT: He's not saying that. That's what he's
10 saying. He's just saying that she's going to testify she's
11 able to pick one person that she'd seen in the
12 neighborhood. She's not going to say it's him. That's my
13 understanding, right?

14 MR. GOLDBERG: Yes, ma'am.

15 MR. SHEALEY: All right. Well, if that's -- if
16 they're not going to try to identify anybody, or if they're
17 not going to say it's Mr., Mr. Stukes, then that's fine.
18 We won't have a *Biggers* issue.

19 THE COURT: But at that -- you understand -- I mean,
20 he understands that he can't say that number two was Mr.
21 Stukes and she thinks she's, he's guilty.

22 MR. SHEALEY: No.

23 THE COURT: All right.

24 MR. SHEALEY: And I think, one last thing that I don't
25 think made the list, Your Honor, we've been talking -- and

1 this is a motion to preclude prejudicial terms. You know,
2 I think calling Ms. Shealy a victim puts the cart before
3 the horse. I think there have been no convictions in this
4 case. She is only a victim when there's a conviction
5 because otherwise her credibility is up there on that
6 stand, and if, and if she's believable to that jury, maybe
7 there's going to be a conviction. If she's not, there's
8 not. But she can't be a victim until her credibility is
9 assessed and a conviction results.

10 I, I think it prejudices Mr. Stukes for everybody, the
11 court, the, the state, us, anybody to refer to Ms. Shealy
12 as a victim in this case. I think it's burden shifting. I
13 think it presupposes a conviction. It presupposes a fact
14 in this case, even if it is subtle, and I think it goes
15 against presumption of innocence. I would refer her as Ms.
16 Shealy. I think that's her name in this case. So, that's
17 my position on it, Judge.

18 THE COURT: All right. I think under the statute
19 she's technically the victim. That doesn't mean he's
20 guilty, I think, but under the statute she's technically
21 the victim. So, I'm going to deny that motion. I think I
22 made it pretty clear to them in the beginning that these
23 are allegations ---

24 MR. SHEALEY: Thank you. Thank you.

25 THE COURT: --- and I'll make that clear to them again

1 during my introduction that all of these are allegations,
2 allegations.

3 All right, let me hear from -- are we going to -- you
4 want to call, proffer her testimony at this time?

5 MR. GOLDBERG: Yes, ma'am, that's fine.

6 THE COURT: All right.

7 MR. GOLDBERG: If I could just have one moment?

8 THE COURT: Sir?

9 MR. GOLDBERG: If I could just have a moment ---

10 THE COURT: Yes.

11 THE COURT: --- with the victim real quick to explain
12 to her what's going on?

13 THE COURT: Yes.

14 MR. GOLDBERG: Thank you.

15 (A PAUSE.)

16 MR. GOLDBERG: Thank you.

17 THE COURT: Okay.

18 MR. GOLDBERG: State calls Misty Shealy Millender.

19 MISTY SHEALY MILLENDER, BEING DULY
20 SWORN, TESTIFIES AS FOLLOWS:

21 CLERK OF COURT: Have a seat in the witness stand,
22 please. State your name for the record.

23 WITNESS: Misty Millender.

24 PROFFER

25 PROFFERED EXAMINATION BY MR. GOLDBERG:

M. SHEALY MILLENDER - PROFFERED EXAM BY MR. GOLDBERG 144

1 Q. Okay, Misty, make sure you keep your voice up loud
2 enough that the judge can hear you. Okay?

3 A. Yes, sir.

4 Q. All right. Prior to May 10, 2004, where were you
5 employed?

6 A. I was employed at Verizon Wireless on Forest Drive.

7 Q. How long had you been employed there?

8 A. For almost two and a half years.

9 Q. And what was your, your work there? What were your
10 duties at Verizon?

11 A. I, when I first started the job, I was hired
12 originally to be a customer service representative, and you
13 do six weeks of training there. Well, after my six weeks
14 of training I had, I guess I had excelled enough that they
15 decided to put me into a higher position, which was an off
16 corp technical support rep. I took phone calls from people
17 when their phone couldn't make or receive phone calls,
18 whenever it was stolen and they needed it suspended, or
19 they needed someone to help, you know, push it through the
20 network so that they could make their calls. I handled
21 that.

22 Q. And what was your regular work shift?

23 A. I believe it was from 10:30 at night till 7:30 in the
24 morning.

25 Q. Okay. You said you worked there about two and a half

M. SHEALY MILLENDER - PROFFERED EXAM BY MR. GOLDBERG 145

1 years?

2 A. Uh-huh.

3 Q. Did you work somewhere before that?

4 A. I did. I worked at Apac over on Broad River Road for
5 Citibank, but they closed down.

6 Q. They closed down?

7 A. Uh-huh.

8 Q. What kind of work did you do there?

9 A. I was also a customer service representative. I
10 handled calls to, like, call people and ask them if they
11 would like to take their credit cards and move it to a
12 Citibank credit card at a lower APR.

13 Q. And where were you living in May of 2004?

14 A. I was living at the Park Apartments on Longcreek
15 Drive.

16 Q. Okay. Did you a roommate or did you live by yourself?

17 A. At the time of this incident, I was living by myself

18 Q. Okay. After the incident occurred on May 10, 2004,
19 did you continue to live in Apartment [REDACTED]?

20 A. No, sir. After the incident, I immediately informed
21 my, you know, the apartment complex. I gave them the
22 police report, and I asked to be moved to another apartment
23 complex, but just a different location.

24 Q. And did they accommodate you with that?

25 A. They did.

1 Q. Did you ever spend another night in that particular
2 apartment?

3 A. No, sir.

4 Q. Did you keep your furniture from that apartment?

5 A. No, sir, I, I couldn't stand to look at the couch
6 anymore. So, I donated it.

7 Q. And immediately after the incident, did you keep your
8 job at Verizon? Did you go back to work right away?

9 A. No, sir, I didn't go back to work right away. I, I
10 spent a good deal of time staying alone in my apartment
11 because I couldn't really just, I really just didn't want
12 to be around people anymore. I just felt kind of, you
13 know, lost and I just -- I just couldn't face people
14 anymore.

15 Q. Did you eventually go back to work?

16 A. Yeah, I did. About close to a month later I tried to
17 go back, but it didn't work out.

18 Q. Did your supervisors know that you'd been involved in
19 an incident?

20 A. I don't think that my supervisors were informed. I
21 know when it happened that I had to let the corporate
22 office know in order to be able to, still be able to be
23 paid. I had to send them the reports. But I wasn't aware
24 of anybody that knew in the actual call center.

25 Q. Once you went back to work, what was your performance,

M. SHEALY MILLENDER - PROFFERED EXAM BY MR. GOLDBERG

147

1 your work performance like?

2 A. I, I wasn't very good anymore. I mean, I was still
3 able to take the phone calls, but I couldn't concentrate.
4 I, I found myself having panic attacks and I just, I just
5 really just didn't like it anymore.

6 Q. Did you eventually stop working there?

7 A. Yes, sir.

8 Q. And whose decision was that?

9 A. It was theirs because I -- of my attendance. So, I
10 guess it was my decision initially.

11 Q. After you were -- stopped working at Verizon, between
12 that time and now, about how many jobs have you had?

13 A. Ten or more.

14 Q. Can you name a few of them?

15 A. I have worked at Paul Argo Screens in North. It's a
16 screen door company. I worked at Substation II in Swansea.
17 I've worked at the Exxon in Swansea. I worked at the
18 little pizza shop in Swansea. I'm trying to think. Just
19 different little odd and end -- I worked at Rodaine
20 Cabinetry on Fernandina Road for a while. Just, I had a
21 lot of different jobs.

22 Q. And how, about how many different residences have you
23 lived in during that time period?

24 A. Probably, probably about between six and eight that I
25 can think of.

1 Q. All in the Columbia area or ---

2 A. No, Columbia and Swansea.

3 Q. Okay. At some point after the incident were you, did
4 you ever go on any medication?

5 A. Yes. I was sent to a psychiatrist and they started me
6 out on Paxil, and I have since been on Paxil, Wellbutrin,
7 Zoloft, Prozac. I've been on different anti-depressants.

8 Q. And just because I know the question's going to come
9 up, when you saw the psychiatrist the one time, did you go
10 into details of the incident at all during that day?

11 A. I didn't want to. The psychiatrist tried to get me
12 to talk about it, but I, I guess I was really -- part of
13 me felt like I was in denial. I just wanted to move past
14 the whole incident, but at the same time it, you know, I
15 guess if you don't talk about it, you don't really deal
16 with it.

17 Q. Now, you mentioned a number of prescription
18 medications that were -- that you were on. Since 2004,
19 have you engaged in the use of nonprescription narcotics as
20 well?

21 A. Yes, sir.

22 Q. Tell us a little bit about that.

23 A. Up until this incident I have -- wasn't a smoker or a
24 drinker. I, I hadn't used drugs, but I, I started using
25 drugs because I, to be honest, I just didn't want to think

M. SHEALY MILLENDER - PROFFERED EXAM BY MR. GOLDBERG 149

1 about it no more.

2 Q. Didn't want to think about what?

3 A. I didn't want to think about what had happened to me.
4 I didn't, I didn't like what I saw when I looked at myself
5 in the mirror anymore. I found myself going from being a
6 very happy and energetic social person to being a hermit.
7 I was scared of everything.

8 Q. What drugs did you use?

9 A. I started using crack cocaine.

10 Q. Did the use of the crack cocaine lead you to get into
11 any trouble with the law?

12 A. Yes, sir. I've never been charged with drugs or
13 caught with drugs, but my addiction, I found myself -- I
14 got into some trouble with the law, you know, for borrowing
15 cars and not bringing them back on time and bad checks and
16 things like that.

17 Q. You have a fraudulent check conviction, right, and
18 that was in 2005. Is that right?

19 A. Yes, sir.

20 Q. And 2010, financial transaction card theft and fraud
21 convictions. Is that right?

22 A. Yes, sir.

23 Q. And 2010, a shoplifting conviction ---

24 A. That's right.

25 Q. --- is that right? And then 2011, use of vehicle

1 without the owner's permission?

2 A. Yes, sir.

3 Q. And there are two count of that, right? And how would
4 you, how would you describe the relationship between those
5 convictions and your drug use?

6 A. Well, I, I guess I, I did what I, you know, I did what
7 I, I did to try to get the money, to get the drugs. But
8 initially yes, that was the reason why I started
9 committing, you know, crimes was to ---

10 Q. Had you ever ---

11 A. --- support my drug addiction.

12 Q. How many times had you been arrested prior to May 10,
13 2004?

14 A. Never.

15 Q.. And I believe -- and, again, you said that you used
16 the drugs to help you forget. Is that right?

17 A. Yes, sir. I guess everybody heals, you know, things
18 differently than other people do. Some people, when some
19 things happens to you, you're able to hold your head up and
20 keep on going, and then some things are so big you just --
21 I guess a part of you snaps, and I just wanted, I just
22 wanted to stop hurting. I just wanted to try to, try to
23 find that person that I used to be before this happened.
24 But using the drugs was the wrong way to go about it, and
25 all it did was push me further and further away from who I

M. SHEALY MILLENDER - PROFFERED EXAM BY MS. PINNOCK 151

1 used to be.

2 MR. GOLDBERG: Beg the court's indulgence for a
3 moment.

4 (A PAUSE.)

5 MR. GOLDBERG: Okay. Those are all my questions at
6 this time. Thank you.

7 MS. PINNOCK: Please the court, Your Honor.

8 THE COURT: Yes, ma'am.

9 PROFFERED EXAMINATION BY MS. PINNOCK:

10 Q. Ms. Shealy, you said that you had worked at Verizon
11 for approximately two and a half years leading up to 2004,
12 correct?

13 A. Yes, ma'am.

14 Q. All right, and then how long was it that you said you
15 worked there until you got fired?

16 A. About probably only like a month or so.

17 Q. A month or two after. Okay. All right. You said
18 that you moved out of the Park Apartments?

19 A. Yes, ma'am.

20 Q. What was the date of the move?

21 A. I think it was two days later.

22 Q. All right, and you said that since you have left
23 Verizon, you've worked at around ten places?

24 A. Yes, ma'am, give or take that.

25 Q. Okay, and you kept losing those jobs. Were you fired,

1 you quit?

2 A. Some of them I was let go; some of them I chose to
3 quit.

4 Q. Okay, and that was ten or more jobs in the past eight
5 years?

6 A. Yes, ma'am.

7 Q. All right, and you -- your run-ins with the law
8 started in 2005, right?

9 A. Yes, ma'am.

10 Q. And didn't you just testify to Mr. Goldberg that you
11 started using drugs to, to help you forget?

12 A. Yes, ma'am.

13 Q. You started using drugs to help you cope with what you
14 purport happened to you?

15 A. Yes, ma'am..

16 Q. Okay. So, you started using drugs because you purport
17 that you were sexually assaulted?

18 A. Yes, ma'am.

19 Q. All right, and because you started using drugs, you
20 started stealing, shoplifting to support your drug habit?

21 A. Yes, ma'am.

22 Q. All right. So, your drug use led to your fraudulent
23 check conviction in 2005?

24 A. Yes, ma'am.

25 Q. Okay. Your drug use led to your conviction for

M. SHEALY MILLENDER - PROFFERED EXAM BY MS. PINNOCK 153

1 financial transaction card theft?

2 A. Yes, ma'am.

3 Q. In 2010?

4 A. Yes, ma'am.

5 Q. It led to the conviction for the credit card fraud in
6 2010?

7 A. Yes, ma'am.

8 Q. It led to another shoplifting conviction in 2010, and
9 then two use of vehicles without permission with intent to
10 deprive in 2011?

11 A. Yes, ma'am.

12 Q. Okay, and all of your convictions are because of your
13 drug use, right?

14 A. I mean, pretty much because of my drug use other than
15 just bad decision making on my behalf.

16 Q. All right. You told Solicitor Goldberg it was because
17 of your drug addiction caused you to break the law, and you
18 started using drugs because you claimed you were sexually
19 assaulted, right?

20 A. Yes, ma'am.

21 MS. PINNOCK: Begging the court's indulgence.

22 (A PAUSE.)

23 MS. PINNOCK: Thank you, Your Honor. I have nothing
24 else.

25 THE COURT: Anything else from the state?

1 MR. GOLDBERG: No, ma'am.

2 THE COURT: All right, ma'am, you may step down.

3 END OF PROFFER

4 (THE WITNESS EXITS THE STAND.)

5 THE COURT: All right, based on that testimony that's
6 been proffered, and in looking at, in reading *State vs.*
7 *Alexander*, which I've done at least two times, the court
8 made it clear that the, I guess, for purposes of the state
9 and the elements that -- of what -- the elements in the
10 indictment of the charge, the testimony is relevant.

11 Now, the next issue is whether or not it's
12 prejudicial, substantially prejudicial to the defendant.
13 And based on the testimony that I've heard, I do not find
14 that it is. That the prejudicial -- I mean, the probative
15 value is outweighed, is out -- is substantially outweighed
16 by the prejudicial effect of what she just testified to.
17 So, I'm going to allow her to testify to what she just
18 testified to. Of course, she cannot draw any conclusions.
19 She is not a doctor or a expert. She can just testify to
20 what happened to her afterwards.

21 But also under the Doctrine of Completeness, you all
22 want to -- if you're going to get into the issues of her
23 prior record after the incident, I mean, I think under the
24 Doctrine of Completeness she's able to explain why or what
25 she thinks happened. She can't conclude as to what, what

1 happened, but she can say I didn't have any of these
2 problems beforehand. Now I have these problems. You can't
3 just -- I don't think you can just put up, well, she has
4 all the -- she's, you know, writes bad checks, she uses
5 drugs, she does all this, and oh, by the way, none of this
6 happened, you know, none of this has happened before 2005,
7 2004.

8 You, you look confused. I may have confused you.

9 MR. GOLDBERG: I'm not sure I follow you. I'm sorry.

10 THE COURT: She -- I'm going to allow her to testify
11 to ---

12 MR. GOLDBERG: Right.

13 THE COURT: --- to what she just testified to. She
14 just cannot come to any -- she can't stand up there and say
15 this is directly related to ---

16 MR. GOLDBERG: Okay.

17 THE COURT: --- me being raped.

18 MR. GOLDBERG: Because of the, because it's not
19 directly a result of what happened on that date.

20 THE COURT: And she ---

21 MR. GOLDBERG: Right.

22 THE COURT: And she definitely can't say him raping
23 me.

24 MR. GOLDBERG: Right. Right. I understand. Thank
25 you, Your Honor.

1 THE COURT: All right. We ready to bring them in?

2 MR. GOLDBERG: State's ready.

3 THE COURT: All right. You can bring them in.

4 (THE JURY ENTERS AT 3:24 P. M.)

5 THE COURT: All right, Mr. Foreman and ladies and
6 gentlemen of the jury, I'm going to ask you to stand so the
7 clerk can swear you.

8 (WHEREUPON, THE JURY IS SWORN.)

9 THE COURT: All right, what I was saying now is
10 intended to serve as an introduction to the trial of the
11 case. These remarks are not a charge on the law in this
12 case. I will instruct you on the law applicable to this
13 case at the end of the trial before you retire to consider
14 your verdict. This is merely an explanation of the
15 procedure that we will follow in the trial of this case so
16 that you may better understand what may be happening.

17 You are not to take any notes during this trial. I'm
18 going to tell you that. You're not to take any notes
19 during this trial, trial.

20 The defendant is charged by an indictment filed in
21 this court with the crime of criminal sexual conduct first
22 degree and burglary first. The indictment is simply the
23 charge by which the case is brought into court, and it is
24 not in any sense evidence of any of the allegations it
25 contains.

1 The defendant has pled not guilty to this indictment.
2 the state, therefore, has the burden of proving each of the
3 elements of the indictment beyond a reasonable doubt, and
4 it will be your duty, ladies and gentlemen, to decide
5 whether the state has met that burden.

6 Your purpose, as jurors, is to find and determine the
7 facts. You are the sole judges of the facts. If at any
8 time I make any comment regarding the facts, you must
9 disregard it. You are to determine, you are to determine
10 the facts from the testimony you hear and the other
11 evidence introduced in court. It is up to you to determine
12 the inferences which you feel may properly be drawn from
13 the evidence.

14 It is especially important that you perform your duty
15 of determining the facts diligently and conscientiously
16 because, ordinarily, there is no way to correct an
17 erroneous determination of the facts by a jury.

18 On the other hand and with equal emphasis, the same
19 law that makes you the judges of the facts makes me the
20 judge of the law. The law as given by the court is the
21 only law you may consider. You must accept and follow it
22 even though you may disagree with it. I cannot tell you
23 what the facts are, and you cannot disagree with me about
24 what the law is or should be.

25 Your job is to take the law as I give it to you and

1 apply it to the facts as you find them from the testimony
2 of the witnesses and any other evidence that is introduced.
3 After doing that, you will render your verdict, a true and
4 just verdict, under the solemn oath that you just took as
5 jurors.

6 Until I advise you to begin your deliberations, you
7 must not discuss this case with anyone, including your
8 fellow jurors, friends, family members, and anyone involved
9 in the case. This includes discussions face-to-face and
10 those by telephone, email, text, blogs, or any other method
11 of communication. After the case is submitted to you, you
12 must discuss it only in the jury room with your fellow
13 jurors.

14 The attorneys and parties in this case have been
15 advised that they are not to talk to you at all. So, if
16 you see anyone involved in the case and they do not even
17 say hello, they're not being unfriendly or rude. They are
18 just following my instructions.

19 During the trial, do not read, listen to, or watch any
20 news reports about this case. This includes anything that
21 may be in the newspapers or on the Internet, the radio, or
22 television. You must not consider anything you may have
23 heard, read or heard about the case outside of the
24 courtroom whether before or during the trial.

25 It is important that you keep an open mind and not

1 decide any issues in the case until all of the evidence has
2 been presented, the parties have made their closing
3 arguments, and I have instructed you on the law in this
4 case. It is your solemn responsibility to determine the
5 guilt or innocence of the defendant, and your verdict must
6 be based solely on the evidence as, as it is presented to
7 you in this trial and on the law as I instruct you during
8 and at the close of the trial.

9 In just a moment, the solicitor will make what is
10 called an opening statement in which the solicitor will
11 explain to you the issues in this case, or at least what
12 the solicitor thinks the issues are in this case. The
13 attorney for the defendant may also make an opening
14 statement, although he is not required to do so.

15 What the attorneys tell you during their opening
16 statements is not evidence in this case. It is only their
17 contention as to what the issues are. The evidence in this
18 case will be presented to you by the testimony of sworn
19 witnesses from the witness stand and/or by exhibits that
20 may be introduced into evidence.

21 From time to time during the trial, you may hear one
22 of the lawyers say something like Your Honor, I believe we
23 have a question of law or a matter of law to discuss with
24 you. Or, Your Honor, may we approach the bench? Or
25 sometimes I, myself, might find it necessary to excuse you

1 from the courtroom for a short while so the attorneys and I
2 can discuss a matter of law.

3 The reason I will excuse you from the courtroom is
4 because you are the judges of the facts of this case, and
5 sometimes when I am discussing matters of law with the
6 attorneys, it may be necessary for me to make a comment as
7 to the facts, facts in connection with ruling on whether a
8 particular law applies. I am not supposed to tell you what
9 I think the facts are. So, I will excuse you from the
10 courtroom while these discussions take place so that in no
11 way you will be influenced by anything that I may say or do
12 in connection with the facts.

13 In determining what the true facts are in this case,
14 you must decide whether or not the testimony of the
15 witnesses is believable. It is my responsibility to rule,
16 as a matter of law, as to whether certain testimony is
17 admissible at all or not. But once the testimony is
18 admitted, whether or not you believe it is solely for you
19 to determine.

20 In deciding whether to believe a witness, you have the
21 right to consider the interest of any witness, the bias of
22 any witness, the prejudice of any witness, the opportunity
23 for the witness to have seen the matters and things about
24 which the witness may testify, and the way the witness acts
25 on the witness stand. You have a right to consider

1 anything that is in the record that would help you evaluate
2 the testimony of the witnesses.

3 That means that it is your duty to pay close attention
4 to these witnesses, to observe the witnesses, to listen to
5 the witnesses, and to pay close attention to the attorneys
6 and the court. Do not let your thoughts wonder, but give
7 strict attention to the testimony in this case so that, at
8 the end of all of the testimony, after the arguments of
9 counsel and the charge on the law by the court, you would
10 then be in a position to determine what the true facts are
11 and to apply the law to those facts and thus render a true
12 and just verdict.

13 It is your added duty, Mr. Foreman, to preside in the
14 jury room and be the jurors spokesperson here in court. It
15 will also be your duty to write the verdict on the verdict
16 form. But I will give you further instructions about that
17 at the conclusion of the case. In order to preserve
18 everyone's rights, I will give the parties an opportunity
19 to object to anything I've said.

20 Any exceptions to anything that I have said to the
21 jury by the state?

22 MR. GOLDBERG: No, ma'am.

23 THE COURT: Any by the defense?

24 MS. PINNOCK: No, Your Honor.

25 THE COURT: All right. All right, ladies and

1 gentlemen of the jury, at this time we will begin the
2 trial. We will begin with opening -- you're going to open
3 on the law? In the opening statements by Ms. Ashton with
4 the solicitor's office regarding the law. Then you will
5 hear from -- who's doing the opening?

6 MR. SHEALEY: Mr. Shealey.

7 THE COURT: Mr. Shealey on behalf of the defense, and
8 then you will hear from -- okay. All right. Well, we will
9 have opening by Ms. Ashton and then Mr. Shealy.

10 MS. ASHTON: May it please the court. Ladies and
11 gentlemen, you are here today because one of the most
12 terrifying and horrific things anyone could ever imagine
13 happened to Misty Shealy Millender on the night of May 10th
14 of 2004. On May 10th of 2004, a stranger forced his way
15 into Misty's apartment, grabbed her by her throat, hit her
16 in the face, pushed her over a couch, and brutally sexually
17 assaulted her. This stranger is no longer a stranger. The
18 person who did this to Misty on the night of May 10, 2004,
19 is sitting right at this defense table, and his name is
20 Melvin Presley Stukes.

21 On May 10, 2004, Misty was just twenty-three years old
22 at the time. Around 9:30 to 10:00 that night, she was
23 getting ready for her job at Verizon Wireless. She worked
24 the night shift between about 10:00 and 7:00 in the
25 technical support unit. She just got a new computer. She

1 was finishing up some work on the computer, put her dog in
2 his crate like she always did, and turned off the lights.
3 It was at that moment that she heard a knock on the door,
4 and she opened it without thinking, and there she saw
5 standing a silhouette, what she believed to be a man, who
6 was much taller than her, broad shoulders, and what looked
7 to be like a hat on his head, and that's all she could see
8 because the lighting was bad. The lights were off in her
9 apartment, and there's only a dim light across the hall
10 from her neighbors.

11 In that split second, he forced his way inside that
12 apartment, inside her apartment, grabbed her by the neck,
13 hit her in the face, pushing her into the couch face down.
14 She went in and out of consciousness, and she's absolutely
15 terrified because he was stuffing his face as hard as he
16 could into those pillows. She remembers feeling him inside
17 of her with her underwear and her pants down by her ankles,
18 and she remembers how bad it hurt, how painful it was
19 because it felt like he was so big inside of her.

20 She was in absolute agony. She wanted to scream, but
21 she was terrified of what he would do to her even more than
22 he was already doing. It hurt so bad that she tried to put
23 her hands behind them, get him to stop. He grabbed that
24 hand, and put it back down in front of her, and stuffed her
25 face even harder in these pillows.

1 The next thing, thing she remembers is that she came
2 to. She was -- did not feel him on top of her anymore,
3 behind her, pressing against her, pressing into her, and
4 she couldn't hear anything either. So, she got up, she
5 pulled up her underwear, she pulled up her pants, and she
6 sat. She sat on the couch absolutely terrified,
7 traumatized, in absolute disbelief about what a stranger
8 had just done to her.

9 Once she got herself together, she called her friend
10 Jackie. She couldn't get Jackie to answer the phone. But
11 she knew that Jackie was home because it was a Monday night
12 and Jackie had to work the next day. She drove, drove
13 herself to Jackie's house and told Jackie exactly what had
14 just happened to her, and Jackie knew what the right thing
15 to do was. She knew that Misty needed to get to the
16 hospital immediately.

17 She took Misty to the hospital, Lexington Memorial
18 Hospital, where Misty was examined by a nurse, then the
19 doctor. And the nurse completed what's called a Sexual
20 Assault Protocol in hopes that she would be able to collect
21 evidence from this brutal sexual assault to help catch and
22 hold accountable that stranger that did what he had just
23 done to Misty. So, she collected the underwear that Misty
24 was wearing during the assault. She combed her vaginal
25 area just in case the suspect left any type of hairs

1 behind, and she also took, took swabs from that area.

2 She called law enforcement. Law enforcement briefly
3 got a statement from Misty, and they also got permission
4 from her to go back to her house and see if they could
5 catch, see if they collect any evidence from the house.

6 This is a long night for Misty. She was not able to
7 leave that hospital until about 7:00 a.m.

8 In the mean time, law enforcement had gone back to her
9 house. They had used the tools available to see if the
10 suspect, if that stranger had left any semen behind. They
11 could not find any. Law enforcement also collected that
12 sexual assault kit, and it wasn't until six months later
13 where that sexual assault, assault kit was actually
14 analyzed by SLED, by DNA analysts at SLED, and six months
15 is not necessarily unusual in this case because they do
16 have a huge backlog.

17 Now, because sexual assaults are secret crimes,
18 they're shameful crimes, there's no witnesses, and because
19 this was a stranger, there really were no leads for that
20 six month period. However, there was a profile developed
21 from the underwear that Misty was wearing that night, but
22 there's no match. They had a profile of that stranger, the
23 DNA profile of the semen of that stranger, but no match
24 yet.

25 It wasn't until two and a half years later, June of

1 2007, where Investigator Branham at the sheriff's
2 department received a letter that said that DNA profile has
3 a match. We have a match to that stranger who brutally
4 assaulted Misty Shealy on May 10th, 2011, and that match,
5 that DNA profile belongs to Melvin Presley Stukes and only
6 Melvin Presley Stukes.

7 Unfortunately, Misty's life was completely different
8 after this assault. So, the numbers that she had were
9 disconnected. She no longer lived at the same address.
10 So, the investigator had a hard time tracking her down. He
11 couldn't find her. Also, he was in the Narcotic's Unit.
12 He was no longer in the Special Victims Unit. He was now
13 in drugs working drug cases. So, between not being able to
14 find Misty because her life had drastically changed since
15 this incident, and also having to handle responsibilities
16 of his other, of his new job, his new responsibilities,
17 this case again laid dormant for another two years.

18 It wasn't until early of 2010 -- let me back up.
19 Investigator Branham did do some research on Melvin Presley
20 Stukes. He did try to find out some information about this
21 defendant, and what he found was that around this time, the
22 defendant had lived in the apartment complex right next
23 door to Misty. Investigator Godfrey, who was assigned to
24 the Cold Case Unit, two and a half years later, early 2010,
25 found out about this case. He found out that there's a DNA

1 profile of a suspect, a match, and the evidence still
2 existed for him to continue to act on. This was not -- to
3 him, this was not going to be a cold case that went
4 unsolved, that lay in the back drawer and just collected
5 dust. So, he took it upon himself to try to find Misty
6 again and he did.

7 He found Misty and he got her statement six years
8 later. She related to him the brutal event that happened
9 to her back in May of 2004, just like she related to
10 Investigator Branham six years prior. But, again, her life
11 is completely different. He found her in jail in
12 Orangeburg County. She was still able to relate to him
13 what had happened to her, but she was in jail because her
14 life had changed, and she will fully explain that to you.
15 She was not the same person she use to be, but he found her
16 and he got her statement and he went to go track down
17 Melvin Stukes. He got an arrest warrant for Melvin Stukes
18 for the crime of burglary first, burglary in the first
19 degree, and criminal sexual conduct in the first degree.

20 Using a team of Richland County Sheriff's Department,
21 arrested Mr. Stukes, and Investigator Godfrey went to talk
22 to Mr. Stukes, went to talk to the defendant, and he asked
23 him. Do you know Misty Shealy? No. Have you ever had
24 sexual relationships with Misty Shealy? No. He even
25 showed the defendant the apartment where this happened. Do

1 you recognize this apartment? No. Then why is it that
2 your DNA profile, your semen and only yours, were in the
3 victim's underwear that she was wearing the night she was
4 sexually assaulted? Absolutely no answer for that.

5 Now, as a result of the defendant's actions on that
6 night, he is charged with the following. He is been
7 charged and indicted by the Richland County Grand Jury on
8 -- that convened on August the 11th, 2010, and presented
9 their oath that Melvin Stukes did, in Richland County, on
10 or about May 10, 2004, engage in sexual battery with the
11 victim, Misty Shealy, and the defendant used aggravated
12 force to accomplish sexual battery and/or while the victim
13 was also the victim of a forcible confinement, kidnapping,
14 robbery, extortion, burglary, house breaking, or any other
15 similar, similar offense or act in violation of Section
16 16-3-652 of the South Carolina Code of Laws.

17 The Grand Jury of Richland County also indicted Mr.
18 Stukes for burglary in the first degree, and that
19 indictment reads that Melvin Presley Stukes did, in
20 Richland County, on or about May 10, 2004, willfully and
21 unlawfully enter the dwelling located at 1601 Longcreek,
22 Longcreek Drive, Apartment [REDACTED], without consent and with
23 the intent to commit, commit a crime therein, and the
24 defendant was -- entered or remained during the hours of
25 darkness, and/or was armed with a deadly weapon while

1 there, and/or caused physical injury to the victim all in
2 violation of Code Section 16-11-311 of the Code of Laws of
3 South Carolina.

4 Now, my name is Kathryn Ashton, and I'm an assistant
5 solicitor with Richland County, and sitting at that table
6 with me is Deputy Goldberg, Deputy Daniel Goldberg of the
7 Richland County Solicitor's Office and also Sergeant Brian
8 Godfrey of the sheriff's department. It is my job and
9 Deputy Solicitor Goldberg's job to prosecute crimes that
10 occur in Richland County.

11 We have to prove to you each element of these two
12 crimes beyond a reasonable doubt. Now, beyond a reasonable
13 doubt does not mean that we have to overcome all possible
14 doubt. It just means that we have to leave you firmly
15 convinced of the defendant's guilt at the end of this
16 trial.

17 And how are you going to make that decision? You're
18 going to hear testimony from witnesses from this stand that
19 can give you a piece of the puzzle, that their testimony
20 will give you a piece of the puzzle for this crime. Lay
21 out the brutal events of that night and the subsequent
22 investigation, and you'll also receive evidence in the form
23 of physical evidence introduced to you as exhibits. At the
24 end of this case, Investigator -- I'm sorry, Deputy
25 Solicitor Goldberg is going to come back to you and talk to

1 you about this case, and talk to you about the
2 investigation, and talk to you about how the defendant
3 escaped justice for eight years, and he's going to ask you
4 to come back with a verdict of guilty for the crimes of
5 burglary in the first degree and CSC in the first degree.

6 Hold him accountable for his actions eight years ago
7 because that stranger who sexually assaulted Misty Shealy
8 Millender on this night is no longer a stranger. It is
9 Melvin Stukes sitting at that table. Thank you.

10 THE COURT: Yes, sir.

11 MR. SHEALEY: May it please the court?

12 The credits roll. Popcorn's on the floor. I feel
13 like we just got out of a scary movie, and that is by
14 design. The state wants you to feel the emotion, and I'm
15 looking at your faces, and we're all feeling it, and that's
16 the intent. You're hearing terms like brutality, horror.
17 You may hear other terms in the course of this trial.
18 Savage. We saw a lot of finger pointing. There'll be, I
19 guarantee you there will be more finger pointing in this
20 case, and I'll get to all this in a little bit later. But
21 this that was just painted to you is a worst-case scenario
22 Hollywood script, and let's talk about that.

23 I do want to take the time to thank each and everyone
24 of you for being here. I know when you're in that panel
25 you don't want to really come down here. No one likes jury

1 duty, but it is necessary. It is absolutely necessary for
2 our system to work. Everyone is presumed innocent, and our
3 country's fought a number of battles, a number of wars.
4 We've shed blood to obtain one of the most perfect judicial
5 systems in the world. Everyone knows that, and it's true.
6 We can do without the lawyers. We can do, respectfully,
7 probably without the judges in a lot of cases. But it's
8 you, the fact finders, that, when a charge arises, no one
9 can do without, and that's why you're special, and I
10 appreciate you being here, and I do want to thank you for
11 that.

12 You know, thinking about a case like this, I like to
13 think about common sense. You, all of you are on here
14 because you have common sense. No one here is in this jury
15 box because they said they couldn't be fair and impartial.
16 You're not here for that. You're here because you can be
17 impartial and you can use your life experiences. You can
18 use your common sense.

19 Common sense always makes me think of my grandmother.
20 Growing up, she was like a second mother to me, and she,
21 she had my father when she was pretty old for back then.
22 She passed away when she was ninety-four-some years ago.
23 But she practically raised me and my brother. Both my
24 parents were trying to work on higher education growing up,
25 and so they were often studying late and that kind of

1 thing. So, often, I would get babysat when I was a little
2 kid with my brother at my grandparents' house on Rock
3 Bridge Road, and she -- I could tell she -- maybe she
4 thought I was stupid, or maybe she thought we were up to no
5 good because my dad was such a troublemaker, but she was
6 always lecturing me and trying to get me to understand the
7 life lessons that I will need to have to be a man.

8 When I was young, when I was in elementary school, she
9 would always -- I remember her tucking me in at night when
10 I would stay on that Rock Bridge Road house and she would
11 say boy, remember. Mind your manners, respect your
12 parents, and to always say your prayers. Mind your
13 manners, respect your parents, always say your prayers.
14 And that -- I listened and I did all those things.

15 When I got a little older, maybe middle school, you
16 know, I'd stay over at her house. I wasn't -- you know,
17 she wasn't babysitting. We'd go over there with my dad.
18 We would come to visit and she would still try to teach me
19 these life lessons. She'd tell me respect your parents,
20 study hard in school, and always say your prayers. I guess
21 she felt that I still wasn't minding my parents enough and
22 maybe I wasn't saying my prayers enough.

23 When I got to high school, and she realized that I was
24 getting older and I, I was saying my prayers, I, you know,
25 I was studying hard, I remember that the life lessons kind

1 of changed. And then she said when I'd come over, she'd
2 hey, are you respecting your parents because I think she
3 still felt that my brother and I weren't quite doing that.
4 Yes, ma'am. Yes, ma'am. You dating anybody yet? Well,
5 I'd like to. I don't know. Let me, let me tell you
6 something, grandson. She said remember nothing ever good
7 happens after midnight. Nothing good ever happens after
8 midnight. So, respect your parents. She's still trying to
9 instill that into me in high school. Nothing ever good
10 happens after midnight. You don't need to be out after
11 midnight. Yes, ma'am.

12 She also told me this: don't ever be alone with a
13 woman unless you're ready to marry her. Don't ever be
14 alone with a woman unless you're ready to marry her. Yes,
15 ma'am. Yes, ma'am.

16 I loved my grandmother. I did what she told me. I
17 didn't always understand it, and one day I asked her. You
18 know, I was looking to date in high school. I was looking
19 to -- you know, I was interested in women, and she said --
20 I said grandma, why, why can't I be alone? Why do I have
21 to -- why do I have to have a chaperone on a date? And she
22 said because if you're alone with a woman, you don't know
23 if she's ever going to question your honor when you leave
24 her, and then no one else will be there to say anything
25 different if she decided to question your honor. So, when

1 you're ready to be alone with a woman, you marry her, and I
2 did.

3 That's this case; that is this case. That is *State*
4 *vs. Melvin Stukes*, and we're going to talk about that some
5 more because he was alone with Misty Shealy. Let me tell
6 you this. This is a case of consensual sex. Roll credits,
7 the lights have come on, the finger pointing has stopped
8 momentarily. This is a case of consensual sex.

9 This is also a case about the state's burden. At
10 these four corners sits all the power of the State of South
11 Carolina. All their investigatory power, all their, the
12 power of Richland County Sheriff's Department and this
13 Fifth Circuit Solicitor's Office. This looks like a humble
14 table, but it's not. It looks humble, but it's not. These
15 indictments which are read to you are just charging
16 documents. They don't mean anything. They don't mean that
17 he's guilty; they mean nothing. They are the mechanism for
18 how we are here. Roll credits. The horror movie has
19 stopped.

20 You know, these types of cases are sensational, and
21 the state will be doing what they feel is appropriate they
22 can to get a rise out of you. But you're not here because
23 you said that you couldn't be, you know, unfair or
24 impartial. You are here because of the exact opposite of
25 that. You all said you could be fair and impartial.

1 And so this is my ugly little box. You swore an oath.
2 You told the judge to be fair and impartial, and all the
3 finger pointing and the name calling that will go on
4 throughout this trial that is intended to raise passions,
5 to raise your prejudice, it goes in this box. There's no
6 place for it in this jury. That's the law, and if you have
7 passion and prejudice, it goes in this ugly box and it
8 stays here.

9 You're just -- hearing this charge can bring about a
10 visceral reaction, the pointing, the name calling. It's
11 about the evidence, ladies and gentlemen. The finger
12 pointing, the name calling goes right here in this ugly
13 little box. All the passions and the prejudice that they
14 may try to bring out of you to make you not do your duty,
15 to make you -- to sway you with passion, that's not your
16 job. You're the fact finders. You are the truth seekers.
17 Everything else sits in this ugly little box.

18 The state has a great burden. I talked to you about
19 trials and tribulations that we got to have this great
20 judicial system. And they'll tell you this, too. They
21 can't hide from their burden. It's reasonable doubt.
22 Reasonable doubt is a doubt which would cause a reasonable
23 person, as all of you, to hesitate to act. If you're
24 hearing the testimony, if you're listening to the evidence
25 in this case and you have hesitation and you have doubt,

1 then Melvin remains innocent. And when you're thinking
2 about reasonable doubt, they have to present to you
3 information that gets beyond a reasonable doubt or else he
4 remains innocent.

5 This is a consensual sexual encounter is what you're
6 going to hear about. You're, you're going to hear about
7 how he told the investigators he did not rape her. They
8 didn't want to hear that. You're going to hear how he was
9 already locked up. They don't want to hear what he had to
10 say. You know, roll credits, the lights come on, the
11 horror movie's over.

12 This witness stand is here for a reason. It's here
13 because every witness will put their hand on this Bible and
14 swear to the veracity of their statement. But it's here
15 because they don't always do that. They don't always do
16 that, and that's why it's here for you to judge them. This
17 witness stand isn't over there. It's the closest thing in
18 this courtroom to each and every one of you as the fact
19 finders. So, when you're hearing about testimony, when
20 you're hearing about allegations, have them look you in the
21 eye and prove it.

22 You will never hear a case about -- you've heard about
23 this brutal situation. The allegations, the horror, the
24 harshness of what they're alleging, there will be nothing
25 about physical evidence or rape. There will be no

1 information about a kicked in door. There will be no
2 information about ripped furniture, moved furniture. There
3 -- you will not hear any information about being there or
4 semen found around the area of the alleged rape. You will
5 not hear this because it was a consensual sexual act.

6 What you're going to hear from the state's witnesses
7 is a fabrication. Don't ever be with a woman alone unless
8 you're prepared to marry her. It's consensual sex. And
9 when you hear the evidence that the state is trying to
10 provide you to overcome this great burden, the fact finder,
11 which you are, you have to be questioning them. That's
12 your duty.

13 You must question the motives here on this witness
14 stand. You must question the evidence. Have you heard
15 enough evidence? What are you hearing from the state, and
16 what are you not hearing from state? It is absolutely
17 their burden to attempt to convince you beyond a reasonable
18 doubt of someone's guilt. Otherwise, it doesn't work, and
19 people remain innocent.

20 I want to introduce you to Melvin Stukes, and he is an
21 innocent man, and he's not innocent just because I say he's
22 innocent. He's innocent under the law in this state, in
23 this county, in this courtroom. He doesn't have to prove
24 his innocence; he doesn't have to disprove guilt. Our law
25 says that he is robed, shrouded in righteousness that

1 follows him throughout these proceedings, follows him, in
2 your mind, back to deliberation, and that's the standard.

3 You got common sense and you have wisdom of your own
4 that you've acquired through the years, and I'm going to
5 expect you to use it. The state doesn't have evidence in
6 this case. This is consensual sexual encounter. And by
7 the time you're done hearing the testimony in this case,
8 you will all agree that what Melvin did was not illegal,
9 but he didn't listen to my grandma, and at the end of this
10 case you'll find him not guilty.

11 THE COURT: Can I see the attorneys?

12 (OFF-THE-RECORD BENCH CONFERENCE.)

13 THE COURT: All right, ladies and gentlemen of the
14 jury, I'm going to, going to send you all out for about
15 five minutes. We'll have you back in. Thank you.

16 (THE JURY EXITS AT 4:02 P.M.)

17 THE COURT: Not that I want y'all to reargue it or
18 not, but now that he has put, put his, I guess, his
19 position or his defense on the record, my question is how
20 is it different than *Alexander*, this case different than
21 *Alexander*?

22 MR. GOLDBERG: I don't exactly know what the Supreme
23 Court said in those facts that led them to make the
24 decision, that it was a unique case as opposed to any case.

25 THE COURT: And I don't either. I, I ---

1 MR. GOLDBERG: So, it's hard for me to answer it in
2 terms of the analysis because they didn't do any in that
3 regard. I still think it just comes back to basic 403
4 analysis, which you've already examined, in terms of what
5 she was going to say about it in connection to what
6 happened to her after the incident, and whether those
7 things are substantially -- if the probative value that is
8 substantially outweighed from the prejudice, and I guess, I
9 guess my point is that hasn't changed just because they're
10 now arguing that it's consent, especially when it's our
11 position that it was not consensual, and the effect that
12 that kind of nonconsensual incident has had on her in her
13 life.

14 THE COURT: Yes, ma'am.

15 MS. PINNOCK: Judge, we would just briefly argue that
16 it -- I mean, with the consent defense, I think it's
17 directly in line with *Alexander*. Ms. Shealy is saying
18 there was no consent. Our defense is there was consent.
19 And, again, the Supreme Court did not go into detail about
20 what the analysis was, but I believe the solicitor's prior
21 argument was because this was a consent case, *Alexander* was
22 a consent case, it differed from it never happened.

23 We never alleged, we never said our defense was it
24 never happened. So, that was the distinction that was
25 drawn before. It seems like now we're kind of backtracking

1 on the arguments because -- we've done in opening, in
2 opening statements. So, Your Honor, we would just restate
3 our objection to it. I don't think it gets past 403.

4 I think the analysis is, now that we've exposed what
5 our defense is, it's along the same lines with *Alexander*.
6 I mean, it is supposed to be evaluated on a case-by-case
7 basis, which would give power to Your Honor to make that
8 decision. But based on my, my reading and understanding of
9 *Alexander*, I don't think it should get past the 403
10 balancing test.

11 THE COURT: Well, how is he prejudiced?

12 MS. PINNOCK: Well, Your Honor, because it -- the
13 testimony that we heard, they proffered the testimony, it's
14 our position that that line of, that line of testimony from
15 Ms. Shealy, being the only person who is able to offer
16 anything potentially substantial in this case as far as
17 evidence, she's the only person that can offer any sort of
18 testimony about the allegations, Your Honor. It's going to
19 do nothing else but play on the emotions of the jury, and
20 potentially lead them to make a determination about Ms. --
21 Mr. Stukes guilt in this case based on their emotions.

22 I believe 403 is, is pretty clear that evidence should
23 be excluded, even though it's relevant, if it would tend to
24 lead the jury to, to make a decision based on, based on an
25 emotional or a, you know, some un, un -- I lost my word.

1 I'm sorry, Your Honor. But leaving it to make a, make a
2 decision based on their emotions and not based on the facts
3 and the law. So, Your Honor, I think it does, it does not
4 get past 403. He is going to be prejudiced because of the
5 emotional effect of that testimony.

6 I don't see where argument will come from the
7 solicitor's office saying that it is not geared to, to
8 playing with somebody's emotions. The entire line of
9 questioning that we heard earlier is emotionally charged.
10 That's the only thing that we can see that trying to do.
11 So, Your Honor, again, we don't believe it is -- it will
12 get past 403.

13 THE COURT: Yes, sir.

14 MR. GOLDBERG: If she was going to say that, as
15 you've already said she can't, that all the things that
16 happened to her were a direct result of what this guy did
17 to her, but then yeah, clearly you got a 403 problem. But
18 she's not saying that. She's not even coming close to
19 saying that. She's saying that she struggled since then
20 and developed a drug problem, and as a result of the drug
21 problem, that she's found herself in trouble with the law
22 and that she's moved around and lost jobs.

23 I don't think losing your job, having a drug problem,
24 being convicted of crimes, especially being convicted of
25 crimes, I don't know that that elicits sympathy or extra

1 emotion from the jurors on her behalf. I mean, they could
2 interpret it completely differently. They could interpret
3 it as she's a bad person somehow because she's committed
4 these offenses, and it doesn't automatically mean to them
5 they have to feel sorry for her because she committed
6 crimes since then.

7 MS. PINNOCK: Your Honor, if I could just make very
8 quickly? I asked Ms. Shealy on the stand if you're saying
9 you developed a drug problem because you were raped, and
10 because you had drug problem you committed these crimes and
11 you land yourself in jail. She admitted that on the
12 record. It came out of her mouth under oath during
13 proffered testimony. That's what she saying. So, the
14 solicitor is saying now that they can, you know, tailor the
15 testimony to not make her have a direct connection between
16 those, those separate things.

17 But that's what she said under oath. She's already
18 testified to it. So, that's exactly what she's said, and,
19 Your Honor, it's, it is -- that we -- the -- Mr. Stukes is
20 going to be prejudiced by this testimony. It should not
21 have been included in, in the opening statements. I'm not
22 sure what to ask Your Honor to do at this point. We
23 started the trial ---

24 THE COURT: Well, I got to rule first.

25 MS. PINNOCK: Yes, ma'am.

1 THE COURT: All right. Well, she -- and I, and I, and
2 I knew you asked her about did she commit the breach of
3 trust because she wanted money for drugs. I don't know if
4 she related that back to this incident. But I -- the, the
5 ruling will remain. She cannot say that any of, of that,
6 conclude that it's related. If she did, she can't conclude
7 that it's related to the rape. She cannot say that.

8 She can say she had all these problems after, and,
9 frankly, the jury's going to -- because when we did her
10 record earlier, everything -- if y'all bring up her prior
11 criminal record, it's quite obvious that it was after 2005
12 when her record ---

13 MS. PINNOCK: Yes, ma'am.

14 THE COURT: --- came about. So, I will -- she can
15 explain that, but she cannot -- at this point, it appears
16 she can't say it's because this guy right here raped me
17 that I'm having all of these problems.

18 MR. GOLDBERG: And I don't think there was ever any
19 intention for her to say that.

20 THE COURT: Okay.

21 MR. GOLDBERG: Do you understand?

22 THE COURT: All right. All right. We'll bring the
23 jurors back, and the court reporter needs to take two
24 minutes, and you can talk to her.

25 MR. GOLDBERG: Okay.

1 THE COURT: She's not on the stand.

2 MR. GOLDBERG: Understood.

3 (OFF THE RECORD.)

4 THE COURT: All right. You ready?

5 MR. GOLDBERG: Yes, ma'am. Just in terms of
6 scheduling, I've got several witnesses that are outside. I
7 would expect Ms. Shealy would take a decent amount of time.
8 There's one -- the next witness we plan to call is Ms.
9 Bruton, the friend. Just out of scheduling, I was trying
10 to figure out if I should keep her here to do this
11 afternoon, if we could do that, and then maybe break after
12 that.

13 THE COURT: How long you think she's going to take?

14 MR. GOLDBERG: The friend, Ms. Bruton?

15 THE COURT: The victim.

16 MR. GOLDBERG: The victim? Might take an hour
17 depending upon the length of cross.

18 THE COURT: The jurors have said that they don't have
19 -- none of them -- we've already inquired if any of them
20 had to leave by 5:00, and they said no, or 6:00. I think
21 he asked about 6:00 also and they said no. Nobody had --
22 no one spoke up and said they had to leave.

23 So, Ms. Pinnock, is there -- you have your child care
24 issues?

25 MS. PINNOCK: Yes, ma'am.

1 THE COURT: Okay. All right. So, you're need --
2 you're trying get to this witness today?

3 MR. GOLDBERG: If we could do Ms. Bruton this
4 afternoon if it's not too late, too, with Ms. Pinnock's
5 situation, and that would be preferable. If not, then
6 certainly I understand.

7 THE COURT: All right. Let's see how far, how long it
8 takes to do the victim.

9 MR. GOLDBERG: Okay. I'm going to -- the other folks
10 we have here, I'm going to go ahead and cut them loose
11 after that.

12 THE COURT: All right.

13 MR. GOLDBERG: Thank you.

14 THE COURT: All right, you can bring them in.

15 (THE JURY ENTERS AT 4:23 P.M.)

16 THE COURT: All right, ladies and gentlemen of the
17 jury, at this time I am going to ask the state to call
18 their first witness.

19 MR. GOLDBERG: Thank you, Your Honor. If it pleases
20 the court, the state calls Misty Shealy Millender.

21 MISTY LYNN SHEALY MILLENDER, BEING
22 DULY SWORN, TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Thank you. Have a seat in the
24 witness stand, please. State your name for the record.

25 WITNESS: Misty Shealy Millender.

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 186

1 DIRECT EXAMINATION BY MR. GOLDBERG:

2 Q. Misty, where are you from?

3 A. I'm originally from Swansea, South Carolina.

4 Q. Were you born and raised there?

5 A. Yes, sir.

6 Q. Can you tell the jury a little bit about your family
7 background when you were growing up?

8 A. Well, I'm the oldest of four. I have two younger
9 brothers and a younger sister, and I was, being the oldest,
10 you know, just, you know, the big sister. I had to help
11 out because my mom, she, she -- we didn't grow up with a
12 lot of money. But my mom was a very hard worker, and she
13 worked in Swansea Manufacturing pretty much my entire life,
14 and she was a really proud woman. She didn't want to ask
15 for help. We never had things like food stamps and
16 Medicaid, and my mom always said that, that, you know, you
17 only ask for help if you absolutely needed it. But if
18 there was any way that you could do it yourself to pretty
19 much just work harder and do it.

20 Q. I'm just going to move this a little bit closer, if I
21 can, so that we can make sure the jury hears everything
22 you're saying, okay?

23 A. Okay.

24 Q. And did you go to high school in Swansea?

25 A. Yes, sir.

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 187

1 Q. Swansea High?

2 A. Yes, sir.

3 Q. When did you ---

4 A. Class of '99.

5 Q. Graduated in '99?

6 A. Yes, sir.

7 Q. What types of activities were you involved in during
8 high school?

9 A. I played softball. I was in the drama club,
10 performance choir, band. I was on the chess club, computer
11 club, and just pretty much a little bit of everything.

12 Q. When you were growing up, were you particularly close
13 with any other family members?

14 A. I was close with my grandmother, my mom's mother. She
15 -- we lived right next door to her, and my grandma pretty
16 much raised me because my mom worked all the time. So, my
17 grandma was always the one who was there to put us on the
18 bus, and she was always the one there who was waiting for
19 us when we got off the bus, and she was a really good
20 grandma. I was very close to her.

21 Q. When you graduated Swansea High in '99, what did you
22 do after that?

23 A. Well, the, the summer of my senior year, my
24 grandparents had gave me some money for graduation, and I
25 had met this girl on-line because we both liked a certain

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 188

1 actor, and, you know, we both were fans of him. And we,
2 you know, called and talked and we became pretty good
3 friends, and she invited me to come to Rochester, New York,
4 the summer after my senior year, to come visit her family,
5 and ---

6 Q. Did you go up there?

7 A. Yes, sir. I took the money that my grandparents gave
8 me for graduation and bought a Greyhound ticket and went up
9 there for the summer.

10 Q. Did you actually end up staying in Rochester for a
11 period of time?

12 A. Yes, I did. When I went to Rochester, my friend,
13 Arial's grandparents, who I stayed with for the summer,
14 they were a part of a church called Elam, and I had -- I
15 never really went to church much as a kid. I went a couple
16 times with my grandmother, but as far as like being, you
17 know, religious, I didn't attend church every Sunday. But
18 when I went to Rochester and I attended Elam, I, I really
19 felt that it was a really good place and I felt that, you
20 know, God was calling me to go up there. So, I ended up
21 moving up there and going to college at Elam Bible
22 Institute.

23 Q. And at some point, did you end up coming back to South
24 Carolina?

25 A. I did. I went to school for a year and my grandmother

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 189

1 who raised me, she had a heart attack. So, I came back
2 home to, you know, be with her and help her out, and she
3 ended up dying after that.

4 Q. Was that in Swansea?

5 A. Yes, sir.

6 Q. That would have been somewhere around 2001, somewhere
7 in that area?

8 A. Yes, sir.

9 Q. After she passed away, did you find employment?

10 A. I did. I started working at Apac on Broad River Road.

11 Q. What is Apac?

12 A. Apac was a call center that -- like, Citibank was
13 there and I think some other banks pretty much -- they had
14 different call centers there and I worked for Citibank.

15 Q. Okay, and what was the nature of your job there?

16 A. I was a customer service rep. Pretty much my job was
17 to, to call people and offer them, if they had different
18 credit cards, to move their balances from other credit
19 cards onto a Citibank credit card with a lower APR.

20 Q. And did you end up changing jobs from Apac?

21 A. I did. Apac ended up eventually going out of
22 business, and I was fortunate enough to get a job at
23 Verizon Wireless on Forest Drive.

24 Q. Okay. Where were you living at this time?

25 A. I was living at the Park Apartments on Longcreek

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 190

1 Drive.

2 Q. Is that here in Richland County?

3 A. Yes, sir, it's off of Broad River Road.

4 Q. All right, and you said you got a job with Verizon at
5 Richland off Forest Drive. Is that right?

6 A. Yes, sir.

7 Q. What was the nature of your job with Verizon?

8 A. I was an off corp support technical support rep
9 Whenever your ---

10 Q. I'm sorry. Technical support?

11 A. I was a technical support rep off corp. It was a
12 special team name. I was responsible for helping people
13 when their phones wouldn't make or receive phone calls or
14 whenever it was lost or stolen, I would suspend the phones,
15 and I did some customer service work, but mostly it was
16 technical support.

17 Q. And this wasn't your regular Verizon store like I go
18 if I have a problem with my phone, right?

19 A. No, sir, it wasn't a kiosk. It was an actual call
20 center. We actually took the phone calls for the North,
21 you know, pretty much the northern states.

22 Q. When you first started working there, what were your,
23 your hours at the call center?

24 A. You do six weeks of training when you start there, and
25 that's during the daytime. You go in from pretty much 9:00

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 191

1 a.m. till about 4:30 p.m. for your training, and you do
2 that for six weeks, and then they place you in whatever
3 department that they think you're best suited for.

4 Q. And you may have addressed this earlier. I apologize
5 if you did. Which department did you get placed in?

6 A. I was placed because I, I was -- I guess I caught on
7 very quickly and excelled at customer service. So, they
8 placed me on the off corp team, which usually takes about
9 two to three years to get to that position.

10 Q. And what were the hours of your shift doing that kind
11 of work?

12 A. 10:30 p.m. to 7:30 a.m.

13 Q. Okay, and were you working there in that same capacity
14 in May of 2004?

15 A. Yes, sir.

16 Q. And where were you living in May of 2004?

17 A. At the Park Apartments on Longcreek Drive.

18 Q. Which particular apartment?

19 A. Apartment [REDACTED].

20 Q. Who did you live there with?

21 A. Me and my dog.

22 Q. Your dog?

23 A. Yes, sir.

24 Q. Was it a one-bedroom apartment?

25 A. Yes, sir.

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 192

1 Q. Okay. I want to turn your attention to May 10th of
2 2004. Do you remember that day?

3 A. Yes, sir.

4 Q. Did you have to work that day?

5 A. Yes, sir. I was supposed to go in at 10:30.

6 Q. 10:30 p.m.?

7 A. Yes, sir. I had just recently bought a new computer
8 and had spend most of the afternoon before work downloading
9 some music, and just, you know, just cleaning my house and
10 just hanging out. It was just me and my Cocker Spaniel.
11 About 9:30, it was about 9:30, I was ready to go to work
12 because I usually left a little bit earlier because usually
13 I would stop by the store and get some, some coffee and
14 stuff to try to keep me awake. But I had just finished,
15 you know, getting ready for work. I put my dog in his
16 crate, and I turned off the lights because I was right by
17 my, you know, by my door and I heard a knock at the door.

18 And honestly, I guess looking back now I probably
19 should have looked before I opened my door, but to tell you
20 the truth, I didn't have any enemies. I didn't have
21 problems with people. I was, I was very friendly. I had a
22 lot of friends, and it wasn't, you know, uncommon for my
23 friends to come knocking at my door, you know, right before
24 I went to work.

25 Q. Did you open the door?

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 193

1 A. Yes, sir.

2 Q. What did you see when you opened the door?

3 A. I didn't get a whole lot of time to look. But when I
4 opened the door, there was a man standing there and the
5 reason I knew -- well, I guessed that it was a man was
6 because of the body build. He was about three inches
7 taller than me because I had to look up at him and ---

8 Q. How tall are you?

9 A. I'm 5-4, and I opened the door and I looked up for a
10 brief second and, like I said, I noticed that it was a
11 gentleman, but I didn't have much time to really say
12 anything.

13 Q. What was the lighting like when you opened the door?

14 A. My, my outside light was off, but my neighbor across
15 the hall had their light on. So, with my house being dark,
16 I couldn't see his face. I could only see his, like, the
17 silhouette of him because the light was behind me.

18 Q. Did you invite him inside?

19 A. No, I did not.

20 Q. You said you didn't have a whole lot of time to look.
21 Why was that?

22 A. Because he, because he grabbed me by my throat and
23 punched me in the face, and I, and I stumbled backwards
24 into my apartment, and I had a couch, an L-shaped couch
25 there, and I, I fell over the side of it.

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 194

1 Q. When he grabbed your throat, what, if anything, did
2 you notice about his hands?

3 A. It kind of felt like he was wearing gloves.

4 Q. Did you see skin color?

5 A. No, sir.

6 Q. You said that you fell over the arm of the couch?

7 A. Yes, sir.

8 Q. I know it's hard, but tell this jury what happened
9 once you fell over the arm of that couch.

10 A. Okay. When I fell over onto the, the side of the
11 couch, I, I believe I blacked out because the next thing I
12 remember was having my face in the pillow or being -- it
13 was being shoved into the cushions of my couch, and I was
14 in a lot of pain in the -- down in my vaginal area.

15 Q. Why were you in pain?

16 A. Because he was raping me.

17 Q. What else did you feel about his body at that time in
18 relation to your body?

19 A. The way he was, he was bent over me, and I felt his
20 weight. He was strong, and I could smell the alcohol.

21 Q. Had you been drinking that night?

22 A. No, sir.

23 Q. Did you scream at any point?

24 A. I tried to scream. He just shoved my face down into
25 the pillows even harder, and I wanted to scream, but I was

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 195

1 so afraid. I didn't ---

2 Q. At some point ---

3 A. I didn't want -- I was afraid that I would be killed.

4 Q. At some point, did you try to fight back?

5 A. Yeah, I, I tried to reach around with my arm to push
6 him off because it was hurting really badly, but he just
7 shoved my arm right back down.

8 Q. When he shoved your arm back down, did the assault
9 continue?

10 A. Yes, and I ended up blacking out again, and when I
11 came back to, I knew he wasn't there because I couldn't
12 feel the pain anymore, and I didn't feel his body against
13 mine anymore. But I laid for, laid there for probably
14 about thirty more seconds because I was afraid to turn
15 around and look, but...

16 Q. While this act was taking place, where were your
17 clothes?

18 A. Down around my ankles.

19 Q. And what exactly was down around your ankles?

20 A. My panties and my pants.

21 Q. Do you remember ever hearing him leave?

22 A. No.

23 Q. You said you were in pain?

24 A. Yes, sir.

25 Q. Describe that pain for the jury.

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 196

1 A. It was a burning in my vaginal area because it was
2 rather large.

3 Q. What did you do when you, when you came to?

4 A. After I laid there for a little while, I...

5 Q. What did you do with your clothes?

6 A. I put them back on.

7 Q. Did you pull them back up?

8 A. Yeah. I just, just sat there for a second and just
9 pulled them back up and just sat on the couch.

10 Q. Did you ever change clothes while you were at your
11 house?

12 A. No, because honestly I just barely even felt like
13 moving around.

14 Q. Where was your dog during this?

15 A. He was in his crate.

16 Q. Did you tend to the dog at some point?

17 A. Yeah. After I sat there for a few minutes I let him
18 out of his crate, and just sat beside me and just mostly in
19 shock and disbelief because I couldn't believe that that
20 happened to me. I mean, no, nobody ever -- I mean, you
21 just don't see things like that coming sometimes. I mean,
22 people raise you, and I was raised with, you know, a decent
23 family and I know that parents always teach their kids
24 about being safe and you tell people things. But until
25 you're actually placed in that situation, you wouldn't

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 197

1 think something like that would happen to you.

2 Q. Where did you go that night once you were able to
3 leave the apartment?

4 A. I called my friend Jackie and -- because I didn't have
5 anywhere else to go. I didn't know who else to call. So,
6 I called her and I didn't get an answer at first. So, I
7 just went to her house because I figured she would be home.

8 Q. Let me ask you this. Why didn't you call the police
9 right then?

10 A. Because I didn't. I was ashamed. I was ashamed and I
11 was scared and, I mean, I didn't know what to, really what
12 to tell them. That I was leaving for work and I didn't
13 look before I opened my door. And I felt like in a way
14 that, that I would be, you know, be blamed for what I did
15 because I wasn't smart enough to check.

16 Q. So, you couldn't get Jackie on the phone, right, and
17 so you said you just went to her house?

18 A. Yeah. I just took a chance and drove over there
19 because, you know, Jackie worked a lot, and she was really
20 good about having her schedule and, and being at her house
21 and, you know, going to bed by a certain time when she had
22 to work.

23 Q. And so what happened when you got there to her house?

24 A. Well, when I got there, I was really so upset I really
25 just -- I couldn't say much. But after she sat me down and

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 198

1 talked to me, I was able to tell her, through tears and a
2 lot of time, what happened, and I didn't even want to go to
3 the hospital.

4 Q. Why not?

5 A. Because I was ashamed and I was embarrassed, you know,
6 and humiliated. I just wanted to forget.

7 Q. Did she convince you to go to the hospital?

8 A. Yeah, she -- and even though she had to work that
9 morning, she said that she would go with me.

10 Q. Well, did y'all go over to Lexington Medical Center?

11 A. Yes, sir.

12 Q. When you were there, were you examined by medical
13 personnel?

14 A. Yes, sir.

15 Q. The clothes that you were wearing when you got to the
16 hospital, were they the same clothes you had on during the
17 assault?

18 A. Yes, sir.

19 Q. Did you give them to the, the nurse that examined you?

20 A. I -- yes, sir.

21 Q. When this person entered your apartment, did he say
22 anything to you? When the assault was taking place, did he
23 say anything to you then?

24 A. He told me not to say anything. He told me not to
25 scream.

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 199

1 MS. PINNOCK: Objection, Your Honor. We have a matter
2 of law.

3 MR. GOLDBERG: Can we approach?

4 (OFF-THE-RECORD BENCH CONFERENCE.)

5 THE COURT: All right, the last question, there's an
6 objection to and it is sustained. Ladies and gentlemen of
7 the jury, please disregard the last question and the last
8 answer. Thank you.

9 BY MR. GOLDBERG:

10 Q. After your trip to the hospital, did you continue to
11 live in Apartment [REDACTED]?

12 A. No, sir. I spent the night at my friend Jackie's
13 house, and after two nights I went to my apartment complex
14 and I let the manager know that the police report, what had
15 happened, and they were able to transfer me to another
16 apartment that was owned by the same company off of Piney
17 Grove Road. I never stayed in that apartment again.

18 Q. Same company, different complex?

19 A. Yes, sir.

20 Q. You never stayed in that apartment again?

21 A. No, sir.

22 Q. All right. Did you keep the couch that was in that
23 apartment?

24 A. No, sir, I donated it. I couldn't look at it anymore.

25 Q. How soon did you return to work?

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 200

1 A. Probably about three weeks later I tried to go back to
2 work.

3 Q. Did your supervisor at work know what had happened?

4 A. I wasn't aware that he knew. I knew, I knew --
5 because I had to call my job and let them know what had
6 happened. But you don't actually have to call that
7 particular call center. You call the, I guess, the -- it'd
8 be the administrative number for human resources and that's
9 a 1-800 number that's in a different state.

10 Q. So, corporate offices?

11 A. Yes, it's the corporate office number, and I wasn't
12 aware that anybody knew.

13 Q. When you did return to the work, describe how your
14 performance was at the job.

15 A. Well, when I went back to work, I tried to -- you
16 know, that first day I tried to go back to work, I tried
17 to, you know, put on a happy face and try to move on past
18 it, but I started getting panic attacks. I started getting
19 afraid of everything. I kind of would sometimes feel like
20 the walls were caving in on me. Even though other people
21 didn't know, I felt like they were staring at me.

22 Q. About how much longer did you continue to work there?

23 A. Not long. Maybe, like, a week or so. I didn't work
24 very long.

25 Q. And why did you end up leaving the job?

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 201

1 A. Because I just couldn't do it anymore. After the
2 incident, I didn't really recognize myself anymore.

3 Q. Did you ever speak with a psychiatrist about this?

4 A. Yeah, I was -- the corporate office thought that it
5 would be best for me to try some type of trauma services.
6 So, they sent me to a psychiatrist off of Bush River Road
7 and ---

8 Q. How many times did you go there?

9 A. I went once.

10 Q. Were you able to disclose the incident to him?

11 A. No. The psychiatrist tried to get me to talk about
12 it, but I didn't really feel like relaying it. I mean, I
13 had already relayed it to my friend, to about four
14 different police officers altogether, different types of
15 people at the hospital, the nurses, and the doctors, and
16 the detectives. I just didn't, I just didn't feel like
17 saying anything anymore. I really just wanted to forget.

18 Q. Were you put on prescription medication of any kind?

19 A. Yeah, I was put -- I was started on Paxil, and then
20 after Paxil I'd been tried on Zoloft and Wellbutrin,
21 Prozac, Vistaril. You name it, pretty much I've taken it.

22 Q. I believe you testified earlier that you were closer
23 to your grandmother than your mother. Is that right?

24 A. Yes, sir.

25 Q. When this happened, did you tell your family right

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 202

1 away about it?

2 A. No, sir.

3 Q. Why not?

4 A. Because I didn't want them to look at me differently.
5 I mean, you know, whenever something like this happens to
6 somebody else, until it happens to you, you don't know what
7 to say to people. I mean, what, what my family could
8 possibly have said to me, that they were sorry, which I
9 knew that they probably were. But I, I didn't like looking
10 at myself anymore, and I don't think I could have faced
11 having my family look at me and feel like they were judging
12 me or that they felt sorry for me. I just wanted to forget
13 about it and not have to talk about it anymore.

14 Q. At some point, did you move from prescription
15 medication to other types of narcotics?

16 A. Yes, sir. I went through a very hard time after this.
17 There were times when I'd stay in my house for long periods
18 of time. I'd awake with nightmares. It eventually got to
19 the point where I really just didn't want to feel anything
20 anymore. So, I started using crack cocaine to make me
21 forget. To, to not have to feel, to not have to think, or
22 to have to remember even if it was for just a few minutes.

23 Well, then I got in trouble with, I got in trouble
24 with the law. I started smoking crack more and more. I
25 ended up going through a couple different jobs.

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 203

1 Q. You said you got in trouble with the law. Did you get
2 convicted of writing bad checks in 2005?

3 A. Yes, sir, I was convicted. I wrote bad checks.

4 Q. Did you ---

5 A. I've had, like, a breach of trust charge, a
6 shoplifting, all of it because I was using drugs.

7 Q. Financial transaction card theft and fraud convictions
8 in 2010?

9 A. Yes, sir.

10 Q. Shoplifting in 2010, a conviction?

11 A. Yes, sir.

12 Q. Use of vehicle without the owner's permission, two
13 counts, in 2011?

14 A. Yes, sir. I made a lot of mistakes.

15 Q. How often were you using drugs during these time
16 periods that I've just mentioned?

17 A. About every day.

18 Q. About how many ---

19 A. Every day there would be periods where I would go, you
20 know, for -- there would be months where I would go without
21 using drugs. You know, there were times when I would feel
22 happy, you know, when I'd feel normal sometime. But then
23 there would be other times like the smallest little trigger
24 would set me off, and I'd go back into doing drugs again so
25 I didn't have to think about things.

M. SHEALY MILLENDER - DIRECT EXAMINATION BY MR. GOLDBERG 204

1 Q. You said you had a number of different jobs. How many
2 jobs, different jobs did you have?

3 A. I mean, between six and ten altogether.

4 Q. Can you give me just a few examples?

5 A. I worked at Substation II. I worked at Rodaine

6 Cabinetry on Fernandina Road. I worked at Waffle House.

7 I've worked at a little pizza shop in Swansea. I've worked
8 at Paul Argo Screens in North. But I never stayed at the
9 jobs for long periods of time.

10 Q. How about residences?

11 A. About the same thing. I jumped back and forth. It
12 would work out at a place for a little while and I'd be
13 going good and, you know, I'd have a job and I would work
14 and have steady income, and then something would happen and
15 I would snap and go off the deep end again.

16 MR. GOLDBERG: Beg the court's indulgence one moment.

17 (A PAUSE.)

18 BY MR. GOLDBERG:

19 Q. All right, a couple more questions to follow up. Do
20 you remember if you called into work that night?

21 A. I don't remember, but I'm pretty sure I did because
22 it's not like me just to not call my job.

23 Q. And I believe you testified it was about 9:30 p.m.
24 when you got the knock at the door. Is that right?

25 A. Yes, sir.

M. SHEALY MILLENDER - DIRECT EXAM / CROSS-EXAM

205

1 Q. Do you recall what the lighting outside was like?

2 A. My outside light was turned off, but my neighbor's
3 across the hall weren't.

4 Q. How about the sky? Was it daytime or nighttime?

5 A. It was nighttime.

6 Q. At any point when you spoke to law enforcement, were
7 you able to tell them specifically who the man was that did
8 this to you?

9 A. No, sir. I didn't see his face.

10 Q. And this man, did you allow him to consensually enter
11 your apartment on May 10, 2004?

12 A. No, sir, I didn't.

13 Q. Did you have consensual sex with this man on May 10,
14 2004?

15 A. No, sir, I did not.

16 Q. My last question. The defendant in this case, Melvin
17 Stukes, have you ever had consensual sex with him?

18 A. No, sir, I have not.

19 MR. GOLDBERG: Thank you, Misty. Please answer any
20 questions that the defense may have.

21 THE COURT: Yes, ma'am.

22 MS. PINNOCK: Please the court, Your Honor.

23 CROSS-EXAMINATION BY MS. PINNOCK:

24 Q. Ms. Shealy, how long did you live at the Park
25 Apartments?

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 206

1 A. Altogether, like, two and a half years maybe.

2 Q. In the same apartment?

3 A. No, ma'am. I had another apartment with a roommate.

4 Q. What's your roommate's name?

5 A. Her name was Kimberly Boltman.

6 Q. All right, and how long did you live with her?

7 A. Like a year or so.

8 Q. Okay. So, about two years in apartment [REDACTED]?

9 A. About, more like about a year or maybe a year and a
10 half.

11 Q. All right.

12 A. I don't remember the exact dates.

13 Q. Ms. Shealy, I'm going to show you what's been marked
14 as Defense 1, 2, 3, 4, and 5. Can you look at these for
15 me, please? Do you recognize what's in those pictures?
16 Does that fairly show what your apartment entrance looked
17 like when you lived in the Park Apartments?

18 A. Uh-huh. Yes, ma'am.

19 Q. And that was back in 2004 when you lived there?

20 A. Yes, ma'am.

21 MS. PINNOCK: Okay. Your Honor, at this time we would
22 move Defense 1 through 5 into evidence.

23 THE COURT: Any objection?

24 MR. GOLDBERG: No objection.

25 Q. And Ms. ---

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 207

1 THE COURT: Have they been marked?

2 MS. PINNOCK: Yes, ma'am, they have.

3 THE COURT: All right. You need to ---

4 MS. PINNOCK: Oh, I'm sorry. Sorry.

5 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
6 DEFENDANT'S EXHIBITS 1, 2, 3, 4, 5.)

7 BY MS. PINNOCK:

8 Q. Now, while she's doing that, Misty, you said that you
9 were getting ready for work at 9:00, around 9:30, 9:40 that
10 night?

11 A. Yes, ma'am.

12 Q. All right. Now, I wanted to make sure we're clear
13 about what you reported happening in 2004. How many times
14 have you met with Mr. Goldberg to go over your statement?

15 A. I think twice.

16 Q. Twice. As recent as last Friday?

17 A. Oh, Mr. Goldberg? Oh.

18 Q. Uh-huh.

19 A. Oh, no, I've met with officer -- I mean, Solicitor
20 Goldberg about three or four times.

21 Q. Three or four times. How many times did you meet with
22 Ms. Ashton?

23 A. Twice.

24 Q. How many times in the past year have you met with law
25 enforcement?

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 208

1 A. Law enforcement?

2 Q. Yes.

3 A. About this case?

4 Q. Investigators, deputies, anybody in law enforcement.

5 A. I think maybe, like, five or six times.

6 Q. In the past year?

7 A. Yes, ma'am.

8 Q. And that's preparing you to testify in court, right?

9 A. It was asking me questions, but the actual questions
10 or the time that I met with Solicitor Goldberg and really
11 in defense to this was two times.

12 Q. In defense to this to ---

13 A. I mean ---

14 Q. --- go over your statement?

15 A. In reference to my statement, we worked on that one
16 time last Friday.

17 Q. You've only gone over your statement one time?

18 A. Except for, like, talking today and me telling him,
19 like, everything. I, I mean we've -- he's asked me
20 questions about what happened just like everybody has. But
21 as far as, like, meeting and saying okay, this is what
22 we're going over, this is what's going to happen, that was
23 last Friday.

24 Q. Okay. So, you met with him and you practiced about
25 what he would ask you, what you would answer, how you

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 209

1 present your case, your, your story in court today, right?

2 A. Yes, ma'am.

3 Q. All right. Now, in 2004, I want to run through the
4 details of what you reported to law enforcement in 2004.
5 Defense 3. Can you look at that and tell the jury what's
6 in that picture?

7 A. It's a light.

8 Q. It's a light. Is that the hallway leading down to
9 apartment [REDACTED], Misty?

10 A. Yes, it is.

11 Q. And you've lived in [REDACTED]?

12 A. Yes, ma'am.

13 Q. And that's the porch light outside your apartment?

14 A. Yes, ma'am.

15 Q. Okay. So, that's the lighted doorway in your
16 apartment, right?

17 A. Yeah, on the side, yes, ma'am.

18 Q. Okay. This is -- what's in this picture?

19 A. It's my door.

20 Q. Number [REDACTED]?

21 A. Yes, ma'am.

22 Q. That would be State -- I'm sorry, Defense 5?

23 A. Uh-huh.

24 Q. Defense Exhibit 5 is a picture of your door?

25 A. Yes, ma'am.

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 210

1 Q. Another picture of your door?

2 A. Yes, ma'am.

3 Q. There's a peep hole in your door, isn't there, Misty?

4 A. Yes, ma'am.

5 Q. There's a peep hole in the door and a light outside
6 the door, right?

7 A. Yes, ma'am.

8 Q. It's not a light in front of your apartment, in front
9 of your neighbor's apartment. It's in-between your two
10 apartments, right?

11 A. Yes, ma'am.

12 Q. All right. There is no light that you could turn on
13 and off from your apartment, right?

14 A. I thought that there was one.

15 Q. You thought there was one. You don't remember saying
16 that you turned off your outside light and you couldn't see
17 anything because your neighbor's outside light was off --
18 was on. That's what you said, right?

19 A. Yes, ma'am.

20 Q. All right. Now, as you're getting ready to go to
21 work, you say you're pretty much just walking around
22 getting ready to go. You fix your hair. You go to your
23 room and listen to some music.

24 A. Yes, ma'am.

25 Q. That's because you -- your computer's in your room?

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 211

1 A. Yes, ma'am.

2 Q. You download songs, so you want to hear it before you
3 walk out, and then you put your dog in the, in his cage ---

4 A. Yes, ma'am.

5 Q. --- right? Grab your keys, turn off the lights.
6 There's a knock at your door, right?

7 A. Yes, ma'am.

8 Q. And as soon as you hear the knock at the door -- you
9 said you were on the way to the door anyway. You open it?

10 A. Yes, ma'am.

11 Q. And you see a silhouette, a large, broad silhouette
12 standing in your doorway?

13 A. Yes, ma'am.

14 Q. You can't see the person's face?

15 A. No, ma'am.

16 Q. You can't see the person's race?

17 A. No, ma'am.

18 Q. You can't describe their clothing?

19 A. The only thing I could describe was it looked like a
20 hat.

21 Q. It looked like a hat. You were able to see that?

22 A. I was able to see the outline of something on his
23 head.

24 Q. You said it looked like a beanie hat, right?

25 A. Yes, ma'am, it poked out ---

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 212

1 Q. Close to the skull?

2 A. --- on the side, yes, ma'am.

3 Q. But you couldn't make out anything else this person
4 was wearing?

5 A. No, ma'am. It was a split second.

6 Q. Okay, and also because lighting in your neighbor's
7 house was blinding you, right?

8 A. Yes, ma'am, or the lights outside was blinding me.

9 Q. At your neighbor's house was on. Yours was off. We
10 understand that. So, as soon as you open the door, you see
11 this large framed silhouette. You said that this person
12 reaches in and grabs you around the neck?

13 A. Yes, ma'am.

14 Q. And punches you?

15 A. Yes, ma'am.

16 Q. Split second?

17 A. Yes, ma'am.

18 Q. And this person -- let's see. What did you say in
19 2004, grabbed you with his right-hand and punched you with
20 the left-hand, right?

21 A. I can't remember.

22 Q. Can you look at your statement, Ms. Shealy?

23 A. I don't -- you said have I looked at my statement?

24 Q. Yes.

25 A. Yes, ma'am, I've looked at my statement.

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 213

1 Q. Would you agree with me that you told the investigator
2 in 2004 that the assailant grabbed with his right-hand and
3 punched you with his left-hand?

4 A. Yes, ma'am, that's probably what happened.

5 Q. Okay, and that's a sucker punch? Where, where did he
6 hit you?

7 A. The side of my face.

8 Q. Where?

9 A. My cheek.

10 Q. Your whole cheek?

11 A. Right through here, yes, ma'am.

12 Q. All right. So, this large framed, broad -- you said
13 strong, very strong, large person?

14 A. It was stronger than me.

15 Q. Sucker punches you in the face?

16 A. Yes, ma'am.

17 Q. On the whole side of your face?

18 A. Yes, ma'am.

19 Q. And you said that was on your left side?

20 A. It was on this side, yes, ma'am.

21 Q. That's your left side.

22 A. Yes, ma'am.

23 Q. All right, and when this person grabbed you and you
24 fell backwards across your couch, you said that his hands
25 felt like he was wearing gloves?

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 214

1 A. Yes, ma'am.

2 Q. Some sort of rubber gloves?

3 A. It just felt like some type of glove.

4 Q. Some type of glove. So, covered hands, hat on his
5 hand, no other description, no race, no eye color, no, no
6 nothing? All you know is there's gloves, a hat, and he
7 sucker punches you on the left side of your face?

8 A. Yes, ma'am.

9 Q. And you fall backwards?

10 A. Yes, ma'am.

11 Q. As he's got his hand around your neck?

12 A. No, he had let go. As soon as he hit me, I stumbled
13 backwards.

14 Q. Is that your testimony today?

15 A. Yes, ma'am.

16 Q. That's not what you told the investigators in 2004.
17 It was fresher in your mind then, right? Three days after
18 it happened, that's when you gave this statement?

19 A. Yes, ma'am.

20 Q. You didn't tell them in 2004 that he let go and you
21 fell over and he jumped on top of you? That's not what you
22 told, is it?

23 A. I can't remember.

24 Q. Would you like to look at your statement, Ms. Shealy?

25 A. Yeah, that's fine.

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 215

1 Q. Just let me know when you're done.

2 A. Okay.

3 Q. All right. You told them opened the door. You were
4 grabbed by the neck, sucker punched, you fell backwards
5 facing the couch? That's what you told them, right?

6 A. Yes, ma'am, it's in the statement.

7 Q. And then you blacked out?

8 A. Yes, ma'am.

9 Q. And you said -- that's in your statement. That's why
10 you -- that's your statement, right?

11 A. Yes, ma'am.

12 Q. All right. They wouldn't write anything down that you
13 didn't tell them.

14 A. No, ma'am.

15 Q. All right. So, you fall over the couch face down.
16 You black out. The next thing you said you remember, your
17 pants are around your calves.

18 A. Yes, ma'am.

19 Q. This person is holding your face down, as you, as you
20 describe it, pushing your head and your upper body into the
21 couch in your living room, right?

22 A. Yes, ma'am.

23 Q. And you're saying you were sexually assaulted from
24 behind?

25 A. Yes, ma'am.

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 216

1 Q. All right. At some point -- let me back up. Ms.

2 Shealy, I'm going to show you what has been marked as

3 Defense Exhibit 6, 7, 8, 9, 10, 11, 12, and 13. Can you

4 look at these, please, and tell us if you recognize it?

5 A. Yes, ma'am. It's my apartment.

6 Q. That's the doorway leading into your apartment where

7 you said this assault took place?

8 A. Yes, ma'am.

9 Q. It shows your couch?

10 A. Yes, ma'am.

11 Q. Feet from the door?

12 A. Yes, ma'am.

13 Q. Now, in State's ---

14 MS. PINNOCK: Your Honor, I'm sorry. At this time we
15 could enter State's Exhibits -- goodness, Defense Exhibit 6
16 through 14 into evidence.

17 THE COURT: Any objection?

18 MR. GOLDBERG: No objection.

19 COURT REPORTER: She didn't say 14 originally. You
20 said 6 through 13.

21 MS. PINNOCK: We can do 13.

22 THE COURT: Okay.

23 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
24 DEFENDANT'S EXHIBITS 6, 7, 8, 9, 10, 11, 12, 13.)

25 BY MS. PINNOCK:

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 217

1 Q. Now, your couch, it was feet from the door, right?

2 Not a lot of room between the doorway and the couch?

3 A. No, not a lot of room, no, ma'am.

4 Q. All right, and you're saying you told the
5 investigators that you were pushed over the arm of the
6 chair?

7 A. Over the side, yes, ma'am.

8 Q. That was the arm or the back?

9 A. It's, like, in the middle right there. Well, I guess
10 it's the arm of the chair. I mean ---

11 Q. Okay. The arm ---

12 A. --- the couch has a cushion right there, but there was
13 the arm right there and that's what I fell over.

14 Q. Okay.

15 A. I would still be on some of this big cushion that is
16 laying there. But initially, yes, it's over the arm of the
17 couch.

18 Q. Okay. Over the arm of the couch right inside the
19 doorway, right?

20 A. Yes, ma'am.

21 (A PAUSE.)

22 Q. Looking for a picture, one coming directly into the
23 door. It's number 6. All right. So, the person, this
24 large silhouette broad person kind of bum rushes you in
25 your apartment and pushes you over the -- that arm, right?

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 218

1 A. Yes, ma'am.

2 Q. You're face down? He's holding you down?

3 A. Yes, ma'am.

4 Q. Pushing your face and your upper body into the couch?

5 A. Yes, ma'am.

6 Q. According to you, he somehow gets his pants down,
7 gets your pants down, and starts sexually assaulting you,
8 right ---

9 A. I told you.---

10 Q. --- while holding you down?

11 A. Yes, ma'am. I told you. When I fell over the couch,
12 I blacked out. So, yes, at some point he had to have
13 dropped his pants in order for his penis to go in me.

14 Q. Okay, and you've tried to fight back with your left
15 arm?

16 A. Yes, ma'am. I tried to reach around.

17 Q. You're laying flat on your, flat on your face. You
18 reach back with your left arm. That's what your testimony
19 is?

20 A. Yes, ma'am.

21 Q. Where was your right arm?

22 A. Right here.

23 Q. I can't see you. Where was your right arm, Ms.
24 Shealy?

25 A. Being pinned down.

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 219

1 Q. By his hand or right here by you?

2 A. By the body.

3 Q. Your body?

4 A. No, by his body.

5 Q. So, he's holding you down ---

6 A. He's holding me ---

7 Q. --- pushing your face?

8 A. --- over on top of me. My arms are like this behind
9 my back, and I was able to get one of my arms free, and ---

10 Q. Okay, and then he grabbed you?

11 A. --- which I -- yes.

12 Q. He grabbed you so bad it hurt and you screamed out?

13 A. Yes, ma'am.

14 Q. And he shoved your arm back into the couch?

15 A. Yes, ma'am.

16 Q. And then you blacked out again?

17 A. Yes, ma'am.

18 Q. And in 2004, you told the investigators that when you
19 came, came around this time, you don't remember the door
20 closing?

21 A. No, ma'am.

22 Q. He was gone?

23 A. Yes, ma'am.

24 Q. That's what you said in 2004?

25 A. Yes, ma'am.

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 220

1 Q. All right.

2 A. At least that's -- I think I said it in 2004. I'm
3 sorry.

4 Q. You got your statement in front of you, Ms. Shealy?

5 A. Yes, ma'am.

6 Q. All right. You told them in 2004 you didn't remember
7 hearing the door close, right?

8 A. No, ma'am.

9 Q. Huh?

10 A. Yes, ma'am.

11 Q. All right. Now, after this attack, let's talk about
12 what you did after this vicious attack that happened in
13 your apartment. You let your dog out?

14 A. Yes, ma'am.

15 Q. Sat on the couch?

16 A. Yes, ma'am.

17 Q. About an hour?

18 A. I don't know if it was an hour.

19 Q. You told them about a hour?

20 A. About an hour. I'm sorry. I don't remember exactly,
21 you know, sixty minutes going by.

22 Q. All right. So ---

23 A. It was a time.

24 Q. --- some time goes by after you're sitting on your
25 couch after you let your dog out. You don't call 911,

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 221

1 right?

2 A. Yes, ma'am.

3 Q. You don't call your mom?

4 A. I wasn't close with my mother.

5 Q. The first person you decide to call is Jackie Bruton?

6 A. Yes, ma'am.

7 Q. How long you been friends with her?

8 A. I was friends with her a couple months.

9 Q. Just a couple months, that's the first person that
10 pops in your head to call?

11 A. Yeah, actually it was.

12 Q. Okay, and she didn't answer. You said she didn't
13 answer. How many times did you call her?

14 A. I can't remember.

15 Q. A number of times?

16 A. I believe I just called her once.

17 Q. Only called her once. You sure it wasn't four times,
18 four or five?

19 A. I can't remember.

20 Q. Okay. So, you call her once. She doesn't pick up.

21 So, you drive out to Hopkins. How long does it take you to
22 get to Hopkins?

23 A. About fifteen minutes.

24 Q. Fifteen minutes. Didn't detour to the hospital?

25 A. No, ma'am.

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 222

1 Q. Didn't -- you have neighbors, right?

2 A. Yes, ma'am.

3 Q. You didn't go knock on your neighbor's, neighbor's
4 apartment? Help me. I've been assaulted.

5 A. No, ma'am.

6 Q. You didn't scream somebody help me? I've just been
7 raped?

8 A. No, ma'am.

9 Q. You jump in the car and you drive to Hopkins?

10 A. Yes, ma'am.

11 Q. All right, and when you get out to Hopkins, you still
12 don't go to the hospital. Isn't that right?

13 A. Yeah, that's right.

14 Q. You have to be convinced by somebody else to go to the
15 hospital?

16 A. Yeah.

17 Q. And then you ended up at the hospital around 1:00,
18 right?

19 A. I guess that's what time it was. I can't remember
20 exactly what time it was.

21 Q. You said the assault happened in your apartment
22 between 9:30 and 10:00?

23 A. Yes, ma'am.

24 Q. Okay. Got to the apartment about 1:00 a.m., right?

25 A. I guess so. I'm not sure. I can't remember exactly

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 223

1 what time it was. After I was raped, I'm sorry, looking at
2 the clock wasn't exactly the first thing on my mind.

3 Q. All right. Now, you spoke to Investigator,
4 Investigator Branham on May 14, 2004?

5 A. I guess. I'm not sure.

6 Q. Your, your statement's in front of you, Ms. Shealy.
7 You can be sure. Was it May 14, 2004?

8 A. Yeah.

9 Q. Okay. So, on May 14, 2004, that's when you gave your
10 statement to law enforcement?

11 A. Yes, ma'am.

12 Q. You reported a sexual assault at 10:00 on May 10,
13 2004, right?

14 A. Yes, ma'am.

15 Q. All right. You were at the hospital early morning
16 hours of May 11, 2004?

17 A. Yes, ma'am.

18 Q. You didn't go to Richland County until May 14, 2004?

19 A. Yes, ma'am.

20 Q. Right?

21 A. Yes, ma'am.

22 Q. And there's after canceling your first appointment
23 with them?

24 A. Yes, ma'am.

25 Q. Okay. Let's see. Now, you said -- you were

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 224

1 interviewed again in 2010, right?

2 A. Uh-huh.

3 Q. Two investigators came and saw you, Investigator
4 Godfrey and Mincey?

5 A. Yes, ma'am.

6 Q. Down at ---

7 A. Yes, it was officer ---

8 Q. --- the Orangeburg Detention Center?

9 COURT REPORTER: Excuse me, Your Honor. There's a lot
10 of talking over.

11 MS. PINNOCK: I'm sorry.

12 THE COURT: All right, please let her answer the
13 question and ---

14 MS. PINNOCK: Yes, ma'am, I'm sorry.

15 THE COURT: All right.

16 BY MS. PINNOCK:

17 Q. They interviewed you at the Orangeburg Detention
18 Center in 2010?

19 A. Yes.

20 Q. All right. They asked you some more questions?

21 A. Yes.

22 Q. All right, and in 2010 -- do you have that statement
23 in front of you?

24 A. This is the statement from the 14th.

25 Q. Okay. Let's just talk about the 2010 statement for

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 225

1 just a second. You told them in 2010 that your dog was
2 barking when you heard the knock on the door?

3 A. Uh-huh.

4 Q. And when you heard the knock on the door, you told
5 them again you opened the door?

6 A. Yes, ma'am.

7 Q. But in this statement, when they are questioning you
8 again in 2010, you said that the person hit you with their
9 right hand and on the left side of your face. That's what
10 you told them?

11 A. I said it was on the left side of my face, yes, ma'am.

12 Q. But in 2004, that's not what you told them.

13 A. I know. I accidentally switched them.

14 Q. It was fresher in your mind in 2004, right?

15 A. Yes, ma'am.

16 Q. All right, and you told them in 2010 that he knocked
17 you down while he was holding your throat, holding your
18 throat with his left hand, right?

19 A. What I said was that he hit me and I stumbled
20 backwards, yes, ma'am. The same thing I've said in 2004.

21 Q. And the only reason -- the reason you could only see
22 an outline was because of the lighting outside?

23 A. Yes, ma'am.

24 Q. Of your neighbor's light?

25 A. The light outside. Neighbor's. Mine. The light.

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 226

1 Q. You were very clear, Ms. Shealy. You said your
2 outside light was off and your neighbor's was on. That's
3 why you said you could only see the silhouette, right?

4 A. Yes, ma'am.

5 Q. All right. You told them again that you blacked out.
6 During the assault, you blacked out.

7 A. Yes, ma'am.

8 Q. Multiple times you blacked out, you came back into
9 consciousness, you blacked out again, and in 2010 you told
10 them you heard the door shut?

11 A. I don't remember telling them I heard the door shut.

12 Q. Were you in a relationship at this time in 2004?

13 A. No, ma'am.

14 Q. You didn't tell Investigator Godfrey that you were in
15 a relationship in 2004?

16 A. I said that I had had sex with someone. That doesn't
17 make me be in a relationship.

18 Q. Okay. So, you told Investigator Godfrey you were not
19 in a relationship, and in 2010 that's when you got your
20 convictions for theft of a credit card and fraudulently
21 using somebody else's credit card?

22 A. Yes, ma'am.

23 Q. All right. You pled guilty to those?

24 A. Yes, ma'am.

25 Q. Misty, I think I skipped over something. Let's go

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 227

1 back to 2004. Can you look at what's been marked as
2 Defendant's Number 15, 16, 17, and 18? Do you recognize
3 those?

4 A. Yes, ma'am.

5 Q. You look through all of them?

6 (A PAUSE.)

7 A. Yes, ma'am.

8 Q. What's in those pictures?

9 A. My face.

10 Q. From 2004?

11 A. Yes, ma'am.

12 Q. Are these the photos that were taken of you after you
13 reported the assault in 2004?

14 A. Yes, ma'am.

15 Q. Is it a fair depiction of what you looked like in
16 2004?

17 A. Yes, ma'am.

18 Q. And is what you reported your injury was in 2004,
19 right?

20 A. Yes.

21 MS. PINNOCK: Your Honor, at this time we'd like to
22 enter these Defense Numbers 15 through 18 into evidence.

23 THE COURT: Any objection?

24 MR. GOLDBERG: No objection.

25 THE COURT: All right. They'll be entered without

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 228

1 objection.

2 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
3 DEFENDANT'S EXHIBITS 15, 16, 17, 18.)

4 BY MS. PINNOCK:

5 Q. All right. Now, Misty, Exhibit 15, Defense Exhibit
6 15, you say this is a picture of you when they took photos
7 after this vicious assault?

8 A. Yes, ma'am.

9 Q. This vicious attack, right?

10 A. Yes, ma'am.

11 Q. The sucker punch in your face. This is your face?

12 A. Yes, ma'am.

13 Q. This is the injury you reported?

14 A. Yes, ma'am.

15 Q. And that's what they photographed?

16 A. Yes, ma'am.

17 Q. And Number 17, that's another angle of your face ---

18 A. Yes, ma'am.

19 Q. --- them photographing injuries ---

20 A. Yes, ma'am.

21 Q. --- that you received during this vicious attack in
22 your apartment, right?

23 A. Yes, ma'am.

24 Q. Same thing for 16 and 18, different angles of the
25 injuries that you sustained during this vicious attack,

M. SHEALY MILLENDER - CROSS-EXAMINATION BY MS. PINNOCK 229

1 right?

2 A. During the attack, yes, ma'am.

3 Q. After somebody forced their way into your apartment,
4 grabbed you by your neck, punches you in the face, that's
5 what they came up with, correct?

6 A. Yes, ma'am.

7 Q. And that's because that's what you told them happened?

8 A. Yes, ma'am.

9 MS. PINNOCK: Begging the court's indulgence.

10 (A PAUSE.)

11 By MS. PINNOCK:

12 Q. Now, Ms. Shealy, just so we're clear, not only in 2010
13 were you convicted of a theft and a fraud, you were also
14 convicted in 2005 of another fraudulent check?

15 A. Yes, ma'am.

16 Q. That means you're writing bad checks?

17 A. Yes, ma'am.

18 Q. You're also convicted of a shoplifting in 2010. That
19 means you're stealing things?

20 A. Yes, ma'am.

21 Q. Things that don't belong to you?

22 MR. GOLDBERG: Objection, Your Honor. Commentary.

23 THE COURT: Sustained.

24 BY MS. PINNOCK:

25 Q. And in 2011, you have two charges for use of vehicle

M. SHEALY MILLENDER - REDIRECT EXAM BY MR. GOLDBERG 230

1 without permission with the intent to deprive. Isn't that
2 right?

3 A. Yes, ma'am.

4 Q. And did you testify that you started, your drug habit
5 started after 2004?

6 A. Yes, ma'am.

7 MS. PINNOCK: Thank you, Your Honor.

8 THE COURT: Anything else from the state?

9 MR. GOLDBERG: Very briefly, Your Honor.

10 THE COURT: All right, sir.

11 REDIRECT EXAMINATION BY MR. GOLDBERG:

12 Q. MS. Pinnock asked you numerous questions about the
13 lighting outside, right?

14 A. Yes, sir.

15 Q. She asked you about the grabbing and the punching,
16 correct?

17 A. Yes, sir.

18 Q. Can you describe again for this jury how quickly that
19 all happened?

20 A. It was a split second.

21 Mr. Goldberg: Thank you, ma'am. That's all I have.

22 THE COURT: All right, ma'am, you may step down.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: Yes, sir, call your next witness.

25 MS. ASHTON: State calls Jacqueline Bruton.

J. BRUTON - DIRECT EXAMINATION BY MS. ASHTON

231

1 JACQUELINE BRUTON, BEING DULY
2 SWORN, TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Thank you. Have a seat in the
4 witness stand, please. State your name for the record.

5 WITNESS: Jacqueline Bruton.

6 DIRECT EXAMINATION BY MS. ASHTON:

7 Q. Good afternoon, Ms. Bruton.

8 A. Hi.

9 Q. Okay, where do you work?

10 A. Thomas and Howard.

11 Q. And how long have you worked there?

12 A. For about eleven years.

13 Q. Okay, and what is Thomas and Howard?

14 A. Food distributing company. We service convenience
15 stores.

16 Q. Okay. What is your position? What do you do there?

17 A. IT specialist.

18 Q. Okay, and you worked there in 2004?

19 A. Yes.

20 Q. Did you -- where did you live -- where do you live
21 now?

22 A. The Irmo area.

23 Q. And where did you live in 2004?

24 A. On Garners Ferry.

25 Q. Okay. Back in May of 2004, did you know Misty Shealy?

1 A. Yes, I did.

2 Q. And do you remember a night in May of 2004 when Misty
3 came to your house?

4 A. Yes.

5 Q. And what do you remember specifically about that
6 night?

7 A. She just, she was afraid, scared, and I noticed a
8 handprint. I don't remember if it was on her face or on
9 her neck.

10 Q. Did she relay to you that she had been sexually
11 assaulted?

12 A. Yes, she did.

13 Q. And do you remember where she said that happened to
14 her?

15 A. That I, I, I can't remember where she told me it
16 happened.

17 Q. Okay, and do you remember when she said it happened to
18 her?

19 A. It was, it was that night.

20 Q. Okay, and, again, describe her demeanor.

21 A. She was afraid, scared.

22 Q. Okay, and what did you, what did you do next with
23 Misty?

24 A. I told her she needed to go to the doctor, to the
25 hospital.

J. BRUTON - DIRECT EXAMINATION BY MS. ASHTON

233

1 Q. And did, did she go to the hospital?

2 A. Yeah, I took her there down there.

3 Q. And which hospital did you go to?

4 A. I cannot remember. I don't remember.

5 Q. Because this is eight, eight years ago?

6 A. Yeah.

7 Q. And did you stay with Misty while she was at the
8 hospital?

9 A. I was there. I was in the waiting room. I believe I
10 was -- yeah, I was in the waiting room while they were
11 checking her out.

12 Q. Okay, and was it a long period of time that you were
13 there with her?

14 A. Yes.

15 Q. And what -- do you remember what you did once she was
16 finished at the hospital?

17 A. I, I don't remember what we did after that. I don't.
18 I do not.

19 Q. And do you recognize in any way the defendant who's
20 sitting at that table over there?

21 A. No, I don't.

22 Q. Do you know a gentleman by the name of Melvin Stukes?

23 A. No, I do not.

24 MS. ASHTON: Beg the court's indulgence.

25 (A PAUSE.)

1 MS. ASHTON: Thank you, Ms. Bruton. Please answer any
2 questions they may have.

3 MR. SHEALEY: May it please the court?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION BY MR. SHEALEY:

6 Q. Ms. Bruton.

7 A. Hi.

8 Q. Now, how did you come to meet Ms. Shealy?

9 A. That I don't remember.

10 Q. All right.

11 A. I don't remember.

12 COURT REPORTER: Keep your voice up, ma'am.

13 A. I don't remember.

14 Q. And you don't remember if you met her through friends
15 or activities or anything like that? Just ---

16 A. I cannot. I do not remember.

17 Q. Okay, and at that time you did not live where she
18 lived then?

19 A. No.

20 Q. You lived approximately how far away would you say?

21 A. About thirty, thirty-five minutes maybe.

22 Q. Do you think you were about thirty or thirty-five
23 minutes away?

24 A. I think, yeah.

25 Q. And at that time, you were living in Hopkins?

J. BRUTON - CROSS-EXAMINATION BY MR. SHEALEY

235

1 A. Yes.

2 Q. Okay. Now, you spoke to law enforcement that night,
3 right?

4 A. At the hospital?

5 Q. Yes, ma'am.

6 A. I probably did. I don't remember. I probably did.
7 They probably asked me questions.

8 Q. Okay. Did you ever sign a statement or anything like
9 that?

10 A. I don't remember.

11 Q. Okay. That's fine. I know it's been a long time.

12 A. Yeah.

13 Q. How, how long had you been friends, if you recall,
14 with Misty at the time of this alleged incident? How long
15 had y'all been friends?

16 A. Not that long.

17 Q. Okay. Did y'all -- were y'all close like sisters?

18 A. No.

19 Q. Did it surprise you when she came to you with this
20 information?

21 A. Sort of really.

22 Q. And why was that?

23 A. Because we didn't know each other like that.

24 Q. Okay, and again, how long had you known her at that
25 time?

J. BRUTON - CROSS-EXAMINATION BY MR. SHEALEY

236

1 A. I, I don't think that long. I mean, I had -- I would
2 say less than a year.

3 Q. Did y'all hang out a good bit or ---

4 A. I probably went to her house one time.

5 Q. Okay. One time?

6 A. Yeah.

7 Q. Did you know her to be seeing anyone at that time in
8 her life?

9 MS. ASHTON: Objection.

10 MR. SHEALEY: Grounds?

11 THE COURT: What's the objection?

12 MS. ASHTON: Based on what we discussed at pretrial
13 about ---

14 THE COURT: Let me, let me see the lawyers.

15 (OFF-THE-RECORD BENCH CONFERENCE.)

16 THE COURT: Ladies and gentlemen, I'm going to send
17 you all out for a brief moment and bring you right back in,
18 all right?

19 (THE JURY EXITS AT 5:32 P.M.)

20 THE COURT: All right, we'll proffer the testimony.
21 You may ask the question again.

22 And, ma'am, if you can answer it. We'll do it --
23 ma'am, we're going to do it outside the presence of jury,
24 all right?

25 WITNESS: Yes, ma'am.

PROFFER

PROFFERED EXAMINATION BY MR. SHEALEY:

Q. And it's fine, Ms. Bruton. Do you recall if she was in a relationship at that time?

A. No, I don't remember. I don't think she was.

Q. Okay.

THE COURT: All right.

MR. SHEALEY: All right. We're okay.

END OF PROFFER

THE COURT: Bring them back in.

MR. SHEALEY: And before we bring them back in, is this objection sustained? What's the, what's the ruling? Are you withdrawing your objection or what ---

MS. ASHTON: Your Honor, as long as he doesn't try to impeach -- Investigator Godfrey wrote in a summary that in 2010 when she -- when he spoke to Ms. Bruton, that she, she replied she did not think she was in any relationship because of her preference at that time. As long as he doesn't try to expand upon her answer, we have ---

MR. SHEALEY: And ---

MS. ASHTON: --- no objection.

MR. SHEALEY: I don't know how I can impeach this witness on something that Ms. Shealy told this investigator. So, I think it's ---

THE COURT: All right. Well, I think she's already

1 answered the question.

2 MR. SHEALEY: That's fine.

3 THE COURT: It's no.

4 MR. SHEALEY: That's fine.

5 THE COURT: And we can bring the jury back in, and the
6 objection is overruled.

7 MR. SHEALEY: Thank you, Your Honor.

8 (THE JURY ENTERS AT 5:36 P.M.)

9 THE COURT: All right. Yes, sir, the objection is
10 overruled.

11 MR. SHEALEY: Thank you, Your Honor.

12 BY MR. SHEALEY:

13 Q. Ms. Bruton, how much longer did you have any kind of
14 contact with Ms. Shealy after this alleged incident?

15 A. I can't say. Probably less than six months.

16 Q. Okay, and did y'all eventually have a disagreement
17 about a falling out and y'all didn't really hang out
18 anymore?

19 A. No, we didn't.

20 Q. Okay, because y'all had a fallen out. Is that
21 correct?

22 A. Yes.

23 Q. You told Sergeant Godfrey that at one point, right?

24 A. Yes.

25 Q. Okay, and you recognize Mr. -- Sergeant Godfrey here?

J. BRUTON - CROSS-EXAMINATION BY MR. SHEALEY

239

1 A. No.

2 Q. Does he look familiar? Okay. That's fine, but you do
3 recall telling somebody that?

4 A. Yes.

5 Q. Okay. Do you also recall telling somebody that
6 Strawberry did not believe the statement?

7 MR. GOLDBERG: Objection.

8 MS. ASHTON: Objection.

9 THE COURT: Hold on.

10 Ladies and gentlemen of the jury, I'm going to send
11 you all out once again. Sorry.

12 (THE JURY EXITS AT 5:37 P.M.)

13 THE COURT: All right, the objection, I didn't hear
14 the -- I heard something about a Strawberry. I don't -- I
15 didn't hear the objection.

16 MR. SHEALEY: I don't know what the objection is.

17 THE COURT: What the -- can you rephrase your question
18 so I can hear it?

19 MR. SHEALEY: I can if we're going to talk ---

20 THE COURT: I mean, can I hear it. Not rephrase it.
21 Can you restate it?

22 MR. SHEALEY: Okay. Did you come to learn that
23 Strawberry did not believe Misty about this incident.

24 THE COURT: Who is Strawberry?

25 MR. SHEALEY: That's what I'm asking this witness.

1 THE COURT: All right. Your objection?

2 MS. ASHTON: First of all, it's an opinion of another
3 person who is not testifying. So, not only is it hearsay,
4 but it's also inadmissible opinion testimony by a witness.
5 But this is not even her. This is Strawberry, who is
6 another person who was at Ms. Bruton's house that night,
7 and it's what Strawberry relayed. It's hearsay.

8 MR. SHEALEY: It's not.

9 MS. ASHTON: Strawberry relayed to Ms. Bruton at some
10 point.

11 MR. SHEALEY: And respectfully it's not hearsay. The
12 form of the question is fine. Did you come to understand
13 that Strawberry did not believe. It's a question. You
14 come to understand that, yes or no.

15 THE COURT: All right. Well, I don't think, first of
16 all, that you laid the proper foundation as to who
17 Strawberry is. You didn't say was there anybody else
18 there, who was it.

19 MR. SHEALEY: I'm going to ---

20 THE COURT: I mean ---

21 MR. SHEALEY: --- respectfully ---

22 THE COURT: Yes, sir.

23 MR. SHEALEY: --- I'm not sure I have to do that to
24 ask her a question about somebody having information,
25 believing or not believing something.

J. BRUTON - CROSS-EXAMINATION BY MR. SHEALEY

241

1 THE COURT: But I think you need ---

2 MR. SHEALEY: So, I mean, I'll be happy to ---

3 THE COURT: You need to establish who Strawberry is.

4 MR. SHEALEY: Well, I probably would have gotten to
5 that as soon as I'd been allowed to ask that question. But
6 the form of the question ---

7 THE COURT: And how is it not hearsay?

8 MR. SHEALEY: It's something that she has information
9 about. She's not speaking about Strawberry's statement.
10 She's not saying, for instance, that Strawberry told me
11 that she did not believe Ms. Shealy. She's saying I came
12 to understand that Strawberry didn't believe Ms. Shealy.
13 So, the form of the question is fine. It's not hearsay.
14 This is information that she has.

15 THE COURT: All right.

16 MS. ASHTON: Because Strawberry -- well, first of all,
17 we don't even know who Strawberry is. No -- her real
18 name has never surfaced throughout this investigation.
19 Second of all, what -- how she came to learn of it, it can
20 only -- even if it's not from Strawberry, then clearly it's
21 inadmissible. But if it is from Strawberry, it's, it's
22 hearsay.

23 MR. SHEALEY: And the form of question is not hearsay.
24 I'd be happy to lay a foundation about who she understands
25 Strawberry to be to make it, make it more in accordance

1 with what you wish, Judge.

2 THE COURT: With the rules. I mean, you have to, you
3 have to be able to set it up. You can't just ask did Blue
4 Man say he didn't believe her. I mean, if it's somebody
5 else said it, you got to ask the question as to who.

6 MR. SHEALEY: I'll be happy to ask her who Strawberry
7 is.

8 THE COURT: All right, but even if you ask that
9 question, I do, I do believe that it is hearsay. If you
10 want to bring Strawberry in and ask her what, whoever
11 Strawberry is -- but I, I am going to sustain the
12 objection.

13 MR. SHEALEY: And just for the record, Your Honor ---

14 THE COURT: Yes, sir.

15 MR. SHEALEY: --- under the Sixth and Fourteenth
16 Amendment, and the ability to present a full and complete
17 defense, these are constitutional protections that I have
18 the ability, from information in discovery, to be able to
19 assert my client's defense, potentially that other people
20 don't believe this witness. It supersedes all state
21 evidentiary rules even if it was hearsay, Judge.

22 So, I guess before you make your ruling, I'd like to
23 make that clear. This is a constitutional issue at hand as
24 addressed in *Kyles vs. Whitley*. This is information that
25 is in Sergeant Godfrey's report about people that do not

J. BRUTON - CROSS-EXAMINATION BY MR. SHEALEY

243

1 believe Ms. Shealy's statement. I think it's proper. I'm
2 not conceding it's hearsay. I don't think it's hearsay at
3 all, but I think constitutional rights, of course,
4 supersede any state rules of evidence, and I think for us
5 to be able to present a full and complete defense for Mr.
6 Stukes, this line of questioning is proper. This goes to
7 the heart of our defense, Your Honor.

8 THE COURT: All right. Well, it's also hearsay, and
9 if you have Strawberry here, then we can talk about that at
10 that point. But this witness, something that, something
11 that she said that somebody else said to her that she said
12 to the investigator is hearsay, and I'm not going to allow
13 it.

14 All right, you can bring back the jurors.

15 MR. GOLDBERG: Real quickly, Your Honor. You'll be
16 instructing them to disregard that. Is that correct?

17 THE COURT: Yeah, I'm going to. Yeah, I will.

18 (THE JURY ENTERS AT 5:42 P.M.)

19 THE COURT: All right, the objection is sustained.

20 Ladies and gentlemen, please, gentlemen, please
21 disregard the last question.

22 Yes, sir, you may continue.

23 BY MR. SHEALEY:

24 Q. Just briefly, Ms. Bruton. Do you know someone named
25 Strawberry?

1 A. I believe that was her name, yes. That's how I know
2 her by.

3 Q. Is it -- so, is this someone that you know from 2004?

4 A. I just knew she was a friend of Misty.

5 Q. Okay. At that time, she was a friend of Misty's?

6 A. Yes.

7 MR. SHEALEY: Okay. Beg the court's indulgence.

8 (A PAUSE.)

9 MR. SHEALEY: Thank you, Ms. Bruton.

10 THE COURT: Anything else from the state?

11 MS. ASHTON: No, Your Honor.

12 THE COURT: All right, ma'am, you may step down.

13 (THE WITNESS EXITS THE STAND.)

14 THE COURT: Any objection to this witness being
15 excused?

16 MR. GOLDBERG: None from the state.

17 MR. SHEALEY: None from the defense.

18 THE COURT: All right, ma'am. You're free to leave.
19 Thank you.

20 All right, ladies and gentlemen of the jury, it's
21 about a quarter till 6:00. At this time we will take our
22 evening break. I would remind you that you all are not to
23 discuss the case with anyone, not even your fellow jurors.
24 It would also be improper for you to form an opinion in
25 your mind at this time, being that all the evidence has not

1 been presented. Remember no research, no tweeting, no
2 social networking, no Facebooking regarding the service
3 here on this jury, and we will start back tomorrow morning
4 at 9:30.

5 Remember that you are to report back to the jury room
6 when you enter. You have on your badges, and we will see
7 you tomorrow morning at 9:30. Thank you.

8 (THE JURY EXITS AT 5:45 P.M.)

9 THE COURT: All right, we'll start back at 9:30.
10 Y'all have any motions?

11 MS. PINNOCK: All right, Your Honor, just put on the
12 record, I believe we approached the bench and had a sidebar
13 about the testimony from Ms. Shealy with the assailant told
14 her not to tell anybody or something, and Your Honor struck
15 it from the record. But did want to put on our objection
16 to that ---

17 THE COURT: Okay.

18 MS. PINNOCK: --- back on the record, Your Honor. We
19 know you sustained the objection, and you struck it from
20 the record. But we do believe that the jury did hear the
21 question and the answer. So, we would ask Your Honor --
22 we, we move for a mistrial. We think that is a *Riddle*
23 violation.

24 We did specifically ask for information from Misty
25 Shealy that was either added, changed, or admitted to her

1 previous statements. We were assured in court this morning
2 that we had -- we knew everything. That obviously was not
3 the case. So, Your Honor, we do believe the jury did hear
4 the question and the answer. So, it is a violation of, of
5 *Riddle vs. Osment*, Your Honor. So, at this time we would
6 move then for a mistrial.

7 THE COURT: Any response?

8 MR. GOLDBERG: And, Your Honor, as I stated at the
9 sidebar, that was my fault in that I was just rolling along
10 with the questions. Didn't know what the answer was to
11 that question, whether any statements had been made at this
12 time.

13 I asked the question of whether or not the suspect
14 made any statements when he entered the residence, and
15 foolishly followed up the question did he make any
16 statements while the assault was going on without knowing
17 the answer to it. Cardinal rule. So, my apologies for
18 that, but I did not know what the answer was going to be.

19 So, in any event, I do believe that your sustaining
20 the objection, striking it from the record, and advising
21 the jury as such is enough of a curative measure to prevent
22 any danger of mistrial as a result.

23 THE COURT: All right, and the motion for mistrial is
24 denied, and also we did not put on the record, supposed to
25 put on the record earlier, that as far as jury selection,

1 Juror Number 195 was excused after the individual voir
2 dire, and Juror Number, and Juror Number 75 was seated as a
3 juror and Number 266 and 141 was seated as alternates. The
4 other, the other three jurors that we selected were, as
5 alternates, were excused.

6 All right, y'all have a good evening. We'll see you
7 at 9:30 in the morning. And you think -- did you all
8 anticipate any motions that need to be heard before then?
9 If so, we'll start at 9:00.

10 MR. GOLDBERG: I don't have any.

11 THE COURT: Thank you.

12 MR. GOLDBERG: Thank you.

13 (WHEREUPON, THE CASE IS AT EASE.)

14 WEDNESDAY, JULY 25, 2012

15 (COURT RESUMES AT 9:51 A.M.)

16 THE COURT: All right. All right, we ready to bring
17 them in?

18 MR. GOLDBERG: Yes, ma'am.

19 MS. PINNOCK: Your Honor, just one brief matter before
20 we do begin. It's our understanding that the solicitor is
21 planning on calling all of the witnesses for chain and the
22 DNA. We're willing to stipulate to that; we're not
23 challenging DNA. We, we said that from the beginning. So,
24 if they're willing to stipulate to the DNA, then we'll
25 agree that the DNA was found in Ms. Shealy's underwear.

1 MR. GOLDBERG: Actually, we weren't made aware of
2 that until this morning, that they weren't challenging the
3 DNA.

4 MS. PINNOCK: Well -- sorry.

5 MR. GOLDBERG: But we got everybody lined up ready to
6 go. The burden of proof is on the state. We're prepared
7 to proceed with the majority of those witnesses at that
8 time. Definitely not stipulating to the results of the DNA
9 analysis. We would like to put the analyst up just to show
10 that the testing was done and the results of the tests.
11 The chain witnesses will be quick.

12 THE COURT: So, you want to -- you're going to still
13 call them?

14 I mean, of course, they want to call them they can
15 call them.

16 MR. PINNOCK: Yes, ma'am.

17 THE COURT: Okay.

18 MR. GOLDBERG: Yes, ma'am.

19 THE COURT: But I think she's just trying to shortcut
20 it for us.

21 MR. GOLDBERG: Yes, ma'am.

22 THE COURT: But I understand. All right, we ready to
23 bring them in?

24 MR. GOLDBERG: Yes, ma'am.

25 THE COURT: All right, you can bring them in.

B. METZ - DIRECT EXAMINATION BY MS. ASHTON

249

1 (THE JURY ENTERS AT 9:53 A.M.)

2 THE COURT: All right. Good morning, ladies and
3 gentlemen of the jury. I trust that you had a restful
4 evening.

5 At this time, we will continue with the state's case,
6 and I will ask Mr. Goldberg and Ms. Ashton to call their
7 next witness.

8 MS. ASHTON: State calls investigator Brian Metz.

9 BRIAN METZ, BEING FIRST DULY
10 SWORN, TESTIFIES AS FOLLOWS:

11 CLERK OF COURT: Have a seat in the witness stand
12 please, and state your name for the record.

13 WITNESS: It's Brian Metz, M-E-T-Z.

14 DIRECT EXAMINATION BY MS. ASHTON:

15 Q. Investigator Metz, where are you currently employed?

16 A. At the Richland County Sheriff's Department.

17 Q. And what are your duties and responsibilities at the
18 sheriff's department?

19 A. I'm an investigator assigned to the Technical Services
20 Unit of the Investigative Division.

21 Q. And were you employed with the Richland County
22 Sheriff's Department in May of 2004?

23 A. I was.

24 Q. And what was your position in ---

25 A. I don't recall the exact unit, but I was assigned to

1 Investigations Division.

2 Q. And back on May 11th of 2004, did you respond to
3 Lexington Memorial Hospital?

4 A. I did.

5 Q. And why did you respond there?

6 A. I received a call to go there to meet with Deputy
7 Hicks, who was already there or who was en route.

8 Q. Okay, and what time was that?

9 A. I arrived -- I was informed of the call at 2:15 in the
10 morning.

11 Q. And what time did you get there?

12 A. At 2:40 in the morning.

13 Q. And who was already at the emergency -- who was
14 already at the hospital?

15 A. Deputy Hicks, who's a uniform officer at the sheriff's
16 department.

17 Q. And was, was the victim?

18 A. And the victim.

19 Q. Okay, and, and again ---

20 A. And ---

21 Q. --- what was the nature of this call?

22 A. It was a criminal sexual assault.

23 Q. And what was the victim's name in this case?

24 A. Misty Price.

25 Q. Excuse me?

B. METZ - DIRECT EXAMINATION BY MS. ASHTON

251

1 A. Excuse me. Misty Shealy.

2 Q. Okay, and what did you do once you arrived at the
3 hospital?

4 A. When I arrived there, Deputy Hicks was already doing
5 an interview with Ms. Shealy. I fell in on the tail end of
6 that, and then I talked to her about needing to go to her
7 apartment to do a search and received a consent from her to
8 do so, and also the keys to the apartment.

9 Q. Okay, and what was her -- what do you remember her
10 demeanor being at the hospital?

11 A. I remember her being withdrawn. Physically she was
12 cooperative and was talking. Upset but withdrawn. She had
13 some type of garment, whether it was a blanket or
14 something, wrapped around her.

15 Q. And you mentioned that you wanted to go to her
16 apartment, and she gave you a key in order for you to be
17 able do that. Why was that important for you?

18 A. To collect any evidence that may have been there.

19 Q. Who else went back to Misty's apartment with you?

20 A. Investigator Richards, who was with the, the crime
21 lab, and also one of the road supervisors at that time,
22 Corporal Pearson met us there, and I believe Deputy Hicks
23 went there, too.

24 Q. And, and you stated Sergeant Stan Richards went back
25 with you to the apartment?

1 A. I think he met me there or was...

2 Q. Okay, and what was his role at the time?

3 A. He was an investigator assigned to the crime lab.

4 Q. And so you were there to process any ---

5 A. That's correct.

6 Q. --- potential evidence there?

7 A. That's correct.

8 Q. Going back to the, to the hospital when you were
9 there, did, did Misty give you any information about where
10 this assault took place?

11 A. She did.

12 Q. And where was that?

13 A. Inside her apartment on Longcreek.

14 Q. Is that in Richland County?

15 A. That is.

16 Q. And did she indicate about what time this happened to
17 her?

18 A. She had told me that it was prior to 10:00. She had
19 woken up at that time after the assault, and it was 10:00
20 or 11:00 at that time.

21 Q. Okay, and when you say woken up, you mean -- what do
22 you mean by that?

23 A. She told me that during the assault, she had blacked
24 out and that she had woken, I believe she said 10:00 to
25 11:00. That's correct, 10:00 to 11:00 p.m. is when she

B. METZ - CROSS-EXAMINATION BY MR. SHEALEY

253

1 woke up.

2 Q. Okay, and was she able to give you a description of
3 the, of the subject, suspect?

4 A. She could not, no.

5 Q. Could she even give you a race of the suspect?

6 A. No.

7 MS. ASHTON: Beg the court's indulgence.

8 (A PAUSE.)

9 MS. ASHTON: Thank you. Please answer any questions
10 the defense may have.

11 MR. SHEALEY: May it please the court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION BY MR. SHEALEY:

14 Q. Investigator, I'm going to show you what I had as your
15 report. Is this the same thing you have?

16 A. Appears to be, yes, sir.

17 Q. Okay. So, you respond to the hospital on that day,
18 right?

19 A. That evening. That morning, yes, sir.

20 Q. Right, the early morning. Officer Hicks was there?

21 A. Correct.

22 Q. He did a report in this case?

23 A. That's correct.

24 Q. And you got on the tail end of that?

25 A. Of his interview talking to her, yes.

1 Q. And then you did your job, which is basically to go,
2 after she consented, to let you go to the apartment, go,
3 like you stated, to look for evidence?

4 A. Yes, sir. You're at a managerial point where I'm not
5 going to actually do a search for the evidence. That would
6 be Investigator Richards.

7 Q. Okay.

8 A. I was making sure that he was contacted to be there.

9 Q. Okay. So, you were above Richards at that time or
10 not?

11 A. Not in rank, but in effect of making sure everything
12 was done. That's the job of the investigator.

13 Q. Okay, and that -- and he was crime scene?

14 A. That is correct.

15 Q. That's his job to go attempt to collect evidence?

16 A. Correct.

17 Q. And your job, at that point in time as an
18 investigator, was to, like you said, manage and make sure
19 that gets done?

20 A. Correct.

21 Q. But you yourself can observe things and take them down
22 in a report, right?

23 A. Correct.

24 Q. And you did that?

25 A. Yes, sir.

B. METZ - CROSS-EXAMINATION BY MR. SHEALEY

255

1 Q. Okay, and so -- and you'd agree that you went out
2 there to her apartment, and that was apartment [REDACTED]?

3 A. I believe that's correct, sir.

4 Q. Okay.

5 A. Yes, sir.

6 Q. When you went out there, was it daylight or was it
7 dark?

8 A. When I first arrived, I'm pretty sure it was still
9 dark.

10 Q. Okay. Y'all have the key and you went in the
11 apartment, right?

12 A. Yes, sir.

13 Q. And you remember that one-bedroom apartment?

14 A. I did not, don't remember the entire apartments. I've
15 been in the apartments at Longcreek Apartments many times.
16 So, I don't remember that one specifically other than a few
17 things that I was looking at and talking to Investigator
18 Richards about.

19 Q. Right, but you did write a report in this case?

20 A. I did.

21 Q. Detailing things that were important to you at that
22 time?

23 A. Correct.

24 Q. Things that you testified to about, where located,
25 what the apartment number was, little details like that are

B. METZ - CROSS-EXAMINATION BY MR. SHEALEY

256

1 important for if you ever have to go to court. You can
2 reference important things in your case.

3 A. That's correct.

4 Q. But your, your report is one page, right?

5 A. That's correct.

6 Q. Okay, and if there had been any demonstration of a
7 forced entry or anything like that, you would have noted
8 that in your report, right?

9 A. Most likely, yes, sir.

10 Q. If there had been a demonstration of any kind of blood
11 or anything like that, you would have noted that in your
12 report if y'all found anything of that?

13 A. It, it all depends. Not necessarily. When you're the
14 midnight investigator and you know that the case is going
15 to be turned over to another investigator the next morning,
16 you would document certain things that you saw or whatever.
17 But most of that, you're really wanting to stay out of
18 Investigator Richards's way and let him do his job.

19 Q. Okay, but you did a report and you're looking for --
20 you're looking to collect evidence and assist in that
21 process investigating?

22 A. Yes, sir.

23 Q. Okay, but there was no forced entry noted in this
24 case, was there?

25 A. None that I recall, no, sir.

B. METZ - CROSS-EXAMINATION BY MR. SHEALEY

257

1 Q. And, and you, with Investigator Richards, y'all
2 didn't note any unusual disturbances in that apartment,
3 right?

4 A. I did not.

5 Q. Okay, and y'all didn't find any semen or anything
6 where you were directed to look, did you, on that couch?

7 A. No, sir.

8 Q. Nothing was stolen from the apartment?

9 A. I do not know.

10 Q. But it's not in your report. I mean, it's been a long
11 time.

12 A. Well, I probably would not know.

13 Q. Okay. I mean, you know what's in your report?

14 A. Yes, sir.

15 Q. And that's not in your report that anything was stolen
16 or anything like that at that time?

17 A. There's nothing in the report saying that.

18 Q. All right. Did you, being the investigator that was
19 -- and you were with Investigator Richards, the first
20 investigators to get to the alleged crime scene, right?

21 A. It's my recollection that I actually gave the key to
22 Deputy Hicks and he went ahead of me. So, I believe they
23 were already in the apartment ---

24 Q. Okay.

25 A. --- before I got there.

1 Q. But he was the responding officer and you're an
2 investigator, right?

3 A. That's correct.

4 Q. So, you and Investigator Richards were the first
5 investigators to get up there?

6 A. Yes, sir.

7 Q. Okay. I don't see anything in your report. Did you
8 knock on the next door neighbor's door to see if they had
9 any information?

10 A. I did not.

11 MR. SHEALEY: Okay, beg the court's indulgence.

12 (A PAUSE.)

13 BY MR. SHEALEY:

14 Q. And in your report, it's indicated that the alleged
15 suspect was wearing rubber gloves, right?

16 A. That's correct.

17 Q. Y'all didn't find any rubbers gloves or anything like
18 that at that time, did you?

19 A. I did not. I do not know anything else.

20 MR. SHEALEY: Okay. Thank you, sir.

21 THE COURT: Yes, ma'am.

22 MS. ASHTON: Just a few questions.

23 REDIRECT EXAMINATION BY MS. ASHTON:

24 Q. And, again, Investigator Metz, you were the on-call
25 investigator at this time. Is that right?

B. METZ - REDIRECT EXAMINATION BY MS. ASHTON

259

1 A. That's correct.

2 Q. So, you weren't necessarily the primary investigator
3 in this case?

4 A. That's correct. I knew at that time I would not be
5 the primary investigator.

6 Q. Okay, and when you're an on-call supervisor, does it
7 eventually get turned over to another investigator?

8 A. That's correct. I would do my report of what happened
9 that night and have it ready for an investigator that would
10 be assigned the case the next day.

11 Q. So, in other words, your role is fairly limited in
12 these types of, in these types of cases of on-call
13 supervisor?

14 A. That's correct.

15 MS. ASHTON: Thank you.

16 THE COURT: All right, you may step down.

17 Any objection to this witness being excused?

18 MS. PINNOCK: No objection.

19 (THE WITNESS EXITS THE STAND.)

20 THE COURT: You may call your next witness.

21 MS. ASHTON: State calls sergeant Michael Pearson.

22 MICHAEL D. PEARSON, II, BEING FIRST
23 DULY SWORN, TESTIFIES AS FOLLOWS:

24 CLERK OF COURT: Have a seat in the witness stand,
25 please. State your name for the record.

M. PEARSON - DIRECT EXAMINATION BY MS. ASHTON

260

1 WITNESS: Michael Durham Pearson, II.

2 DIRECT EXAMINATION BY MS. ASHTON:

3 Q. Good morning. Good morning, Sergeant Pearson.

4 A. Morning.

5 Q. Where are you currently employed?

6 A. Richland County Sheriff's Department.

7 Q. And what is your position at Richland County Sheriff's
8 Department?

9 A. I'm a traffic sergeant over the traffic team.

10 Q. Were you employed with the sheriff's department in May
11 of 2004?

12 A. Yes, I was.

13 Q. And what was your position at that time?

14 A. At that time I was a shift corporal for Region 4,
15 which is the Broad River Road area.

16 Q. And did you -- were you a supervisor at that time?

17 A. Yes, I was.

18 Q. And did you supervise Deputy Donald Hicks at that
19 time?

20 A. Yes, I did. He was on my squad.

21 Q. Okay, and is Deputy Hicks currently on military leave?

22 A. Yes, he is. He's on military leave at this time.

23 Q. Okay, and what was his position in May of 2004?

24 A. He was a deputy sheriff on R-Squad basically answering
25 911 calls, patrolling, such that we do for a -- calling a

M. PEARSON - DIRECT EXAMINATION BY MS. ASHTON

261

1 road deputy.

2 Q. Okay, and was one of your duties as the supervisor to
3 review and approve incident reports for cases that he would
4 have responded to?

5 A. Yes.

6 Q. And did he respond to a sexual assault case in May of
7 2004?

8 A. Yes, he did. He did respond to 1601 Longcreek Drive,
9 it's apartment in Richland County, to apartment [REDACTED] on a
10 sexual assault call.

11 Q. Okay, and do you have the, the incident report that he
12 completed in front of you?

13 A. I do have it.

14 Q. And did you -- again, did you approve this particular
15 incident report?

16 A. I did, yes. My name is at the bottom as approving
17 officer.

18 Q. All right, and so again, what type of call was this?

19 A. This was a rape call, a forcible rape call as it went
20 out that she had been assaulted inside of her residence.

21 Q. Okay, and was that in Richland County?

22 A. Yes, it was in Richland County.

23 Q. Who, who was -- who's the listed victim in this case?

24 A. The listed victim in this incident report is Misty
25 Shealy, Misty Lynn Shealy.

1 Q. And when does it state that this occurred?

2 A. Yes, it does. It says it occurred May the 11th, 2004.
3 We were dispatched at 2:00 in the morning after she had
4 called 911.

5 Q. Oh, actually, didn't you -- did Deputy Hicks respond
6 to the hospital?

7 A. Yes.

8 Q. Okay, and I believe the nurse actually is the one who
9 called 911. Is that correct?

10 A. Yes, ma'am.

11 Q. Okay. Did, did Deputy Hicks actually speak with the
12 victim at the hospital?

13 A. Yes, my understanding he did.

14 Q. Okay, and he got a report from her as to what occurred
15 that night?

16 A. Right, he would have definitely got the basic
17 information and notified an investigator.

18 Q. And this would have been basic information?

19 A. Yes.

20 Q. Okay. Now, what -- did you actually respond to the
21 hospital this night?

22 A. I did. I met with Deputy Hicks in -- I actually -- I
23 believe it's Lexington ER, in the waiting, lobby room, and
24 he had -- just wanted to make sure he was doing right in
25 notifying the correct people, and I went over his

M. PEARSON - DIRECT EXAMINATION BY MS. ASHTON

263

1 information and saw that he was doing everything correctly.

2 Q. Okay, and did you go anywhere else on this night?

3 A. Not that I recall.

4 Q. Did you not respond to the victim's apartment later on
5 that night?

6 A. Later on, yes, yes.

7 Q. Okay, and who else, if you recall, who else was at the
8 victim's apartment?

9 A. It would have -- we would have met with lab unit. I
10 believe it was Investigator Richards. Yeah, Richards at
11 the lab I believe.

12 Q. Okay.

13 A. It's been many years ago. I'm trying to recall
14 exactly ---

15 Q. Right. Right.

16 A. --- who was there.

17 Q. And, again, your role in this case was, it was just as
18 a supervisor for the responding officer?

19 A. Yes.

20 Q. And eventually this case was turned over to an actual
21 investigator?

22 A. Yes.

23 Q. And did you have any further involvement with this
24 case?

25 A. No, ma'am.

M. PEARSON - DIRECT EXAMINATION BY MS. ASHTON

264

1 MS. ASHTON: Beg the court's indulgence.

2 (A PAUSE.)

3 BY MS. ASHTON:

4 Q. A few quick follow-up questions, Sergeant Pearson.

5 When did this act -- I know you said that you responded to
6 the hospital around 2:00 or at least Deputy Hicks did.

7 When did the actual incident occur?

8 A. The incident occurred May the 10th at, showing at ten
9 till 10:00, I believe, in the evening.

10 Q. Okay, and is there a suspect identified at this time?

11 A. At the time of the incident report?

12 Q. At the time of the incident report, yes, sir.

13 A. No, ma'am. No, just a male suspect. We didn't have
14 any further information.

15 Q. Any type, any race listed?

16 A. No.

17 Q. And basically no other information other than just
18 that he was a male?

19 A. Yes.

20 Q. And that was what the victim was able to tell the
21 responding officer at that time?

22 A. Yes. I believe she had told them that she had blacked
23 out several times and highly upset. She wasn't able to
24 give me any further information.

25 MS. ASHTON: Thank you.

M. PEARSON - CROSS-EXAMINATION BY MS. DYAR

265

1 THE COURT: Yes, sir, please any questions that Ms.
2 Dyar may have.

3 MS. DYAR: May it please the court, Your Honor?

4 CROSS-EXAMINATION BY MS. DYAR:

5 Q. Good morning.

6 A. Good morning.

7 Q. And you, you have a copy of Deputy Hicks's ---

8 A. Yes, ma'am.

9 Q. --- report? Okay. I just wanted to make sure, and
10 this is what it looks like and make sure we have the same
11 thing here ---

12 A. Yes, ma'am.

13 Q. --- while I look at this. Okay, and you were his
14 supervising officer?

15 A. Yes. I was a shift corporal at the time.

16 Q. Okay, and you were -- you approved the report,
17 everything that was on here?

18 A. Yes, sir.

19 Q. And it's accurate to check off by you, and this is
20 your signature down here?

21 A. Yes, on the bottom.

22 Q. Okay, and he says the incident occurred May 10th
23 around ten, ten to 10:00, and he was first called out at
24 2:00 in the morning?

25 A. Yes.

1 Q. Okay.

2 A. Because I was dispatched.

3 Q. And, and so you both arrived at the same time to the
4 hospital?

5 A. No.

6 Q. No. You arrived later? He called you later?

7 A. Yes.

8 Q. Okay, and in his report it shows time there about an
9 hour and fifteen minutes, and during that time he was
10 notified by the victim of the things that happened that
11 night?

12 A. Yes.

13 Q. She was -- in, in here it says she tells him she was
14 grabbed by the throat by the suspect with his left hand and
15 hit with the right hand in the face. Is that correct?

16 A. Yes.

17 Q. Okay. So, hit with -- make sure I get this right
18 here. Her throat was -- by the throat with left hand and
19 then hit in the face with the right hand. Make sure I get
20 that right. Yep.

21 Okay. Now, in this report does it say that Deputy
22 Hicks observed any injuries on the victim?

23 A. I don't believe so. I don't see where it says that.

24 Q. All right. Right here it looks like he checked no:

25 No visible injuries on the victim. There were no

M. PEARSON - CROSS-EXAMINATION / REDIRECT EXAMINATION 267

1 complaints of any visible injuries.

2 A. Right.

3 Q. There were non-visible injuries, correct?

4 A. Correct, they were not visible.

5 Q. Okay, and you signed off on this report. You, you
6 supervised everything that he did that night. So,
7 everything on here would be accurate from, from eight years
8 ago ---

9 A. Yes.

10 Q. --- from the night? Okay.

11 MS. DYAR: Beg the court's indulgence.

12 (A PAUSE.)

13 MS. DYAR: No further questions.

14 THE COURT: Anything else from the state?

15 MS. ASHTON: Brief follow up.

16 REDIRECT EXAMINATION BY MS. ASHTON:

17 Q. Did you personally look yourself to see if the victim
18 had any visible injuries?

19 A. No, I did not.

20 MS. ASHTON: Thank you.

21 THE COURT: Any more questions? Is that all you have?

22 MS. ASHTON: Yes. Yes, Your Honor.

23 THE COURT: All right. All right, sir. You may step
24 down.

25 WITNESS: Thank you, judge.

1 THE COURT: Any objection to this witness being
2 excused?

3 MS. DYAR: No, Your Honor.

4 MS. ASHTON: None from the state.

5 THE COURT: All right. You're free to leave.

6 (THE WITNESS EXITS THE STAND.)

7 MR. GOLDBERG: State calls Donna Sharpe.

8 MS. PINNOCK: Your Honor, before this witness takes
9 the stand I, we need to have a matter of law.

10 THE COURT: All right, ladies and gentlemen of the
11 jury, at this time we have a matter of law that I need to
12 take up outside of your presence. I'm going to send you
13 back to the jury room.

14 (THE JURY EXITS AT 10:16 A.M.)

15 THE COURT: Yes, ma'am.

16 MS. PINNOCK: Thank you, Your Honor. Please the
17 court? Your Honor, Ms. Sharpe is the nurse in the
18 examination at the hospital. During the examination there
19 was, you know, background questioning going out the rape
20 protocol kit, and one of the questions that was asked by
21 the nurse to Ms. Shealy was about had she had, had she had
22 sex recently, and she got a time frame of that.

23 Now, we understand Your Honor's ruling earlier that
24 we've established that she was in a relationship. During
25 cross-examination, cross-examination yesterday, I asked Ms.

1 Shealy if she was in a relationship. Her response to that
2 question was she never said she was in a relationship, but
3 she said what she had said. But she never told she was in
4 a relationship.

5 So, Your Honor, I think at this point the door to that
6 has been opened. We're still not trying to get into any
7 details about was it male or female or anything like that.
8 But I do believe that, based on her testimony yesterday, we
9 would have the right to ask the nurse about that particular
10 question since it's in her report. We had ---

11 THE COURT: About when she had this incident?

12 MS. PINNOCK: Yes, ma'am, just that -- the one
13 question. I won't go into male or female. I just wanted
14 to clear that up before she took the stand.

15 THE COURT: So, you want to ask her, based on Ms.
16 Shealy's -- BEcause you, I think you've asked her was she
17 in a relationship.

18 MS. PINNOCK: Yes, ma'am.

19 THE COURT: And she said no.

20 MS. PINNOCK: She said she was not in a relationship.
21 She said that she had had sex. That's what she told them,
22 I had had sex, but that does not mean I was in a
23 relationship. That was her response to me just asking her
24 if she was in a relationship. So, I think the talk of sex
25 has now been brought in through Ms. Shealy herself.

1 MR. GOLDBERG: She also didn't say when. I mean, the
2 questions didn't go back further on the cross-examination
3 of when she had sex. We don't know if she's referring to
4 within the last week, within the last six months. She was
5 just trying to be responsive to the question. I still
6 don't see how it's relevant at this point, considering your
7 prior ruling.

8 MS. PINNOCK: Judge, if I may? The line of
9 questioning I was doing was about that time when she was
10 reporting this. She said was -- and this was later. But I
11 asked her specifically at this time were you in a
12 relationship. The proper response to that is not no, I
13 had sex even though I wasn't dating anybody. We weren't --
14 I wasn't trying to get the topic out of her. I didn't ask
15 her about a sexual relationship. She offered that
16 information.

17 It is in the report. We weren't trying to dig into it
18 based on your prior ruling, but I think her testimony from
19 yesterday would allow us to now ask at least about a sexual
20 relationship that she was in at the time because she's
21 already offered that. And, again, I'm not trying to say
22 male or female. I don't care who she was having sex with.
23 But just the fact she was having it. I mean, I can still
24 present it, but I think we should have the ability to
25 address it.

1 THE COURT: You can proffer testimony and hear, see
2 exactly what it is you want to ask her and what she's going
3 to say. You can, you can call the nurse up, and that way I
4 can hear exactly what it is that you're asking her.

5 MS. PINNOCK: Your Honor, I can tell you the question
6 I'm going to ask.

7 THE COURT: All right. What's your question?

8 MS. PINNOCK: You know, I was leading up to the, will
9 be the first question, but during your conversation with
10 Ms. Shealy, she told you that she had sex within a five-day
11 period of reporting this incident. That's all I would ask
12 her. I don't care with who. I don't care if there's
13 penetration. Just that she said yes, I had sex on May
14 the ---

15 THE COURT: She said five days before.

16 MS. PINNOCK: Well, May 5th, Your Honor. So, it would
17 be five days before she reported a sexual assault and
18 that's it.

19 MR. GOLDBERG: I still don't see how it's relevant in
20 this situation, considering her response was simply that
21 she had sex at some point around that time. Her response
22 was clarified and her answer to the question of are you in
23 a relationship. No, I'm not in a relationship, but I've
24 had sex around that time. I don't understand how it's
25 relevant to this case in this situation that she had sex at

1 some point within the week prior to this incident
2 occurring.

3 I mean, if the allegation is that it was a consensual
4 encounter, then what makes the fact that she had sex five
5 days prior relevant to the issue, to the case in any way?

6 MS. PINNOCK: Judge, it's relevant to our defense. It
7 -- I mean, the solicitor doesn't have to agree that it's
8 relevant. It's relevant to our defense. It might not be
9 relevant, relevant to their case.

10 The door has been opened. She offered the
11 information. It's, it's potential impeachment evidence. I
12 mean, it's, it's relevant to our defense.

13 We were not, again, trying to get the information out
14 of her. She offered it to us in a random response to a
15 question about a relationship. I don't think that we
16 should be barred from establishing the relationship because
17 that is what your prior ruling allowed us to do. It's now
18 been brought that we can establish she was in a sexual
19 relationship.

20 Again, not going with the sex of the, of her partner.
21 That's not what we're trying to get into. There is a line
22 in the report that says that, you know, there's no vaginal
23 penetration. I wasn't going to ask about that. I just
24 want to know that she -- she asked her if she had sex. She
25 said yes, on this date. That's the extent of the questions

1 I was going to ask her about that.

2 MR. GOLDBERG: It's not, it's not an impeachment
3 point. She said she had sex at some point. If she had sat
4 up on the witness stand and said I haven't had sex at any
5 point in the last year, then yeah, that could be
6 impeachable. But she said -- it came out on
7 cross-examination, yeah, I had sex around that time. The
8 point has been made.

9 It's just, it's a way of back dooring this issue of
10 she's promiscuous in some manner, in attacking her morality
11 because she had sex at some point within the previous week.

12 MS. PINNOCK: I mean, that -- I completely disagree.
13 We're not trying to attack her morality. We're not trying
14 to call her promiscuous.

15 Our position is that she was in a relationship with
16 somebody, having a sexual encounter with somebody within
17 the week can further support that she was in a relationship
18 with somebody, regardless if she said she's not. We know
19 that she says she was to other people. So, the fact that
20 our -- it's our, our position that she was in a
21 relationship. She had sex; she admitted to having sex.
22 She told the nurse the night she was at the hospital she
23 had sex. It goes to support the, the -- our position that
24 she was in a relationship during this time.

25 THE COURT: But how does that -- how is that related

1 to your -- I mean, a defense, as a defense?

2 MS. PINNOCK: Well, Your Honor, it goes to potential,
3 to ---

4 THE COURT: I'm just trying to -- I'm -- I, I do think
5 she opened the door, but I'm just trying to figure out how
6 is it relevant to a, to a claim of consent. If, if y'all
7 are saying that she consented to having sex with him, then
8 what does -- I mean, I'm just trying, I'm just trying to
9 understand where you're going.

10 MS. PINNOCK: Yes, Your Honor. I think we're -- what
11 I was trying to get to is that it goes to her potential
12 bias. It goes to a misrepresentation made by, by her on
13 the stand in court to what her situation was. I mean, it
14 goes to her credibility as a witness.

15 THE COURT: But she said she had sex.

16 MS. PINNOCK: But she denied being in a relationship.
17 It goes to her credibility on that issue.

18 THE COURT: Well, I'm ---

19 MS. PINNOCK: Her biases about ---

20 THE COURT: You know, these days you don't have to be
21 in a relationship to have sex. I don't think it's ---

22 MS. PINNOCK: I completely understand that, but it
23 does go to her credibility based on things that are going
24 to be coming out potentially during cross-examinations to
25 come. It is an inconsistent statement that she has given.

1 It does goes towards her bias. I believe we're allowed to
2 get into it since she offered the information.

3 There are inconsistent statements at this point. We
4 haven't gotten our witnesses on the stand who are going to
5 provide this information. But at this point, Your Honor, I
6 do think it's relevant and it is support -- it is part of
7 our defense. So, I believe we should be able to get into
8 it, just that limited question as, as, as we present our
9 complete defense.

10 MR. GOLDBERG: And at this point, it's not
11 inconsistent with anything she already said.

12 THE COURT: All right. Well, I'm not -- we'll -- I'm
13 not going to allow you to ask her this on cross unless it
14 comes up somehow, and then we'll just keep this witness on
15 standby, and if you need to recall her, I'll let you recall
16 her if, if it becomes an inconsistent statement. But at
17 this point I'm not sure how any of it is relevant to
18 whether or not she consented to have, have sex with him at
19 this point.

20 But we'll just keep the witness. Like I said, we'll
21 keep the witness. I'll not excuse this witness. We'll
22 just keep her on stand-by and if you need to recall her to
23 ask that question, we will later on in the trial.

24 MS. PINNOCK: Yes, ma'am.

25 THE COURT: All right, let's bring them back in.

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

276

1 (THE JURY ENTERS AT 10:27 A.M.)

2 THE COURT: All right, call your next witness.

3 MR. GOLDBERG: Thank you, Your Honor. The state calls
4 Donna Sharpe.

5 DONNA SHARPE, BEING FIRST DULY
6 SWORN, TESTIFIES AS FOLLOWS:

7 CLERK OF COURT: Have a seat in the witness stand.
8 State your name for the record.

9 WITNESS: My name is Donna Sharpe.

10 DIRECT EXAMINATION BY MR. GOLDBERG:

11 Q. Good morning, Ms. Sharpe. Where are you currently
12 employed?

13 A. I'm currently employed in two locations. I work at
14 Lexington Medical Center ER, and I also work at Providence
15 Hospital cath lab.

16 Q. And what are your duties at those two locations?

17 A. At Lexington I'm an ER nurse. At Providence I'm a
18 cath lab nurse.

19 Q. A what nurse?

20 A. Cath lab. I do cath, heart cath.

21 Q. Okay, and can you describe to the jury a little bit
22 about your education, training, and experience?

23 A. I have an EDN. I'm a registered nurse. I have a --
24 I'm a certified emergency nurse, which means I have some
25 extra training in emergency room medicine and took a

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

277

1 special test to get certified in that.

2 Q. And how long have you been a registered nurse?

3 A. Right at nine years.

4 Q. Nine years. Okay. So back around 2003?

5 A. Yeah.

6 Q. Okay, and where were you working back in May of 2004?

7 A. At Lexington in the emergency room.

8 Q. Lexington in the emergency room?

9 A. That's correct.

10 Q. How long had you been working there at the time?

11 A. I started working at Lexington in July of '03. So,
12 I'm not sure what month we're talking about here.

13 Q. And you said you were an emergency room nurse?

14 A. That's correct.

15 Q. And can you give the jury a little bit of background
16 on exactly what that entails kind of on a nightly basis,
17 daily basis?

18 A. It just depends on which department they put you in.
19 Kind of -- you have different zones. Some do fast track
20 sort of things which are little, little scratches and
21 bruises, and the main area where I was working this
22 particular night is just where you get everything. It
23 ranges from the most minimal injury to it can be up to
24 trauma.

25 Q. And that's where you were working on the night of May

1 10, 2004 ---

2 A. That's correct.

3 Q. --- over to the early morning hours of May 11, 2004?

4 A. That's correct.

5 Q. And actually did you generate a, a report as a result
6 of your work that evening?

7 A. This -- we talking about the, the kit?

8 Q. Uh-huh.

9 A. Yes.

10 Q. Okay. Did you happen to come into contact with an
11 individual named Misty Shealy?

12 A. That's correct. I was her nurse for this particular
13 night.

14 Q. And tell the jury about how you came in contact with
15 Ms. Shealy.

16 A. Ms. Shealy apparently came in through the triage,
17 which is the front of the hospital when you come in. If
18 you, if, if you work in triage, you're the nurse that,
19 like, does the intake, does like the little summary of
20 what's going on, and then subsequent, subsequently the
21 patient will be assigned to a room. Once they get assigned
22 to the room, that's where I am and that's -- she came to me
23 from there.

24 Q. Were there some notes generated by the nursing staff
25 as to what was -- you said a summary of, of ---

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

279

1 A. No.

2 Q. --- of what had happened that were generated prior to
3 her getting to you?

4 A. That's the triage note, yes.

5 Q. And did you have an opportunity to review those before
6 you met Ms. Shealy?

7 A. Yes, I would had. We always would read over to see
8 what kind of patient we were getting to see what kind of
9 care we would need to provide at that point.

10 Q. And what was generally your understanding of the
11 situation?

12 A. I would have read the top of that note. Do I need to
13 read you the note or not? It would just be a general --
14 the nurse up front would have given a little summary of
15 what the patient had told her. I would have read through
16 that. It looked to me that this patient had come in saying
17 that she had been ---

18 MS. PINNOCK: Objection.

19 A. --- assault ---

20 THE COURT: What's your objection?

21 (OFF-THE-RECORD BENCH CONFERENCE.)

22 BY MR. GOLDBERG:

23 Q. All right, and you can finish your sentence.

24 A. By reading the note, it looked to me like this patient
25 had told the triage nurse that she, that what she had

1 been ---

2 Q. Without -- just let me ---

3 A. Okay.

4 Q. Be careful. You can't go into everything that, that
5 was said about it. If, if you can keep it to the, the act
6 that was alleged, what type of incident, and ---

7 A. Okay.

8 Q. --- where it had happened.

9 A. The triage nurse quoted that the patient stated to her
10 in quotes ---

11 MS. PINNOCK: Objection.

12 A. I'm sorry.

13 MR. GOLDBERG: I'll, I'll move on from that.

14 THE COURT: Okay. Thank you.

15 BY MR. GOLDBERG:

16 Q. Going over to your -- to the sexual assault
17 examination protocol.

18 A. Uh-huh.

19 Q. Can you tell the jury what exactly that is?

20 A. We have a kit that we perform that's supplied, I
21 believe, by some government agency or something, that they
22 give us a kit. That we have to perform the kit according
23 to the protocol within the kit. It's a several page
24 document that we interview the patient, discuss things with
25 her verbally, write down what she tells us, and then we

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

281

1 perform a multitude of samples and put them in the, in the
2 kit and assemble that to give to law enforcement when we're
3 finished.

4 Q. Okay, and so is it fair so say that it's somewhat of a
5 question and answer session ---

6 A. Uh-huh.

7 Q. --- and a physical examination to get the full picture
8 of what took place?

9 A. Exactly.

10 Q. Okay, and on that report, did you note the time that
11 Ms. Shealy was admitted to the hospital?

12 A. All right. Let me look. I don't recall that off
13 the top of my head. Yes, I wrote -- it would have come
14 from the triage note when she come in the front. I would
15 have taken that time from the time she walked in to be
16 assessed from the triage note. So, that would be the
17 admitted time.

18 Q. Was that 1:25?

19 A. Uh-huh.

20 Q. Okay, and I'm sorry to jump around on you, but if you
21 go back to the triage notes there previously that you had
22 reviewed, according to that, what time did you first
23 encounter Ms. Shealy at the bottom of that page?

24 A. It looks like 3 -- if you look on the upper right-hand
25 corner, it says room 327 at 3:35. That would have been the

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

282

1 time that they walked the patient to her room, put her in
2 the room, and at the bottom they'd written a note there
3 that says 0335 again also. Says: Patient to Room 27.
4 Report to Donna Sharpe.

5 Q. Okay.

6 A. And then 0340 I would have written a note.

7 Q. Okay, and so, at 0340 is when you encountered her?

8 A. That's correct.

9 Q. And can you describe Ms. Shealy's demeanor at that
10 time?

11 A. As I've written in the note here, she was emotional
12 and she wanted some time by herself at that point.

13 Q. Was she tearful?

14 A. Tearful, yes.

15 Q. Okay.

16 A. Nervous acting.

17 Q. All right.

18 A. Uncomfortable.

19 Q. You said nervous and uncomfortable?

20 A. Yeah. She just appeared to -- sometimes when we are
21 with these patients ---

22 MS. PINNOCK: Objection.

23 THE COURT: Yes, ma'am, your objection?

24 MS. PINNOCK: May we approach?

25 THE COURT: Yeah.

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

283

1 MS. PINNOCK: Thank you.

2 (OFF-THE-RECORD BENCH CONFERENCE.)

3 BY MR. GOLDBERG:

4 Q. Okay, let's go back. You were describing her demeanor
5 when you first encountered her.

6 A. That's correct.

7 Q. Can you go through that again, please?

8 A. She was nervous. When I first went in to see if she
9 -- we usually go in and explain what we're going to do with
10 the kit. She was anxious and nervous at that point,
11 tearful, and didn't want to go ahead at that point. Wanted
12 some time, some time by herself. I told her I would give
13 her that time and come back and check ---

14 Q. When ---

15 A --- to see if she was ready. According to my notes,
16 she was ready at 4:00, I think it was 4:20. Stated that
17 she was now ready to go ahead.

18 Q. Okay, and ---

19 A. And that she did remain nervous and tearful at that
20 time, but was ready to go ahead.

21 Q. So, what was the first thing you did with her at that
22 time?

23 A. I would have taken the kit into the room with me.
24 Once we do, once we do the kit, we go into the room with
25 the patient and we stay with the patient from that point

1 forward. We don't leave. If we have any needs for any
2 other supplies or anything, we call out. So, I would have
3 gone in with the kit with her at that point and stayed with
4 her until we completed the kit because the -- I have to
5 keep the kit with me at all times. So, when we have the
6 samples in the room, we kept -- we stayed with it. So, I
7 would have been with her from that point forward, and I
8 would have started by going through the, the first page by
9 asking her basically what happened.

10 Q. Okay, and did she indicate to you where the assault
11 took place?

12 A. She -- in her apartment.

13 Q. Okay, and when it -- approximately when it took place?

14 A. It was that evening before she got to us, and
15 according to the note, the note it says 10:00 p.m. that
16 night.

17 Q. Okay.

18 A. I don't have a ---

19 Q. All right, and then you go through a series of
20 questions with her. That takes a little bit of time. Is
21 that right?

22 A. That's correct.

23 Q. And that's documented on the, the protocol
24 questionnaire that you filled out?

25 A. That's correct.

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

285

1 Q. Okay. Did you ask her about whether or not she had
2 urinated or bathed or showered in any way since the
3 incident?

4 A. The triage, triage nurse had asked her that, and so
5 usually I don't readdress that. I kind of -- I don't
6 address it here once it's addressed here. But we do go
7 over that during the kit to make sure that we're...

8 Q. And were you made aware of those findings?

9 A. That's correct.

10 Q. And what was that?

11 A. That she had not urinated and had -- I'm sorry. Let
12 me go back here. Had not, had not urinated and had not
13 changed her clothes.

14 Q. Okay, and as far as the actions during the actual
15 assault or alleged assault, did you go through a series of
16 questions with her about that as well?

17 A. Yes. The first brief summary on the top is her -- she
18 would have given me the scenario, and I would have then put
19 that in that little summary there.

20 Q. Right, and then you have some follow-up questions,
21 correct?

22 A. All these ones about all the ---

23 Q. Yes.

24 A. --- follow up? Yes.

25 Q. Okay, and so what was the first question on that list

1 under the section of during alleged assault?

2 A. Yeah, did the penis penetrate.

3 Q. And what did you mark?

4 A. I marked the vagina.

5 Q. And the third question, what was that?

6 A. Did the assailant experience ejaculation.

7 Q. And the answer?

8 A. It was not known.

9 Q. And how about when you asked her did the assailant
10 bite, lick, or kiss the victim? What was her response?

11 A. Let me find it down here.

12 Q. It's about halfway down.

13 A. She said it was not known.

14 Q. Okay. All right. Moving on to the Page 2 of your
15 report there, there's a section entitled whether there was
16 any coercion used. What is that, what is that about, that
17 section?

18 A. That's the, that's the section we would normally ask
19 them if they were held at gunpoint, that sort of thing.
20 Her answer to that was that she was choked.

21 MS. PINNOCK: Objection. 801(d), Your Honor.

22 THE COURT: Sustained.

23 BY MR. GOLDBERG:

24 Q. How about under the assailant portion, what did she
25 indicate on that? How many assailants were there?

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

287

1 A. There was one assailant.

2 Q. And was she able to provide an age or a race?

3 A. She was not.

4 Q. And how about under the portion marked assailant's
5 relationship to victim?

6 A. That it was a stranger. She did not know who it was.

7 Q. Okay. Did she indicate whether or not the assailant
8 was under the influence of any drugs or alcohol?

9 A. Let's see. That's on this part up here.

10 Q. Top of the page.

11 A. Yeah, she said alcohol. She was -- it was unknown how
12 much and that she had smelled it on his breath.

13 Q. And were the same questions asked about her as well?

14 A. That's correct.

15 Q. And what did you find out on that?

16 A. When we originally started going through the
17 conversation, I asked her if she used any drugs. She had
18 answered me marijuana. So, I had written 'marijuana down,
19 assuming that she had meant that night when we first
20 started the conversation. And then when I proceeded to ask
21 her how much and when, she said two to three weeks ago.
22 So, I had written two -- I'm sorry. Two or three puffs. I
23 had written two or three puffs down, and when I asked her
24 when, she had said three weeks ago.

25 So, then I realized that was not the kind of question

1 I had been asking her. So, I had written it down before I
2 realized she meant previously. So, I put a line through it
3 and initialed it, and then I -- that's when I wrote on
4 there three weeks ago was her last use to show that I had
5 not ---

6 Q. Okay.

7 A. --- addressed that properly.

8 Q. So, she had not used it that evening?

9 A. Exactly.

10 Q. Okay. All right, and moving down to the portion of
11 indicating a physical examination, did you conduct an
12 emotional assessment of her at that time?

13 A. That would, that would just be my visual assessment of
14 her during the case. She ---

15 Q. What did you mark on that?

16 A. That she appeared very nervous. She was crying and
17 appeared to be upset throughout the collection of the kit.
18 She was cooperative, but she was also very sensitive to --
19 during the, during this collection of -- I had to touch her
20 several -- and she would, like, what's the word, refrain
21 from touch, pull away. She was very sensitive to touch and
22 would withdraw from any kind of touch.

23 Q. And did you do an examination to see if there was any
24 semen on her body?

25 A. Yes, we would -- let me see if I can find the section

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

289

1 here. What we do is do a, a light -- trying to see if it's
2 shown here. There it is. With the Woods light there. We
3 turn the lights off and use a Woods Lamp, which is
4 basically a black light sort of thing, to look to see if
5 there's -- it will show if there's large areas of semen on
6 the body.

7 Q. Did you see anything?

8 A. No.

9 Q. And the doctor, the attending physician actually had
10 an opportunity to conduct a physical examination on her.
11 Is that right?

12 A. That's correct.

13 Q. And was there anything particular noted on the pelvic
14 examination?

15 A. No. He marked negative on his physical exam, didn't
16 see anything obvious there.

17 Q. All right. No genital or pelvic surgical procedures
18 necessary?

19 A. No.

20 Q. Was she prescribed any medication at that time?

21 A. I think -- let's see. I think it was a...

22 Q. Refer you to the Page 3 of the protocol under the
23 section labeled treatment record.

24 A. Yeah, I'm just looking to see what's on here. All
25 right, yes, she was prescribed a prophylactic antibiotic

1 Cipro. That was for any infections that she might have
2 gotten during this.

3 Q. And under the question any other medications?

4 A. Yes, she -- after -- she had originally complained of
5 the vaginal pain, and he had given her the Vicodin for that
6 pain. Two tablets.

7 Q. Okay, and can you tell the jury what a SANE nurse is?

8 A. I think -- it's a sexual assault nurse that's been
9 trained to do these kits on a regular basis. They just go
10 through further training to be certified to do these kits
11 because they do them all the time.

12 Q. At the time was there a SANE nurse on duty at
13 Lexington Medical Center?

14 A. No.

15 Q. Is that uncommon to not have one on call or at the
16 hospital?

17 A. It, it was for that hospital. Lots of hospitals don't
18 -- they can't, I guess, budget that sort of thing. They
19 have somebody on staff all the time for that. At that, at
20 that time, whoever got assigned a patient in a room, they
21 did the, they did the sexual assault kit for their patients
22 in those rooms.

23 Q. On this particular evening, though, there was no SANE
24 nurse, correct?

25 A. There was not.

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

291

1 Q. And that's how the case ended up with you ---

2 A. Exactly.

3 Q. --- is that right?

4 And you said you'd been a nurse for about a year at
5 the time?

6 A. That's right.

7 Q. Okay.

8 A. And we went through training, like departmental
9 training a little bit on how to do the kits, but we weren't
10 certified ---

11 Q. Okay.

12 A. --- like the SANE nurses are.

13 Q. And over your course of your career as a registered
14 nurse, approximately how many times do you think you've had
15 to go through this procedure where you've had to collect
16 sexual assault kits in this manner?

17 A. That would be a guess, but I would say maybe fifteen.

18 Q. Okay, and this was, this was way back in 2004, right?

19 A. That's correct.

20 Q. How did you remember this incident?

21 A. I think the -- her demeanor when she came in. It just
22 -- I'm not sure what I can say and what I can't say. She
23 seemed ---

24 MS. PINNOCK: Objection.

25 A --- very upset.

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

292

1 MR. GOLDBERG: She said that she seemed upset.

2 THE COURT: Overruled.

3 MS. PINNOCK: Okay.

4 BY MR. GOLDBERG:

5 A. She seemed very upset and the scenario around the way
6 it happened and the way she said it happened was ---

7 MS. PINNOCK: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. GOLDBERG:

10 Q. She seemed upset?

11 A. She seemed upset.

12 Q. Okay, and you were with her for about three and a half
13 hours. Is that right?

14 A. That sounds right. From 4:20 till my shift ended at
15 around 7:00.

16 Q. At some point during your interactions with her, part
17 of the protocol is to collect any potential evidence. Is
18 that right?

19 A. That's correct.

20 Q. And that includes her clothing?

21 A. That's correct.

22 Q. And can you describe for the jury a little bit about
23 how the clothing collection procedure takes place?

24 A. Once I came in to her and was ready to collect the
25 kit, I would have talked to her and got the whole story to

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

293

1 start with kind of, and once I'd done that, I started
2 collecting the samples. I would have put -- and the kit
3 comes a large paper, maybe, just from my memory, maybe
4 3-foot by 3-feet or so, something like that, folded up, and
5 it unfolds and we have her stand on that. And as she
6 stands on that, she disrobes and we collect those clothes
7 and put them in the bag, and then we also take what she
8 stood on and fold that back up and collect that. That way
9 in case there's any debris from her clothing that would
10 fall off, we would collect that, too, in addition to her
11 clothing.

12 Q. Debris such as hair ---

13 A. Hair.

14 Q. --- skin, anything of that nature?

15 A. Yes.

16 (BAG OF CLOTHING MARKED AS STATE'S EXHIBIT NUMBER 22
17 FOR IDENTIFICATION.)

18 MR. GOLDBERG: May I approach please?

19 THE COURT: Yes, sir.

20 BY MR. GOLDBERG:

21 Q. Show you what's been marked as State's 22 for ID and
22 have you take a look inside here. Do you, you recognize
23 these items?

24 A. That would have been her clothing we would have taken
25 off during the collection of the evidence, and I would have

1 -- yeah, there's a sticker on the bag that comes on the
2 bag, and I would have -- that's my handwritten there. I
3 would have collected and marked everything that I've taken
4 off the patient.

5 Q. And ---

6 A. And then after I take it off, I fold it over and seal
7 it, and there's a seal on it that I have to initial that
8 that can't, can't be removed.

9 Q. And what items did you indicate are in the bag?

10 A. I indicated that she had a button-down white shirt, a
11 pair of jeans, a black bra, and two socks.

12 MR. GOLDBERG: At this time we'd offer State's 22 into
13 evidence.

14 MS. PINNOCK: No objection.

15 THE COURT: It will be entered in without objection.

16 (BAG OF CLOTHING MARKED INTO EVIDENCE AS STATE'S
17 EXHIBIT NUMBER 22.)

18 BY MR. GOLDBERG:

19 Q. And is part of that you said you collected the paper
20 that she was standing on as well?

21 A. That's correct.

22 Q. So, you collected the outer clothing and her
23 underwear, right?

24 A. That's correct.

25 Q. Did you have an opportunity to try and take some swabs

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

295

1 from her as well?

2 A. Yes. Let me see. Let me see. Yes.

3 Q. What kind of swabs?

4 A. We did vaginal swabs and smear.

5 Q. And what do you do with those swabs once you've
6 collected them?

7 A. They're, they're in the kit and I -- you have to swab
8 them, smear them and let them dry, and put them in a little
9 -- it's a little box kit that you slide the glass in to
10 send to law enforcement.

11 (SEXUAL ASSAULT KIT MARKED AS STATE'S EXHIBIT NUMBER
12 23 FOR IDENTIFICATION.)

13 Q. All right, State's 23 for ID, have you take a look at
14 that. Is that the kit that you're referring to?

15 A. Yes, that's my handwriting.

16 Q. So, is it fair to say that everything you collected
17 from her, in terms of swabs and all that, was put in that
18 kit?

19 A. Yeah, all the small stuff with the exception of the
20 clothing goes in the big bag and all the swabs and samples
21 go in the small box.

22 Q. Okay, and then is it sealed up?

23 A. Uh-huh, sealed. It's sealed around both sides.

24 Q. Does it stay with you until the examination is
25 complete?

1 A. That's correct.

2 Q. And after it's completed, in this instance you
3 actually turned it over to another nurse. Is that right?

4 A. That's right. My shift had ended and we didn't know
5 when the law enforcement would be by to pick it up. So, we
6 either wait for the law enforcement to come and give it or
7 we give it to -- sign it to the nurse coming on shift to
8 turn it over to them.

9 Q. In this instance, that was a Harriet Childers,
10 correct?

11 A. Yes. I signed here that it was 7:47. I waited a
12 little while, not sure when they would show up, and then at
13 7:47 I signed it over to her. She turned it over to the
14 officers when they showed up.

15 Q. All right. Did you take any photographs, Ms. Sharpe?

16 A. No.

17 Q. And can you, can you describe Ms. Shealy's demeanor as
18 the doctor conducted the pelvic examination?

19 A. I can't find it. Do I have a note here on that?

20 Q. Refer you to the nursing notes basically at the top.

21 A. All right.

22 Q. I believe it's already -- I'm jumping around on you
23 here.

24 A. Yes, I've written here that she's very anxious and
25 that she was gripping the bed throughout the exam. A

D. SHARPE - DIRECT EXAMINATION BY MR. GOLDBERG

297

1 pelvic exam table, as many people are aware, have the foot
2 things and there's a edge that you -- she had her hands on
3 the edge, like, gripping on anxiously throughout the
4 procedure, and I think that's all I've got here. Yeah,
5 just anxious and gripping the bed and tearful.

6 Q. All right, and it was actually the doctor that
7 conducted that pelvic examination, correct?

8 A. That's correct.

9 Q. And you had a chance to review his findings when you
10 were putting together the, the protocol before, correct?

11 A. That would just -- that would be the notes that he put
12 back here about the injuries, yeah.

13 Q. Okay, and he indicated there was no bleeding, right?

14 A. Correct.

15 Q. No bruises?

16 A. Correct.

17 Q. As far as in the ---

18 A. In the pelvic area.

19 Q. --- pelvic area?

20 A. Uh-huh.

21 Q. No abrasions, correct?

22 A. In the pelvic area, correct.

23 Q. Right, in the pelvic area. What observations did
24 you make in looking at Ms. Shealy and her physical
25 appearance?

1 A. There's a section in the kit for anatomical findings,
2 and there I had marked that she had a -- trying to read my
3 writing. It's very vague there. There was a bruise to her
4 right cheek, and I'm sorry, redness right cheek, and under
5 the eye if I recall.

6 Q. And did you actually put some notes down, further down
7 the page ---

8 A. And there's ---

9 Q. --- detailing that?

10 A. And there's a note there at the top also about the:

11 Red area surrounded by bruise to right cheek bone
12 below right orbit, small red area to right lower
13 eyelid, and a red mark to the right side of the
14 neck resembles a hand mark.

15 Q. Okay. Is that pretty much the end of the examination?

16 A. Let me check. Yes.

17 Q. Did you have any further involvement with Ms. Shealy
18 after you left the room?

19 A. I would have been the one to medicate her and that
20 sort of thing and drawn -- let's see. Let's see. Those
21 last few notes from 5:55 on, those are all mine. So, it
22 looks like the kit was pretty much finished around that
23 5:55 time, and from that point on would have been when I
24 was medicating and the labs were drawn, that sort of thing.

25 Q. When you said medicating, you're talking about the

D. SHARPE - CROSS-EXAMINATION BY MS. PINNOCK

299

1 prophylactic antibiotic, right, and all -- and the Vicodin?

2 A. She was medicated per the doctor's order. That would
3 of been with the Vicodin and Cipro.

4 Q. And the Cipro is the antibiotic and the Vicodin ---

5 A. Yes, sir.

6 Q. --- is for pain, right?

7 A. Exactly.

8 MR. GOLDBERG: Beg the court's indulgence.

9 (A PAUSE.)

10 MR. GOLDBERG: Thank you. Those are all my questions.

11 THE COURT: You need to answer any questions by the
12 defense.

13 MS. PINNOCK: Please the court, Your Honor?

14 CROSS-EXAMINATION BY MS. PINNOCK:

15 Q. Hey, Ms. Sharpe. Are you referring to -- may I take a
16 look at what you're referring to?

17 A. For which part?

18 Q. Are you referring to Dr. Beguski's report?

19 A. I'm not sure what you're asking me.

20 Q. When you're testifying -- when you testified about
21 what doctor found.

22 A. The section in the kit here about no bruising and all
23 that I'm showing?

24 Q. The emergency department note, that's not your ---

25 A. When I asked -- when I referred to no bruising and

1 bleeding and all that?

2 Q. Uh-huh.

3 A. I'm referring to it marked on the kit, the area that
4 he marks on the kit.

5 Q. Okay, but he did a separate exam from when he was with
6 you, right?

7 A. Yeah. I did not, I did not refer to his note.

8 Q. Okay, but you know that he did ---

9 A. I know ---

10 Q. --- correct?

11 A. --- that he did, but I did not refer to his notes.

12 Q. All right, and you started -- you know, this report is
13 the report handed out by Department of Justice Sexual
14 Assault Protocol. That's what you did?

15 A. The kit you're referring to?

16 Q. Yes.

17 A. Yes. This, this kit here?

18 Q. Yes, ma'am.

19 A. All this paperwork that comes in this kit.

20 Q. And it's your job when you get a report -- you said
21 that if there's no SANE on call, you would do the, the exam
22 yourself?

23 A. That's correct.

24 Q. Was there a SANE at Richland Memorial Hospital?

25 A. I'm unaware of that. I don't work at Richland

D. SHARPE - CROSS-EXAMINATION BY MS. PINNOCK

301

1 Memorial Hospital.

2 Q. How far away is that hospital from Lexington?

3 A. Also -- it's within a thirty-mile drive, I would say.

4 I'm not ---

5 Q. Okay.

6 A --- an expert on how far it is.

7 Q. But y'all didn't have anybody on staff you said or on
8 call that night?

9 A. Yeah. That wasn't our protocol.

10 Q. All right, and you said you went through this report
11 where you got some general background information from her.
12 She had gone through triage first?

13 A. That's correct.

14 Q. And did I understand your testimony earlier, did you
15 say that she had not urinated and not changed her clothes?

16 A. I believe ---

17 Q. That's in the triage notes?

18 A. I'm going to look back and refer to that, but believe
19 that's correct. The triage note says: Patient denies
20 showering, patient denies voiding, patient denies changing
21 clothes.

22 Q. Okay, and voiding would be?

23 A. Urinating.

24 Q. Urinating. Okay, but on the first page of the report,
25 of the protocol kit, didn't you mark that she urinated?

1 A. She urinated between there, I believe. Let me look
2 here. If you'll look at the time? I believe it says 0152,
3 if I'm reading that correctly. It says Richland County
4 notified.

5 Q. I'm just looking at the first page of your -- of the
6 protocol.

7 A. I'm telling you where it comes from. It says: Patient
8 given a urine cup for collection. So, that's why between
9 the triage note and mine she add urinated ---

10 Q. Okay.

11 A. --- because they gave her a cup for collection.

12 Q. And that you took your urine so you could do
13 toxicology on it, right? That's the purpose of collecting
14 urine?

15 A. I'm not sure what they collect for -- they collected
16 for the kit, and whatever they do as a standard. I believe
17 there are some additional tests they do, if I'm not
18 mistaken.

19 Q. Okay. Toxicology is one of those?

20 A. I'm not a hundred percent sure about that. I believe
21 that to be true, but I'm not a hundred percent sure about
22 that.

23 Q. All right. Now, you mentioned with the solicitor that
24 Ms. Shealy told you that she smoked marijuana?

25 A. Yes.

D. SHARPE - CROSS-EXAMINATION BY MS. PINNOCK

303

1 Q. Okay, and originally you thought that she meant that
2 day, but then you realized she meant before that?

3 A. Exactly.

4 Q. And your report was taken May 11th, early morning
5 hours May 11th?

6 A. May 11th at 4:24.

7 Q. Okay, and then you said you performed the examination
8 on her?

9 A. Uh-huh.

10 Q. You did a physical, just physical -- visual exam. You
11 were present during the pelvic exam?

12 A. Yes.

13 Q. Okay, and that's because you can't leave her side the
14 whole time while the kit's in there, right?

15 A. Uh-huh.

16 Q. You didn't note any bruises on her arms?

17 A. I did not note any bruises on her arms.

18 Q. You didn't note any bruises on her back?

19 A. Did not note any bruises on her back.

20 Q. You did make a note saying that there was a red mark,
21 a red area on her cheek and around, and near her eye. You
22 didn't take any pictures of that?

23 A. We didn't take pictures. That wasn't our standard.

24 Q. It wasn't your standard? Isn't it standard when doing
25 rape protocol kits that you document in reports and take

1 pictures so you can refer back to them?

2 A. Not -- no, the SANE nurses I believe do that, if I'm
3 not mistaken, but we do -- this was not a standard with
4 this kit.

5 Q. Okay. So, there's no pictures showing a mark on her
6 neck?

7 A. Not that I'm aware of unless ---

8 Q. That you took?

9 A. Not that I took, no, ma'am.

10 Q. You didn't take any pictures of this red, bruised
11 area?

12 A. It was on our protocol. That's why I marked it on the
13 document where they were.

14 Q. And also you -- again, no pictures of any of the
15 bruises?

16 A. I didn't take pictures of anything.

17 Q. You didn't note anything else? Arms, legs, stomach,
18 chest, back?

19 A. No.

20 Q. No other bruises? No cuts, no abrasions, no nothing?

21 A. Not that I noted.

22 Q. And did you do the Wood light exam? Did you do that?

23 A. No.

24 Q. Okay, and that's, like, what we see on TV, that blue
25 light they shine on things looking for stains or anything?

D. SHARPE - CROSS-EXAMINATION BY MS. PINNOCK

305

1 A. Uh-huh.

2 Q. And nothing found?

3 A. Hu-huh.

4 COURT REPORTER: Excuse me. I need verbal answers
5 from the witness.

6 A. No. I'm sorry.

7 THE COURT: All right, ma'am, please answer yes or no.

8 BY MS. PINNOCK:

9 A. No, I did not.

10 Q. Okay. So, there's no semen on -- that's what that
11 test was for?

12 A. That tests for any large areas of semen.

13 Q. You did a -- did you do the wet mount?

14 A. They -- I'm not sure if the doctor collects a second
15 one. I can't recall that, but we do a vaginal swab for
16 this kit. We do that and we work -- when they give it to
17 us, we wrote it on the slide and collect it for this.

18 Q: Okay, but can you turn to page -- I'm sorry.

19 A. No, go ahead.

20 Q. Turn to page 2 in your report.

21 A. Go ahead.

22 Q. At the bottom to the right: Wet mount for spermatozoa.

23 A. That's ---

24 Q. Okay, and the results of that test, there was no
25 sperm?

1 A. That test I don't think I would have gotten back that
2 night, if I'm not mistaken.

3 Q. Did you fill this out?

4 A. Yes, but I don't see -- where does it say?

5 Q. Performed by hospital, wet mount for spermatozoa
6 towards the bottom on the right. You have three options:
7 motile, non-motile, none seen.

8 A. Oh, on the far right?

9 Q. Yes, ma'am.

10 A. So, that means they were reported back to the doctor,
11 and he would have marked that as none seen.

12 Q. Okay.

13 A. I don't look for that.

14 Q. Okay, and that's a test, like you said, you take the
15 swab, you wrote it on there, and you put it on a
16 microscope, you're looking for sperm, three options. You
17 can either see it still moving, you see it not moving, or
18 nothing. None seen means it's just not there.

19 A. Not there.

20 Q. The pelvic exam, you said you were around for that?

21 A. Yes.

22 Q. All right, and there are one, two, three, four, five
23 specific areas that are looked at. There's a negative in
24 parenthesis. That means no findings, right?

25 A. That's correct.

D. SHARPE - CROSS-EXAMINATION BY MS. PINNOCK

307

1 Q. There was no redness noted?

2 A. He would have had to answer that. He -- himself. For
3 me, that just means nothing of any significance that he
4 wanted to make a note of.

5 Q. Okay. Well, you referred to what he put in his notes
6 in the, in the anatomical drawings, correct?

7 A. No. He would have written -- if he found, if he found
8 things that he wanted to draw on the anatomic, we can both
9 draw on the anatomic drawings.

10 Q. Yes, ma'am.

11 A. If he would have found things that he wanted to draw
12 in anatomic drawings, he would do that.

13 Q. All right. Solicitor Goldberg asked you about
14 describing all the signs of physical trauma on that page
15 the doctor wrote. You testified about that?

16 A. I wrote on the bottom. If you look above my writing,
17 the doctor wrote something I can't see on there. So, I
18 don't know what this says.

19 Q. You didn't just answer that question for Mr. Goldberg?
20 He asked you about bleeding, abrasions.

21 A. But I didn't see that. I thought you were asking what
22 the doctor found. The doctor has a little note here that I
23 can't read. I didn't see any. I don't recall him
24 reporting any to me, and the bottom is what I wrote. I
25 don't have the original here at the top. It's just not

1 good quality.

2 Q. I have another copy if you want to look at that.

3 A. Yeah, the doctor's note says none noted on perineum.

4 Q. No bruising?

5 A. Yes.

6 Q. No abrasions?

7 A. Right.

8 Q. No cuts, no redness, nothing?

9 A. That's correct.

10 Q. Correct? All right.

11 A. That's correct.

12 Q. So, the vaginal area, the pelvic area, there's
13 absolutely nothing wrong, as far as you can tell, from
14 doing these exams? Nothing wrong?

15 A. Nothing that we noted, no.

16 Q. All right. So -- I mean, I just have two more
17 questions for you. You took, you took the collection of
18 her clothes, right?

19 A. Correct.

20 Q. And if there was -- they go directly into the bags.
21 You seal them up. You send them off.

22 A. Yes.

23 Q. You have her stand on a debris sheet just in case
24 something falls off?

25 A. That's correct.

D. SHARPE - CROSS-EXAMINATION BY MS. PINNOCK

309

1 Q. And as you're collecting all the stuff, you're
2 documenting what you're collecting?

3 A. Yes.

4 Q. All right, and you identified that page. You
5 collected her outer, outer clothing?

6 A. Correct.

7 Q. Underwear?

8 A. Correct.

9 Q. "You didn't take any bite marks swabs because you
10 didn't see anything?"

11 A. Correct.

12 Q. You didn't take any oral swabs or smears. What, what
13 is that?

14 A. If she had reported -- I'm sorry. I'm trying to find
15 the section that says oral swabs. Can you show me where
16 you are?

17 Q. Oh, I'm sorry. I'm on Page 3, evidence checklist and
18 disposition.

19 A. Okay.

20 Q. There's no bite swabs.

21 A. Oral swabs. Oral swabs. That would have been had she
22 reported earlier when I asked her about the penetration on
23 the previous one and she said vaginally, and she had said
24 that she had been, for instance, forced to perform oral
25 sex, then I would collect oral swabs.

1 Q. All right. You didn't take any fingernail scrapings?

2 That's when you ---

3 A. If she had ---

4 Q. --- wrote ---

5 A. If she had reported scratching or anything, I would
6 have scraped the fingernails.

7 Q. All right, but she didn't say anything about fighting
8 back. So, you didn't test for fingernails?

9 A. I don't recall that negative for fighting back. All I
10 recall -- all I know from this is she didn't say she -- she
11 said -- she did not report to me that she had scratched
12 him.

13 Q. But you did take the vaginal swab?

14 A. Yes.

15 Q. No rectal swab, no miscellaneous bodily fluid, and you
16 collected some known samples from her for comparison,
17 right?

18 A. Exactly.

19 MS. PINNOCK: All right, beg the court's indulgence.

20 (A PAUSE.)

21 MS. PINNOCK: Thank you, Your Honor. I have no
22 further questions.

23 MR. GOLDBERG: Nothing further.

24 THE COURT: All right, ma'am. You may step down.

25 WITNESS: Thank you.

H. CHILDERS EVANS - DIRECT EXAMINATION BY MS. ASHTON 311

1 (THE WITNESS EXITS THE STAND.)

2 MR. GOLDBERG: Your Honor, may we approach?

3 (OFF-THE-RECORD BENCH CONFERENCE.)

4 THE COURT: All right, Mr. Goldberg, call your next
5 witness.

6 MS. ASHTON: State calls Harriet Childers.

7 HARRIET CHILDERS EVANS, BEING
8 FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: Have a seat in the witness stand
10 please.

11 THE COURT: All right, ma'am. I'm going to ask you to
12 speak into the microphone and speak loudly so that we can
13 all hear you.

14 WITNESS: Okay.

15 THE COURT: All right. Thank you.

16 CLERK OF COURT: State your name for the record.

17 WITNESS: Harriet Childers Evans.

18 DIRECT EXAMINATION BY MS. ASHTON:

19 Q. Morning, Ms. Childers.

20 A. Good morning.

21 Q. Where were you working in May of 2004?

22 A. Lexington Medical Center.

23 Q. And what was your position at Lexington Medical
24 Center?

25 A. Registered nurse in the emergency room.

H. CHILDERS EVANS - DIRECT EXAMINATION BY MS. ASHTON 312

1 Q. I am going to show you what's been marked as State's
2 Exhibit 23 and ask you to look at the back of this box.

3 A. Okay.

4 Q. Do you recognize your signature on that box?

5 A. Yes, ma'am.

6 Q. And who did you receive this sexual assault kit from?

7 A. From Donna Sharpe.

8 Q. And what -- is there a date and time marked on this
9 box that you received it?

10 A. Yes, ma'am.

11 Q. And can you state that?

12 A. Uh-huh. 5/11/04. 7:47 a.m.

13 Q. And who did you turn this sexual assault kit over to?

14 A. Kellye Whittacker.

15 Q. And what time and date was that?

16 A. 5/11/04. 7:57 a.m.

17 Q. So, approximately ten minutes later?

18 A. Yes, ma'am.

19 Q. And when you received this box, was it sealed with a
20 red tape?

21 A. Yes, ma'am.

22 Q. And when you transferred it to Kellye Whittacker, was
23 it still sealed?

24 A. Yes, ma'am.

25 Q. And when you received it and transferred it, it was in

K. HENDRICK - DIRECT EXAMINATION BY MS. ASHTON

313

1 the same condition?

2 A. Yes, ma'am.

3 MS. ASHTON: Thank you, Ms. Childers.

4 THE COURT: Please answer any questions that the
5 defense may have.

6 MS. PINNOCK: We have no questions, Your Honor.

7 THE COURT: All right, ma'am. You may step down.

8 WITNESS: Thank you.

9 THE COURT: Any objection to this witness being
10 excused?

11 MS. PINNOCK: No, Your Honor.

12 THE COURT: All right. Ma'am, you're free to go.

13 (THE WITNESS EXITS THE STAND.)

14 THE COURT: Call your next witness.

15 MR. GOLDBERG: State calls Corporal Kellye Hendrick.

16 KELLYE HENDRICK, BEING FIRST DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Have a seat in the witness stand.
19 State your name for the record.

20 WITNESS: Kellye Hendrick.

21 DIRECT EXAMINATION BY MS. ASHTON:

22 Q. Is it Corporal Kellye Hendrick?

23 A. Corporal Kellye Hendrick.

24 Q. Where are you currently working?

25 A. The Richland County Sheriff's Department.

K. HENDRICK - DIRECT EXAMINATION BY MS. ASHTON

314

1 Q. And where were you working in May of 2004?

2 A. Richland County Sheriff's Department.

3 Q. What was your position in May of 2004 with the
4 department?

5 A. I was a deputy.

6 Q. Okay, and at some point -- well, let me back up. I'm
7 going to show you what's marked as State's Exhibit 23. Do
8 you see your signature on this box?

9 A. Yes, ma'am.

10 Q. And did you actually go by Kellye Whittacker at that
11 time?

12 A. I did. I was married for a short time.

13 Q. Okay, and when does it say on this sexual assault kit
14 that you received that, the evidence?

15 A. 5/11 of 2004 at 07:57 hours in the morning.

16 Q. And who did you receive it from?

17 A. Harriet Childers.

18 Q. Okay, and when you received this, was it sealed with
19 this evidence tape?

20 A. Yes, ma'am.

21 Q. And when you turned -- who was your supervisor at that
22 time or your master deputy?

23 A. Master Deputy Deanna Moore.

24 Q. And did you turn this box over to her ---

25 A. Yes, ma'am.

D. MOORE - DIRECT EXAMINATION BY MS. ASHTON

315

1 Q. --- on that date? When you turned it over to Master
2 Deputy Deanna Moore, was it tampered with in any way?

3 A. No, ma'am.

4 Q. And did you turn it over later on that morning?

5 A. Yes, ma'am.

6 MS. ASHTON: Thank you. Please any -- answer any
7 questions from the defense.

8 MR. SHEALEY: No questions, judge.

9 THE COURT: All right, ma'am, you may step down.

10 WITNESS: Thank you, Your Honor.

11 (THE WITNESS EXITS THE STAND.)

12 THE COURT: Call your next witness.

13 MR. GOLDBERG: State calls Deanna Moore.

14 DEANNA MOORE, BEING FIRST DULY
15 SWORN, TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: Have a seat in the witness stand,
17 please. State your name for the record.

18 WITNESS: Deanna Moore.

19 MS. ASHTON: Beg the court's indulgence.

20 (A PAUSE.)

21 DIRECT EXAMINATION BY MS. ASHTON:

22 Q. Good morning, Ms. Moore.

23 A. Good morning.

24 Q. Were you employed at the Richland County Sheriff's
25 Department in May of 2004?

1 A. Yes, I was.

2 Q. And what was your position then?

3 A. I was a master deputy training officer.

4 Q. And did you supervise Corporal Kellye Whittacker at
5 the time?

6 A. Yes.

7 Q. And I'm going to show you this document and evidence
8 form.

9 A. Uh-huh.

10 Q. On May 11th of 2004, did you come in contact with a
11 sexual assault kit?

12 A. Yes.

13 Q. And what time -- what, what day does it did you come
14 in contact with that?

15 A. The date was May 11, 2004.

16 Q. Okay, and when you received this kit, was it sealed?

17 A. Yes.

18 Q. Okay, and who did you transfer it to?

19 A. I took it to headquarters to Tena in our evidence
20 department.

21 Q. Is that Tena Goff?

22 A. Yes.

23 Q. And does it indicate what time you turned it in?

24 A. I'd have to look on the form.

25 Q. Is it towards the bottom?

D. MOORE - DIRECT EXAM / T. GOFF - DIRECT EXAM

317

1 A. It was 9:45 a.m. on the 11th, May 11th.

2 Q. Okay, and did she sign for it?

3 A. Yes, she did.

4 Q. And when you transferred it to Tena, was it still
5 sealed in its original condition?

6 A. Yes, it was.

7 MS. ASHTON: Thank you.

8 WITNES: Thank you.

9 MS. PINNOCK: We have no questions, Your Honor.

10 THE COURT: All right, ma'am, you may step down.

11 WITNESS: Thank you.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: All right, call your next witness.

14 MR. GOLDBERG: the state calls Tena Goff.

15 TENA GOFF, BEING FIRST DULY SWORN,

16 TESTIFIES AS FOLLOWS:

17 CLERK OF COURT: Have a seat in the witness stand
18 please. State your name for the record.

19 WITNESS: Tena Goff.

20 DIRECT EXAMINATION BY MS. ASHTON:

21 Q. Ms. Goff, where are you currently employed?

22 A. The Richland County Sheriff's Department.

23 Q. And where were you employed in May of 2004?

24 A. The Richland County Sheriff's Department.

25 Q. And on May 11th of 2004 did you receive a sexual

1 assault kit with a case where Misty Shealy was the victim?

2 A. Yes.

3 Q. And when you received it -- what day was, did you
4 receive it?

5 A. On May 11, 2004, at 9:45 in the morning.

6 Q. And who did you receive that from?

7 A. Deputy Moore.

8 Q. Was it tampered with in any way when you received it?

9 A. No.

10 Q. Did it have the sealed tape around it?

11 A. Yes.

12 Q. Okay, and would you have accepted it if it appeared
13 that any of the seals were -- had been broken?

14 A. No.

15 Q. And where was it stored once you received it?

16 A. We have a refrigerator in the back of the evidence
17 room that's held in until the DNA lab picks it up or we
18 deliver to SLED.

19 Q. Okay. In this case, did you actually deliver it to
20 SLED?

21 A. I did.

22 Q. And what time and date did you do that?

23 A. May 13, 2004, at 8:44 a.m.

24 Q. And who did you actually transfer it to in the SLED
25 evidence department?

T. GOFF - DIRECT EXAMINATION BY MS. ASHTON

319

1 A. I believe it was Ms. Fitzgerald.

2 Q. Could it of been Ms. Fitzpatrick?

3 A. Fitzpatrick. Sorry.

4 Q. And once you transferred the kit to Ms. Fitzpatrick,
5 what did she do?

6 A. She actually broke the seal and took out the
7 components that were inside the box, repackaged them and
8 when she heat sealed those pouches, I initialed and dated
9 that, those pouches.

10 Q. Okay, and SLED assigned their own SLED number?

11 A. They did.

12 Q. And do you know what the lab number was in this case?

13 A. L044903.

14 Q. And was that the extent of your involvement with the
15 evidence in this case?

16 A. Yes.

17 MS. ASHTON: Thank you.

18 THE COURT: Any questions?

19 MR. SHEALEY: No questions, judge.

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

21 Call your next witness.

22 MR. GOLDBERG: State calls Marilyn Fitzpatrick.

23 MARILYN FITZPATRICK, BEING FIRST DULY

24 SWORN, TESTIFIES AS FOLLOWS:

25 CLERK OF COURT: Thank you. Have a seat in the

M. FITZPATRICK - DIRECT EXAMINATION BY MS. ASHTON

320

1 witness stand, please. State your name for the record.

2 WITNESS: Marilyn Fitzpatrick.

3 DIRECT EXAMINATION BY MS. ASHTON:

4 Q. Good morning.

5 A. Good morning.

6 Q. Where were you employed in May of 2004?

7 A. South Carolina Law Enforcement Division.

8 Q. And what was your -- can you speak up just a little
9 bit?

10 A. South Carolina Law Enforcement Division.

11 Q. Thank you, and what was your position there?

12 A. Forensic technician.

13 Q. And is that also known as SLED?

14 A. Yes.

15 Q. Okay. Did you receive a sexual assault kit from Tena
16 Goff on May 11, 2004? I'm sorry. May 13th of 2004. (

17 A. Yes, ma'am.

18 Q. And who did you -- you received it from Tena Goff?

19 A. Yes, ma'am.

20 Q. Okay, and what time?

21 A. 8:59 a.m.

22 Q. And how was it packaged when you received the kit?

23 A. In a box.

24 Q. Okay.

25 A. A CSC box.

M. FITZPATRICK - DIRECT EXAMINATION BY MS. ASHTON

321

1 Q. I show you what's marked as State's Exhibit 23.

2 Something that looks exactly like this?

3 A. Yes, ma'am.

4 Q. Okay. Would it have been sealed when you received it?

5 A. Yes, ma'am.

6 Q. And do you assign -- are you the -- responsible for
7 assigning a lab number?

8 A. Yes, ma'am.

9 Q. And did you assign a lab number in this case?

10 A. Yes, ma'am.

11 Q. Okay. What was that number?

12 A. L0404903.

13 Q. Okay, and once you actually received the sexual
14 assault kit, what did you do?

15 A. It's opened and the individual pouches are received,
16 what is the container number, that E number on the paper.
17 They are -- the individual pouches are sealed in a SLED
18 heat-sealed pouch and initialed and put in their respective
19 evidence containers.

20 Q. Okay, and is there any precautions made to make sure
21 that when you take each of these items out that it's not in
22 any way contaminated?

23 A. They're -- each of the items are in their own sealed
24 containers inside of the sealed box.

25 Q. Okay, and part of what was in that sexual assault kit

1 that you received, did that include, excuse me, an item
2 labeled panties?

3 A. Yes.

4 Q. Okay. Also an item labeled vaginal swab?

5 A. No. It just would have been labeled as the kit.

6 Q. But in addition to -- was there an additional item in
7 that CSC kit ---

8 A. Yes.

9 Q. --- packaged separately?

10 A. Yes.

11 Q. Okay. That is, was labeled as vaginal swabs?

12 A. Yes.

13 Q. Okay. Also did you receive from that CSC kit
14 something that was labeled as one gray tube top with the
15 victim's blood?

16 A. Yes.

17 Q. Okay, and would the vaginal swab and the panties,
18 where did you -- once you took it out the CSC kit, where
19 did you put those after that?

20 A. They all go in a heat-sealed pouch.

21 Q. Okay.

22 A. So, they're in their respective containers, field
23 containers in the pouch. I don't take the individual items
24 out. I take the sealed containers out and put them in the
25 SLED sealed container.

M. FITZPATRICK - DIRECT EXAMINATION / CROSS-EXAMINATION 323

1 Q. Right, and do you actually yourself transfer them to
2 another location?

3 A. Yes.

4 Q. And where -- what is that?

5 A. The evidence processing refrigerator.

6 Q. Refrigerator?

7 A. Uh-huh.

8 Q. And what about the victim's blood? Where would you --
9 where did you transfer this item?

10 A. That would have gone to another sealed refrigerator.

11 Q. Okay. In a different department or a different, in a
12 different -- to a different department or a different
13 refrigerator?

14 A. A different refrigerator.

15 Q. Okay. And, again, all these items remain sealed?

16 A. Yes.

17 MS. ASHTON: Okay. Thank you.

18 WITNESS: Uh-huh.

19 MS. PINNOCK: Please the court. Very briefly.

20 CROSS-EXAMINATION BY MS. PINNOCK:

21 Q. You said that you had a tube top with some blood on
22 it, or is a tube with a blood sample?

23 A. The item would have been sealed in a package inside of
24 the kit.

25 Q. Right, But the item inside of the package that was

M. FITZPATRICK - CROSS-EXAM / J. CLAYTON - DIRECT EXAM 324

1 inside of the kit, was it like a vile?

2 A. I don't know. It was sealed.

3 Q. Was it a blood sample?

4 A. I don't see that. It's sealed inside of the
5 container.

6 Q. Okay, but you're not talking about a, a shirt? It was
7 not a tube top? It was a blood sample and that's why you
8 put into the blood refrigerator?

9 A. I don't actually -- I didn't see that particular item.
10 It was all sealed inside of a kit.

11 MS. PINNOCK: Okay. Thank you.

12 THE COURT: Anything else from the state?

13 MS. ASHTON: Nothing further, Your Honor.

14 THE COURT: All right, ma'am, you may step down.

15 THE COURT: Yes, ma'am, call your next witness.

16 MR. GOLDBERG: State calls Jennifer Clayton.

17 JENNIFER CLAYTON, BEING FIRST DULY
18 SWORN, TESTIFIES AS FOLLOWS:

19 CLERK OF COURT: Have a seat in the witness stand,
20 please. State your name for the record.

21 WITNESS: Jennifer Clayton. C-L-A-Y-T-O-N.

22 DIRECT EXAMINATION BY MS. ASHTON:

23 Q. Ms. Clayton, where were you employed in May of 2004 --
24 excuse me, August of 2004?

25 A. I was employed by the South Carolina Law Enforcement

J. CLAYTON - DIRECT EXAMINATION BY MS. ASHTON

325

1 Division also known as SLED.

2 Q. Okay, and did you come in contact with evidence
3 related to Lab Number 04-4903?

4 A. Yes, I did.

5 Q. And what type of evidence was this?

6 A. It was a sexual assault kit sealed in a heat-sealed
7 pouch.

8 Q. Okay. At the time that you came into contact with
9 this, with these items, were they already in their
10 individual packages outside of the CSC kit itself?

11 A. The kit, by the time I received it, it was divided
12 some because there were some samples in it that had been
13 sent to toxicology and some that were sent to the DNA
14 Department.

15 Q. Okay, and specifically on August the 6th of 2004, did
16 you transfer a sealed item described as vaginal swab? It's
17 Item 1.7 on Page 5 of the ---

18 A. Yes, I did.

19 Q. Where ---

20 A. It was contained inside the sexual assault kit.

21 Q. Okay, and where did you receive this from?

22 A. I received it from our large refrigerator in our
23 evidence processing building. It's a locked, sealed
24 refrigerator with limited access, and I transferred it from
25 that location to another locked refrigerator in our DNA

1 laboratory.

2 Q. And is this all documented in the chain of custody
3 form?

4 A. Yes, it is.

5 Q. And I will also direct your attention to Page 9 of the
6 chain of custody document. Did you also come into contact
7 with a -- one sealed item described as panties?

8 A. Yes, I did.

9 Q. And what date and time was this?

10 A. That was on August 6th of 2004 at 4:35 in the
11 afternoon.

12 Q. And where did you receive it from?

13 A. That was at the same location. It was in a locked
14 refrigerator in our evidence processing department, and I
15 then transferred it to a locked refrigerator in our DNA
16 department.

17 Q. And then at any time that these two items were in your
18 custody, were they tampered within in any way?

19 A. No, the heat-sealed pouch remained sealed.

20 MS. ASHTON: Okay. Thank you.

21 MR. SHEALEY: No questions of the witness.

22 THE COURT: All right, ma'am, you may step down.

23 All right. Call your next witness.

24 MS. ASHTON: State calls Deputy Ray Livingston.

25 RAY A. LIVINGSTON, BEING FIRST DULY

R. LIVINGSTON - DIRECT EXAMINATION BY MS. ASHTON

327

1 SWORN, TESTIFIES AS FOLLOWS:

2 CLERK OF COURT: State your name for the record.

3 WITNESS: Ray A. Livingston.

4 DIRECT EXAMINATION BY MS. ASHTON:

5 Q. Good morning.

6 A. Good morning.

7 Q. Where, where are you currently employed?

8 A. Richland County Sheriff's Department, Region 7.

9 Q. And what are your duties at Richland County right now?

10 A. Senior patrol officer.

11 Q. Okay, and were you employed in Richland County in May
12 of 2004?

13 A. Yes, ma'am.

14 Q. And did you come, did you -- did Investigator Branham
15 -- I'm sorry. Let me back up. What was your -- what
16 exactly was your position in May of 2004?

17 A. I was working in the Crime Scene Unit at the time.

18 Q. Okay, and is part of the responsibility of the crime
19 scene investigators to take photos?

20 A. Yes, ma'am.

21 Q. Okay. Did Investigator Branham contact you in
22 relation to a sexual assault case in May of 2004?

23 A. Yes, ma'am.

24 Q. What date was that?

25 A. The date is the 14th, 14th of May.

R. LIVINGSTON - DIRECT EXAMINATION BY MS. ASHTON

328

1 Q. Okay, and what did he ask you to do?

2 A. He only asked me to photograph the victim's face.

3 Q. Okay, and did you do that?

4 A. Yes, ma'am.

5 Q. I'm going to show you what's been marked as State's
6 Exhibit 16 through 21 for ID purposes only. I'm going to
7 ask you to look at these photos and tell me if you
8 recognize these.

9 A. Yes, ma'am.

10 Q. Okay, and what do these photos depict?

11 A. Depict the face of the victim, the side view, front
12 view, left and right side of the cheek area.

13 Q. And is this Misty Shealy?

14 A. Yes, ma'am.

15 MS. ASHTON: Your Honor, at this time I'd ask to offer
16 into evidence State's Exhibit 16 through 21.

17 THE COURT: Any objection?

18 MS. PINNOCK: No objection.

19 THE COURT: All right. They'll be admitted.

20 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
21 STATE'S EXHIBITS 16, 17, 18, 19, 20, 21.)

22 MS. ASHTON: And I believe the jury's already seen
23 copies of these.

24 BY MS. ASHTON:

25 Q. Again, this -- these photos were taken May 14th of

R. LIVINGSTON - DIRECT EXAMINATION / CROSS-EXAMINATION 329

1 2004?

2 A. Yes, ma'am.

3 Q. And is it your understanding that was several days
4 after the incident actually took place?

5 A. Yes, ma'am.

6 Q. Did you have any other additional involvement in this
7 case?

8 A. No, ma'am.

9 MS. ASHTON: Thank you.

10 WITNESS: Yes, ma'am.

11 THE COURT: Cross.

12 MS. PINNOCK: Please the court, Your Honor, very
13 briefly.

14 CROSS-EXAMINATION BY MS. PINNOCK:

15 Q. You just said the -- that you took these pictures on
16 the 14th of May?

17 A. Yes, ma'am.

18 Q. Okay, and what Ms. Ashton just showed you, are those
19 the same pictures? Just multiple copies?

20 A. Yes, ma'am.

21 Q. All right, and I'm referring to Defendant's Exhibit
22 15, 16, and 17, and 18. Those are the same ones that you
23 took?

24 A. Yes, ma'am.

25 Q. All right, and that was on May 14, 2004?

S. RICHARDS - VOIR DIRE EXAMINATION BY MR. GOLDBERG

330

1 A. Yes, ma'am.

2 MS. PINNOCK: All right. Thank you.

3 WITNESS: Thank you.

4 THE COURT: Anything else from the state?

5 MS. ASHTON: No, Your Honor.

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

7 MR. GOLDBERG: State calls Stan Richards.

8 STAN RICHARDS, BEING FIRST DULY
9 SWORN, TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Have a seat in the witness stand,
11 please. State your name for the record.

12 WITNESS: Stan Richards. R-I-C-H-A-R-D-S.

13 VOIR DIRE EXAMINATION BY MR. GOLDBERG:

14 Q. Sergeant Richards, where are you currently employed?

15 A. Richland County Sheriff's Department Crime Scene Unit.

16 Q. You say Crime Scene Unit, what does that mean?

17 A. We have a unit there that is a part of the Forensics
18 Division. Our job is to go to any crime scenes, whatever
19 they might be, collect, preserve, and process the physical
20 evidence.

21 Q. How long have you been with the sheriff's department?

22 A. I've been with the sheriff's department since 1994,
23 and I've been with the Crime Scene Unit approximately
24 eleven years.

25 Q. Can you describe for the jury some of your education,

S. RICHARDS - VOIR DIRE EXAMINATION BY MR. GOLDBERG 331

1 training, and experience?

2 A. My undergraduate work was, was in criminal justice at
3 St. Layle University in Florida. I also have studied
4 sociology at Wayland Baptist University in Anchorage,
5 Alaska, and I have -- also am a graduate from the U.S. Army
6 Command General Staff College in quantitative analysis.

7 My experience with the Crime Scene Unit is with a
8 multiple areas of disciplines from latent prints to
9 footwear, and I am a certified crime scene investigator, a
10 certified footwear examiner, and a certified bullet stain
11 pattern analysis examiner through the International
12 Association for Identification.

13 MR. GOLDBERG: Your Honor, at this time we'd offer
14 Sergeant Richards as an expert in crime scene analysis.

15 THE COURT: Any cross-examination?

16 MS. PINNOCK: Beg the court's indulgence.

17 (A PAUSE.)

18 MS. PINNOCK: Briefly, Your Honor.

19 VOIR DIRE EXAMINATION BY MS. PINNOCK:

20 Q. Investigator Richards, how, how many times have you
21 been qualified as an expert?

22 A. In what, ma'am?

23 Q. In crime scene analysis.

24 A. Crime scene analysis?

25 Q. Yes, sir.

1 A. Twenty-eight times.

2 Q. Twenty-eight times, and you said you'd been with the
3 crime scene investigating unit for eleven years?

4 A. Yes, ma'am.

5 Q. Okay, and your certifications are in shoe prints, the
6 footwear examination, and blood stain patterns?

7 A. And crime, crime scene investigation. Three.

8 MS. PINNOCK: Thank you, Your Honor. No objection.

9 THE COURT: All right. Any other questions?

10 MR. GOLDBERG: No, ma'am.

11 THE COURT: All right, ladies and gentlemen of the
12 jury, normally a person cannot give opinion testimony.
13 Normally when a person testifies, they testify as to what
14 they either saw, heard, or sensed by smell or something of
15 that nature. However, there is an exception when someone's
16 qualified through educational experience. They are
17 permitted to give their opinions in certain areas if the
18 court qualifies them that way.

19 This witness will be qualified in the area of crime
20 scene analysis to give opinion testimony in that area.
21 That does not mean that you must accept that, that opinion.
22 But it is evidence from you -- to use in any way you see
23 fit and give it the weight and credibility you believe is
24 appropriate.

25 All right. Thank you. You may proceed.

S. RICHARDS - DIRECT EXAMINATION BY MR. GOLDBERG

333

1 MR. GOLDBERG: Thank you, Your Honor.

2 DIRECT EXAMINATION BY MR. GOLDBERG:

3 Q. Back in May of 2004, were you working crime scene at
4 that time?

5 A. I was.

6 Q. And were you notified of an incident on May 11, 2004?

7 A. I was.

8 Q. What type of incident was that?

9 A. I was notified that it was a possible criminal sexual
10 assault and at Parks Apartment, I believe apartment [REDACTED],
11 and that's where I responded and arrived there about 3:15
12 in the morning.

13 Q. Okay, and how long were you at that location?

14 A. I completed about 4:30 in the morning.

15 Q. And the noted victim at that time?

16 A. I have listed a Misty Shealy.

17 Q. Once you responded to apartment 196, what did you do?

18 A. I assessed the situation and received information from
19 Deputy Hicks who was on scene at that time. It was related
20 to me that the victim had been transported to Lexington
21 Medical Center before my arrival, and she was being
22 interviewed, I believe, by an Investigator Metz at that
23 time. I was also ---

24 Q. Did you -- I'm sorry. Go ahead.

25 A. I was also advised that the victim suggested or said

1 that she opened the door to the subject ---

2 MS. PINNOCK: Objection.

3 MR. GOLDBERG: All right. I'll rephrase the question.

4 THE COURT: Sustained.

5 BY MR. GOLDBERG:

6 Q. Based upon the information that had been given to you,
7 what was going to be the primary area of the apartment that
8 you were going to focus your investigation?

9 A. The doorway, the door just inside the door around the
10 sofa, sofa area, and flooring around the sofa area.

11 Q. I show you what's been marked as State's Number 4
12 through Number 15. Have you take a look at those?

13 A. (WITNESS COMPLIES.)

14 Q. Generally what do you recognize State's 4 through 15
15 to be?

16 A. Generally I recognize it to be the apartment and the
17 areas that I processed that night or that morning.

18 Q. And did you take photographs that night?

19 A. I did.

20 Q. Did you actually take those photographs?

21 A. I did.

22 Q. Do those photographs fairly and accurately depict how
23 it appeared on that evening?

24 A. They do.

25 MR. GOLDBERG: At this time we'd offer State's 4

S. RICHARDS - DIRECT EXAMINATION BY MR. GOLDBERG

335

1 through 15 into evidence.

2 THE COURT: Any objection?

3 MS. PINNOCK: No objection.

4 THE COURT: It will be entered without evidence.

5 MR. GOLDBERG: Thank you.

6 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
7 STATE'S EXHIBITS 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15.)
8 BY MR. GOLDBERG:

9 Q. Please tell the jury about what you did in terms of
10 processing the crime scene once you arrived.

11 A. These are the things I did in that general area. I
12 processed the door internally and externally both inside
13 and out. I also processed ---

14 Q. And I'm sorry to interrupt. When you say you
15 processed the door, what does that mean?

16 A. I'm sorry. I processed the door for latent prints.
17 The possibility of somebody opening or closing the door
18 could possibly leave some latent prints on the door handle
19 or certain areas around the door knob internally or
20 externally. So, I processed the door in that manner for
21 latent prints.

22 Q. Are latent prints fingerprints?

23 A. Fingerprints, yes.

24 Q. So, how do you go about looking for fingerprints on,
25 on a door like that?

1 A. First on the door, and on a door knob, I probably and
2 I did use lighting just for a visible surface and visible
3 check. A lot of times you can see latent prints or
4 fingerprints on a door especially if it's one that's
5 painted. I did that. Then I used black powder, which is a
6 substance that we generally use when we try to enhance a
7 fingerprint that you cannot see.

8 A fingerprint, to leave a fingerprint, it's because
9 the ridges on your finger and they sweat out of pores just
10 like the rest of your body. So, when you touch something,
11 there is a, an ability to leave your fingerprint on the
12 substraight that you touched. A lot of times you can't see
13 it because it's water, amino acids, salt. That sweat that
14 comes out of your fingers, out of the pores on your
15 fingers, and 98 percent of that is water. So, it's hard to
16 see most of the time. So, we enhance it using certain
17 techniques. This time I used black powder and fingerprint
18 brush.

19 Q. Did you locate any usable fingerprints ---

20 A. No.

21 Q. --- or latent prints?

22 A. No.

23 Q. Is that uncommon?

24 A. It's not uncommon. There's many reasons why you
25 wouldn't. A fingerprint, as I just described, because it's

S. RICHARDS - DIRECT EXAMINATION BY MR. GOLDBERG

337

1 mostly water, very fragile. That means if you run your
2 hands across a substraight, you're smearing it. A lot of
3 people have a lot of sweat. They sweat a lot. So, they
4 have too much sweat. So, they smear fingerprints when they
5 touch something. A lot of people don't have enough, so
6 they won't leave anything when they touch something.

7 And so it's an environment. It's the person. It's
8 the substraight that's being touched. So, just because you
9 touch something doesn't, does not mean you're going to
10 leave a fingerprint.

11 Q. What, if any, indication did you find regarding any
12 potential shoe prints in the area?

13 A. I looked on the inside and the outside because I was
14 looking for anything I could think of that might indicate
15 that someone had been in or on the outside of that
16 apartment. So, I looked for shoe, footwear impressions
17 inside and outside and I -- that was -- used an alternate
18 light source to do that also, and I did not find any.

19 Q. When you were say alternate light source, what does
20 that mean?

21 A. It's different types of lights used in different types
22 of wave lengths in order to look for things that you can't
23 see very well yourself. You have to get down specifically
24 when you're on the outside of an apartment door where
25 there's a lot of cement. The shoe wear impressions that

1 you might find is because they have -- a person might have
2 something on the bottom of their shoe, whether they picked
3 it up outside or inside the apartment. They can still be
4 left on the concrete or whatever substraigh~~t~~ they're
5 walking on.

6 In order to try to see that, you have to get down with
7 certain wave lengths of light and try to find that. Then
8 if you do find it, you can enhance it with some chemicals
9 just like you do with a fingerprint and try to lift it.

10 Q. In this instance, no prints?

11 A. No.

12 Q. Did you then proceed to process the area around the
13 couch and the couch itself?

14 A. I did.

15 Q. And how did you go about doing that?

16 A. Same basic way as a footwear impression: by using an
17 alternate light source. The alternate light that I used
18 for the sofa and the surrounding carpet of the sofa was UV
19 light where it was 786 nanometer. Doesn't mean anything to
20 me either, so don't worry about it, but it's a black light.
21 I know everybody's heard of black light.

22 But a black light will react to certain body fluids,
23 particularly seminal fluids, and make it sparkle or
24 fluoresce, if you will. And so that's the light that I
25 used in this case that morning.

S. RICHARDS - DIRECT EXAMINATION BY MR. GOLDBERG

339

1 Q. Did you observe any fluids on or around the couch?

2 A. No.

3 Q. Is that uncommon?

4 A. It could or could not be.

5 Q. You also looked for other evidence such as hair
6 fibers. Is that right?

7 A. I did. Using basic alternate light source again, I
8 used -- I looked for hair and fibers. When you're looking
9 for a certain area for a certain type of an incident that
10 occurred, you try to think of what might have been left
11 there. So, hair and fibers, of course, were the two things
12 that should have and would have been looked for, and that's
13 what I did on the sofa and surrounding in the back of the
14 sofa on the, on the carpet.

15 Q. Did you process any other areas or parts of the
16 apartment at that time?

17 A. I did not.

18 Q. Any other doors processed?

19 A. No.

20 Q. Any other miscellaneous items in the apartment
21 processed?

22 A. No.

23 Q. And was that the extent of your involvement in this
24 case?

25 A. The only other thing that I did was, in April of 2010,

S. RICHARDS - DIRECT EXAMINATION / CROSS-EXAMINATION 340

1 I got some evidence, retrieved some evidence for the
2 evidence room which consisted of 2004 photographs, and I
3 had them developed because they were 35-millimeter, and
4 turned over to investigations and that's it.

5 Q. And those were the photographs that had been taken by
6 Investigator Livingston?

7 A. That's correct.

8 MR. GOLDBERG: Thank you, sir.

9 WITNESS: Yes, sir.

10 THE COURT: All right, please answer any questions
11 that Ms. Pinnock may have.

12 MS. PINNOCK: Please the court, Your Honor?

13 CROSS-EXAMINATION BY MS. PINNOCK:

14 Q. You said you have been with the CSI for eleven years,
15 right?

16 A. Yes, ma'am.

17 Q. You've been in law enforcement for a very long time?

18 A. Since 1994 here ---

19 Q. Okay.

20 A --- with Richland County, and I had about three to
21 four years stint as a law officer in Georgia in the middle
22 of military break.

23 Q. Okay. So, you've got quite a career?

24 A. Yes, ma'am.

25 Q. And you've gone through the extra training to get

S. RICHARDS - CROSS-EXAMINATION BY MS. PINNOCK

341

1 certified in three different areas as an expert. You know
2 processing scenes, processing fingerprints, blood, shoe
3 prints, you've done all of that?

4 A. Yes, ma'am.

5 Q. And throughout your years with Richland County doing
6 the crime scene investigating, when you get the call, is it
7 -- does it work you get the call, you get a little bit of
8 information like a briefing over the phone, and then you
9 meet whoever's processing the case at the scene?

10 A. Yes. I gather all information I possibly can from the
11 person holding the scene for me: any investigators that
12 might be there, any victims if the victims are still there.

13 Q. Okay, and you get that information so when you get
14 there, you know where you should go, what you should be
15 looking for, what you're trying to collect?

16 A. Yes, ma'am.

17 Q. And you said you spoke to Deputy Hicks?

18 A. Yes, ma'am.

19 Q. He's the one that requested you to go out to apartment
20 [REDACTED]?

21 A. Yes.

22 Q. All right, and he told you that this assailant was
23 wearing a mask and rubber gloves?

24 A. That's what I was told, yes.

25 Q. Okay, and that was from Deputy Hicks?

1 A. Yes.

2 Q. All right, and when you got there, you were already,
3 you already knew it was an alleged sexual assault?

4 A. Yes.

5 Q. You knew that Misty Shealy was saying it happened in
6 her living room?

7 A. Yes.

8 Q. Do they tell you that she reported that she was in and
9 out of consciousness?

10 A. I don't have that on my report. So, I ---

11 Q. Okay.

12 A --- don't remember.

13 Q. Okay, but the only place they told you, Deputy Hicks
14 told you that you needed to be interested in was the small
15 area that he described was the front door and the couch?

16 A. Yeah. It was described to me about that area, in and
17 out, the possibility of a suspect being in and out the same
18 front door, and that nothing else would have -- he -- a
19 suspect did not go any further than that around the sofa
20 area ---

21 Q. Okay.

22 A --- and nothing else was touched. That's the
23 information I gathered.

24 Q. Okay. Did he tell you how he verified that this
25 person didn't go anywhere else?

S. RICHARDS - CROSS-EXAMINATION BY MS. PINNOCK

343

1 A. Deputy Hicks related that to me, and later confirmed
2 by Investigator Metz, that the subject was not going any
3 further than the living room and sofa area.

4 Q. Okay, but they didn't tell you what confirmation they
5 had of that? They just said we've confirmed that he didn't
6 go anywhere else?

7 A. That's the information that I gathered, yes.

8 Q. And when you got there, you said you, you took
9 pictures. When you process the scene, you take pictures so
10 you know what you're looking at. This is about 3:00 in the
11 morning?

12 A. Yes, ma'am.

13 Q. All right. So, this would be the picture of the, the
14 light outside the apartment when you showed up?

15 A. When I showed up, yes, ma'am.

16 Q. Okay, and it was apartment [REDACTED]?

17 A. Yes, ma'am.

18 Q. And when you got in there, you said that you first --
19 you, one of the things you did was you were looking for
20 footprints inside and outside. And footprints either
21 inside or outside would support somebody being there,
22 standing still for a long period of time or any time in one
23 spot?

24 A. If I had something to compare it to, it would support
25 that somebody other than the person living there, the

1 deputies, EMS. A lot of people you have to rule out first.

2 Q. Right.

3 A. But possibly could, yes.

4 Q. Okay, but there was no fingerprint -- I'm sorry, no
5 shoe prints?

6 A. None that I saw.

7 Q. None outside the door?

8 A. None that I saw ---

9 Q. Okay.

10 A --- on that type of substraight.

11 Q. Okay, and you said that you examined the couch and the
12 floor area around the couch?

13 A. Yes.

14 Q. Did you -- you didn't -- did you collect any of the
15 cushions ---

16 A. No.

17 Q. --- for any testing?

18 A. No.

19 Q. You took a couple of pictures of the couch. Did --
20 you didn't take any pictures, I guess, looking over the
21 side of the couch at a downward angle?

22 A. No.

23 Q. No, and you didn't find any, with the ultraviolet
24 light, you didn't find any sweat? Would you find sweat
25 with an ultraviolet light?

S. RICHARDS - CROSS-EXAMINATION BY MS. PINNOCK

345

- 1 A. You could, you could pick it up, yes.
- 2 Q. Okay. There was no semen on the couch?
- 3 A. No.
- 4 Q. There's no saliva on the couch?
- 5 A. That's all. I was looking specifically for the
- 6 reaction that you would get from seminal fluids ---
- 7 Q. Okay.
- 8 A. --- which would be a sparkly type of fluorescence.
- 9 Q. And there's nothing, none of that?
- 10 A. I found none.
- 11 Q. On the couch or on the floor in this apartment?
- 12 A. No.
- 13 Q. Okay. You said that you dusted for fingerprints
- 14 inside and outside the door?
- 15 A. On the door.
- 16 Q. Okay, and you used the black powder with that brush?
- 17 A. Yes.
- 18 Q. Okay, and you didn't find any latent prints ---
- 19 A. No.
- 20 Q. --- on the door?
- 21 A. No, no usable prints.
- 22 Q. Well, now, do you remember, is this a one-bedroom
- 23 apartment?
- 24 A. I don't remember, ma'am.
- 25 Q. Okay.

1 A. Couldn't tell you.

2 Q. But the only information you were given was to process
3 again this small area when you come in the door?

4 A. That's the information I was given. So, that was the,
5 the determination that I made ---

6 Q. Okay.

7 A. --- as to where I needed to process.

8 Q. All right. So, we can be sure that nothing -- well,
9 you didn't take any pictures of the bedroom?

10 A. Not that I remembered ---

11 Q. Okay.

12 A. --- taking any photographs, no.

13 Q. You didn't collect any sheets from the bedroom?

14 A. No.

15 Q. No pictures of the kitchen? Nothing taken anywhere
16 else, nothing else processed in this entire house?

17 A. I don't know about the photographs, and I don't
18 remember ---

19 Q. Okay.

20 A. --- if I took any or not. But no, there was no
21 evidence collected, no.

22 Q. Okay, and you didn't -- and that's because of the
23 information that you were given?

24 A. Yes, ma'am.

25 Q. Okay, and that was from Deputy Hicks?

S. RICHARDS - REDIRECT EXAMINATION BY MR. GOLDBERG

347

1 A. Confirmed partially by Investigator Metz, yes.

2 MS. PINNOCK: Okay. Begging the court's indulgence.

3 (A PAUSE.)

4 MS. PINNOCK: No further questions, Your Honor.

5 THE COURT: All right. Anything? Yes, sir.

6 REDIRECT EXAMINATION BY MR. GOLDBERG:

7 Q. Sergeant Richards, it was related to you that a
8 suspect could potentially be wearing gloves. How would
9 that affect your ability to locate fingerprints?

10 A. To lift a fingerprint?

11 Q. Yes, sir.

12 A. It would greatly reduce. I've only read about being
13 able to lift a fingerprint from any type of a latex or
14 rubber glove and basically none from any type of cloth
15 glove. And the only reason I say that is there has been
16 some empirical testing which, of course, is very, very rare
17 that if you absolutely wear a certain type of latex gloves
18 -- it's very, very tight. You sweat a lot. It can
19 possibly come through. That's why, even after I was given
20 that information, I went ahead and processed anyway.

21 MR. GOLDBERG: Thank you, sir.

22 MS. PINNOCK: Nothing further.

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

24 MR. GOLDBERG: State calls Brandon Landrum.

25 BRANDON LANDRUM, BEING FIRST DULY

B. LANDRUM - VOIR DIRE EXAMINATION BY MR. GOLDBERG

348

1 SWORN, TESTIFIES AS FOLLOWS:

2 CLERK OF COURT: Have a seat in the witness stand
3 please. State your name for the record.

4 WITNESS: Brandon Landrum.

5 VOIR DIRE EXAMINATION BY MR. GOLDBERG:

6 Q. Agent Landrum, where are you employed?

7 A. South Carolina Law Enforcement Division, also known as
8 SLED.

9 Q. How long have you been employed at SLED?

10 A. Eight years.

11 Q. And tell the jury a little bit about your education
12 and background and training.

13 A. I received my Bachelor's of Science in biology with a
14 minor in chemistry from Winthrop University. I then went
15 on and received a certification as a medical technologist
16 from the Carolinas College of Health Sciences in Charlotte,
17 North Carolina. I then went and worked at Palmetto
18 Richland as an ER and Core Lab for about a year performing
19 blood, blood alcohol analysis, drug testing, and different
20 clinical tests before being hired on as SLED.

21 Upon being hired on at SLED, I went through an
22 intensive in-house program where we trained doing roughly a
23 thousand pre-analyzed blood samples for alcohol analysis,
24 and then those results had to be within plus or minus 5
25 percent of what the report had been reported out. And then

B. LANDRUM - VOIR DIRE EXAMINATION BY MR. GOLDBERG

349

1 after completing that, went through oral and written
2 examinations on interpretations as well as the different
3 chemistries dealing with alcohol.

4 Once satisfying that part of the training, I went on
5 to doing drug training, which involved running about a
6 hundred to two hundred previously runs cases from other
7 analysts, and then my results had to come in within the
8 same results that they reported out, and then with that I
9 then took another written and oral examination based off of
10 the interpretations of the things with drugs dealing with
11 the different classes.

12 Since -- once getting signed on, I attended several
13 courses, Borkenstein's Alcohol and The Driver course up in
14 Indiana University dealing with impairments of alcohol and
15 how it affects in relations to the driving. I've also
16 attended what we called web labs where you watch people get
17 dosed at different alcohol levels, and you watched their
18 impairment levels. And then I've also taken a, what's
19 called drug recognition evaluation course where you observe
20 people under the, under the influence of different drugs
21 and how they react. And that's just some of the training
22 that I've gone through since being at SLED.

23 Q. And once you began your employment with SLED, what
24 were your duties there?

25 A. At the time I was a forensic toxicologist, and a

B. LANDRUM - DIRECT EXAMINATION BY MR. GOLDBERG

350

1 forensic toxicologist is basically a scientist who applies
2 science to law. We analyze biological and non-biological
3 samples for the presence or absence of alcohol, drugs, or
4 and/or poisons, and then we provide interpretation of those
5 results for courts of law, coroners, and pathologist.

6 Q. And if you had to guess approximately how many tests
7 on blood samples regarding drug and alcohol concentrations
8 have you performed, ball park?

9 A. Probably about 10,000, 15,000, somewhere in there.

10 MR. GOLDBERG: Your Honor, at this time we'd offer
11 Agent Landrum as an expert in forensic toxicology.

12 MS. PINNOCK: No objection.

13 THE COURT: All right. He will be qualified as a
14 expert in forensic toxicology.

15 DIRECT EXAMINATION BY MR. GOLDBERG:

16 Q. Back in May of or, excuse me, April of 2005, were you
17 -- what was your role with SLED at that time?

18 A. I was a forensic toxicologist.

19 Q. And on or about April 26th of 2005, did you receive a
20 specimen of blood through the SLED lab?

21 A. Yes, I did. I received a tube of blood labeled
22 Shealy, Misty L.

23 Q. Okay. Can you describe for the jury a little bit
24 about what you did once you received that specimen?

25 A. Upon receiving that specimen, we checked to make sure

B. LANDRUM - DIRECT EXAMINATION BY MR. GOLDBERG

351

1 there's been no tampering, tampering with the tube.

2 Usually the -- in this case, we received a gray top tube,
3 which gray top tube basically has an antimicrobial and an
4 anti, anti -- basically keeps the blood from clotting. An
5 anti, antibacterial and then something to keep it from
6 forming clots, and then I make sure that there's no
7 tampering being done with that. Then from there I
8 performed the analysis, and on this case I performed a
9 blood alcohol analysis on this case.

10 Q. And generally what, what is a blood alcohol analysis
11 entail?

12 A. What a blood alcohol analysis entails is basically
13 looking for ethanol, which is the drinking alcohol that's
14 found in your beers and liquors and wines, and then we
15 perform -- I perform that test to find out if there's any
16 presence there and then reported out my findings.

17 Q. Were there any other substances that you were testing
18 for at that time?

19 A. At this time, our alcohol analysis test is specific
20 for ethanol and it's also specific for methanol, which is
21 your rubbing alcohol. Well, isopropanol, which is your
22 rubbing alcohol, methanol, which is more of a chemical used
23 in different labs and things like that, acetone, and
24 acetaldehyde are the other things that it's specific for so
25 we can differentiate what's present and what's not present.

B. LANDRUM - DIRECT EXAMINATION / CROSS-EXAMINATION 352

1 And that's pretty much the only testing that we did on this
2 sample.

3 Q. And what were your findings with regards to those
4 tests?

5 A. It was negative for volatiles in blood, which included
6 ethanol, methanol, isopropanol, acetone, and acetaldehyde
7 were all negative.

8 Q. In layman's terms, what does that mean?

9 A. There's, there's no ethanol. The person, at the time
10 of the blood was drawn, the person had not been under the
11 influence of ethanol or any of these drugs.

12 Q. Okay, and you didn't do any specific testing regarding
13 any other any other substances, did you?

14 A. No, we did not.

15 MR. GOLDBERG: Thank you, sir. That's all I have.

16 THE COURT: Please answer any questions that the
17 defense may have.

18 MS. PINNOCK: Please the court, very briefly.

19 CROSS-EXAMINATION BY MS. PINNOCK:

20 Q. Investigator Landrum, you said this was the only test
21 you'd done on the sample?

22 A. That's correct, yes.

23 Q. Okay, and it's just a blood alcohol test?

24 A. That's correct.

25 Q. You could have tested for cannabisis, cocaine, cocaine

B. LANDRUM - CROSS-EXAMINATION BY MS. PINNOCK

353

1 base? Any of the opiates, you could have done those
2 testing if you wanted to?

3 A. If we had history in our reports upon -- when officers
4 submit samples to a lab, if they suspect anything else that
5 might be present or there's any history of something that
6 might be present, then we go further and do -- for CSC
7 cases, we would go further and look for any other, anything
8 else that was there. In this case, we didn't have any
9 history of any other drugs. So, we followed our protocol,
10 which is basically to do an ethanol analysis on the case.

11 Q. Isn't it true that this ethanol test, since 2008, has
12 been removed from general blood tests? It's typically
13 reserved for death cases? You don't do those tests
14 anymore, do you?

15 A. We do still perform, to my knowledge, we still do
16 perform blood alcohol analysis on all cases that require
17 it, yes.

18 Q. Okay, and if somebody had admitted to smoking
19 marijuana, you would have tested it for illegal drugs?

20 A. If that was in the history that we received, then we
21 would have done a test for marijuana, yes.

22 Q. Okay, and you didn't do it because nobody told you?

23 A. That's correct. It wasn't in our report, in our
24 report.

25 MS. PINNOCK: Thank you. I have nothing further.

1 THE COURT: Anything?

2 MR. GOLDBERG: No, ma'am.

3 THE COURT: Thank you. You may step down.

4 Any objection to this witness being excused?

5 All right, ladies and gentlemen, at this time we will
6 take about a ten minute break. We've been going for some
7 time, and we'll stop so you all can use the restroom and
8 refresh yourselves, and also so the court reporter can take
9 a break. She's been busy over there. So, we're going to
10 take about a ten minute break. All right, thank you.

11 (THE JURY EXITS AT 12:08 P.M.)

12 THE COURT: All right, let's take about ten.

13 (OFF THE RECORD.)

14 THE COURT: All right, you ready to bring them in, Mr.
15 Goldberg?

16 MS. ASHTON: He's coming.

17 THE COURT: Okay.

18 (A PAUSE.)

19 THE COURT: All right, we ready to bring them?

20 MR. GOLDBERG: Yes, ma'am.

21 THE COURT: You can bring them in.

22 (THE JURY ENTERS AT 12:36 P.M.)

23 THE COURT: All right. Yes, ma'am, call your next
24 witness.

25 MS. ASHTON: State calls Investigator Anthony Branham.

A. BRANHAM - DIRECT EXAMINATION BY MS. ASHTON

355

1 ANTHONY BRANHAM, BEING FIRST DULY
2 SWORN, TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Have a seat in the stand please.
4 State your name for the record.

5 WITNESS: Anthony Branham. B-R-A-N-H-A-M.

6 DIRECT EXAMINATION BY MS. ASHTON:

7 Q. Investigator Branham, where are you currently
8 employed?

9 A. The City of Columbia Police Department.

10 Q. And how long have you worked at the City of Columbia
11 Police Department?

12 A. One month.

13 Q. One month. Where were you employed previously?

14 A. Richland County Sheriff's Department.

15 Q. And when did you start working at the Richland County
16 Sheriff's Department?

17 A. In June of 1996.

18 Q. And were you with the sheriff's department from '96
19 until two months ago?

20 A. Yes, ma'am.

21 Q. In May of 2004, were you working at the sheriff's
22 department?

23 A. Yes, ma'am. I was working as an investigator assigned
24 to investigative division.

25 Q. Okay, and what unit were you in in May of 2004?

1 A. The Special Victims Unit.

2 Q. Okay, and what, what does that mean, Special Victims
3 Unit?

4 A. We were assigned to investigate crimes such as child
5 -- crimes against children, sexual assaults, crimes against
6 the elderly, and those sorts of -- we have special victims
7 involved.

8 Q. And do you remember when you were assigned to that
9 unit?

10 A. It was the latter part of 2003, I believe, or early
11 part, maybe January of 2004. Somewhere the end of 2003,
12 beginning of 2004.

13 Q. Okay, and do you remember why you were assigned there?

14 A. You know, the, the chief of investigations came to me
15 and asked if, if I would help them out in that unit. They
16 had a need for another investigator. So, they transferred
17 me from the Narcotics Unit over to the Special Victims Unit
18 to help out with the case load.

19 Q. And in the Narcotics Unit, is that drug-related
20 crimes?

21 A. Yes, ma'am.

22 Q. In May of 2004, were you assigned the sexual assault
23 case where Misty Shealy was the victim?

24 A. Yes, ma'am, I was.

25 Q. And when were you assigned that case?

A. BRANHAM - DIRECT EXAMINATION BY MS. ASHTON

357

1 A. I was assigned that case on May the, May the 11th if
2 memory serves.

3 Q. Of 2004?

4 A. Yes, ma'am, 2004.

5 Q. And did you, did you actually go to the hospital that
6 night where she was before?

7 A. I did not go that night. I was assigned the actual
8 case the following morning after the report was taken by,
9 by an officer.

10 Q. Would the on-call supervisor have gone to the hospital
11 instead of you?

12 A. On-call supervisor or one of the on-call investigators
13 would have, have responded out to the hospital.

14 Q. And so you weren't assigned till later that morning?

15 A. That's right.

16 Q. Okay. Once you were assigned the case, what steps did
17 you take?

18 A. I began by contacting the victim and trying to set up
19 an appointment so that I could sit down and speak with her
20 and take a formal, formal statement from her:

21 Q. And what do you have -- once you're assigned the case,
22 do you have any information related to that case?

23 A. Normally all we have is an incident report, and that's
24 -- they assign copies of the incident report to, to the
25 investigator, and it's the investigator's responsibility is

1 to take it from there.

2 Q. So, you say that you attempted to make contact with
3 Misty?

4 A. I did. I spoke with her that next morning on the
5 11th, and I'm referring back to my notes, if that's okay.
6 Spoke with her about 9:00 a.m. that following morning, and
7 then set up an appointment for her I think later on that,
8 for later on that day. And we were going to set up an
9 appointment for the 12th the following day after, I guess
10 it was the day after I received the, the, the incident
11 report and then assigned the case. But she had been in the
12 hospital for a long period of time, and she asked to
13 reschedule that appointment. So, she came in and spoke
14 with me on May the 14th.

15 Q. And you were actually notified by the investigators
16 that she tried to make contact either with you or with the
17 investigative unit to make ---

18 A. Right, but she had called, she had called headquarters
19 to let them know, let me know that she wasn't going to be
20 able to make that appointment, and we rescheduled it.

21 Q. So, it was rescheduled for May 14th?

22 A. Yes, ma'am.

23 Q. And did she come in on May 14th to meet with you?

24 A. Yes, ma'am.

25 Q. And what time did she come in?

A. BRANHAM - DIRECT EXAMINATION BY MS. ASHTON

359

1 A. 11:15 a.m.

2 Q. And once she came to headquarters, did you respond to
3 headquarters? Is that where she, she came to speak with
4 you?

5 A. Yes, ma'am.

6 Q. Okay, and what, what did you do once she got to
7 headquarters?

8 A. Spoke to her briefly about the incident and kind of --
9 to kind of get a, a feel of what, what, what she said had
10 occurred during the, the incident at her, her apartment.
11 And from there we just took a statement from her and asked
12 her some follow-up questions to, to what she had, she had
13 told me about.

14 Q. Okay. Did she relate to you that she had been
15 sexually assaulted?

16 A. She did.

17 Q. And did she relate to you who had done this to her?

18 A. She was -- did not know who had done it.

19 Q. Okay. Did she give you any type of description of the
20 suspect?

21 A. She described him as being a, a larger person. She
22 was unable to tell me race, ethnicity. Seemed like a, a
23 larger framed individual or a taller, I should say, taller
24 individual than herself wearing some type of a hat. Had a
25 smell of alcohol about his person, and that was, that was

A. BRANHAM - DIRECT EXAMINATION BY MS. ASHTON

360

1 all that she was able to, to determine because at some
2 point in time during the assault, she indicated to me that
3 she had lost consciousness.

4 Q. And where did she say that this, this assault
5 occurred?

6 A. Just inside of her apartment around the, the sofa, the
7 couch area. I guess the living room area.

8 Q. Okay, and what was her address at that time?

9 A. Her address at that time was 1601 Longcreek Drive,
10 apartment [REDACTED].

11 Q. And is that in Richland County?

12 A. Yes, ma'am, it is.

13 Q. And what time did she say that the sexual assault
14 occurred?

15 A. Somewhere after 9:40 p.m. on the evening of the 10th.

16 Q. So, she gave you as much detail as she could related
17 to the assault?

18 A. She did. She, she was, gave me, you know, very
19 specific details because she knew that the, the -- about
20 the -- I guess the time that it occurred because she was
21 getting ready to leave her apartment and go to work.

22 Q. And did she give you a written statement?

23 A. Yes, ma'am, she did.

24 Q. While she was at headquarters on May 14th of 2004, did
25 you contact Investigator Ray Livingston?

A. BRANHAM - DIRECT EXAMINATION BY MS. ASHTON

361

1 A. I do not recall.

2 Q. Okay. To refresh your memory, I just hand up
3 Investigator Livingston's report.

4 A. Oh, yes, ma'am.

5 Q. Okay, and what did you ask Investigator Livingston to
6 do?

7 A. According to the request here for the, the forensic
8 science division, I requested him to take photographs of
9 the victim's face.

10 Q. And you didn't actually document that in your report,
11 though?

12 A. No, ma'am.

13 Q. And did the pictures that he took, those were a couple
14 days after the assault actually occurred?

15 A. That is correct.

16 Q. What apartment complex did, did Misty live at?

17 A. There are so many apartment complexes down in that,
18 that area on Longcreek Drive, I don't recall the, the name
19 of those apartments.

20 Q. Okay. I'll refer to your report on Page 2. I just
21 show you your report.

22 A. The Park.

23 Q. Yeah.

24 A. The Park Apartments.

25 Q. The Park Apartments.

A. BRANHAM - DIRECT EXAMINATION BY MS. ASHTON

362

1 A. Yes, ma'am.

2 Q. Okay. Did you make contact with Lieutenant Smith of
3 the Richland County Sheriff's Department on May 14, 2004?

4 A. Yes, ma'am, I did.

5 Q. And what did you ask him to do?

6 A. I had asked him to supply the patrol division and also
7 to put out information to the other investigators to be on
8 a lookout for any strange activity in that area along
9 Longcreek Drive referencing back to this sexual assault
10 that I was investigating.

11 Q. Okay. Were you aware that while Misty was at the
12 hospital that, on May the 11th of 2004, that she underwent
13 a sexual assault exam?

14 A. Yes, ma'am.

15 Q. And were you aware that the kit that was taken was
16 sent to SLED for analysis?

17 A. Yes, ma'am.

18 Q. And that is, and that, is the typical, at least in
19 2004, for these kits to be sent to SLED?

20 A. Yes.

21 Q. Is that correct?

22 A. Yes, ma'am. Once they're logged into evidence and the
23 -- the investigator is never notified when they come in,
24 when they go out unless they personally handle them. We
25 just receive information back from SLED sometime later

A. BRANHAM - DIRECT EXAMINATION BY MS. ASHTON

363

1 after the, the items in the protocol kit have been, have
2 been processed.

3 Q. And at some point later, did you receive the DNA
4 report from SLED?

5 A. I did. I received it from them, and it indicated that
6 a profile had been -- I guess they were able to gather a, a
7 profile from the items that were sent into them.

8 Q. Okay. Was that in January 2005?

9 A. Yes, ma'am.

10 Q. Now, in January 2005 had a match been developed from
11 that DNA profile?

12 A. No, ma'am.

13 Q. Between the time that you interviewed Misty in May
14 14th of 2004 and the time that you received the report from
15 SLED in January of 2005, what, what steps did you take
16 during, during that period of time?

17 A. I was waiting to see if any, any of the uniform
18 officers had made, you know, field contact or made any
19 contact with anyone along Longcreek Drive. Kept the case
20 opened for any leads that may come in to, to help solve the
21 case. And then right around January of '05, I was
22 transferred back to the Narcotics Unit and they found that
23 -- because they found an investigator permanently to work
24 in that Special Victims Unit.

25 Q. Okay, because you were basically, like you stated

1 earlier, filling in a gap in the ---

2 A. Right.

3 Q. --- Special Victims Unit, and there was no description
4 of the suspect during this time. Is that correct?

5 A. Right. There was just a, a male subject, taller than
6 the victim, with no race, ethnicity that wasn't sure of
7 anything.

8 Q. Did that make it difficult, in some respects, to
9 develop any type of leads?

10 A. Yes, ma'am, it did, and I explained to the victim in
11 cases like this where they -- the assailant is a stranger,
12 it, it takes some time and it will, it will probably, you
13 know, it could be months or years before we, we figure out
14 who did it.

15 Q. So, you were transferred to the Narcotics Unit in
16 January of 2005 or approximately that time?

17 A. Yes, ma'am.

18 Q. So, you were back on drug cases?

19 A. Right.

20 Q. Did this case remain assigned to you?

21 A. It remained assigned to me and open in hopes that, at
22 some point in time, I would be able to close it out.

23 Q. Did you have a lot of open SVU or sexual assault cases
24 that you took with you to the Narcotics Unit?

25 A. This was my only one that was left opened from the,

A. BRANHAM - DIRECT EXAMINATION BY MS. ASHTON

365

1 the Special Victims Unit. I had older drug cases that were
2 opened that I had, I was -- maintained during the time that
3 I was working the sexual assault cases. And then as I was
4 reassigned to the Narcotics Unit, I began to get inundated
5 with more and more cases of drugs.

6 Q. Can you approximate how many narcotics cases you
7 received per month?

8 A. It depends on month. It's month-by-month. Anywhere
9 between twenty and forty cases.

10 Q. Assigned to you specifically?

11 A. Right.

12 Q. Did -- I'm going to take your attention to June 29th
13 of 2007. Did you receive a letter from the SLED DNA
14 department?

15 A. I did.

16 Q. And did you learn in that letter that a DNA profile
17 from Misty's underwear had been matched to a suspect?

18 A. I did.

19 Q. And what was the name of that individual?

20 A. Melvin Stukes.

21 Q. At that point, did you attempt to conduct any
22 background investigation as far as where Mr. Stukes lived
23 around this time as part of your investigation?

24 A. Yes, ma'am. I, I did some background research and
25 found that around the time that the incident occurred that

A. BRANHAM - DIRECT EXAMINATION BY MS. ASHTON

366

1 Mr. Stukes was living at an address near by to the incident
2 location.

3 Q. Okay, and what specifically was that address?

4 A. 1804 Longcreek Drive, apartment [REDACTED], and I believe
5 it's B. Yes, ma'am.

6 Q. So, Longcreek Drive as well?

7 A. Yes, ma'am.

8 Q. And that's also where the victim's apartment was?

9 A. The same road, yes, ma'am.

10 Q. All right. Same road obviously, but a different
11 address?

12 A. Right, yes, ma'am.

13 Q. Did you also try to locate Misty because this was
14 approximately three years after you last spoke with her?

15 A. Yes, ma'am, I did. I attempted to contact her by
16 telephone. Right ---

17 Q. Which -- were those the telephone numbers that you had
18 on file?

19 A. Right, yes, ma'am. No contact was made with her
20 through the telephone, and an address on her driver's
21 license out in the Swansea area. I responded to that
22 address, to a residence, and no one was at home, and I was
23 not able to contact anyone at that time.

24 Q. And you didn't leave a card?

25 A. No, ma'am.

A. BRANHAM - DIRECT EXAMINATION BY MS. ASHTON

367

1 Q. After you made these initials attempts to contact
2 Misty, did you continue to, to try to find her?

3 A. I, I would call the number every so often to see if
4 maybe, if she had, she had got that phone number put back
5 in her name or, or, or, or -- and that's, that's -- I'd
6 just try to keep calling her, and I couldn't make contact
7 with her. So, it's kind of -- it stayed in an open status
8 up until later on when I turned it over to Investigator
9 Godfrey.

10 Q. And did you actually document the efforts that you
11 made to contact her ---

12 A. I ---

13 Q. --- after ---

14 A. After that, just making the phone calls and stuff, no,
15 ma'am, I never documented those.

16 Q. And part of your reasoning for that is because you
17 just weren't successful?

18 A. I wasn't successful, that's, that's correct.

19 Q. I'm going to take your attention to later, later in
20 the year 2009, early 2010. Did you learn about Misty's
21 location?

22 A. Yes, ma'am. I, I learned that she was incarcerated in
23 the Orangeburg County jail.

24 Q. Okay, and what did you do once you learned where she
25 was?

A. BRANHAM - DIRECT EXAMINATION BY MS. ASHTON

368

1 A. I spoke with the chief of police in North. He was
2 handling a case that had led her to being incarcerated, and
3 I asked his permission if I -- to set up an appointment to
4 come speak to her.

5 Q. Okay. Did you ever actually go speak to her?

6 A. I did not. A day or so after speaking with him and
7 getting his permission, I was approached by Investigator
8 Godfrey or Sergeant Godfrey about any of the -- my old SVU
9 cases that may be opened. He had indicated that the
10 sheriff's department had received a grant to, to work on
11 some of the cold case assault, assault cases that are still
12 opened, and I, I informed -- I told him briefly about the
13 case. He appeared interested.

14 It took me a week or so to find my, my file because we
15 had moved narc offices, and I couldn't put my hand directly
16 on the file. But once I, I found the file, I turned it
17 over to Investigator Godfrey or Sergeant Godfrey and they
18 went on from there.

19 Q. Could it have been longer than a week that it took you
20 to locate your file?

21 A. Yes, ma'am, it's probably a few weeks maybe.

22 Q. Okay, and again you said the reason that it, that you
23 weren't sure where it actually was is because you moved
24 offices?

25 A. Right. I, I kept my open, all my open cases in a

A. BRANHAM - DIRECT EXAMINATION / CROSS-EXAMINATION 369

1 briefcase, and we had to move narc offices from one to the
2 other, and with all the construction and all that going on,
3 it was kind of a mad house in the office. So, I kept
4 those, those files away so they wouldn't be damaged.

5 Q. Okay. Were you able -- do you remember whether you
6 told Investigator Godfrey where Misty was at that time?

7 A. I believe I, I had, but in follow-up conversations
8 there, there must of been some, some type of
9 miscommunication and apparently I -- he did not, he didn't
10 know that I -- where she was at the time.

11 Q. Okay, and he took the case over from you?

12 A. Right.

13 Q. Because he was assigned to the Cold Case Unit and he
14 had grant money to work specifically on these type of
15 cases?

16 A. Right.

17 MS. ASHTON: Beg the court's indulgence.

18 (A PAUSE.)

19 MS. ASHTON: Thank you. Please answer any questions
20 from the defense.

21 MR. SHEALEY: May it please the court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION BY MR. SHEALEY:

24 Q. Investigator, you're still an investigator at this
25 point, just in a different jurisdiction now, Columbia

1 Police Department?

2 A. Yes, sir.

3 Q. It's still the same basic principle of being an
4 investigator?

5 A. That's correct.

6 Q. And you've been an investigator now for how long?

7 A. Going on twelve years.

8 Q. Twelve years. Is it true that you know some of the
9 qualities being an investigator will be to research certain
10 aspects of the case?

11 A. Yes, sir.

12 Q. Would you agree with that's fair, researching is
13 important?

14 A. Yes, sir.

15 Q. Interviewing is important?

16 A. Yes, sir.

17 Q. Certain cases have suspects and witnesses that need to
18 be interviewed?

19 A. Right.

20 Q. So, research is important, interviewing is important.
21 Your powers of observation, you'd agree, are important, in
22 your twelve-year career as an investigator?

23 A. Yes.

24 Q. And then your, your report itself, your report taken
25 would have to be essential as an investigator, right?

A. BRANHAM - CROSS-EXAMINATION BY MR. SHEALEY

371

1 A. Yes, sir.

2 Q. In this case. This was from 2004, right?

3 A. That's correct.

4 Q. And one of the reasons you know that is because you
5 can look at something to reference, your report?

6 A. Right.

7 Q. The same with any case you have?

8 A. Right.

9 Q. So, I know you testified it's difficult to develop
10 leads in this case, right?

11 A. Right.

12 Q. Okay, and it's true and safe to say that and it's fair
13 to say that, you know, the majority of your investigation
14 was by interviewing Ms. Shealy, correct?

15 A. That's correct.

16 Q. And there's also some crime scene people that came out
17 there to apartment [REDACTED], right?

18 A. Yes.

19 Q. Did you ever drive to apartment [REDACTED]?

20 A. I did not.

21 Q. Okay, and you're the lead investigator at that time,
22 right?

23 A. Right.

24 Q. You have a two-page report, right?

25 A. Yes, sir.

1 Q. So, you didn't actually go out to the crime scene?

2 A. No, sir. They -- there was -- they had already
3 processed it.

4 Q. So, your powers of observation personally are somewhat
5 limited because you didn't go out there, and that's fair?

6 A. I wouldn't say they were limited. I had spoken with
7 the, the victim in this case and got a detailed description
8 of what happened and the events surrounding the incident.

9 Q. And if you were -- you're familiar with the term
10 corroboration, right?

11 A. Right.

12 Q. If you were to do any independent corroboration,
13 potentially you'd do that yourself?

14 A. Right.

15 Q. And one way of doing that is going to the crime scene,
16 right?

17 A. That's one, one means, yes, sir.

18 Q. Okay. Another way of doing that is in, in your
19 experience, twelve years, you often have to have an area
20 canvassed, right?

21 A. I'm sorry?

22 Q. Canvassed.

23 A. Oh, yes, sir, canvassing.

24 Q. Looking for anybody that may have seen something?

25 A. Right.

A. BRANHAM - CROSS-EXAMINATION BY MR. SHEALEY

373

1 Q. And in this case, y'all didn't find anybody?

2 A. No, sir. There was only two, two witnesses that night
3 and I was un, unable to locate the second witness.

4 Q. Now, you're aware this apartment complex, there's a
5 neighbor across the hall, another door across the hall?

6 A. I believe those, those apartments are set up that way,
7 yes, sir.

8 Q. Well, you didn't go out there, right? You testified
9 to that?

10 A. Right.

11 Q. So, you didn't talk to whoever that neighbor was?

12 A. No, sir.

13 Q. And you're, you're also aware, being the lead
14 investigator on this case, that Ms. Shealy's apartment was
15 on the first floor, right?

16 A. That's correct.

17 Q. And that there are apartments above it as well that
18 kind of mirrored the first floor?

19 A. Right.

20 Q. And you didn't talk to any of those people upstairs?

21 A. No, sir.

22 Q. Okay. You didn't send responding Officer Hicks to
23 talk to any of those people?

24 A. No, sir.

25 Q. What about Investigator Richards?

1 A. No, sir.

2 Q. So, it was, it was difficult to develop leads, though?

3 A. Yes, sir, it was.

4 Q. And you'd agree it's a little bit more difficult when
5 you're not talking to folks that were close in proximity or
6 at least attempting to, and that's fair, right?

7 A. It depends case-by-case, yes, sir.

8 Q. But in this case, we'll never know because you didn't
9 do it?

10 A. I did not interview the neighbors, no.

11 Q. Okay. In your two-page report, just make sure we're
12 on the same page, the first page is kind of a log of things
13 that you did, right, starting on the 11th?

14 A. Yes, sir.

15 Q. Then your second page pretty much just incorporates
16 Ms. Shealy's statement, right?

17 A. Yes, sir.

18 Q. And then after her statement, I think you have one
19 more entry where you're asking, I don't know, people to go
20 by the Park Apartments, right?

21 A. Right.

22 Q. Okay. There's nothing else and there aren't
23 additional pages, one of two, two or two, right?

24 A. That's right.

25 Q. Okay. Okay. So, your powers to research this case,

A. BRANHAM - CROSS-EXAMINATION BY MR. SHEALEY

375

1 to observe, to report are pretty much channeled through Ms.
2 Shealy?

3 A. That's correct.

4 Q. Because you didn't go out there yourself. Other
5 officers went out to her apartment, right?

6 A. Right.

7 Q. And the details of her story are basically provided to
8 you ---

9 A. That is correct.

10 Q. --- right? Did she talk to you about, you know, she
11 couldn't get any leads about the suspect, she said she
12 couldn't see who it was?

13 A. Right.

14 Q. Gave a general descriptions about size, that kind of
15 thing. Couldn't give you race. Let you know that
16 allegedly it all occurred in the front door area, right?
17 That's what she told you?

18 A. Right.

19 Q. And that's, that's in her statement?

20 A. Right.

21 Q. Told you that she was grabbed in the neck with a right
22 hand and punched in the face with a left hand of her
23 attacker, right?

24 A. That's correct.

25 Q. And that's in her statement, right?

1 A. Right.

2 Q. And that statement was given -- you can look at your,
3 your notes -- on the 14th, right?

4 A. That is correct.

5 Q. Okay, and I want to just show you briefly this, this
6 statement. Is that what we're talking about?

7 A. Let me just match it up with what I have here. Yes,
8 sir.

9 Q. Okay, and that statement, again, was dated on what
10 date?

11 A. The 14th, May 14th at 11:25 a.m.

12 Q. And you're aware that Officer Hicks talked to her
13 earlier on?

14 A. At the hospital, yes, sir.

15 Q. And that was on the 11th, right?

16 A. That is correct. Somewhere between the evening of the
17 11th and the early morning hours of the 12th.

18 Q. Okay. Now, even though you didn't go up there
19 yourself, you didn't become aware -- and you testified as
20 being on this case for a while, right?

21 A. After it was assigned to me?

22 Q. Yes, sir.

23 A. Yes, sir.

24 Q. Before it went over to Investigator Godfrey, you were
25 on it for a while. So, you were familiar with what people

A. BRANHAM - CROSS-EXAMINATION BY MR. SHEALEY

377

1 observed that actually went out there themselves?

2 A. Right.

3 Q. So, you're aware that there was no evidence of any
4 kind of forced entry, right? You're aware of that?

5 A. Right. I think the victim said she opened the door.

6 Q. Right. This wasn't a case where you were able to
7 observe hinges off the door or anything like that?

8 A. Right.

9 Q. But you were aware that Ms. Shealy says that he forced
10 his way in?

11 A. Right.

12 Q. But there's no evidence of any struggle in the doorway
13 to your knowledge?

14 A. To my knowledge, no, sir.

15 Q. You weren't made aware of any kind of evidence of any
16 kind of sexual activity at the doorway, right?

17 A. That's, that's not where she indicated to me that it
18 had occurred, no, sir.

19 Q. If you -- if there had been, let's say, semen found on
20 that couch, you would have indicated that in your report,
21 right?

22 A. It would have been indicated in the crime scene
23 investigator's report.

24 Q. And probably would have been noteworthy in your report
25 as well?

A. BRANHAM - CROSS-EXAMINATION BY MR. SHEALEY

378

1 A. Oh yes, sir. Yes, sir.

2 Q. But there was none of that in this case?

3 A. No, sir.

4 Q. Okay. She also told you about a dog, an animal in
5 this, this case?

6 A. Yes, sir. I believe that she had a dog in the
7 apartment.

8 Q. And putting a dog in a cage, right ---

9 A. Yes, sir.

10 Q. --- before her alleged attack? The lights were dark
11 in her apartment she said, right?

12 A. Right.

13 Q. But she indicated that there was a light at her
14 neighbor's area that had -- that's why she couldn't see
15 anything, right?

16 A. Right.

17 Q. Okay. Again, you didn't talk to this neighbor?

18 A. No.

19 Q. Y'all didn't get any independent 911 calls of any kind
20 of disturbances that night from that area of the apartment
21 complex?

22 A. There was none, no, sir.

23 Q. Not from any of the neighbors, no 911 call, call from
24 Ms. Shealy yourself? You weren't aware of that, right?

25 A. No, sir.

A. BRANHAM - CROSS-EXAMINATION BY MR. SHEALEY

379

1 Q. And that didn't happen in this case?

2 A. That's not unusual in these types of cases, yes, sir.

3 Q. And you're aware that she actually went out to Hopkins
4 to -- after this alleged incident and made contact with an
5 associate of hers, right?

6 A. That is correct.

7 Q. And you became aware, through your investigation, that
8 was Ms. Bruton?

9 A. That's correct.

10 Q. Okay. This isn't a case where y'all looked in any
11 other place for any signs of physical evidence other than
12 that front door area and the couch, right?

13 A. That's -- the, the living room area was and the
14 doorway area would be the concentration of the, the
15 investigation.

16 Q. And you're aware that this was literally about a foot
17 from the door, this couch?

18 A. It wasn't -- in her terms it wasn't far at all.

19 Q. Okay, and the door was adjacent to a breezeway?

20 A. Right.

21 Q. And the breezeway is how people are getting in and out
22 of this area?

23 A. That's correct.

24 Q. So, it's very close to the parking lot, the hallway,
25 other public areas?

A. BRANHAM - CROSS-EXAMINATION BY MR. SHEALEY

380

1 A. Right.

2 Q. Okay, but no one else heard anything, right?

3 A. No, sir. No one, no one, no one else called 911 or
4 came forward to law enforcement to report any type
5 incident.

6 Q. And you didn't contact the apartment manager at that
7 time?

8 A. Not during that time, no, sir.

9 Q. You didn't think it would be good to see if they had
10 any complaints of any suspicious people with gloves on or
11 masks or anything?

12 A. We -- I'm sure they would have called, but no, sir, I
13 did not contact them.

14 Q. Okay. So, if there was a report of a complaint of
15 somebody banging on doors with a, a -- gloves or masks, you
16 would not be aware of that being located in this Park
17 management file, with the office manager?

18 A. Not unless they, they contacted me and let me know
19 about that.

20 Q. And they didn't?

21 A. No, sir.

22 Q. And you didn't contact them?

23 A. No, sir.

24 MR. SHEALEY: Beg the court's indulgence.

25 (A PAUSE.)

1 MR. SHEALEY: That's it. Thank you.

2 THE COURT: Anything else?

3 MS. ASHTON: Nothing further, Your Honor.

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

5 MR. GOLDBERG: your Honor, we have one quick matter to
6 take up.

7 THE COURT: All right. Can I see you for a second?

8 (OFF-THE-RECORD BENCH CONFERENCE.)

9 THE COURT: All right, ladies and gentlemen of the
10 jury, it's about 1, like 12 or 13 and it is lunchtime. So,
11 I am going to let you all take a break at this time. We
12 will start back at 2:30.

13 Just remember everything that I told you regarding the
14 case. Do not discuss it with anyone, not even your fellow
15 jurors, and you are to be back here at 2:30. Thank you.
16 Have a great lunch.

17 (THE JURY EXITS AT 1:12 P.M.)

18 THE COURT: All right. Yes, sir.

19 MR. GOLDBERG: One of our next witnesses, Mr.
20 Caldwell, in 2010 -- just as some background. When
21 Sergeant Godfrey got the case and Mr. Stukes had been
22 developed as a suspect, Investigator Godfrey -- or Sergeant
23 Godfrey obtained warrants for the arrest of Mr. Stukes. He
24 was ultimately placed under arrest by Sergeant Caldwell
25 with the fugitive team at a residence on Marlboro Street,

1 and in the discovery that's been provided, it's noted that
2 Sergeant Caldwell told Sergeant Godfrey that when he placed
3 Mr. Stukes under arrest, Mr. Stukes on his own accord said
4 that the warrants had to be a mistake because he didn't
5 know the victim.

6 We asked Sergeant Caldwell some follow-up questions
7 about that today in preparation for his testimony. He,
8 just so the court is aware and so counsel's aware, he said
9 that the standard procedure -- and we can proffer his
10 testimony if needed. The standard procedure is that they
11 went to the location, they came in contact with Mr. Stukes
12 in the apartment, told him he was under arrest, put him in
13 the patrol car to take him down to the county jail, and
14 while doing so read the warrants to him. The actual -- I
15 mean, it would be the description of the offense for each
16 of the two warrants, and it was at that time that Mr.
17 Stukes responded and said the warrants must be a mistake
18 because I don't even know -- let me see: The warrants must
19 be a mistake because I don't even know the victim.

20 Obviously that's something that we would seek to
21 introduce into evidence from that exchange. I don't
22 believe that it's been a situation in that it was not an
23 interrogation. They weren't asking questions. When the
24 victim said that, the only question that was asked by
25 Sergeant Caldwell was or -- that was said really was, you

1 know, we can't -- we're not going to ask any questions, but
2 if you want to talk to investigators we can arrange that.
3 And he said yeah, I want to talk to investigators, and that
4 would be the end of their conversation.

5 Again, we would be seeking to introduce that. If it's
6 necessary to have some sort of a hearing about that
7 exchange, obviously we can put him up. But it's our
8 position that, you know, he was not being interrogated. He
9 wasn't advised of his rights at the time. He was simply
10 being placed under arrest, and Sergeant Caldwell will
11 testify that it's standard procedure, when that happens, to
12 actually read the warrant to him.

13 Now, I will point out that if we get to that point
14 where he's testifying about what he read to him, there is
15 some reference in the actual warrant that says, in the body
16 of the warrant, that says a DNA profile developed from
17 semen discovered during the analysis of the evidence
18 resulted in a profile match of the defendant or to the
19 defendant in CODIS. Obviously we would black out the words
20 in CODIS, and I have no intention of using that. I've
21 advised Sergeant Caldwell that he's not allowed to
22 reference that phrase at all.

23 But for the sake of not going through all this once
24 he's on the stand and coming up, I just wanted to bring it
25 to everyone's attention now so that we could hash it out

1 before it comes up. And also, of course, the issue that
2 once he was taken into custody, he was taken to the Alvin
3 S. Glenn Detention Center, which I think already comes out
4 by way of Sergeant Godfrey because when he testifies as he
5 did in the *Jackson v. Denno* hearing, he'll testify that he
6 went and picked him up from the jail, advised him of his
7 rights as they were leaving the jail en route to
8 headquarters. Just wanted to get all that out there now
9 while I have a chance.

10 THE COURT: All right.

11 MR. SHEALEY: Your Honor, I would, I would say that he
12 was in custody at that time. There's a -- and I guess he's
13 getting all this from the -- Godfrey's report from May 5th
14 because it's the information referring to Caldwell.

15 You know, no Miranda. He's in custody. You know, I
16 say it's probably impermissible at that point in time.
17 Talking to a suspect who's in custody about why he's being
18 arrested, reading him a warrant, protocol or no protocol, I
19 think you can certainly probably exclude it for not having
20 Miranda at that time, being advised of.

21 If you, if you feel otherwise, Judge, I think we would
22 have to have -- yeah, certainly another hearing on the
23 matter. But I'd say we don't even get to that because
24 there's no Miranda, and it's already indicated that that
25 wasn't provided for in that advisement.

1 But he is in custody and it wasn't like it was a, you
2 know, detaining someone for purposes of investigating
3 something. He had an arrest warrant. He was in custody.
4 At that point in time he was going nowhere but Alvin S.
5 Glenn. It wasn't an investigatory type situation. This
6 was they have their guy, he's in custody, he's arrested,
7 and that point in time any statements from him that would
8 be elicited Miranda must be advised.

9 THE COURT: All right, I'll take a look at it and
10 there's some cases out there on it lately, but ---

11 MR. GOLDBERG: And obviously, in a nutshell, our
12 position would be that, you know, it's there -- they're
13 required to advise the suspect of why they're being under
14 arrest, and the statement that was made was not in response
15 to any question. It was something that the defendant
16 blurred out sporadically, voluntarily, without, without a
17 response -- excuse me, not in response to any question.
18 Excited utterance of a sort if you want to look at it that
19 way, and so that's my, that's my position.

20 THE COURT: All right. Like I said, I know there's
21 some cases out there. I'm trying to remember. For
22 whatever reason, when I was with the city, this came up
23 quite frequently. So, I will take a look at it over our
24 lunch break.

25 MR. GOLDBERG: And for additional scheduling purposes,

1 just based on our conversation earlier, we, I believe, will
2 have everybody here this afternoon, and all of our
3 potential witnesses will be available to testify this
4 afternoon except for Sergeant Godfrey, it looks like at
5 this point. We won't get to him in time.

6 THE COURT: Yeah, and we'll start back at 2:30. So,
7 that will give us an opportunity to -- yeah, we'll, we'll
8 go through probably, what, about seven or eight more
9 witnesses?

10 MR. GOLDBERG: Yes, ma'am, seven or eight.

11 THE COURT: So, we'll -- that will probably take us,
12 I'm guessing, 4:00 or so and then we'll, and then we'll
13 start with him in the morning.

14 MR. GOLDBERG: That will be good.

15 THE COURT: All right.

16 MR. GOLDBERG: All right. Thank you.

17 THE COURT: You have a good lunch. I'll be -- and I'll
18 be glad to -- you know what? Actually, y'all come back a
19 little bit early. I told them 2:30, right?

20 MR. GOLDBERG: Yes, ma'am.

21 THE COURT: Y'all come back maybe about 2:15.

22 MR. GOLDBERG: Yes, ma'am.

23 THE COURT: If y'all have any cases that I -- you want
24 me to look at, I'll take a look at them.

25 MR. GOLDBERG: Yes, ma'am.

1 THE COURT: We'll take a look at them ---

2 MR. GOLDBERG: Thank you.

3 THE COURT: --- over lunch.

4 (OFF THE RECORD.)

5 (PACKET CONTAINING UNDERWEAR MARKED AS STATE'S EXHIBIT
6 NUMBER 24 FOR IDENTIFICATION.)

7 THE COURT: All right, the next witness, and there's
8 an issue about ---

9 MR. GOLDBERG: Your Honor, would it be inconvenient if
10 I asked if we could do two chain witnesses prior to taking
11 up this witness and that argument for scheduling purposes
12 that are chain witnesses? Does that bother anyone?

13 THE COURT: It's, it's your case. You can call
14 whoever you want.

15 MR. GOLDBERG: Just in terms of bringing the jury in
16 and out.

17 THE COURT: Oh, no, that's fine.

18 MR. GOLDBERG: Okay. Then we'll call the two chain
19 real quick, and then if we could excuse the jury ---

20 THE COURT: Well, let me just do this. Y'all have any
21 cases y'all want me to look at because I can look at them
22 while they're ---

23 MR. GOLDBERG: I do.

24 MR. SHEALEY: Sure, Your Honor.

25 THE COURT: I mean, I have a couple of them. State

1 vs. Brown.

2 MR. SHEALEY: Do you have a Court of Appeals case,
3 State vs. Ledford?

4 THE COURT: No.

5 MR. SHEALEY: That's 351 S.C. 83. It's a good one.
6 There's that case *Miranda vs. Arizona* we're all familiar
7 with.

8 THE COURT: Yes, of course.

9 MR. GOLDBERG: Is that new?

10 MR. SHEALEY: That's new.

11 THE COURT: All right.

12 MR. SHEALEY: And maybe a situation of just addressing
13 the witness Caldwell where we -- it may be proper to put
14 them up there and go over the custodial issue and the
15 voluntary issue, proffer his testimony before we make some
16 arguments on it unless you already know what you want to do
17 on it.

18 THE COURT: No, I don't.

19 MR. SHEALEY: But ---

20 THE COURT: I mean, that's what I was thinking I was
21 going to do.

22 MR. SHEALEY: Yeah.

23 THE COURT: But I, I can look at these while he's
24 going through the chain.

25 All right. You can bring them in.

S. GRIFFEY - DIRECT EXAMINATION BY MR. GOLDBERG

389

1 (THE JURY ENTERS AT 2:38 P.M.)

2 THE COURT: All right, ladies and gentlemen of the
3 jury, I trust that you had a good lunch. At this time we
4 will continue with the state's case, and I will ask Mr.
5 Goldberg to call his next witness.

6 MR. GOLDBERG: Thank you. Please the court? State
7 calls Steve Griffey.

8 STEVE GRIFFEY, BEING FIRST DULY
9 SWORN, TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Have a seat in the witness stand,
11 please. State your name for the record.

12 WITNESS: Steven Griffey.

13 DIRECT EXAMINATION BY MR. GOLDBERG:

14 Q. Where are you employed, sir?

15 A. Richland County Sheriff's Department, sir.

16 Q. How long have you been employed there?

17 A. Sixteen years.

18 Q. And back in May of 2010, were you employed there at
19 the time as well?

20 A. Yes, sir, I was.

21 Q. What were your duties there at that time?

22 A. I was the evidence custodian at that time, sir.

23 Q. Can you tell the jury a little bit about what that
24 means?

25 A. As an evidence custodian, what we would do would

1 receive items either from the investigators or deputies
2 with Richland County Sheriff's Department. We would review
3 those items to make sure they were properly sealed, the
4 proper documentation was on the bags. We would enter into
5 -- enter them into our computer system, and then we would
6 place them in a safe storage facility.

7 Q. Specifically turning your attention to May the 5th,
8 2010, did you receive an item of evidence in connection to
9 a case involving Misty Shealy and Melvin Stukes?

10 A. Yes, sir, I did.

11 Q. And what item was that?

12 A. The item was listed as a swab carton containing one
13 swab taken from Melvin Stukes, Jr.

14 Q. Who did you receive that item from?

15 A. Investigator Brian Godfrey.

16 Q. And when did you receive it?

17 A. On the 5th of May at 1255 hours.

18 Q. And was that -- when you received it, had it been --
19 had the item been sealed?

20 A. Yes, sir.

21 Q. Was it tampered with in any way?

22 A. No, sir, not at all.

23 Q. And what did you do upon receipt?

24 A. Then I would log it into the evidence room, and after
25 I checked everything, and then placed it in its storage

S. GRIFFEY - DIRECT EXAM / P. WEED - DIRECT EXAM

391

1 facility.

2 Q. Did you alter its condition in any way while it was in
3 your care?

4 A. No, sir, not at all.

5 MR. GOLDBERG: All right. Thank you, sir.

6 WITNESS: Yes, sir.

7 MS. PINNOCK: No questions, Your Honor.

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

9 WITNESS: Thank you.

10 (THE WITNESS EXITS THE STAND.)

11 MR. GOLDBERG: State calls Patty Weed.

12 PATTY WEED, BEING FIRST DULY

13 SWORN, TESTIFIES AS FOLLOWS:

14 CLERK OF COURT: Have a seat in the witness stand,
15 please. State your name for the record.

16 WITNESS: Investigator Patty Weed.

17 DIRECT EXAMINATION BY MR. GOLDBERG:

18 Q. Where are you employed, ma'am?

19 A. Richland County Sheriff's Department.

20 Q. How long have you been employed there?

21 A. Fifteen years.

22 Q. And were you working there back in August of 2010?

23 A. Yes, sir.

24 Q. What was your role in the sheriff's department in
25 August, 2010?

1 A. I was working in the evidence room.

2 Q. And did you happen to take custody of some item of
3 evidence in connection with a case involving a Misty Shealy
4 and Melvin Stukes?

5 A. Yes, sir, I did.

6 Q. On what date was that, August 4, 2010?

7 A. Yes, sir, at 8:53.

8 Q. And what piece of evidence was that that specifically
9 you were involved with?

10 A. It was a sexual assault kit.

11 Q. Do you have the chain of custody form in front of you?

12 A. I do, sir.

13 Q. Okay. Was that Item Number 3?

14 A. I'm sorry, sir. Yes, it was a swab. I'm sorry.

15 Q. Okay.

16 A. Item 3.

17 Q. And what was the description of the swab?

18 A. It's a swab carton containing one swab taken from
19 Melvin Stukes, Jr.

20 Q. Okay, and how did you gain control of that item?

21 A. It was brought in from the investigator that had taken
22 the swab from the -- from Mr. Stukes.

23 Q. And did you actually get it out of the evidence room?

24 A. Yes, sir, I did.

25 Q. Okay, and had it been altered or tampered with in any

P. WEED - DIRECT EXAMINATION BY MR. GOLDBERG

393

1 way when you got it?

2 A. No, sir.

3 Q. Okay, and where did you take it?

4 A. I took it to SLED on, on the ---

5 Q. On August the 4th?

6 A. August 4, 2010, I took it to SLED and I picked it up
7 9/8 of 2010. I picked it up from SLED and brought it back
8 to the sheriff's department evidence room.

9 Q. And at the time that you dropped it off at SLED on
10 August 4, 2010, had the seal been broken in any way? Was
11 it tampered with or altered?

12 A. No, sir.

13 MR. GOLDBERG: Okay. Thank you, ma'am.

14 THE COURT: Anything further?

15 MS. PINNOCK: No questions.

16 THE COURT: All right, ma'am, you may step down.

17 (THE WITNESS EXITS THE STAND.)

18 THE COURT: All right, call your next witness.

19 All right, ladies and gentlemen of the jury, I am
20 going to have to send y'all out. There's a matter of law
21 that I need to take up with the attorneys before we call
22 the next witness, and so I'm going to send you out for a
23 short break. Thank you.

24 (THE JURY EXITS AT 2:44 P.M.)

25 THE COURT: All right. All right, you want to call

A. CALDWELL - EXAMINATION BY MS. ASHTON

394

1 your officer and we can do, I guess, an evidentiary as to
2 whether or not the statement was voluntarily given and what
3 he's going to say about the Miranda rights and whether or
4 not he was in custody.

5 MR. GOLDBERG: Yes, ma'am, if that's what you, if
6 that's what you require.

7 THE COURT: Well, I think any statement the court, in
8 reading this case, I think any statements -- and I think
9 that's why, the reason why it was reversed is any
10 statements, that the defense is entitled to a hearing as to
11 the voluntariness of the statement. So, we will bring in
12 Officer?

13 MR. GOLDBERG: Caldwell.

14 THE COURT: Cauthran?

15 MR. GOLDBERG: Caldwell.

16 THE COURT: Caldwell.

17 MR. GOLDBERG: Drew Caldwell.

18 ANDREW CALDWELL, BEING FIRST DULY
19 SWORN, TESTIFIES AS FOLLOWS:

20 THE COURT: Thank you. Have a seat in the witness
21 stand, please. State your name for the record.

22 WITNESS: Andrew Caldwell.

23 EXAMINATION BY MS. ASHTON:

24 Q. Sergeant Caldwell, what team do you work with for the
25 Richland County Sheriff's Department?

A. CALDWELL - EXAMINATION BY MS. ASHTON

395

1 A. I currently supervise the Fugitive Task Force for the
2 sheriff's department.

3 Q. And on April -- in April of 2010, what was your
4 position with the sheriff's department?

5 A. Sergeant of the Fugitive Task Force.

6 Q. Okay, and can you just briefly explain what the
7 responsibilities of the Fugitive Task Force is?

8 A. Our primary goals are to identify and locate dangerous
9 and wanted individuals who have arrest warrants pending for
10 their arrest and to take them into custody.

11 Q. Okay, and did you make contact with Investigator
12 Godfrey in relation to a defendant by the name of or a
13 suspect by the name of Melvin Stukes?

14 A. Yes. I was contacted by Investigator Godfrey ---

15 Q. And ---

16 A. --- concerning this case.

17 Q. And what did he relay to you?

18 A. Related that there was some outstanding arrest
19 warrants for a burglary first and a criminal sexual conduct
20 and requested my assistance in locating the defendant, Mr.
21 Stukes.

22 Q. Okay, and were you able to locate Mr. Stukes?

23 A. We were.

24 Q. And when? What date was that?

25 A. We located him on May 5, 2010, at 921 Marlboro,

A. CALDWELL - EXAMINATION BY MS. ASHTON

396

1 Marlboro Street, apartment 27-2 in Columbia, South
2 Carolina.

3 Q. And was that in Richland County?

4 A. It is.

5 Q. Okay, and what did you do upon making contact with Mr.
6 Stukes?

7 A. Took Mr. Stukes into custody. It was early in the
8 morning. I believe the apartment that we were -- found Mr.
9 Stukes in belonged to his sister. We allowed him to put on
10 some shoes and a shirt, I believe. He could -- he just had
11 some shorts on. He came from the upstairs section of the
12 apartment. Told him he was under arrest and subsequently
13 read and served him with the two arrest warrants.

14 Q. And is that standard procedure for the fugitive team
15 to read the arrest warrants to him?

16 A. It is.

17 Q. Okay, and why is that?

18 A. Well, that's, that's what gives us the authority to,
19 to take somebody into custody and place them under arrest,
20 and that's their notification, if you will, as to why we're
21 doing what we're doing.

22 Q. Okay, and upon reading the warrant, did he, did he say
23 anything to you once you read the warrant?

24 A. Yes, ma'am. With regard to the criminal sexual
25 conduct warrant, I recall him saying -- because I thought

A. CALDWELL - EXAMINATION BY MS. ASHTON

397

1 this was very strange of all the things I hear. The
2 warrant has the victim's name in it, and when I read that
3 warrant to him, the probable cause section, I remember him,
4 I remember him making a statement, something to the effect
5 of that's got to be a mistake or that's, that's wrong. I
6 don't even know her.

7 Q. Okay, and what ---

8 A. I thought that was very odd.

9 Q. And was that in response to any questioning of him ---

10 A. No.

11 Q. --- by you?

12 A. No. We don't question the defendants that are wanted.
13 We generally don't, we generally don't know a lot about
14 the, the, the details of the case involving -- regarding
15 the probable cause. We're more from the standpoint of
16 looking at leads on where that individual's located.

17 Q. Once he made that statement to you, that response to
18 the warrants, what did, what did you do? What did you tell
19 him?

20 A. I asked him -- and this is also routine. Give the
21 individuals a chance. We tell them up front that we're
22 just there to serve the warrants. We're not the
23 investigators working the case, and I asked them if they
24 would like to speak to the investigator that's working the
25 case that got the warrants. If they do, I make every

A. CALDWELL - EXAMINATION BY MS. ASHTON

398

1 possible attempt to get them in touch, or take them to that
2 investigator if that's possible during that time frame. If
3 they say no, I don't want to talk, then we take them
4 directly to the jail from where, wherever it is we located
5 them and made the arrest.

6 Q. Okay. So -- but in this case, did you take him to --
7 do you remember where you took him?

8 A. I believe we took him to the warrant division first,
9 and then he was transported down to the jail. I believe
10 Investigator -- Sergeant Godfrey wasn't available at that
11 time of the morning ---

12 Q. Okay.

13 A. --- and that he contacted Mr. Stukes sometime later
14 on.

15 Q. Okay, and did you yourself actually serve him with
16 these warrants?

17 A. I did.

18 Q. And how is that indicated or memorialized?

19 A. On the left side of the warrant on the return service
20 section, that's my signature with the date and the
21 defendant's name.

22 Q. And again, this was his immediate response to you once
23 you informed him of the charges ---

24 A. Yes, ma'am.

25 Q. --- against him?

A. CALDWELL - EXAMINATION BY MS. ASHTON

399

1 A. Yes, ma'am.

2 MS. ASHTON: Beg the court's indulgence.

3 (A PAUSE.)

4 BY MS. ASHTON:

5 Q. Did Mr. Stukes indicate to you that he wanted to speak
6 to an investigator?

7 A. He did.

8 Q. And did you, did you ever advise him of his rights?

9 A. No. We, we generally would never advise anybody of
10 their rights because we're not questioning them as to the
11 specific facts of the case. I may ask them, if we get
12 them, got any weapons on you. Is there anything in your
13 pockets that's going to stick me when we're searching them.
14 But, but not from the aspect of questioning with regards to
15 the case.

16 Q. And again, you said that he indicated he wanted to
17 speak to an investigator?

18 A. He did.

19 Q. And you did not ask him any further questions?

20 A. No.

21 Q. Especially not related ---

22 A. Booking information, name, address, date of birth,
23 things like that.

24 MS. ASHTON: Beg the court's indulgence.

25 (A PAUSE.)

1 MS. ASHTON: Thank you.

2 MR. SHEALEY: May it please the court?

3 THE COURT: Yes, sir.

4 EXAMINATION BY MR. SHEALEY:

5 Q. Is it Sergeant ---

6 A. Hi.

7 Q. --- Caldwell?

8 A. Yes, sir.

9 Q. How are you remembering all this stuff?

10 A. That was such a, a strange comment that it's just --
11 it stuck out in my mind. I, like I said before, I'm -- we
12 don't usually discuss the charges with, with the
13 individuals we take into custody. So, there's never really
14 a, a discussion about what's going on, and they don't
15 really make that comment.

16 Q. And you talked about of all the things that you hear.

17 A. Uh-huh.

18 Q. That one stands out to you. You hear a lot of stuff
19 when you're ---

20 A. Oh, yeah. I didn't do it. That's not me. You've got
21 the wrong guy. If he had said that, I'm not sure I could
22 have remembered that. But, you know, my first thought was
23 so you only rape the people you know if you're -- didn't do
24 this because you don't know her? That was my first
25 thought.

A. CALDWELL - EXAMINATION BY MR. SHEALEY

401

1 Q. Now, you're here, you're talking about all these
2 things you hear from people in the undertaking of your
3 particular job.

4 A. Yes, sir.

5 Q. A fugitive -- apprehension of fugitives, and that's
6 not uncommon that people are talking to you a lot, and you
7 said when you hear all these things. You just talked about
8 what they tell you.

9 A. About they didn't do it. That's not me. That, you
10 know -- a lot of them even say we have the wrong person.

11 Q. Sure, and you're often -- and I imagine always because
12 you used the term protocol, you and Ms. Ashton did --
13 reading people arrest warrants?

14 A. We do.

15 Q. And there's no question mark in your mind that this --
16 that he was in custody once you got a hold of him?

17 A. Oh, no. He was in custody.

18 Q. Definitely in custody?

19 A. Yes, sir.

20 Q. Had no place to go but the Alvin S. Glenn Detention
21 Center?

22 A. Correct.

23 Q. Because of your arrest warrant?

24 A. Correct.

25 Q. And you don't ever take any notes or anything like

1 that, anything of interest, when people are telling
2 you about why they didn't do it and all that kind of
3 stuff?

4 A. No, sir.

5 Q. How long have you been doing this, this aspect of your
6 career? How long have you done this?

7 A. This particular aspect, approximately six years.

8 Q. Six years, and people tell you all kinds of things
9 when you arrest them?

10 A. They can, yes.

11 Q. And you always know they're in custody when you get
12 your hands on them, right?

13 A. Some are harder to get in custody than others.

14 Q. And your particular job isn't investigative detention?

15 A. No.

16 Q. They already are -- there's an arrest warrant with
17 their name on it?

18 A. When I am involved, there's an arrest warrant that has
19 been issued.

20 Q. Okay. Now, as far as when exactly he said this
21 statement to you, was it in a, in a car? Was it when you
22 were reading him the particulars of his or warrant?

23 A. I can't remember if he were sitting, if he was sitting
24 in my car, or if we were still waiting on the clothes
25 inside the apartment, but it was before we got down to the

A. CALDWELL - EXAMINATION BY MR. SHEALEY

403

1 warrant division.

2 Q. Okay.

3 A. Because we had already read them by then.

4 Q. And he would have been in handcuffs at that time?

5 A. Yes.

6 Q. Are you alone when you do these things or ---

7 A. No.

8 Q. --- are there other officers? I know you seem to
9 recall this, this event particularly. Do you particularly
10 remember how many other fugitive members were with you
11 helping you out?

12 A. It should have been Agent Robinson with the State Law
13 Enforcement Division. I'm not sure if my corporal,
14 Corporal Raymond Hayhurst, was there and possibly
15 investigators Bell and Hall.

16 Q. Okay, but these suspects quite often are trying to
17 talk to you a good bit when you're reading them their
18 warrants?

19 A. No, sir, I wouldn't say that.

20 Q. Okay. Well, help me out. You said they tell you all
21 kinds of things.

22 A. Some people do, yes, but I don't want you to get the
23 impression that every single person I arrest tries to tell
24 me things.

25 Q. Okay. Well, I can only go off what you're telling

1 me. I just remember you said you hear all kinds of things.

2 So ---

3 A. I do.

4 Q. Okay.

5 A. That doesn't mean every defendant that I arrest says
6 anything.

7 Q. I understand. So, sometimes it happens?

8 A. Sometimes it doesn't.

9 Q. Sometimes it doesn't. You just testified to that.

10 A. Uh-huh.

11 Q. But you never read Miranda after they're in custody?

12 A. No.

13 Q. And again ---

14 A. I'm not interested in attempting to take a statement
15 from any of defendants that I arrest.

16 Q. I understand, but you agree that sometimes they're
17 talking to you outside the scope of Miranda, right?

18 A. If they wish to talk and say anything they want, I'm
19 going to sit there and let them talk.

20 Q. But you've never advised these people about their
21 right to an attorney?

22 A. I've never questioned them either. That's why I don't
23 advise them.

24 Q. But, again, you never advised them?

25 A. No, never questioned them.

A. CALDWELL - FURTHER EXAMINATION BY MS. ASHTON

405

1 Q. We're not in front of the jury. I understand what
2 you're saying.

3 A. It's not my routine to read the Miranda warnings to
4 anybody I arrest.

5 MR. SHEALEY: Thank you, sir.

6 MS. ASHTON: Your Honor, I do just have two follow-up
7 questions.

8 THE COURT: Yes, ma'am.

9 FURTHER EXAMINATION BY MS. ASHTON:

10 Q. Mr. Shealy asked you about not documenting anything
11 and questioned your memory about this incident.

12 A. Uh-huh.

13 Q. I'm going to show you Mr. Stukes's booking report.
14 Can you tell me what time you -- what time he was booked at
15 the Alvin S. Glenn Detention Center?

16 A. The arrest was made at approximately 6:30 in the
17 morning the morning of May 5, 2010.

18 Q. And I'm going to ask you to look at Investigator
19 Godfrey's report at the bottom. What does that date and
20 time read?

21 A. May 5, 2010, at -- this is the notation of the time
22 that I spoke with Investigator, Sergeant Godfrey. It was
23 7:32 a.m.

24 Q. And did you tell him exactly what had just occurred?

25 A. I did.

A. CALDWELL - FURTHER EXAMINATION BY MS. ASHTON

406

1 Q. Did you tell him exactly what Mr. Stukes's comments
2 were to you upon reading the warrant?

3 A. I did.

4 Q. And again, you don't interrogate individuals that you
5 arrest?

6 A. No, ma'am.

7 Q. You don't question them?

8 A. No, ma'am.

9 Q. So, any comments, if there are comments, are made not
10 as a result of your interrogations?

11 A. Voluntarily on the defendant's own accord.

12 MS. ASHTON: Okay.

13 THE COURT: Anything else from the state?

14 MR. GOLDBERG: No, ma'am.

15 THE COURT: Anything from the defendant?

16 MR. SHEALEY: I have just our arguments.

17 MR. GOLDBERG: No other witnesses or questions.

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

19 (THE WITNESS EXITS THE STAND.)

20 THE COURT: Yes, sir.

21 MR. GOLDBERG: Thank you, Your Honor. Based upon
22 Sergeant Caldwell's testimony, it's our position that the
23 statements made by the defendant are admissible in that
24 they were not a result of a custodial interrogation. He
25 did testify that Mr. Stukes was taken into custody, but he

1 also went on to say that he did not question him about the
2 facts of the case. He did not interrogate him, as is his
3 common practice, when he makes these kinds of arrest.

4 I would point you to a case that I handed up, *State*
5 *vs. Franklin*, 299 S.C. 133, and in the *Franklin* case it's a
6 very similar situation. That's a South Carolina Supreme
7 Court case in which the defendant was arrested pursuant to
8 a warrant. He was actually taken to a criminal
9 investigator at the sheriff's department for questioning.
10 That was the reason they took him there. He was advised
11 that he was under arrest for a homicide, and his response
12 -- the defendant's response was I ain't did nothing.

13 The investigator in the case said that he wanted to
14 advise him of his rights, and the defendant responded at
15 that time what do I need rights for. I didn't beat nobody,
16 and went on to make further admissions, and at that time
17 the court conducted a suppression hearing on the
18 statements. The judge found that those statements were
19 admissible. They were spontaneous utterances. They were
20 not in response to any questions, as was the case here.

21 The only comments that Mr. Caldwell said to the
22 defendant prior to him stating that the warrants had to be
23 a mistake because he didn't know the victim or that he was
24 reading the warrant, reading the substance of the warrant
25 and telling him what he was under arrest for.

1 The court in *Franklin* went on to address or talk about
2 the analysis in *Rhode Island v. Ennis*, United States
3 Supreme Court case which talks about Miranda, and as the
4 law clearly states, Miranda is required of custodial
5 interrogation. Yes, there was custody. There was no
6 interrogation here in that case. In the *Rhode Island* case,
7 the court said that Miranda comes in when you've got either
8 expressed questioning or its functional equivalent, and by
9 that they went on to say, you know, statements that are
10 likely to elicit, elicit an incriminating response.

11 Well, that's not what we have here. The fact that
12 Sergeant Caldwell read the warrants to the individual is
13 not a statement that is likely to elicit an incriminating
14 response. He testified that sometimes people say things.
15 Sometimes they don't. They aren't always incriminating
16 either. Sometimes they make comments. Sometimes they
17 don't.

18 Again, the court upheld the admission of that
19 statement, and again the other case that I handed up was
20 *State v. Howard*, also a Supreme Court case, where a
21 probation officer actually got information that the
22 defendant had been arrested, was incarcerated. The
23 probation officer went to the prison to talk to the
24 suspect. Upon arriving there, the suspect volunteered to
25 him that he wanted to apologize for what had happened. He

1 had something to tell him, felt real bad about what he had
2 done. The officer never asked questions at that point, and
3 Mr. Pope went on to say that he or -- excuse me, the
4 officer went on to say that the defendant went on to
5 voluntarily give the information.

6 Again, our court again looked at what it means to
7 interrogate someone, how that's defined. They also
8 referenced the *Rhode Island* case again in the same
9 analysis, whether it be direct questioning or those likely
10 to elicit an incriminating response.

11 It's our position the statements by Sergeant Caldwell
12 were simply informing the defendant of what he was charged
13 with and the defendant, on his own, volunteered those
14 comments about this being a mistake, and that he didn't
15 know the victim. It was not a response to interrogation
16 and, therefore, it's our position that it is admissible.

17 THE COURT: Yes, sir.

18 MR. SHEALEY: Thank you, Your Honor. The *Franklin*
19 case is pretty interesting. That officer's actually
20 trying, trying hard to Mirandize the suspect, but he's
21 interrupted by the suspect at that time, and I think that
22 goes some ways in distinguishing that case. And there were
23 efforts made by the state in the effort of apprehending the
24 suspect, real, legitimate efforts in that *Franklin* case.

25 The other case with the parole officer that you have

1 and that Mr. Goldberg's talking about, you know, that guy
2 is in jail arrested on warrants, very serious charges.
3 He's been sitting there awhile before his parole agent
4 comes to speak to him. He's already been advised of his
5 Miranda. He's already sat in custody for some time on the
6 charges.

7 So, then the issue was with that parole officer. Did
8 he, did he then go ahead and Mirandize him before he spoke
9 to him, and he did in that case, so that is distinguished
10 very much so as opposed to what we have here.

11 Your Honor, here you heard the testimony, and we have
12 a sergeant that is in the business of apprehending
13 fugitives. He is communicating with the lead investigator
14 in this case looking for, looking specifically for Mr.
15 Stukes, who testified that, you know, it's his protocol and
16 I -- and it could be his case protocol or it could not be a
17 protocol. That doesn't mean it conforms the law. He says
18 he always reads the warrants and sometimes he hears all
19 kinds of stuff from people. Sometimes he doesn't.

20 The, the thing is here the state is trying to use him
21 to bring forth an incriminating statement. You know, I
22 think Mr. Goldberg argues sometimes he probably hears stuff
23 that's not incriminating. Well, the state here is moving
24 to bring forth potentially statements that may be perceived
25 as incriminating and not -- you know, we're not talking

1 about, you know, other situations where Sergeant Caldwell
2 has been brought up -- and I, I assume he never has -- to
3 talk about non-incriminating things.

4 What we're talking about here is definitely a custody
5 situation. He is with the Fugitive Task Force. He's going
6 to the jail. He's being read a very detailed warrant
7 that's not just a charge. He is read the entire paragraph
8 including names, addresses, and, as he said, there's often
9 a response to that situation. He says he's not trying to
10 interrogate him, but it's often people are trying to talk
11 to him.

12 I think when people are trying to talk to him, and
13 specifically in this case where Stukes is purported to say
14 something to Sergeant Caldwell and he's in custody,
15 certainly then I think we're in a situation where this is
16 either expressed question or functional equivalent,
17 equivalent that -- you know, including words or any kind of
18 actions, arrests in combination with reading words from a
19 warrant on the part of the police -- here Caldwell -- that
20 Caldwell should know is reasonable to elicit some kind of
21 response, incriminating or not. And I think that goes to
22 the heart of the Miranda case law, Your Honor.

23 I think it's prudent here to suppress any kind of
24 information coming from this clear custodial interrogation.
25 I think protocol or no protocol, the actions of reading --

1 I mean, that warrant is almost more, is more specific than
2 the indictment almost in this case. It's very specific.
3 It's very -- it's a very meaty warrant, Your Honor. I
4 think that certainly would invoke a response from anybody,
5 and if there hadn't been any kind of Miranda, you're not
6 advised of your right to an attorney or your right to
7 remain silent -- you know, Sixth and Fifth Amendments are
8 not being advised.

9 However, he is in custody and he's going nowhere but
10 to jail, and given the fact that Sergeant Caldwell has been
11 communicating extensively, as Ms. Ashton pointed out, with
12 the investigator on this case, I think there's a, a
13 connection here. And he absolutely should have Mirandized
14 him before talking to him at all because he was in custody.
15 He was going jail.

16 So, I think that it's, it's natural for such -- and I
17 think we probably should make the warrant a part of the
18 record, if it's not already. Let's go ahead and make that
19 part of the record right now. I'll just do that. I mean,
20 there are, there are warrants and then there are warrants,
21 and this is a very specific warrant, both of them. So,
22 let's make that part of the record, Your Honor.

23 COURT REPORTER: Court's 2, Your Honor?

24 THE COURT: Yes.

25 (ARREST WARRANTS MARKED INTO EVIDENCE AS COURT'S

1 EXHIBIT NUMBER 2.)

2 MR. SHEALEY: That's it, judge. I think there's a --
3 there's a lot of connection between the lead investigator
4 in this case and the fugitive sergeant, I think. With a
5 very specific detail warrant like that, I think it's, you
6 know, it's, I think it's natural for someone in custody at
7 that point to respond to all those allegations. It's not
8 just you are arrested for burglary first and CSC first.
9 They're very specific allegations in there, and I think
10 certainly it, it's natural that it would elicit some kind
11 of response that he would have to be Mirandized.

12 THE COURT: Yes, sir.

13 MR. GOLDBERG: Thank you, Your Honor, very briefly.

14 In response to Mr. Shealey's comments that there was
15 extensive communication between Sergeant Caldwell and
16 Sergeant Godfrey, I don't think that's what was testified
17 to. I believe he said he got a phone call from Sergeant
18 Godfrey about where he possibly could find him. And if you
19 refer to Sergeant Godfrey's notes, it indicated that
20 Sergeant Caldwell contacted him. He said he'd be pulling
21 the NCIC file and working on Stukes's apprehension.

22 There's nothing in the record to suggest that they had
23 extensive conversations that it would lead Sergeant
24 Caldwell to know that it was important to get this out of
25 the defendant, that he didn't know the victim.

1 And I would also just like again to point out in
2 *Franklin*, *Franklin* was taken to the investigator's office,
3 according to the case, specifically for questioning. This
4 was not specifically for questioning. It was requested
5 under, in that case, in *Franklin*, he was taken there
6 specifically for questioning, and when he got there, prior
7 to the investigator trying to advise him of his rights, he
8 said I ain't did nothing. That was before anybody ever
9 attempted to advise him of his rights, and that was when he
10 was taken there specifically for questioning.

11 There was nothing of the sort here. He was -- the
12 investigators specifically went there to place him under
13 arrest and only place him under arrest. Again, it's our
14 position that it was not an interrogation, and it was a
15 statement that was voluntarily made by the defendant upon
16 hearing the allegations against him.

17 THE COURT: All right. Well, I've had a chance to
18 look over *Franklin* and also *Ledford* and also the case that
19 -- actually a more recent case, *State vs. Brown*, and the
20 cite on that is 697 S.E.2d 622, Court of Appeals case where
21 it's decided in June of 2010.

22 The court in this case is, is -- actually goes into
23 defining custodial interrogation for purposes of *Miranda*
24 is:

25 Questioning initiated by law enforcement officers

1 after a person has been taken into custody or
2 otherwise deprived of his freedom or of action in
3 any significant way.

4 The court goes on to define interrogation, for
5 purposes of Miranda:

6 Defined as expressed questioning or its
7 functional equivalent, which includes words or
8 actions on the part of the police other than
9 those normally intended to arrest and custody,
10 that the police should know are reasonably likely
11 to elicit an incriminating response.

12 In this case, there -- I believe this is a case where
13 they asked a question regarding booking, and the court held
14 that that was routine, administrative, and not in violation
15 of Miranda.

16 In *Ledford*, in looking at that case, the court in that
17 case, the officer -- that's a DUI case, a roadside DUI
18 case, and the officer specifically asked him questions
19 regarding his intoxication, and if he had had a drink after
20 the accident. In that case there's an active questioning
21 by the officer. And the court in there, in that case, I
22 believe, reversed it because, one, there was not a hearing
23 as to the voluntariness and, two, because there was a
24 question and they stated -- and the , and the guy was drunk
25 and going in and out, and that the officer specifically

1 asked him a question.

2 As far as this case is concerned, I find that Sergeant
3 Caldwell was part of the fugitive, fugitive team based on
4 his testimony, and his own responsibilities to secure the
5 arrest of Mr. Stukes. While the defendant was in custody,
6 I find that there was no custodial, custodial interrogation
7 by Sergeant Caldwell, Caldwell. That the comments by the
8 defendant was a spontaneous utterance in response to the
9 arrest warrant. I find that Miranda is inapplicable in the
10 case because Sergeant Caldwell's actions were
11 administrative in nature. So, I will allow him to testify
12 to what was said to him.

13 Of course, I'll -- he can't get into all of that, the
14 stuff about, well, why he thought it was strange and all of
15 that. I mean, I, I think y'all were just asking that for
16 purposes of, of the general hearing in comparing this case
17 to, I guess, to the other arrests that he's made.

18 MR. SHEALEY: Thank you, Your Honor.

19 THE COURT: Yes, ma'am.

20 MS. ASHTON: Your Honor, just for -- so we don't run
21 into any issues with Sergeant Caldwell testifying, I just
22 wanted to make sure that the defense didn't have any issues
23 of him saying that he transferred him to Alvin S. Glenn
24 Detention Center for the purposes of -- as a result of the
25 arrest on this day.

A. CALDWELL - DIRECT EXAMINATION BY MS. ASHTON

417

1 MR. SHEALEY: Yes, that's kind of what they normally
2 do. So, I mean, I don't think that's ---

3 THE COURT: Yeah, I mean, I think that's already in
4 through somebody else or through another witness.

5 All right, you can bring them in.

6 (THE JURY ENTERS AT 3:19 P.M.)

7 THE COURT: All right. Yes, ma'am, call your next
8 witness.

9 MS. ASHTON: State calls Sergeant Andrew Caldwell.

10 ANDREW CALDWELL, BEING FIRST DULY
11 SWORN, TESTIFIES AS FOLLOWS:

12 CLERK OF COURT: Have a seat in the witness stand,
13 please. State your name for the record.

14 WITNESS: Andrew Caldwell.

15 DIRECT EXAMINATION BY MS. ASHTON:

16 Q. Is it Sergeant Caldwell?

17 A. Yes, ma'am.

18 Q. Sergeant Caldwell, what -- where are you employed?

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

21 Q. And what is your position with the sheriff's
22 department?

23 A. I'm currently the sergeant of the department's
24 Fugitive Task Force.

25 Q. And what, what exactly is the Fugitive Task Force?

1 A. Our goal is to locate and identify and apprehend any
2 wanted individuals. Specifically anybody violent or
3 dangerous, serious charges, that have arrest warrants
4 pending for their arrest.

5 Q. And in April of 2010, what was your position at the
6 sheriff's department?

7 A. Same position.

8 Q. On April the 22nd of 2010, did you make contact with
9 Investigator Brian Godfrey?

10 A. I did. I was contacted by Sergeant Godfrey.

11 Q. And why were you contacted by Sergeant Godfrey?

12 A. He had obtained some arrest warrants for the
13 defendant, Mr. Stukes, and requested my unit's assistance
14 in locating Mr. Stukes and serving those arrest warrants.

15 Q. And were you actually able to assist him in doing
16 this?

17 A. We were.

18 Q. And did you eventually apprehend Mr. Stukes?

19 A. We did.

20 Q. And where was that?

21 A. That was -- we located him at [REDACTED] Street,
22 Apartment [REDACTED], in Columbia here in Richland County.

23 Q. And what date was that?

24 A. That was May 5, 2010, approximately, I believe it was
25 around 6:30 in the morning. It was fairly early.

A. CALDWELL - DIRECT EXAMINATION BY MS. ASHTON

419

1 Q. And once you located Mr. Stukes, once you made contact
2 with him, what did you do?

3 A. Again, it was fairly early in the morning. We, we let
4 him get some clothes. Best of my knowledge, I believe he
5 had some kind of shorts already on. Let him get some
6 shoes, shirts. Placed him in custody, handcuffed him,
7 searched him, eventually read him the two arrest warrants
8 that I had for his arrest, and he was eventually
9 transported down to the Alvin S. Glenn Detention Center.

10 Q. You said you notified him and informed him of the
11 charges against him?

12 A. I did.

13 Q. And how did you do that?

14 A. Verbally and, and also, in addition to that, we, we
15 actually read the arrest warrants to the individuals that
16 we're taking into custody.

17 Q. And you do that in every ---

18 A. Yes, ma'am.

19 Q. --- arrest, and did you do that in this case?

20 A. We did.

21 Q. And can you read the warrant that you served on Mr.
22 Stukes?

23 A. I can. Any particular one first or ---

24 Q. No, just indicate which one.

25 A. Just the probable cause ---

1 Q. Yes.

2 A --- paragraph? All right. States that this is an
3 arrest warrant for Melvin Stukes, and the probable cause
4 for the arrest states that:

5 On or about May 10, 2004, while at 1601 Longcreek
6 Drive, Apartment [REDACTED] in the Dutch Fork
7 Magisterial District ---

8 MS. PINNOCK: Objection, Your Honor. May we approach
9 the bench?

10 THE COURT: Yes.

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 THE COURT: Yes, ma'am, you may continue.

13 MS. ASHTON: Beg the court's indulgence. May I
14 approach the witness, Your Honor?

15 THE COURT: Yes.

16 BY MS. ASHTON:

17 Q. Sergeant Caldwell, I just want to make sure that we
18 have the exact same warrant.

19 A. All right.

20 Q. Thank you.

21 A. Thank you.

22 Q. Okay. Can you -- would you please start over with the
23 arrest warrant for the criminal sexual conduct ---

24 A. Sure.

25 Q. --- in the first degree.

A. CALDWELL - DIRECT EXAMINATION BY MS. ASHTON

421

1 A. It states that:

2 On or about May 10, 2004, while at 1601 Longcreek
3 Drive, Apartment [REDACTED], in the Dutch Fork
4 Magisterial District of Richland County, it is
5 believed the defendant did commit the crime of
6 sex -- criminal sexual conduct first degree
7 because he did enter the dwelling of the victim,
8 Misty Shealy, without the consent at night. Once
9 inside the residence, the defendant did engage in
10 both physical and sexual battery with the victim.
11 The victim did provide a sworn statement stating
12 the same. A DNA, DNA profile developed from
13 semen discovered during the analysis of the
14 evidence resulted in a profile match to the
15 defendant.

16 Q. Thank you, and was he also served with another
17 warrant?

18 A. He was. This one was for burglary first degree and it
19 states that:

20 On or about May 10, 2004, while at 1601
21 Longcreek Drive, Apartment [REDACTED], in the Dutch Fork
22 Magisterial District of Richland County, it is
23 believed the defendant did commit the crime of
24 burglary first degree because he did enter the
25 dwelling of the victim, Misty Shealy, without the

1 consent at night. Once inside the residence, the
2 defendant did engage in both physical and sexual
3 battery with the victim. The victim provide --
4 did provide a sworn written statement stating the
5 same. A DNA profile developed from semen
6 discovered during the analysis of the evidence
7 resulted in a profile match to the defendant.

8 Q. Thank you, and on those, on these two arrest warrants,
9 is it indicated that you actually served these warrants?

10 A. It is. That's my signature to the left which is a
11 notation of the individual that served the warrant, and the
12 defendant himself gets a copy of this as physically given
13 to the defendant.

14 Q. And what, and what date is on there?

15 A. That was on May 5, 2010.

16 Q. Okay. Now, once you finished informing the defendant
17 what he was being charged with, did he make any response to
18 you?

19 A. He did. When I read the, the criminal sexual conduct
20 warrant, he made the comment, and I thought it was very
21 odd, something to the effect of that's a mistake or that,
22 that warrant's a mistake. I don't even know her.

23 Q. And the victim's name is actually in the warrant ---

24 A. Yes, ma'am.

25 Q. --- that you read to him?

A. CALDWELL - DIRECT EXAMINATION BY MS. ASHTON

423

1 A. Yes, ma'am, it is.

2 Q. Now, is your role with the Fugitive Task Force to ask
3 any questions related to the offense, offenses?

4 A. No, ma'am. My sole job is to locate the individual
5 who has that arrest warrant pending for their arrest and to
6 apprehend them, and then notify the investigators that are
7 assigned to that case of the arrest.

8 Q. After he indicated to you that he had no idea who
9 Misty Shealy was and that these warrants must be a mistake,
10 did you -- what did you say to him at that point?

11 A. Nothing that I can recall.

12 Q. Did you tell him that it wasn't your responsibility to
13 ask him questions related to that, and it was the
14 investigator's responsibility?

15 A. Not so much as a result of that specific comment. But
16 the, the general practice with my unit is after we serve
17 somebody their warrants, we, we tell them we're just here
18 to serve the warrants. We're the fugitive guys. We don't
19 investigate this case. We don't know anything about the
20 specifics of the crime. Do you want to talk to the
21 investigator who did obtain these arrest warrants and
22 discuss the case with him?

23 If they do, we immediately try to contact that
24 investigator. I will bring the defendant to the
25 investigator, if that's what they need, or if they state

1 that they don't wish to talk, then we'll transport them to
2 the jail for the next available bond hearing.

3 Q. Did, did the defendant indicate he wanted to speak to
4 an investigator?

5 A. He did. He stated he wanted to speak to Sergeant
6 Godfrey.

7 Q. And what time was he actually arrested on May the 5th
8 of 2010?

9 A. I don't have my arrest report, but memory, I want to
10 say it was around 6:30ish in the morning. We maybe got to
11 the apartment maybe around 6:15, 6:20.

12 Q. And did you immediately notify Investigator Godfrey
13 about the arrest?

14 A. Immediately. Probably after we were leaving the
15 apartment, after everything. We had secured the defendant
16 and was or were leaving the apartment, got on the phone and
17 tried to make contact with Sergeant Godfrey.

18 Q. Okay, and where did you take the defendant after he
19 was initially arrested?

20 A. I believe he was first transported to our warrant
21 division. Finished up some of our paperwork in a booking
22 report, and then transported him to the Alvin S. Glenn
23 Detention Center.

24 Q. Okay, and is it standard procedure as, as it relates
25 to your role as a member of the Fugitive Task Force?

A. CALDWELL - CROSS-EXAMINATION BY MS. PINNOCK

425

1 A. It is.

2 MS. ASHTON: Beg the court's indulgence.

3 (A PAUSE.)

4 MS. ASHTON: Thank you. Please answer any questions
5 from the defense.

6 WITNESS: Thank you.

7 MS. PINNOCK: Please the court, Your Honor?

8 CROSS-EXAMINATION BY MS. PINNOCK:

9 Q. All right, Sergeant Caldwell, you, you said that you
10 had -- when you had these warrants, they were given to you
11 by Investigator Caldwell, right?

12 A. I'm ---

13 Q. I'm sorry.

14 A. I'm Caldwell.

15 Q. Yes. They were given to you by Godfrey?

16 A. I can't say he personally handed them to me, but I
17 came in ---

18 Q. He's the one that put them ---

19 A. I received the copies of the warrants or ---

20 Q. Okay.

21 A. --- the arrest warrants.

22 Q. So, you had no other information about the case?

23 A. Not the specifics of the crime. My goal is to learn
24 everything about the individual that we're hunting.

25 Q. Okay.

1 A. Associates ---

2 Q. Well, let me clarify. You said that you were made --
3 you were notified about them trying to locate somebody.
4 They contact you because that's what your team does.

5 A. Yes.

6 Q. So, you take that information, which is usually an
7 arrest warrant, and you go try and track the person down?

8 A. Yeah, along with whatever other information that the
9 investigator may have that helps with the location.

10 Q. Like gang members?

11 A. Car descriptions.

12 Q. Or ---

13 A. Car descriptions.

14 Q. Okay.

15 A. Family members. I'm interested in finding out are
16 there places maybe the investigator has already been that
17 maybe I wouldn't have to go back to and waste time, or
18 maybe there's some lead that he's already determined is, is
19 not a good lead. But as far as the specifics of the
20 probable cause, that's not something I generally get
21 involved with or have any information or knowledge about.

22 Q. Okay. So, you get very limited information. You
23 contact somebody else. That's what the fugitive team does,
24 right?

25 A. Yes.

A. CALDWELL - CROSS-EXAMINATION BY MS. PINNOCK

427

1 Q. Okay, and you said you arrested him on Marlboro
2 Street, an apartment in Marlboro Street?

3 A. Correct.

4 Q. His sister's apartment?

5 A. I believe it was a sister. I don't, I don't
6 specifically remember the female's relationship to him, but
7 I believe it was the sister.

8 Q. All right. When you got there, you said you knocked
9 on the door. A female, Ms. Powell, opened the door and you
10 said that Mr. Stukes was coming down the stairs?

11 A. I don't remember if it was Ms. Powell. A female.

12 Q. Okay.

13 A. This was fairly low speed. This was not a dynamic
14 entry search warrant. We didn't breach the door, use
15 battering rams. We just ---

16 Q. You just knocked and ---

17 A. We had some people in the back, but we just knocked,
18 waited on them to open the door.

19 Q. He comes down the stairs ---

20 A. I asked ---

21 Q. --- in a pair of shorts?

22 A. I asked where he was at. She said he was upstairs. I
23 said I need to talk to him, and I think, if I remember
24 right, she called, called for him. He came downstairs.

25 Q. Okay.

1 A. He was arrested without incident.

2 Q. When he came downstairs, he told you who he was?

3 A. Yes.

4 Q. Okay. So, he didn't try to tell you he wasn't Melvin
5 Stukes?

6 A. No, he did not.

7 Q. Okay.

8 A. He was arrested without incident.

9 Q. Now, you said you -- do you remember -- did you read
10 him the warrant in the apartment, or did you read it to him
11 in the car?

12 A. I don't recall if it was when we were sitting in the
13 car or while we were still waiting on him to get dressed.

14 Q. Okay.

15 A. Because there was -- I was trying -- also -- well,
16 before we actually pulled away from the scene, I was also
17 trying to get in touch with Sergeant Godfrey.

18 Q. Okay. At some point you did get in touch with Godfrey
19 and you said that hey, we found Mr. Stukes?

20 A. Yes.

21 Q. He's at the jail. He'd like to talk to you.

22 A. Yes.

23 Q. Okay. So, according to your memory, he's the one that
24 said he wanted to speak with the investigator? You offered
25 and he accepted ---

A. CALDWELL - CROSS-EXAMINATION BY MS. PINNOCK

429

1 A. Yes.

2 Q. --- the invitation to speak to the investigators?

3 A. Yes, ma'am.

4 Q. And that's after he told you the warrant had to be a
5 mistake?

6 A. Did he ask to speak to the investigator?

7 Q. Uh-huh.

8 A. Yes, ma'am.

9 Q. Okay. That's after he told you he didn't know who
10 Misty Shealy was?

11 A. Yes.

12 MS. PINNOCK: Okay. Begging the court's indulgence.

13 (A PAUSE.)

14 MS. PINNOCK: Thank you. I have nothing else.

15 THE COURT: Anything else for this witness?

16 MS. ASHTON: No, Your Honor.

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

18 Any objection to this witness being excused?

19 MS. PINNOCK: No, Your Honor.

20 THE COURT: All right. You're free to leave.

21 WITNESS: Thank you.

22 (THE WITNESS EXITS THE STAND.)

23 MR. GOLDBERG: State calls investigator Gene Mincey.

24 GENE MINCEY, BEING FIRST DULY

25 SWORN, TESTIFIES AS FOLLOWS:

1 CLERK OF COURT: Thank you. Have a seat in the
2 witness stand please and state your name for the record.

3 WITNESS: Gene Mincey.

4 DIRECT EXAMINATION BY MR. GOLDBERG:

5 Q. Where are you employed, sir?

6 A. Richland County Sheriff's Department.

7 Q. And how long have you been with the department?

8 A. About twenty-seven years.

9 Q. Can you tell the jury a little bit about your duties
10 over the years with the department?

11 A. I was street, in the patrol division for a while,
12 traffic division, criminal investigative division, and we
13 started Internal Affairs Unit when Sheriff Lott took over.

14 Q. All right, and back in May of 2010, what were your
15 duties with the department then?

16 A. Working cold cases.

17 Q. When you say cold cases, can you tell the jury a
18 little bit about what that means?

19 A. It's investigation of major cases like homicide and
20 rape, burglary that hadn't been cleared over the years.

21 Q. Did you become involved with an investigation about a
22 sexual assault involving a victim by the name of Misty
23 Shealy?

24 A. I did.

25 Q. And the suspect in that matter was a Melvin Stukes?

G. MINCEY - DIRECT EXAMINATION BY MR. GOLDBERG

431

1 A. Yes, sir.

2 Q. And on May the 5th of 2010, did you have an
3 opportunity to come in contact with the defendant, Mr.
4 Stukes?

5 A. I did.

6 Q. How did you come in contact with him, sir?

7 A. Sergeant ---

8 Q. Godfrey?

9 A. Sergeant Godfrey. I wanted to say investigator, but
10 Sergeant Godfrey is the lead investigator on that case in
11 the Cold Case Unit, and he got information that morning
12 when we went to work that they had picked up Stukes
13 previously, the previous night, and wanted me to go down
14 with him to pick him up and bring him back to headquarters
15 to question him.

16 Q. Okay, and so Mr. Stukes, you, you and Sergeant Godfrey
17 went and picked up Mr. Stukes from the detention center.
18 Is that right?

19 A. Yes, sir.

20 Q. Okay. When you got to the detention center and made
21 contact with Mr. Stukes, was he informed of his rights at
22 that time?

23 A. Sergeant Godfrey informed him as soon as we got in the
24 vehicle to head back to headquarters, but it was oral. It
25 wasn't a sworn, I mean, a, a document. And when we drove,

1 got back to headquarters, Godfrey orally advised him again
2 and we got a -- got him to sign a -- the form.

3 Q. Okay, and you said he was orally advised of his rights
4 when you first made contact with him. Did he make any sort
5 of statements on the way to the, to headquarters?

6 A. No, sir. We didn't question him either.

7 Q. Okay, and at the time that he was provided those
8 rights orally, did he appear to understand those rights?

9 A. He did.

10 Q. Did he waive those rights?

11 A. He said, he said he understood them, yes, sir.

12 Q. Okay, and you said you went back to headquarters, and
13 at that point Sergeant Godfrey advised him of his rights in
14 writing, correct?

15 A. Yes, sir.

16 Q. I show you what's been marked as State's Number 1 for
17 identification and have you take a look at that. Do you
18 recognize that item?

19 A. Yes, sir.

20 Q. And what do you recognize that to be?

21 A. That's the advisement of rights form that we use to
22 advise Mr. Stukes of his rights, and Godfrey signed it, Mr.
23 Stukes signed it, Godfrey signed it, and I witnessed.

24 Q. And what is the date and time on that document?

25 A. May the 5th, 2010, 10:30 a.m.

G. MINCEY - DIRECT EXAMINATION BY MR. GOLDBERG

433

1 Q. And the location?

2 A. Richland County Sheriff's Department, 5623 Two Notch
3 Road.

4 Q. And can -- did you actually advise Mr. Stukes of his
5 rights, or did Sergeant Godfrey verbally do it off that
6 form?

7 A. Sergeant Godfrey did.

8 Q. And while he advised him of his rights, did Mr. Stukes
9 appear to understand all those rights as they were advised
10 to him?

11 A. Said he did, and he signed the paper.

12 Q. Okay. Did he, did he waive those rights ---

13 A. Yes, sir.

14 Q. --- at that time? Was he -- did he appear to be under
15 the influence of any drugs or alcohol or anything of that
16 nature?

17 A. No, sir.

18 Q. Did he seem to understand your questions?

19 A. Yes, sir.

20 Q. And was he denied any comforts like bathroom, food,
21 water, anything of that nature?

22 A. No, sir. He was there for approximately four hours
23 and we offered him drinks. He went to the bathroom. Got
24 him something to eat at McDonald's, I believe, after we got
25 through questioning him.

1 Q. And initially you said that you and Godfrey talked to
2 him orally, correct? Didn't take a written statement from
3 him right away. Is that right?

4 A. On the way back?

5 Q. Once you got back to headquarters.

6 A. No, sir. We didn't take a written, a written
7 statement then.

8 Q. Okay. In fact, didn't you leave headquarters and
9 actually go out riding around together for a little while?

10 A. Yes, sir. We went over to Park Street Apartments and
11 over that area where -- some people he knew. He pointed
12 out some apartments, and we just talked with him about the
13 different people that he knew in that area.

14 Q. And it was you and Mr. Stukes and Godfrey, correct?

15 A. Yes, sir.

16 Q. And at any time during that, did he indicate that he
17 no longer wished to speak to you all?

18 A. No, sir.

19 Q. At any time, did he ask for an attorney?

20 A. No, sir.

21 Q. Was he cooperative?

22 A. Yes, sir, very cooperative.

23 Q. Did he speak to you freely and voluntarily?

24 A. He did.

25 Q. And after you all rode around in the apartment

G. MINCEY - DIRECT EXAMINATION BY MR. GOLDBERG

435

1 complexes together, you went back to the sheriff's
2 department, correct?

3 A. Yes, sir.

4 Q. And at that time, did Sergeant Godfrey take a written
5 statement from him?

6 A. He did and I was present.

7 Q. And you were present the entire time?

8 A. Yes, sir.

9 Q. Okay. Just want to show you State's Number 2 for ID
10 only, have you take a look at that. Do you recognize that?

11 A. That's Mr. Stukes's written sworn statement, yes, sir.

12 Q. And at the top of the statement on the first page, is
13 he also advised of his rights once again?

14 A. Yes, sir. It starts out with the, the location, the
15 date, and then it goes into his advice of rights again.

16 Q. And what was the, the time on that statement?

17 A. The time on this statement was 1320 hours.

18 Q. And ---

19 A. Which is 1:20 p.m.

20 Q. Sergeant Godfrey was the one that advised him of his
21 rights on that form?

22 A. Yes, sir.

23 Q. And again, did Mr. Stukes appear to understand his
24 rights?

25 A. He did.

1 Q. Did he waive those rights?

2 A. He did.

3 Q. And Sergeant Godfrey actually typed up that statement
4 for Mr. Stukes, correct?

5 A. He did.

6 Q. Was Mr. Stukes given an opportunity to review it?

7 A. Yes, sir.

8 Q. Did you witness that?

9 A. Yes, sir. He handed him, Godfrey handed him -- matter
10 of fact, I think Godfrey read the statement to him, and
11 Godfrey gave him the statement for him to read and for him
12 to sign.

13 Q. And how many times did Mr. Stukes sign the statement?

14 A. There's four pages and he signed all four pages.

15 Q. And did he sign multiple times on each page?

16 A. He signed, yes, sir, two times on each page that he,
17 he has made a:

18 Foregoing statement freely and voluntarily
19 without fear, threat, promise, and reward, or
20 hope of reward of any kind.

21 And then the next signature on the same page is:

22 This is certified that I have read or read to me
23 the foregoing statement consisting of four pages
24 and a true copy has been given to me this 5th day
25 of May, 2010.

G. MINCEY - DIRECT EXAMINATION BY MR. GOLDBERG

437

1 Q. And again, during that time period where the statement
2 was being reviewed with Mr. Stukes, did any -- at any point
3 did he indicate that he wanted to change, add, delete
4 anything from that statement?

5 A. No, sir.

6 Q. Can you describe for the jury a little bit about the
7 environment when you all were talking to him at the
8 sheriff's department? What the room was like, who was
9 sitting where, that sort of thing?

10 A. Yes, sir. Investigator Godfrey or Sergeant Godfrey
11 was sitting at his desk at the computer, and let's say that
12 your assistant that's sitting there, that's Godfrey. She's
13 Godfrey. Mr. Stukes would have been right across from
14 Godfrey, and I'd have been either on the left or the right
15 where I could observe him talking when he talked. I wasn't
16 sitting next to him because I couldn't see his face if I
17 was sitting next to him.

18 Q. At any time, did anyone raise their voice at Mr.
19 Stukes?

20 A. No, sir.

21 Q. Was he threatened in any way?

22 A. No, sir.

23 Q. Any offers of leniency made towards him at any point
24 in time?

25 A. No, sir.

G. MINCEY - CROSS-EXAMINATION BY MR. SHEALEY

438

1 MR. GOLDBERG: All right. Thank you, sir.

2 WITNESS: Yes, sir.

3 MR. GOLDBERG: That's all.

4 THE COURT: Yes, sir.

5 MR. SHEALEY: May it please the court?

6 CROSS-EXAMINATION BY MR. SHEALEY:

7 Q. How you doing?

8 A. How you do, sir?

9 Q. Good. Investigator, so you were, you were assisting
10 Investigator Godfrey in, in your capacity?

11 A. Yes, sir. We have approximately four to five
12 investigators working cold cases. Most of us are retired
13 and come back and work part time.

14 Q. Yes, sir.

15 A. Godfrey's the only full-time one at that time.

16 Q. Okay, and he was the lead on this case?

17 A. Yes, sir.

18 Q. Okay. So, you were helping him with, with various
19 tasks?

20 A. Well, he asked me to go with him to -- usually when we
21 go pick a prisoner from jail charged with a major crime
22 like this, we have two of us in the vehicle.

23 Q. Okay.

24 A. He asked me to go with him and assist him. So, I did.

25 Q. Okay, and so you were able to witness the statement

G. MINCEY - CROSS-EXAMINATION BY MR. SHEALEY

439

1 that -- Mr. Stukes's statement y'all were just referencing?

2 A. Yes, sir.

3 Q. You were able, able to be there and observe things
4 that were going on, right?

5 A. Yes, sir.

6 Q. Okay, and you know in that statement he told y'all,
7 when you were there listening to him as well, about certain
8 things about this case, right?

9 A. Yes, sir.

10 Q. And he told y'all that he didn't rape anybody, right?

11 A. Yes, sir.

12 Q. He told you that he didn't burglarize anybody?

13 A. Yes, sir.

14 Q. Okay. He was -- he denied doing what y'all were
15 accusing him of, right?

16 A. Yes, sir.

17 Q. And you were there to witness this statement?

18 A. Yes, sir.

19 Q. And you signed it ---

20 A. Yes, sir.

21 Q. --- with your signature and Investigator Godfrey's as
22 well, right?

23 A. Yes, sir.

24 Q. And that statement was typed up?

25 A. Godfrey typed it on his computer.

1 Q. Is there a printer in there, too?

2 A. Yes, sir.

3 Q. Okay. So, Melvin didn't actually have an opportunity
4 to write anything down and then y'all typed it, or y'all
5 just talked to him?

6 A. We talked to him and asked him questions, and then we
7 went out and drove in the car, and we come back and asked
8 him some more questions. And then Godfrey started typing
9 the statement and asking him questions and typed the
10 statement as he was questioning -- as he was typing it for
11 him, the statement.

12 Q. And I forget. Were you there when, when Ms. Shealy
13 was -- did her statement? Were you there?

14 A. No, sir. You mean the victim?

15 Q. Yes, sir. Yes, sir.

16 A. No, sir. No, sir, I wasn't there at the time.

17 Q. Okay. Were you able to do any independent
18 investigation on this case, or were you just kind of at the
19 direction of Investigator Godfrey?

20 A. I was helping Godfrey with whatever he wanted me to
21 help him with.

22 MR. SHEALEY: Okay. Beg the court's indulgence.

23 (A PAUSE.)

24 MR. SHEALEY: No further questions, Your Honor.

25 THE COURT: Anything else from this witness?

A. STEPHENS - DIRECT EXAMINATION BY MR. GOLDBERG

441

1 MR. GOLDBERG: No, ma'am.

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

3 WITNESS: Okay.

4 (THE WITNESS EXITS THE STAND.)

5 MR. GOLDBERG: State calls Amy Stephens.

6 AMY STEPHENS, BEING FIRST DULY
7 SWORN, TESTIFIES AS FOLLOWS:

8 CLERK OF COURT: Have a seat in the witness stand,
9 please. State your name for the record. State your name
10 please.

11 WITNESS: Amy Stephens.

12 DIRECT EXAMINATION BY MR. GOLDBERG:

13 Q. Where are you employed, ma'am?

14 A. I'm employed with the South Carolina Law Enforcement,
15 excuse me, Law Enforcement Division, also known as SLED.

16 Q. How long have you been employed there?

17 A. A little over six years.

18 Q. And what are your duties at SLED?

19 A. I'm a forensic technician in the Evidence Control
20 Department. Our main job is to log in, package, and
21 transfer evidence from forensic analysis in criminal cases.

22 Q. And were you working there in that same capacity in
23 August of 2010?

24 A. Yes, I was.

25 Q. Okay. Did you come into contact with a, an item, an

A. STEPHENS - DIRECT EXAMINATION BY MR. GOLDBERG

442

1 Item 2, a heat-sealed pouch containing a Buccal swab
2 belonging to Melvin Stukes?

3 A. Yes, I did.

4 Q. And how did you come in contact with that piece of
5 evidence?

6 A. I received the evidence from Patricia Weed with the
7 Richland County Sheriff's Office.

8 Q. And once you received it, what did you do with it?

9 A. I would have placed it in a SLED heat-sealed pouch,
10 sealed that pouch, and then have the submitting officer,
11 which was Patricia Weed, initial and date the seal as well
12 as sign and date the front of the bag.

13 Q. And when she delivered it to you, had it been altered
14 or tampered with in any way?

15 A. Not to my knowledge, no.

16 Q. And when you had it, did you alter or tamper with it
17 in any way?

18 A. No, I did not.

19 Q. Once you put it in the heat-sealed pouch, what did you
20 do with it?

21 A. I then transferred the evidence into our DNA evidence
22 intake storage located in our evidence room.

23 Q. All right, and that would have been on August the 6th.
24 Is that right?

25 A. I would have transferred it, once I received it from

S. BROWN - DIRECT EXAMINATION BY MR. GOLDBERG

443

1 Patricia, I would have transferred it to our DNA intake
2 storage in our evidence room, and then on August 6th I
3 retrieved it from our intake storage and transferred it to
4 Sheree Brown, a forensic technician in the DNA department.

5 MR. GOLDBERG: Okay. Thank you. That's all.

6 MS. PINNOCK: No questions, Your Honor.

7 THE COURT: All right, ma'am. You may step down.

8 WITNESS: Thank you.

9 (THE WITNESS EXITS THE STAND.)

10 MR. GOLDBERG: State calls Sheree Brown.

11 SHEREE BROWN, BEING FIRST DULY

12 SWORN, TESTIFIES AS FOLLOWS:

13 CLERK OF COURT: Have a seat in the witness stand
14 please. State your name for the record.

15 DIRECT EXAMINATION BY MR. GOLDBERG:

16 Q. State your name, please.

17 A. Sheree Brown.

18 Q. Where are you employed, ma'am?

19 A. SLED.

20 Q. State Law, South Carolina Law Enforcement Division?

21 A. Yes, sir.

22 Q. How long have you been employed there?

23 A. A little over eighteen years.

24 Q. And what are your duties with SLED?

25 A. I'm a forensic technician within the DNA department.

1 Q. And did you work there in that capacity in August of
2 2010?

3 A. Yes.

4 Q. On August the 6th of 2010, did you receive an Item
5 Number 2 described as a heat-sealed pouch containing a
6 Buccal swab of Melvin Pressley Stukes?

7 A. Yes.

8 Q. And where did you receive that from?

9 A. I took custody from Amy Stephens.

10 Q. Okay, and upon receiving custody of it, did it appear
11 to be tampered with or altered in any way?

12 A. No.

13 Q. And what did you do with it upon receiving it from Amy
14 Stephens?

15 A. It, when it was in my custody, I took physical custody
16 and transferred it into a storage area within the DNA
17 Department in -- labeled DNA storage drawer 7-A.

18 Q. All right, and did you alter, tamper it, test it in
19 any way while you had control of it?

20 A. No, I did not.

21 Q. All right, and was that the extent of your involvement
22 with that item?

23 A. Yes.

24 MR. GOLDBERG: All right. Thank you, ma'am.

25 MS. PINNOCK: No questions, Your Honor.

1 THE COURT: All right, ma'am, you may step down.

2 (THE WITNESS EXITS THE STAND.)

3 MR. GOLDBERG: May we approach, Your Honor?

4 THE COURT: Yes, sir.

5 (OFF-THE-RECORD BENCH CONFERENCE.)

6 THE COURT: All right, ladies and gentlemen of the
7 jury, we'll take our afternoon break. We'll take about a
8 ten minute break and then I will -- we will have you back
9 in the courtroom, and I think we only have maybe one or two
10 more witnesses for the afternoon. All right. Thank you.

11 (THE JURY EXITS AT 3:54 P.M.)

12 THE COURT: All right, we'll take about ten minutes.

13 MR. GOLDBERG: Thank you.

14 (OFF THE RECORD.)

15 THE COURT: All right, y'all ready to bring them in?

16 MR. GOLDBERG: Yes, ma'am.

17 MS. PINNOCK: Yes, Your Honor.

18 THE COURT: All right, you can bring them on in.

19 (THE JURY ENTERS AT 4:16 P.M.)

20 THE COURT: All right. Yes, sir, call your next
21 witness.

22 MS. ASHTON: State calls Rhonda Fields.

23 RHONDA FIELDS, BEING FIRST DULY

24 SWORN, TESTIFIES AS FOLLOWS:

25 CLERK OF COURT: Have a seat in the witness stand,

R. FIELDS - VOIR DIRE EXAMINATION BY MS. ASHTON

446

1 please, and state your name for the record.

2 WITNESS: It's Rhonda Fields.

3 VOIR DIRE EXAMINATION BY MS. ASHTON:

4 Q. Ms. Fields, where are you employed?

5 A. At the South Carolina Law Enforcement Division. It's
6 commonly known as SLED.

7 Q. And how long have you been employed at SLED?

8 A. Approximately thirteen years.

9 Q. And were you employed elsewhere previously?

10 A. I was not.

11 Q. Okay. Can you describe your educational background
12 for us?

13 A. I received my Bachelor's of Science degree from
14 Clemson University in 1998. I've since undergone extensive
15 training by a DNA, a qualified DNA analyst in our
16 laboratory, and I also attend frequent, yearly workshops to
17 keep abreast of current technologies in the field of DNA
18 analysis, and I've also received graduate credit for -- in
19 statistics from the University of South Carolina.

20 Q. Okay, and have you ever been qualified as an expert in
21 a courtroom?

22 A. I have.

23 Q. Okay, and approximately how many times?

24 A. Approximately ten to fifteen times.

25 Q. And what areas have you been qualified as an expert to

R. FIELDS - DIRECT EXAMINATION BY MS. ASHTON

447

1 testify?

2 A. Serology and DNA analysis.

3 Q. And what is serology?

4 A. Serology is the identification of bodily fluids, be it
5 semen, saliva, or blood.

6 Q. You said you've been qualified ten or fifteen times?

7 A. Yes, I have.

8 MS. ASHTON: Your Honor, at this time we would offer
9 Rhonda Fields as an expert in the field of serology and DNA
10 analysis.

11 THE COURT: Any objection?

12 MS. PINNOCK: No, Your Honor.

13 THE COURT: All right.

14 DIRECT EXAMINATION BY MS. ASHTON:

15 Q. And you can, can you explain to the jury in layman's
16 terms what DNA actually is?

17 A. DNA is basically your genetic blueprint. It is what
18 differentiates us as hu -- or it sets us apart from other
19 animals, and approximately 99.5 percent of all human DNA is
20 the same, which gives us two eyes, two arms, two legs. The
21 other .5 percent is where we all differ, and that's, in
22 forensic DNA testing, that's -- those are the areas that we
23 target because we want to be able to tell certain, you
24 know, DNA profiles apart from other people.

25 The only cells in the human body that do not contain

1 DNA are red blood cells and basically everyone's DNA is
2 different except -- with the exception of identical twins,
3 who would have the exact same DNA.

4 Q. I'm going to bring your attention to, to the case at
5 hand. Did you conduct a DNA, DNA analysis on a sexual
6 assault case where Misty Shealy was listed as the victim?

7 A. I did, yes, ma'am.

8 Q. And when did you first make contact with this case?
9 When did you first become associated with this case?

10 A. May I refer to my notes?

11 Q. Sure.

12 A. I received the first item of evidence back in October
13 27, 2004.

14 Q. And does SLED suffer from backlog as far as evidence
15 is concerned and being able to actually conduct tests on
16 evidence that's received?

17 A. We do. We have approximately eight analysts that are
18 on full DNA rotation, and we currently have a backlog of
19 approximately 4500 cases honestly.

20 Q. And was it basically the same situation in 2004?

21 A. Maybe not quite as many cases, but we did have a --
22 suffer from a huge backlog back then as well.

23 Q. And so that would explain the delay between when the
24 evidence is actually received and when you tested it?

25 A. Yes.

R. FIELDS - DIRECT EXAMINATION BY MS. ASHTON

449

1 Q. Okay, and what type of information do you have
2 available before you conduct your testing?

3 A. We, we do have access to -- there's a, a sexual
4 assault protocol submitted with every rape kit. We, we are
5 given that information because it contains critical
6 information that we need as to where items were collected,
7 the time, the incident -- well, we also receive incident
8 report, and that will list the approximate time the
9 incident occurred, and the rape kit will also give the
10 approximate time the victim was admitted to the hospital
11 and the item, the items of evidence collected.

12 This is important because too much time passes. The
13 body can rid itself of foreign material and if it -- too
14 much time passes, the, the items collected in the rape kit
15 may not be relevant.

16 It would also kind of gives -- it just, it has a, a --
17 it, it gives a summary of basically of the incident as
18 well. It gives other information we need like has the
19 victim had a consensual partner in the last seven days.
20 This is important because if we get more than one foreign
21 D, DNA profile developed, it may account if she has had a
22 consensual partner. It may account for the other foreign
23 profile there, and it's, it's a, it's a list of questions.
24 I can't -- I mean, I can read through it if you'd like, but
25 it has a lot of information in it.

1 Q. And the sexual assault protocol that you're referring
2 to, that is conducted in the hospital?

3 A. Right. It is.

4 Q. And that was done in this case?

5 A. It was.

6 Q. And you said you also had the incident report in
7 your ---

8 A. I did have the incident report as well, yes.

9 Q. Okay, and you mentioned something about time, the
10 importance of the amount of time that passed between the
11 actual assault and the time that the evidence was
12 collected. Why is that important again?

13 A. And so the body can rid itself of foreign materials
14 over a period of time, just breakdown of DNA, and those
15 such things.

16 Q. In this particular case, were you aware of the time
17 that passed between the ---

18 A. I believe if you -- according to the incident report,
19 the incident happened on May 10, 2004, at approximately
20 2200, and she was admitted to the hospital at approximately
21 1:25 on May 11th of 2004.

22 Q. So, approximately three and a half hours?

23 A. Exactly, yes.

24 Q. And is that, is that a good sign for you as a DNA
25 analyst?

R. FIELDS - DIRECT EXAMINATION BY MS. ASHTON

451

1 A. Yes. Everything should still be intact at that point.

2 Q. And you stated earlier that you first retrieved the
3 evidence in this case in August of two thousand -- no,
4 October of 2007?

5 A. Yes.

6 Q. Okay, and where did you -- what did you get? What did
7 you first test?

8 A. I received items collected in the rape kit originally.
9 The rape kits come standard with certain types of evidence
10 that you may wish to collect. It doesn't necessarily apply
11 to every single victim. So, every single sample is not
12 necessarily collected. Typically there's, like, a vaginal
13 swab, an oral swab, a rectal swab, some suspected semen
14 envelopes. There's swabs to collect from different,
15 different regions of the body.

16 In this particular case, we did receive a blood
17 standard from the victim which we need to develop her DNA
18 standard as well as vaginal swabs and smears. We -- I did
19 collect that. I did have some smears that were -- smears
20 are basically made for us to do microscopic examinations.
21 The nurse will typically take the swabs, just the swab. I,
22 I'm sorry. I never witness it collected. I know in the
23 lab, when we create, when we prepare a smear, we'll just
24 take a, we'll just take the cutting from the vaginal swab
25 and we'll use the smear from the -- create a smear using

1 the vaginal swab.

2 Let's see, and I, I received -- I'm sorry. I received
3 her blood smears, vaginal swabs, and a pair of panties.

4 Q. And did you get these items from the DNA refrigerator?

5 A. Right. I received them, received them from the DNA
6 refrigerator.

7 Q. Okay, and there's been some panties. I'm going to
8 show you what's marked as State's Exhibit 24. Are these
9 the panties that you tested in late 2004?

10 A. They are. I know this. Of course, I wouldn't have
11 remembered this from 2004, but I always mark it with the
12 case number as well as the item number and my initials.
13 So, since I have -- it says that I have done -- it shows
14 that I did handle this item of evidence.

15 MS. ASHTON: Your Honor, at this time we'd ask to
16 introduce State's Exhibit 24 into evidence.

17 THE COURT: Any objection?

18 MS. PINNOCK: No, Your Honor.

19 THE COURT: All right, and you said it's 20?

20 MS. ASHTON: 24.

21 (PACKAGE CONTAINING UNDERWEAR MARKED INTO EVIDENCE AS
22 STATE'S EXHIBIT NUMBER 24.)

23 BY MS. ASHTON:

24 Q. Can you explain your results from the analysis in
25 2004?

R. FIELDS - DIRECT EXAMINATION BY MS. ASHTON

453

1 A. From the vaginal swab, I, I -- it did produce the
2 victim's protocol from the vaginal swab, which you would
3 expect because it is a sample taken from her body. So, you
4 would expect to see her DNA profile from -- on her vaginal
5 swab, and I did -- and the -- as far as -- basically we do
6 two different extractions when we have the semen, semen,
7 semen identified, which we did in this case. We, we have
8 two different -- we take a cutting from the swab and we try
9 to extract or isolate the female portion of it to get --
10 which would include, like, epithelial cells or just skin
11 cells from, in this case, her -- the, the vaginal region.

12 And then we, we -- the sperm, the male's DNA is
13 typically encased in the sperm cell. So, basically the
14 sperm is, is -- has a more protective coating than
15 epithelial cells. So, we have to do a more stringent wash
16 technique to get the sperm cells to light so that we can
17 have access to the male DNA.

18 So, the sperm cells undergo a whole series of washes
19 to try to extract that DNA, the male DNA from the sperm
20 cells. So, we have what we have called a male and a female
21 fraction that we get from semen items, and the, and the
22 female fraction of the vaginal swab, we -- it was just
23 strictly the female, the victim in the case. And in the
24 male fraction, sometimes if you, if the -- sometimes
25 epithelia cells will linger on in the male fractions. So,

1 I did get some of the victim in the male fraction, and
2 there were some foreign, there were some foreign alleles or
3 just variance of just different forms of DNA, I guess, in
4 the male fraction. But there wasn't enough there for me to
5 make a determination as to who, who would have contributed
6 that.

7 Q. And then the cutting that you made from the vaginal
8 swab?

9 A. From the vaginal swab, correct.

10 Q. Of Misty Shealy?

11 A. Right.

12 Q. Can you -- what about the panties? Were you able
13 to develop a profile from the victim's underwear in this
14 case?

15 A. I was. The -- there was semen also identified on the
16 panties and the, the DNA profile developed from the semen
17 found on the panties matched Melvin Stukes.

18 Q. Okay. How would -- let's go back to the actual -- how
19 many profiles were developed from the underwear?

20 A. There were actually two profiles developed. Again,
21 since there was semen identified, I did the two difference
22 extraction techniques or the one extraction technique where
23 I have a male and a female fraction. And the female
24 fraction, it was a mixture of the female, and there were
25 some foreign alleles that showed up as well that was

R. FIELDS - DIRECT EXAMINATION BY MS. ASHTON

455

1 consistent with Melvin Stukes. But we honestly -- whenever
2 we look at a, a semen sample, we just submit the -- in the,
3 in the female fraction, you have the female and someone
4 else.

5 We typically just look at the male fraction because of
6 what we're interested in. You absolutely expect to see the
7 female, the victim or the female there and -- on her own
8 set of panties. We consider them intimate items as well.
9 So, you would expect to see the female there. So, we just
10 sort of subtract her and use what's there.

11 And normally in the male fraction, sometimes we'll get
12 a really clean male profile, and that's what happened in
13 this case. I got a really clean male profile in the male
14 fraction of the panties, the extraction from the panties.

15 Q. Okay, and only one male profile?

16 A. Only one male profile, yes.

17 Q. And actually in 2005 when you actually completed your
18 report ---

19 A. Uh-huh.

20 Q. --- there was no match at that time. Is that correct?

21 A. That's correct. There were no males submitted at the
22 time to compare to.

23 Q. So, there was a profile?

24 A. Right. I did get a male profile, but no standards for
25 comparison.

1 Q. At some point later in 2007, did you become aware that
2 a profile developed from the underwear matched Melvin
3 Stukes?

4 A. I did become aware of that fact, yes.

5 Q. And in 2010 did you receive additional evidence
6 related to the sexual assault of Misty Shealy?

7 A. I did. I received additional items.

8 Q. And what was that?

9 A. It was a Buccal sample, swab from Melvin Stukes, and
10 basically a Buccal swab, it's just a cheek swab.

11 Q. And did you test that Buccal swab?

12 A. I did.

13 Q. Okay, and did you compare it again to the profile
14 developed from Misty's underwear?

15 A. I did and ---

16 Q. Okay, and what were those results?

17 A. It, it matched Melvin Stukes.

18 Q. And again you documented that in your report?

19 A. I did.

20 Q. Is there a statistic associated with this match?

21 A. It is, the probability of randomly selecting an
22 unrelated individual having the same DNA profile is
23 approximately one in 410 quadrillion.

24 Q. One, one in 410 quadrillion?

25 A. Quadrillion, yes.

R. FIELDS - DIRECT EXAMINATION BY MS. ASHTON

457

1 Q. And how, how many zeros are in quadrillion?

2 A. It's 410 followed by fifteen zeros.

3 Q. So, this was your statistic?

4 A. Right.

5 Q. And explain that statistic one more time, how it
6 relates to the defendant, Melvin Stukes.

7 A. To put it in perspective, 410 quadrillion is about 58
8 million times the world's population.

9 Q. Now, can DNA be transferred from one surface to
10 another?

11 A. It can, yes.

12 Q. And, for instance, the assailant ejaculated on a part
13 of the body and then the underwear was down at the ankles,
14 if the victim then pulled up her underwear, could that DNA
15 be transferred to the underwear?

16 A. If the underwear did come in contact with a portion of
17 the skin that contained the semen, yes, it could transfer
18 from the skin to the underwear.

19 Q. And in your expert opinion, that profile, that male
20 profile developed from the underwear matches Melvin Stukes?

21 A. Barring an identical twin, yes, it does.

22 MS. ASHTON: Thank you. Please answer any questions
23 from the defense.

24 WITNESS: Okay.

25 MS. PINNOCK: Please the court, Your Honor?

1 CROSS-EXAMINATION BY MS. PINNOCK:

2 Q. All you can tell us today is that Melvin Stukes's DNA
3 was present? You can't say how it got there?

4 A. I cannot. I know there was semen identified from the
5 stain and his profile developed. That's all I can tell you
6 about that.

7 MS. PINNOCK: Okay. Thank you.

8 THE COURT: Anything else from the state?

9 MS. ASHTON: No, Your Honor.

10 THE COURT: All right, ma'am, you may step down.

11 WITNESS: Okay. Thank you.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: All right, ladies and gentlemen of the
14 jury, that is our last witness of the, the day. So, we're
15 -- I'm going to go ahead and let you all leave for your
16 evening break.

17 Once again, I remind you that you are not to discuss
18 this case with anyone. I know that it is, what, Wednesday,
19 and your family members are probably eager to know what you
20 all are doing down here at the Richland County Judicial
21 Center. Tell them that you will tell them all about it
22 this weekend, but you cannot discuss it with them at this
23 time.

24 You are not to discuss this case with any of your
25 fellow jurors, and you yourself, it would be improper for

1 you to form an opinion in your own mind because you do not
2 have all of the evidence at this time.

3 I am going to release you. Remember no research, no
4 social networking, no tweeting, no Facebooking, and
5 whatever else there is out there as far as social
6 networking regarding this case. I hope that you have an
7 enjoyable evening.

8 We will start tomorrow morning about 10:00. Let's
9 say, let's say about 10:30. There's another matter that I
10 have to handle before we start this trial tomorrow. So --
11 but I think that we should be finished by 10:30.

12 So, if you all will be here at 10:30, and I'm going to
13 probably order lunch for you all tomorrow more than likely,
14 order lunch for you tomorrow. So, once you get here, get
15 here, you will -- they'll give you the -- madame clerk will
16 have forms ready for you to order lunch tomorrow.

17 So, have a great evening, and we will see you tomorrow
18 morning at 10:30. All right. Thank you.

19 (THE JURY EXITS AT 4:37 P.M.)

20 THE COURT: All right, anything you all anticipate
21 that we will have to deal with that we can do this
22 afternoon since we have some time? If not, I'll see you
23 all in the morning. We'll just -- after about 10:30 as
24 soon as we finish. I don't think it should take more than
25 an hour. That would be the longest.

1 MR. SHEALEY: Thank you, Your Honor.

2 MR. GOLDBERG: Thank you.

3 THE COURT: All right.

4 (WHEREUPON, THE CASE IS AT EASE.)

5 THURSDAY, JULY 26, 2012

6 (COURT RESUMES AT 11:09 A.M.)

7 (REDACTED STATEMENT MARKED AS STATE'S EXHIBIT NUMBER
8 25 FOR IDENTIFICATION.)

9 (ENLARGED MAP MARKED AS STATE'S EXHIBIT NUMBER 26 FOR
10 IDENTIFICATION.)

11 THE COURT: All right, we ready to bring them in?

12 MR. GOLDBERG: Yes, ma'am.

13 THE COURT: Bring them in.

14 (THE JURY ENTERS AT 11:10 A.M.)

15 THE COURT: All right, ladies and gentlemen of the
16 jury, I hope you had a restful evening. At this time, the
17 state will continue with their case. I'll ask Mr. Goldberg
18 to call his next witness.

19 MR. GOLDBERG: Thank you, Your Honor. If it pleases
20 the court, the state calls Sergeant Brian Godfrey.

21 BRIAN GODFREY, BEING DULY SWORN,
22 TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Have a seat in the witness stand,
24 please, and state your name for the record.

25 WITNESS: Brian Godfrey.

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

461

1 DIRECT EXAMINATION BY MR. GOLDBERG:

2 Q. Where are you employed, sir?

3 A. The Richland County Sheriff's Department.

4 Q. And how long have you been employed there?

5 A. Since 1998.

6 Q. Can you tell the jury a little bit about your
7 education, your training, your background work experience?

8 A. I have a bachelor in science from in criminal justice.
9 After getting out of the Marine Corps, I started with the
10 sheriff's department. I've held numerous jobs throughout
11 the sheriff's department. Started off as a paddy wagon
12 driver. Was a road deputy on the road. I started
13 investigating petty crimes, and then I went to
14 investigations and spent a deal -- great deal of time in
15 narcotics investigating burglaries, robberies, murders.

16 I spent approximately two and a half years in the
17 Special Victims Unit investigating child sexual assault,
18 sexual assault, and vulnerable adult crimes, those type.
19 Been in investigation since about 2000. Been to numerous
20 schools as it pertains to investigations and interviews.

21 Q. Back in 2010, what was your role at the sheriff's
22 department?

23 A. 2010 I was the supervisor over the Cold Case Unit.

24 Q. And I believe the jury's heard a little bit about it
25 already, but if you could tell them a little bit about what

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

462

1 the Cold Case Unit does?

2 A. Cold Case Unit, we, we investigate unsolved murders,
3 those that leads have been exhausted. We also -- at that
4 particular time, I was under a grant, federal grant where
5 we were able to run DNA in different cases: any kind of
6 aggravated sexual assault with unknown perpetrators,
7 aggravated robberies, and unsolved murders. And so that
8 was the focus at that point.

9 Q. And in March in 2010, did you begin some involvement
10 in investigating the sexual assault involving Misty Shealy?

11 A. That is correct.

12 Q. How did you get involved in that case?

13 A. We were reviewing unsolved sexual assaults per the
14 grant, trying to identify cases we could go into and where
15 maybe, you know, DNA hadn't been done yet, or some other
16 evidence could be -- specifically, we were focused on DNA
17 cases that we could maybe develop DNA in, cases that maybe
18 that went by the wayside or hadn't been exhausted yet.

19 And this case, we have what's called a Cold Case MDT.
20 It's a multidisciplinary task force. It has -- the
21 coroner's office is there, a representative from there.
22 The solicitor's office, there's a specific solicitor
23 assigned to that particular Cold Case MDT, someone from the
24 lab, someone from the DNA lab, the crime scene lab verses
25 the DNA lab, investigators, the actual investigators who

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

463

1 handle some of these cases, and we all meet on these cases,
2 and we identified this particular case.

3 Q. And, in fact, you -- and, in fact, you were made aware
4 that there was actually a DNA profile that was developed in
5 this case. Is that right?

6 A. That's correct.

7 Q. Okay, and so once you become aware of that
8 information, how did you begin your investigation?

9 A. Once we identified that there had been a profile
10 developed in that case, we had a MDT meeting. We conducted
11 backgrounds. We made sure that the evidence was still in
12 the evidence room and secure. We talked with the person
13 that -- the Sergeant Richards who testified earlier. We
14 talked to him about pulling the lab file that was developed
15 in that particular case, and I made contact with the
16 primary investigator at the time, which was Investigator
17 Branham who talked or who testified earlier as well.

18 Q. And was it at that point that you were kind of made
19 aware of the general allegations of the case and the facts
20 involving the incident?

21 A. That's correct.

22 Q. So, at that time what, what was your first move once
23 you got that information?

24 A. Once we got that information, we attempted to make
25 contact with the victim in the case.

1 Q. Was that Misty Shealy?

2 A. That's correct.

3 Q. Okay, and how did you go about trying to track her
4 down?

5 A. We have databases that show previous addresses and
6 most current addresses, specifically Accurint, and so we
7 went with the most current address, then continued from
8 there.

9 Q. And did you find an address for her in the Swansea
10 area?

11 A. That's correct.

12 Q. And based upon -- well, did you go to Swansea?

13 A. I did.

14 Q. Who did you make contact with over there?

15 A. There was no one home at the residence that we went
16 to. However, I talked to a neighbor, and the neighbor
17 advised me that she believed that the victim was located in
18 the Orangeburg County Detention Center.

19 Q. Okay, and that would have been -- what was the date on
20 that?

21 A. That was March 18, 2010.

22 Q. Okay. Did she indicate -- excuse me, did the neighbor
23 indicate whether there was any other family members that
24 you could try to speak to?

25 A. She let me know about the victim's husband and where

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG.

465

1 he was working at.

2 Q. And did you try and make contact with the husband?

3 A. We did. We actually went to where -- it was another
4 location in Swansea, a feed store.

5 Q. And what did you learn about Ms. Shealy's relationship
6 with her husband at the time?

7 A. They'd been in a relationship since -- for
8 approximately four years prior to me talking to him.

9 Q. So, 2006?

10 A. Approximately 2006. His last name was Millender.
11 That's why her name was now, last name was Millender. He
12 said he was currently going through a divorce with his --
13 with, with Ms. Millender, Ms. Shealy, and they were in
14 family court.

15 Q. And did he know where she was located?

16 A. At the Orangeburg County Detention Center.

17 Q. Did you eventually make contact with Ms. Millender,
18 Ms. Shealy?

19 A. That's correct.

20 Q. Was that at the Orangeburg County Detention Center?

21 A. We did, myself and Investigator Thompson.

22 Q. And when was that, sir?

23 A. March 23, 2010.

24 Q. And are you referring to some notes that you generated
25 as a result of your investigation?

1 A. That's correct.

2 Q. Okay, and so when you made contact with her at the
3 jail, what did you do?

4 A. Asked her about the incident, asked her to refresh her
5 memory. We took a statement from her, a written statement
6 from her about what occurred back then.

7 Q. Based upon your conversation with her, what was your
8 impression of her relationship with her mother and family
9 members at the time of the incident?

10 A. Didn't appear they had a very close relationship.

11 Q. And did you learn any information about how long it
12 had been before she informed them of what had happened?

13 A. Approximately a year after the incident.

14 Q. Is that -- and you said you used to work sexual
15 assault cases primarily. Is that right?

16 A. Yes.

17 Q. About how many investigations of sexual assault cases
18 had you worked when you were in that unit?

19 A. We would get anywhere from thirty-five to forty cases
20 a month. I was there for about two and a half years, and
21 some of them were a mixture of, like, child abuse case and
22 vulnerable adult cases, but primarily it was sexual
23 assault.

24 Q. Is it unusual for ---

25 MR. SHEALEY: Your Honor, I object. It's speculation.

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

467

1 He's not qualified as an expert.

2 THE COURT: Sustained.

3 BY MR. GOLDBERG:

4 Q. Based upon your experience as an investigator, how
5 likely is it that an assault would be reported ---

6 MR. SHEALEY: Your Honor, same objection, same
7 objection.

8 MR. GOLDBERG: It's based on his experience of two and
9 a half years investigating numerous sexual assault cases
10 about ---

11 THE COURT: Let me see you.

12 (OFF-THE-RECORD BENCH CONFERENCE.)

13 THE COURT: All right, the objection is sustained..
14 Please rephrase, rephrase the question.

15 MR. GOLDBERG: Yes, ma'am.

16 BY MR. GOLDBERG:

17 Q. With regard to the sexual assault cases that you've
18 investigated over the years, are there some situations
19 where the victim does not disclose what happened to them to
20 a family member immediately?

21 A. Absolutely.

22 Q. Are there some situations where they do disclose
23 immediately?

24 A. Absolutely.

25 Q. Are there some situations where the victim does not

1 call 911 or the police immediately?

2 A. Absolutely.

3 Q. And are there some where they do?

4 A. Absolutely.

5 Q. All right. Thank you, and you said you took a
6 statement from Ms. Millender?

7 A. That's correct.

8 Q. Okay. During the course of your conversation with
9 her, how many times was Melvin Stukes identified by her as
10 her attacker?

11 A. Never.

12 Q. Can you tell this jury a little bit about what a photo
13 lineup is?

14 A. A photo lineup is generally six pictures, and they're
15 all similar in nature. You wouldn't have female to male,
16 white guy, black guy. It would be if you had a particular
17 person in mind, it would be six people that look similar in
18 nature wearing similar type clothes, similar type
19 hairstyles, those type things. They're not exactly the
20 same, obviously, but you want to make them consistent in
21 nature. Six pictures. They're in random order.

22 A lot of times, you'll use it as a tool to either
23 identify someone or rule someone out. You'll show them to
24 a witness or a victim in an effort to see if they can
25 identify anybody within that array of photos.

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

469

1 Q. Did you show Ms. Millender a photo lineup?

2 A. I did.

3 Q. Did she recognize anyone in that lineup?

4 MR. SHEALEY: Your Honor, I'm going to ask to approach
5 the bench briefly.

6 (OFF-THE-RECORD BENCH CONFERENCE.)

7 BY MR. GOLDBERG:

8 Q. So, you showed her a photo lineup, right?

9 A. Yes, sir.

10 Q. And did she recognize anyone in that lineup?

11 A. She looked at the photos and only stated that photo
12 number 2 looked familiar to her, but she couldn't say that
13 she knew the individual.

14 Q. And to your knowledge, was there anyone in the lineup
15 that she identified as having consensual sex with her at
16 any point?

17 A. No.

18 Q. And was there anyone, to your knowledge, in the lineup
19 that she identified as being given consent to enter her
20 apartment at any time?

21 A. No.

22 Q. Can you describe Misty's demeanor as you took this
23 statement from her?

24 A. I, I, I remember clearly that she was visibly, visibly
25 upset and crying at points during the interview, but I was

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

470

1 taking my notes, but I, I specifically remember that.

2 Q. Once you concluded taking the statement from her, what
3 was your next move with the investigation?

4 A. Once we concluded, I made contact with Sergeant
5 Richards again about the lab files and photos and I -- to
6 get those located. I wanted to see those; it was
7 important.

8 Q. Did you also make contact with Agent Fields at SLED?

9 A. That's correct.

10 Q. And what did she provide you with?

11 A. With a copy of the DNA report.

12 Q. DNA report indicating what?

13 A. That a profile had been developed and matched to Mr.
14 Stukes.

15 Q. And that it was from the victim's panties. Is that
16 right?

17 A. That's correct.

18 Q. Did you at some point finally catch up Investigator
19 Branham to get his case file?

20 A. I did. I actually received that case file from
21 Investigator Branham, the original case file, on April 19,
22 2010.

23 Q. Have you had an opportunity to review it?

24 A. I did have an opportunity to review it.

25 Q. Okay, and so part of that, you reviewed the incident

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

471

1 report?

2 A. That's correct.

3 Q. Who was the officer that took the incident report on
4 that night?

5 A. Hicks.

6 Q. Hicks, and where is he currently?

7 A. He's on the military leave.

8 Q. After you reviewed the file, did you get warrants for
9 Mr. Stukes's arrest?

10 A. That's correct.

11 Q. And what were those warrants for?

12 A. Burglary first degree and criminal sexual conduct in
13 the first degree.

14 Q. Did you have an opportunity to consult with a John
15 Barron from the sheriff's department on this case?

16 A. I did.

17 Q. And what was that about?

18 A. He was actually part of that, at that time, the Cold
19 Case team, group. He's a DNA analyst for the Richland
20 County Sheriff's Department. At the time of this case, we
21 did not have a DNA department at the Richland County
22 Sheriff's Department, so everything was handled through
23 SLED.

24 Q. When you said at the time, do you mean back in 2004?

25 A. That's correct, and so now in 2010, we did have a DNA

1 unit at the sheriff's department. So, I asked, just asked
2 him to review it.

3 Q. Did he actually generate any reports?

4 A. No. There wouldn't have been -- what my understanding
5 of the rule was and what I learned was if D -- if SLED
6 started the actual DNA processing, they'd have to finish it
7 even if it happened -- even if we developed something ten
8 years down the road, if they initially initiated it, no one
9 else is going to touch it at the sheriff's department. So,
10 it's got to go back out to SLED.

11 Q. And is that, in fact, what happened with this
12 investigation?

13 A. That's correct.

14 Q. On April 22, 2010, were you in contact with Sergeant
15 Caldwell of the Fugitive Team?

16 A. That is correct.

17 Q. What was the nature of your conversation?

18 A. On that particular case, I attempted to get the
19 Fugitive Team to locate Mr. Stukes.

20 Q. Is that unusual for you to try and call in others to
21 try and track down a suspect, or how does that work?

22 A. No, sir. It's not unusual at all. I do like to
23 oftentimes go find my own individuals, and I did do some
24 research and try to find Mr. Stukes. However, I was
25 unsuccessful. In addition to that, you're obtaining cases,

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

473

1 constant cases. The cases don't stop just because you're
2 working one case, and so their sole purpose is to locate
3 people who have arrest warrants. And so I thought it would
4 be better, more beneficial, and probably a quicker process
5 to have them attempt to locate him.

6 Q. Sergeant Caldwell ultimately located the defendant?

7 A. That's correct.

8 Q. When was that?

9 A. May 5, 2010.

10 Q. How were you notified of that?

11 A. Sergeant Caldwell called me on my cell phone.

12 Q. And did you learn anything about the defendant at that
13 time?

14 A. That he was requesting to speak with me.

15 Q. So, did you make contact with the defendant on May 5,
16 2010?

17 A. I did. I was -- I received a call from Sergeant
18 Caldwell about 0732 in the morning. And I was actually on
19 my way to work, but I live a pretty good distance away, so
20 I made contact with Mr. Stukes at the jail at approximately
21 10:29 the same day.

22 Q. Were you by yourself?

23 A. I was not. Investigator Mincey accompanied me.

24 Q. So, when you made contact with the defendant, how did
25 you do that?

1 A. He was in the jail. I pulled up in the sally port
2 area. I had called ahead to make sure that they had him
3 prepared because sometimes you can wait a while if you
4 don't call ahead.

5 They placed him in hand irons, belly chains and leg
6 irons, and while in the sally port -- a lot of times you'll
7 -- always I'll ahead and advise them of their rights
8 because it would behoove you to do that before you drive
9 them all the way to Richland County Sheriff's Department,
10 they tell you they don't want to talk to you. So, I
11 advised him of his rights.

12 Q. And that would be his Miranda rights?

13 A. That's correct.

14 Q. And did you do that orally?

15 A. Orally at that point.

16 Q. Did he appear to understand the rights as you advised
17 them?

18 A. Yes, sir.

19 Q. And did he agree to talk and go with you?

20 A. He did.

21 Q. And you went from the, from the jail over to the
22 sheriff's department headquarters. Is that right?

23 A. That's correct.

24 Q. On Two Notch Road?

25 A. Yes, sir.

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

475

1 Q. During the car ride, did you have any conversations
2 about the case?

3 A. No.

4 Q. What did you do with Mr. Stukes once you got back to
5 headquarters?

6 A. We went to a, it's kind of an interview room. It's
7 got a table, couple of chairs, very plain room.

8 Q. And at that time, did you advise him of his rights
9 again?

10 A. I did. This time the written advisement.

11 Q. I show you what's been marked as State's Number 1 for
12 ID, have you take a look at that. What do you recognize
13 that to be?

14 A. This is the advisement form, standard Richland County
15 Sheriff's Department advisement form. This particular one
16 is the one I used for Melvin Stukes that, that morning.

17 Q. And what is the date and time on that form, sir?

18 A. May 5, 2010, at 10:30 in the morning.

19 Q. And that's the form that you went through his rights
20 with him?

21 A. That's correct.

22 Q. Can you explain to the jury precisely how that process
23 worked, and take them through that process as you did it
24 with Mr. Stukes on that day.

25 A. Okay. That's what the form looks like. It's actually

1 broken down in three different parts. One is the basic
2 information. Who was present. I placed his name, Melvin
3 Stukes. The location we were at, 5623 Two Notch Road,
4 which is the sheriff's department. The officers that were
5 present, which was Mincey and Godfrey. The date and time,
6 May 5, 2010, at 10:30.

7 And then we go over each individual right, and you can
8 see to the left of each particular one, there's a little
9 box there that you can check to make sure that you actually
10 went through that and that they understood it.

11 So, I started with the first one. I said:

12 Before we ask you any questions, you must
13 understand your rights.

14 Check.

15 You have the right to remain silent.

16 Check.

17 Anything you say can be used against you in
18 court.

19 Check.

20 You have the right to talk to a lawyer for advice
21 before we ask you any questions and to have a
22 lawyer with you during any questioning.

23 Check.

24 If you cannot afford a lawyer, one will be
25 appointed for you before any questioning if you

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

477

1 wish.

2 Checks.

3 If you decide to answer questions now without a
4 lawyer present, you still have the right to stop
5 answering at any time. You also have the right
6 to stop answering at any time until you talk to a
7 lawyer.

8 I checked that, and then I ask them do they understand
9 that, and then there's a place for -- they affirm. There
10 is a place there for them to sign, and then myself and
11 Investigator Mincey witnessed it.

12 Q. And did Mr. Stukes understand the rights that you
13 advised him?

14 A. Yes, sir.

15 Q. And did he actually sign that form?

16 A. He did.

17 Q. Okay.

18 A. And then after that, we'll go over the waiver portion
19 because that's only if they understood it. The next
20 portion is whether or not they want to waive those rights
21 and talk with you. So, I'll read that out loud, and
22 there's also a little check box next to that, and I checked
23 it. It says:

24 I have read this statement of my rights and
25 understand what my rights are. I am willing to

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

478

1 talk and answer questions. I understand and know
2 what I'm doing. No promises have been made to
3 me, and no pressure or coercion of any kind has
4 been used against me.

5 They agree to that, they understand that, then there's
6 a place for them to sign if they want to speak with you.
7 And then it was also witnessed by myself and Investigator
8 Mincey, and Mr. Stukes did sign that portion as well.

9 MR. GOLDBERG: Your Honor, at this time we'd offer
10 State's Number 1 into evidence.

11 THE COURT: Any objection?

12 MR. SHEALEY: No objection.

13 (ADVICE OF RIGHTS FORM MARKED INTO EVIDENCE AS STATE'S
14 EXHIBIT NUMBER 1.)

15 BY MR. GOLDBERG:

16 Q. As you went through the rights with Mr. Stukes, he
17 appeared to understand those rights?

18 A. Yes, sir.

19 Q. And he waived those rights?

20 A. Yes, sir.

21 Q. Did he appear to be under the influence of any drugs
22 or alcohol at that time?

23 A. No, sir.

24 Q. At any time as you went through the rights, did he
25 indicate that he did not want to talk to you, or that he

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

479

1 wished to have a lawyer present?

2 A. No, sir.

3 Q. Once he was advised of his rights and waived his
4 rights, did you immediately take a written statement from
5 him at that point?

6 A. No, sir.

7 Q. And why is that?

8 A. Generally you'll, you'll have an interview where
9 you'll talk to them. You'll want to kind of get the gist
10 of what their explanation is, and you'll talk about -- it
11 just, it's easier of -- it's a easier flow than to sit
12 there. Did you do that? Check, check, check, check, and
13 type it. Did you do that? Check, and it's just easier to
14 sit there and talk to them.

15 Q. And so you all had an oral conversation for a while?

16 A. That's correct.

17 Q. Did you also ask Mr. Stukes about providing you with a
18 Buccal swab?

19 A. Yes, sir.

20 Q. Okay, I want to show you what's been marked as State's
21 3 for ID. Do you recognize that?

22 A. I do.

23 Q. And what is that form?

24 A. This is a Richland County sheriff's standard consent
25 to search for DNA evidence form that we use in an effort to

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

480

1 voluntarily get a DNA sample from an individual. It's just
2 swabs. There's no -- used to be blood taken. It's just
3 like a Q-Tip swab of the mouth, the inside of the mouth.

4 Q. And can you read the form, please?

5 A. Again, the date's on it: May 5, 2010. The location:
6 5623 Two Notch Road, which is the sheriff's department. It
7 says:

8 I, Melvin Stukes, do hereby consent to the search
9 of my person without a search warrant by.

10 And I've got Godfrey/Mincey.

11 Investigators for the Richland County Sheriff's
12 Department. This investigator is authorized by
13 me to take from my person any materials or other
14 property which he may desire. This search shall
15 be made of my person for the purposes of
16 obtaining a Buccal.

17 It's got parentheses.

18 Oral swabs for DNA evidence. I am aware that any
19 evidence obtained as a result of this search can
20 be used against me in a court of law. This
21 written permission is being given by me to the
22 above-named investigator freely, voluntarily, and
23 without threats or promises of any kind.

24 After you -- after that's read, there's a place for
25 him to sign it. He did sign it Melvin Stukes, and then

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

481

1 it's witnessed by myself and Investigator Mincey.

2 MR. GOLDBERG: Your Honor, at this time we'd offer
3 State's Number 3 into evidence.

4 THE COURT: Any objection?

5 MR. SHEALEY: Without objection.

6 (CONSENT TO SEARCH MARKED INTO EVIDENCE AS STATE'S
7 EXHIBIT NUMBER 3.)

8 BY MR. GOLDBERG:

9 Q. Did you, in fact, obtain a Buccal swab from Mr.
10 Stukes?

11 A. I did.

12 Q. And at some point later, did you turn that in to Mr.
13 Griffey with the evidence department at the sheriff's
14 department?

15 A. Yes, sir.

16 Q. Tamper with it or alter it in any way while it was in
17 your possession?

18 A. No, sir.

19 Q. After advising Mr. Stukes of his rights and speaking
20 with him orally about the events in question, at that point
21 did you reduce the statement to writing?

22 A. No, sir.

23 Q. What did you do?

24 A. Actually, we, we took a ride out to the Park Apartment
25 at Longcreek Drive, Ashton Apartment area, try to identify

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

482

1 several apartments that he said he was familiar with,
2 identify an apartment where he said he was staying at the
3 time of this incident. And I also showed him, without
4 telling him, the victim's apartment.

5 Q. And I'm going to show you State's Number 26 for ID.
6 Do you recognize this?

7 A. I do.

8 Q. And generally what do you recognize it to be?

9 A. That's the Longcreek, Garner Lane, Park Apartment,
10 Ashton Apartments area.

11 Q. And is this the area where you drove Mr. Stukes
12 around?

13 A. That's correct.

14 MR. GOLDBERG: At this time, we'd offer State's 26
15 into evidence.

16 THE COURT: Any objection?

17 MR. SHEALEY: No objection, Judge.

18 (ENLARGED MAP MARKED INTO EVIDENCE AS STATE'S EXHIBIT
19 NUMBER 26.)

20 BY MR. GOLDBERG:

21 Q. And if you could, just describe for the jury a little
22 bit about where you took Mr. Stukes and any comments he had
23 about those apartments in question.

24 A. Okay. This is obviously I-20. That would be towards,
25 that would be towards Florence eastbound. That would be

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

483

1 westbound towards Augusta. Garner Lane runs right up along
2 this frontage road. There's actually entrances into the
3 Park Apartments through both sides, both Longcreek and
4 Garner Lane. Longcreek runs off of Broad River Road just
5 before you hit the highway.

6 If you come down this way, this would be one of the
7 entrances to the Park Apartments, and then this is another
8 -- this one obviously doesn't go all the way through. It
9 doesn't go all the way through, and this is the back side
10 of the Park Apartments. There's a divider here. I don't
11 know if there was at the time, but there is now a fence
12 that divides both the Ashtons and the Park Apartments that
13 runs across through here.

14 Q. So, this area here is the ---

15 A. That's the Park Apartments, that's correct.

16 Q. And this area to the left is the Ashtons?

17 A. Actually, all this right here is the Ashtons.

18 Q. Okay.

19 A. And then this is just like some stone condos or
20 something, something.

21 Q. And what connection, if any, did Mr. Stukes have to
22 this area?

23 A. I know he said he was staying with a girlfriend. I
24 have her actual address in the statement. It was somewhere
25 towards the back of the apartments and I wrote ---

1 Q. In the Ashton complex?

2 A. The Ashton complex.

3 Q. And that would have been back around when?

4 A. The same time as this incident.

5 Q. Back around 2004?

6 A. Yes, sir.

7 Q. Okay.

8 A. And then he made me familiar with a couple of people
9 he knew in the Parks, primarily in this building. He
10 identified two people in this building and then one in
11 this. I want to say it was this back building.

12 Q. Okay.

13 A. Right here.

14 Q. And did he give you any names of those people?

15 A. Yeah. One was Chris that lived back here, and then up
16 here he gave me a Shawntee [*phonetic*] and a Louis.

17 Q. Okay.

18 A. In this building.

19 Q. And where was Misty's apartment?

20 A. It would have been in this building here, right about
21 in the middle. I believe it's...

22 Q. Apartment [REDACTED]?

23 A. Yes, sir.

24 Q. Did you have an opportunity to drive Mr. Stukes by
25 that apartment?

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

485

1 A. Drove him right around this circle here.

2 Q. And did you ask him any questions about that
3 apartment?

4 A. Specifically asked him about that apartment without
5 referencing it being the victim's apartment. He denied
6 knowing anybody that lived -- or ever being in that
7 apartment.

8 Q. All right. Thank you. After you went through that
9 with him, did you guys go back to the sheriff's department?

10 A. We did.

11 Q. And was it at that time that you reduced his statement
12 to writing?

13 A. That's correct.

14 Q. And who actually wrote the statement?

15 A. I typed the statement.

16 Q. You typed the statement?

17 A. Yes, sir.

18 Q. And can you explain to the jury why you typed it as
19 opposed to Mr. Stukes writing it by his own hand?

20 A. It's our -- as far as -- long as I've been at the
21 sheriff's department, we always write the -- type the
22 statement out. We actually write the statement. It's just
23 protocol that we use.

24 Q. And was there any audio recordings of your
25 interactions with Mr. Stukes?

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

486

1 A. No, sir. At the sheriff's department, there are no
2 audio, video recordings of any interview interrogations
3 other than the polygraph room.

4 Q. And I'll show you what's been marked as State's Number
5 25 for ID. Do you recognize that?

6 A. I do.

7 Q. What do you recognize that to be?

8 A. This is a copy of Mr. Stukes's statement that was
9 provided on May 5, 2010.

10 Q. And at the top of that statement, was Mr. Stukes
11 actually advised of his rights again?

12 A. That's correct.

13 MR. GOLDBERG: Your Honor, at this time I would ask
14 Sergeant Godfrey to publish the entire statement.

15 THE COURT: Any objection?

16 MR. SHEALEY: No objection, Judge.

17 BY MR. GOLDBERG:

18 Q. All right, can you -- well, let me ask you this. You
19 said earlier that you did not type one and ask another
20 question, correct?

21 A. That's correct.

22 Q. You typed it all. Is that right?

23 A. Correct.

24 Q. Upon finishing typing the statement, did you give a
25 copy to or give that version to Mr. Stukes for his review?

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

487

1 A. That's correct. I read it out to him as well as
2 provided it to him.

3 Q. Tell the jury how that whole process works.

4 A. He'll give a statement. I'll type it out obviously.
5 Print it out. I'll read the statement out to him in its
6 entirety. I'll provide him with it.

7 There's two specification locations where he signs on
8 each page. Each page has the same two places where he's
9 supposed to sign. The first part, the first portion of
10 that, first portion of that says:

11 I have made the foregoing statement freely and
12 voluntarily without fear, threat, promise or
13 reward, or hope of any kind.

14 He'll sign that; there's a place for him to sign
15 there. There's a place for witnessing.

16 On this particular statement, I notarized it and
17 Mincey witnessed it. And then the second portion says:

18 This is to certify that I have read or had read
19 to me the foregoing statement consisting of four
20 pages, and a true copy has been given to me this
21 5th day of May.

22 And there's a place for him to sign, and then that's
23 where I notarized it on the side there.

24 Q. And if you could, just read the statement, please, for
25 the jury.

1 A. All right.

2 Q. Starting at the very top.

3 A. Okay. It says the statement of, and it has Melvin
4 Stukes, Jr. Provides his address, [REDACTED] Road,
5 apartment [REDACTED], Columbia, South Carolina 29205. Gave a
6 telephone number, [REDACTED] 6. Says:

7 Columbia, South Carolina, this 5th day of May,
8 two thousand -- excuse me. Made at Columbia,
9 South Carolina, this 5th day of May, 2010 at 1320
10 hours.

11 Which is 1:20 in the afternoon. I used military time.

12 In the presence of the Investigator
13 Godfrey/Mincey of the Richland County Sheriff's
14 Department.

15 Says:

16 I, Melvin Stukes, Jr., understand that I have
17 read -- I, I have the right to remain silent.
18 Anything I say can be used against me in court.
19 I have the right to talk to a lawyer for advice
20 before you ask me any questions and to have a
21 lawyer with me during any questioning. If I
22 cannot afford a lawyer, one will be appointed for
23 me for any questioning if I wish. If I decide to
24 answer questions now without a lawyer present, I
25 still have the right to stop answering at any

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

489

1 time. I also have the right to stop answering at
2 any time until I talk to a lawyer.

3 It then says: Do make the following statement. I have
4 a kind of a guide. It's got Q by question, Godfrey/Mincey.
5 A stands for answer and it says Stukes. Then it's all Q,
6 A, Q, A after that. It says:

7 Q. Are you currently under the influence of any
8 drugs or alcohol?

9 The answer: A. No.

10 Q. Where were you born?

11 A. Columbia, South Carolina.

12 Q. Do you have the ability to read and write?

13 A. Yes.

14 Q. What is the extent of your education?

15 A. The tenth grade at Eau Clair High School.

16 Q. Do you, do you take any medications?

17 A. No, sir.

18 Q. Have you ever been treated for mental health?

19 A. No, sir.

20 Q. Are you currently employed?

21 A. I do lawn service ever now, ever now and
22 then.

23 Q. Do you ever live on Longcreek Drive -- did
24 you ever live on Lawn Creek Drive?

25 A. Yes. I lived at the Ashton Apartments with

1 my son's mother, Quantina Brown. We were out
2 there when she first got on Section 8. I believe
3 my son was one or two then. We lived in
4 apartment [REDACTED]. She lived there a year or two.

5 Q. Did you know anyone else or hang with anyone
6 else over there?

7 A. I knew a white guy named Christopher who was
8 a college student and was about twenty-one to
9 twenty-two years old at the time. He lived in
10 the back of the Park Apartments. I knew a
11 light-skinned black male named Louis who worked
12 at the Exxon Pantry at Broad River and -- Broad
13 River and I-20 and a, and, and a Wal-Mart. He
14 was about twenty-eight to thirty years old.

15 Q. Do you know the woman, Misty Shealy, in the
16 picture?

17 A. No. I have never seen that woman before that
18 I remember.

19 Q. Let me stop you right there. I apologize. You asked
20 him about a woman a picture?

21 A. That's correct.

22 Q. What was that about?

23 A. I showed him a driver's license photo. Excuse me.

24 Throat's getting a little -- I showed him a driver's

25 license photo of the victim in an effort to see if he just

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

491

1 knew her, see it he'd ever seen her before. I actually
2 chose a driver's license photo. The most recent picture I
3 had was, I believe, in 2007, her. But I tried to show him
4 the most recent picture that would have been close in
5 proximity to the time of the actual incident.

6 Q. When you said the most recent, you mean the one
7 closest to as she appeared in 2010, or the closest picture
8 you had as she appeared in 2004?

9 A. As she appeared in 2004.

10 Q. Okay, and did he indicate that he recognized her?

11 A. Had never seen her.

12 Q. You may continue with the statement.

13 A. All right.

14 Q. Have you ever told or confided in anyone
15 about raping anything?

16 A. No.

17 Q. Why would anyone say that?

18 A. I don't know. That is not my MO.

19 Q. What do you think should happen to someone
20 who rapes a woman?

21 A. They should be locked up.

22 Q. Have you ever put your hands on a woman?

23 A. No. I was not brought up like that.

24 Q. Did you have a sexual relationship with any
25 woman at the Park or Ashton Apartments?

1 A. Yes. I had a friendship with a female named
2 Shawntee who lived in the front of the Park
3 Apartments. She's a black female. I think she
4 was a nurse or something. She was a nurse. She
5 was just a friend, but we had sex a couple of
6 times.

7 Q. Did you have a relationship with a white
8 woman in the Park Apartments?

9 A. No. I had a relationship with two white
10 females. Both of their names were Jessica. I
11 did not know their last names. One stayed at
12 Hammond Village, and the other stayed on Park
13 Street.

14 Q. Have you ever been accused of rape before?

15 A. No. Every girl that I have slept with
16 voluntarily gave it up. The only time I would
17 consider myself having sex with her.

18 And I put in parentheses the victim.

19 Is if we knew each other on a daily basis.

20 Q. Do you ever blackout after using drugs or
21 drinking alcohol?

22 A. No.

23 Q. Do you have an identical twin?

24 A. No.

25 Q. Would you be willing to take a polygraph

1 examination?

2 A. Yes.

3 Q. Did you break into Misty Shealy's apartment
4 at the Park Apartments on May 10, 2004?

5 A. No.

6 Q. Did you rape Misty Shealy on May 10, 2004?

7 A. No.

8 Q. Have you ever consensually had sex with Misty
9 Shealy?

10 A. Not to my knowledge.

11 Q. Did you voluntarily speak with and provide a
12 DNA sample to investigators today?

13 A. Yes.

14 Q. Did you ride with investigators and show us
15 the apartments that you have -- that you
16 frequented in both the Ashton and Park
17 Apartments?

18 A. Yes.

19 Q. Why would your semen be located in Ms.
20 Shealy's body?

21 A. It couldn't be no other option. I had sex
22 with her, sir.

23 Q. Is everything that you told me today the
24 truth?

25 A. Yes, sir.

1 Q. Is there anything that you would like to add
2 to this statement?

3 A. No, sir.

4 And then it's got: End of written statement, May 5,
5 2010, at 1351 hours.

6 Q. And again, on each one of those four pages, how many
7 times did Mr. Stukes sign the page?

8 A. Twice on each page.

9 Q. And that was to indicate what?

10 A. That the statement was provided freely and voluntarily
11 without fear, threat, promise of reward, or hope of any
12 kind, and that he had been provided a copy, and that he had
13 read it.

14 Q. That's a total of eight signatures. Is that right?

15 A. Yes, sir.

16 Q. By the defendant?

17 A. Yes, sir.

18 Q. As well as the two signatures on the page where he was
19 advised of his rights?

20 A. That's correct.

21 Q. During the time that you were with Mr. Stukes, were
22 there any offers of leniency made to him in any way?

23 A. No, sir.

24 Q. Any threats of violence?

25 A. No, sir.

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

495

1 Q. Did he ever indicate to you that he wished to stop
2 talking?

3 A. No, sir.

4 Q. Did he ever ask to speak to an attorney?

5 A. No, sir.

6 Q. Did he appear to understand all your questions?

7 A. Yes, sir.

8 Q. Was he cooperative?

9 A. Yes, sir.

10 Q. Did you have any problems communicating with him
11 whatsoever?

12 A. No, sir.

13 Q. Did he indicate to you in any way that he didn't
14 understand what was going on?

15 A. No, sir.

16 Q. Did he ever indicate to you in any way that he wanted
17 anything added, taken out, or changed with the written
18 statement?

19 A. No, sir.

20 Q. Was he denied any comfort such as water, bathroom
21 breaks, any of that, anything of that nature?

22 A. No. Actually, he was provided with those, and he was
23 -- I also bought him lunch.

24 Q. I'm sorry?

25 A. I also bought him lunch at McDonald's.

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

496

1 MR. GOLDBERG: Your Honor, we'd offer State's Number
2 25 into evidence.

3 THE COURT: Any objection?

4 MR. SHEALEY: No objection, Judge.

5 (REDACTED STATEMENT MARKED INTO EVIDENCE AS STATE'S
6 EXHIBIT NUMBER 25.)

7 BY MR. GOLDBERG:

8 Q. Now, this wasn't the first time that you questioned a
9 suspect regarding the sexual assault. Is that right?

10 A. No, sir.

11 Q. Approximately how many times you think you'd done
12 that?

13 A. A lot. I, I -- a lot.

14 Q. So, you got a deal of experience with this line of
15 questioning?

16 A. Oh, absolutely.

17 Q. Is your goal in questioning a suspect in a case like
18 this to coerce them in any way?

19 A. No, sir.

20 Q. Are you trying to trick them in any way?

21 A. No, sir.

22 Q. Confuse them?

23 A. No, sir.

24 Q. Mislead them?

25 A. No, sir.

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

497

1 Q. Did you do any of those things to Mr. Stukes?

2 A. No, sir.

3 Q. When you took that statement from Mr. Stukes, what
4 were you trying to do?

5 A. I was trying to solicit from him his version of what
6 occurred, and give him an opportunity to provide an
7 explanation. There was no secret in the arrest warrant.
8 It clearly said that his DNA was -- there was a DNA match.
9 I was giving him the opportunity to provide a reason why
10 his DNA would be there.

11 Q. And was he ever able to do that?

12 A. No, sir.

13 Q. Did you then take Mr. Stukes back to the jail?

14 A. That's correct.

15 Q. Oh, also before we get to that, I believe you
16 mentioned earlier the room that you all were in when you
17 were questioning Mr. Stukes, did Mr. Mincey ask any
18 questions?

19 A. It was kind of a mutual questioning kind of deal.

20 Q. And ---

21 A. It was primarily me.

22 Q. Primarily you?

23 A. Yes, sir.

24 Q. Was anybody raising their voice at the defendant
25 during this time?

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

498

1 A. No. It was actually a pretty cordial few hours.

2 Q. And you were together about four hours or so?

3 A. Four, between four and five hours with -- including
4 the ride around and all that.

5 Q. Once you took Mr. Stukes back to the detention center,
6 what did you do next on the case? Did you try to reach out
7 to the victim?

8 A. Yeah. Try to just make sure I didn't miss anything.
9 I didn't. I notified, notified her of the arrest and the
10 bond hearing.

11 Q. And did you also make contact with Jackie, Jackie
12 Bruton?

13 A. I did.

14 Q. And who was that?

15 A. That would have been the young lady who testified
16 earlier that actually took the victim to the hospital.

17 Q. Did she provide you with some information about what
18 she recalled from the night of the incident?

19 A. That's correct.

20 Q. You documented that in your file?

21 A. I did.

22 Q. Did you ever have any contact with the victim again
23 after that during your investigation?

24 A. No, sir, not that I remember; I don't believe I did.

25 Q. In fact, didn't you learn that she actually ended up

B. GODFREY - DIRECT EXAMINATION BY MR. GOLDBERG

499

1 in North Augusta at some point?

2 A. That's correct.

3 MR. GOLDBERG: Beg the court's indulgence.

4 (A PAUSE.)

5 MR. GOLDBERG: All right, just a couple more.

6 BY MR. GOLDBERG:

7 Q. You spent approximately four hours with the defendant
8 that day. Is that right?

9 A. Probably between four and five, somewhere around -- I
10 don't know the -- roughly, roughly that, yes.

11 Q. And you advised him of his rights how many times?

12 A. Three times at least.

13 Q. And how many times did he sign that paperwork?

14 A. Two on the rights advisement and eight on the actual
15 statement.

16 Q. Did you have any indication that he was not speaking
17 to you freely and voluntarily?

18 A. No, sir.

19 Q. Was there any indication to you that he wasn't being
20 truthful with you?

21 A. Yes, sir.

22 Q. How many times during your time with Mr. Stukes did he
23 tell you that he knew Misty Shealy Millender?

24 A. Zero.

25 Q. And how many times did he tell you that he had

1 consensual sex with Misty Shealy Millender?

2 A. Zero.

3 MR. GOLDBERG: Thank you, sir.

4 THE COURT: Please answer any questions that Mr.
5 Shealey may have.

6 MR. SHEALEY: May it please the court?

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION BY MR. SHEALEY:

9 Q. Solicitor Goldberg went over your report with you.

10 A. Yes, sir.

11 Q. And you've been doing this, at least investigation,
12 since, I think you said, 2000?

13 A. Yes, sir.

14 Q. It's not your first rodeo?

15 A. No, sir.

16 Q. In fact, you were able to take advantage of grant
17 money to do what you did at that time when you investigated
18 this case?

19 A. Say one that more time?

20 Q. Cold Case, you were working Cold Case?

21 A. Yes, sir.

22 Q. Special grant money?

23 A. Yes, sir.

24 Q. I imagine Richland County is not throwing grant money
25 at someone that can't use it effectively, right?

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

501

1 A. I would agree with you on that.

2 Q. There you go. You're experienced?

3 A. Yes, sir.

4 Q. You've had lots of training?

5 A. Yes, sir.

6 Q. This report that you wrote is detailed, right?

7 A. Yes, sir.

8 Q. It's thorough?

9 A. Yes, sir. There are some grammatical errors in there,
10 but yes, sir.

11 COURT REPORTER: Speak up, please.

12 Q. Well ---

13 A. There are some grammatical errors in there, but yes,
14 sir.

15 Q. But it's also accurate?

16 A. Yes, sir.

17 Q. And you would agree that that's part of your job as an
18 investigator, right?

19 A. Yes, sir.

20 Q. Thorough, to be detailed, and to be accurate?

21 A. Yes, sir.

22 Q. So, you're not going to write anything in this report
23 that isn't thorough, detailed, and accurate, grammatical
24 errors aside?

25 A. No purposely.

1 Q. Right?

2 A. No, sir.

3 Q. Because you know that you may need to reference this
4 document to assist you, for instance, like today?

5 A. Yes, sir.

6 Q. You're not in the business of trying to mislead?

7 A. No, sir.

8 Q. Or anyone else?

9 A. No, sir.

10 Q. And you prepare this document to assist you in court
11 as well?

12 A. Yes, sir.

13 Q. Okay. You're in Cold Case, or at least you were at
14 that time. You have -- you've taken cases that have gone
15 cold?

16 A. Yes, sir.

17 Q. Often you're inheriting other cases?

18 A. Yes, sir.

19 Q. And it's even more important for you to be thorough,
20 detailed, and accurate?

21 A. I don't know more important. I think it's always
22 important to be thorough and accurate as you possibly can.

23 Q. Well, not being the investigator, the primary
24 investigator initially, you're having to get caught up to
25 speed and review everything in its entirety, right?

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

503

1 A. Yes, sir.

2 Q. You testified that you received Investigator Branham's
3 full report on this case, his case jacket?

4 A. Yes, sir.

5 Q. You had to review that thoroughly in a detailed manner
6 for its accuracy?

7 A. Yes, sir.

8 Q. All right. So, you knew when you got assigned this
9 case, you knew the facts of it. You knew the allegations?

10 A. I did, yes, sir.

11 Q. And then you were able to use your training and your
12 skills to try to further your investigation?

13 A. Yes, sir.

14 Q. And your end goal is to prosecute?

15 A. Yes, sir.

16 Q. Your end goal is to assist Mr. Goldberg?

17 A. Whatever solicitor is assigned, yes, sir.

18 Q. Right. For instance, you were able to use some of
19 your special training and skills to run an Accurint report
20 on Ms. Shealy?

21 A. Yes, sir.

22 Q. Does that look familiar to you as what you ran on Ms.
23 Shealy?

24 A. Yes, sir.

25 Q. And that Accurint is software that you can plug in

1 information about someone and try to get information about
2 their whereabouts, right?

3 A. Yes, sir.

4 Q. Do you -- and you, you probably use that a whole
5 bunch?

6 A. I do.

7 Q. Okay.

8 A. I don't know that I specifically ran that one, but I
9 do know that it's ---

10 Q. Sure.

11 A. --- it's consistent with what I would run.

12 Q. Sure. So, you do have the ability as a cold case
13 investigator to track people down?

14 A. I do.

15 Q. Through software just like that, and that's part of
16 the process of being thorough and detailed and accurate?

17 A. Yes, sir.

18 Q. Now, once you made contact with where you believed Ms.
19 Shealy's whereabouts were, you were able to speak to some
20 folks?

21 A. Yes, sir.

22 Q. Her family?

23 A. I did. Yes, sir, at one point.

24 Q. Her ex-husband?

25 A. Yes, sir.

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

505

1 Q. You learned about her whereabouts?

2 A. Yes, sir.

3 Q. At the detention center in Orangeburg, and you've
4 already testified that you were made aware of what was
5 going on with this case through Investigator Branham in his
6 case?

7 A. Yes, sir.

8 Q. Okay. So, you knew the direction that you were going
9 in your investigation?

10 A. As -- what are you -- I don't understand.

11 Q. Well, you knew you wanted to -- you knew how many
12 times Ms. Shealy had been spoken to, and you knew you
13 wanted to talk to her again?

14 A. Yes, sir.

15 Q. You knew you had a DNA match in this case?

16 A. That's correct.

17 Q. So, you, you had some goals that you were trying to
18 achieve?

19 A. Yeah. I don't believe at the time that I talked to
20 Ms. Shealy that I actually had her statement.

21 Q. Okay, but you know that now?

22 A. Oh, I did. Yes, sir.

23 Q. So, you know that in this case, the lead investigator
24 never went to the scene?

25 A. Yes, sir.

1 Q. You were here for Branham's testimony yesterday,
2 weren't you?

3 A. I was, sir.

4 Q. And you've been sitting here throughout most of this
5 trial?

6 A. Yes, sir.

7 Q. You've been to that crime scene. Have you been ---

8 A. I have.

9 Q. --- to that doorstep?

10 A. I have. Yes, sir.

11 Q. Have you been inside of apartment [REDACTED]?

12 A. I have not.

13 Q. Okay, but you've been to the ---

14 A. I've seen photos. I've been to the apartment. I
15 actually went with Mr. Stukes at some point.

16 Q. Okay. Well, you testified that you drove around Mr.
17 Stukes. Have you been to that breezeway? Had you been
18 inside this area? Have you been as close as the front
19 door?

20 A. I have not. I've been to the front door as in outside
21 of the apartment. I've seen the photos but other than
22 that, I didn't actually go to her front door.

23 Q. Okay. So, your view of the crime scene was from a
24 car?

25 A. And the photos that were taken by the ---

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

507

1 Q. And the photos.

2 A. Yes, sir.

3 Q. Okay. So, we have two lead investigators that haven't
4 walked up to the front door?

5 A. I did not.

6 Q. Okay.

7 A. To my knowledge, I don't remember physically walking
8 up to her front door. When we went near her front door, at
9 that point it was several years later.

10 Q. But you've seen these pictures of the lighting?

11 A. I have.

12 Q. You've seen at least the picture of a front door if
13 you haven't walked up to it?

14 A. Yes, sir.

15 Q. You're aware that there's one centrally located light
16 in the middle between these two apartments that face each
17 other?

18 A. That's -- yes, that's what the pictures depict, yes,
19 sir.

20 Q. Okay, and in this case, and you know the facts. You
21 know that there's no damage to the door, right?

22 A. Yes, sir.

23 Q. You know that there were no fingerprints found?

24 A. That's correct.

25 Q. You're aware of a, of a description of a silhouetted

1 attacker?

2 A. Yes, sir.

3 Q. Described -- and we heard the testimony from Ms.
4 Shealy and some other statements that she's given --
5 described as being blinded by the light from the neighbor's
6 door?

7 A. That correct.

8 Q. Okay, but now you know that there's a light from the
9 middle, right?

10 A. Yes, sir.

11 Q. Okay. You viewed these pictures of the alleged crime
12 being right within a foot of the door, and I know you were
13 never at that door, and obviously you weren't there around
14 the time of the alleged crime. But you're aware that sofa
15 where -- we'll just call that the incident place.

16 A. Yes, sir.

17 Q. Is right within a reach of that front door, right?

18 A. It's relatively close as depicted in the photos.

19 Q. And you are aware of the peephole on this front door?

20 A. Yes, sir.

21 Q. Okay, and you're aware through your review of this
22 investigation that there was no seminal fluid found on the
23 couch or the floor?

24 A. That's correct.

25 Q. Now, this is a one-bedroom unit, right?

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

509

1 A. Yes, sir.

2 Q. And it's just that one front room. In fact,
3 specifically that couch that was actually tested for any
4 kind of seminal fluid or any kind of hair, that kind of
5 stuff?

6 A. Yes, sir.

7 Q. Okay. You're aware that there is not physical injury
8 necessarily consistent with a brutal rape as far as vaginal
9 injuries in this case?

10 MR. GOLDBERG: Objection, Your Honor. Calling for
11 speculation by this witness about injuries and the like.

12 MR. SHEALEY: Your Honor, he's the lead investigator.
13 If he doesn't know that there was no vaginal injuries, then
14 we have a problem. That's not speculating.

15 THE COURT: All right, the question one more time.

16 BY MR. SHEALEY:

17 Q. You're aware there's no vaginal injuries in this case?

18 A. None that were ---

19 THE COURT: Overruled. You can ---

20 WITNESS: Okay.

21 BY MR. SHEALEY:

22 Q. All right.

23 A. None that were noted on the SANE nurse kit.

24 Q. Now, you were here and saw Ms. Shealy testify to being
25 struck like that (INDICATING), right?

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

510

1 A. Yes, sir.

2 Q. You were right there watching being struck on the left
3 side of her face. You've seen these pictures, right?

4 A. I have.

5 Q. Okay, pictures of her description of being punched in
6 the face. This is how she looked at this time, and she was
7 photographed, I believe, May 14th?

8 A. A few, few days after the incident.

9 Q. The alleged incident was May 10th?

10 A. Yes, sir.

11 Q. Okay.

12 A. 10th into the 11th.

13 Q. Okay, and you're aware Investigator Branham not going
14 to the crime scene? Never knocked on the neighbor's door?

15 A. Yes, sir. I'm aware of that.

16 Q. Didn't receive any 911, 911 phone calls on this case
17 from any concerned neighbors?

18 A. That's my understanding.

19 Q. Ms. Shealy herself didn't call 911?

20 A. She did not.

21 Q. She didn't go to her neighbor?

22 A. She did not. I wouldn't say that was uncommon, but
23 she did not.

24 Q. This is a, this is a large apartment complex. It's
25 got a pool?

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

511

1 A. It does.

2 Q. Probably has a management office?

3 A. It does.

4 Q. Maybe even have security?

5 A. I'm not aware of that. Not sure.

6 Q. Maybe, but we don't have any information about her
7 running to office management or security there at the
8 complex, right?

9 A. She did make contact with office management, but it
10 was not on the day of the incident.

11 Q. All right, it wasn't one of the first people that she
12 responded to?

13 A. That's correct.

14 Q. Okay, and the DNA in this case, when you read out
15 Melvin's statement, there was no DNA found inside of Ms.
16 Shealy in this case?

17 A. Yes, sir. Oh.

18 Q. There isn't any DNA found inside of Ms. Shealy in
19 this case, right, and you're the lead investigator in this
20 case?

21 A. I'd like to refer to the DNA report if you have it.

22 Q. I don't have it in front of me. So, you're saying
23 that you're not aware if there's DNA found inside of her,
24 or just on her panties as a lead investigator?

25 A. No. I, I believe there was a foreign DNA that was too

1 weak to interpret.

2 Q. Okay, but there ---

3 A. Found inside of her.

4 Q. But there's no -- so, you agree there's no match found
5 inside of her? The match was found in her panties?

6 A. That's correct.

7 Q. You don't get to see this, do you?

8 A. No. That's why I wasn't sure.

9 Q. Okay.

10 A. I just wanted to make sure we were clear on that.

11 Q. Now, you'd agree with me that if I went home and had
12 consensual sex with my wife, there may be DNA on items of
13 her clothing?

14 A. There may be, yes, sir.

15 Q. Because that's what happens when people have contact,
16 right?

17 A. Yes, sir.

18 Q. Now, you spoke to Misty at the Orangeburg detention
19 center. You're also aware as the lead investigator in this
20 case that she gave other statements in this case, right?

21 A. Yes, sir.

22 Q. She gave a statement to -- well, first she spoke to
23 Officer Hicks who's away on military leave?

24 A. Yes, sir.

25 Q. He was the responding officer, and we heard from his

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

513

1 supervising officer, Officer Pearson?

2 A. Yes, sir.

3 Q. Right, and Pearson was here because Officer Hicks was
4 on leave?

5 A. Yes, sir.

6 Q. But Pearson approved that statement -- excuse me, that
7 incident report, right?

8 A. Yes, sir.

9 Q. And he was here to testify about what she was
10 describing as close to the time period as possible. There
11 was an incident report. It was actually dated May 11th
12 some hours after the alleged attack?

13 A. Yes, sir.

14 Q. Okay. I mean, you're aware of the contents of that
15 statement, right?

16 A. Yes, sir.

17 Q. Okay. So, you're aware at that time that Misty's
18 position was that she was grabbed with the left hand of the
19 attacker. Grabbed her throat, and that she was hit with
20 the right, right?

21 A. Say that one more time. She was?

22 Q. Her first contact with law enforcement, her position
23 about what happened to her is that she was grabbed at the
24 throat with the left hand?

25 A. Yes, sir.

1 Q. And hit with the right?

2 A. I agree.

3 Q. Okay, and what's the date of that report?

4 A. It appears to be May 11, 2004.

5 Q. And she goes on to describe this silhouetted attacker,
6 right?

7 A. Yes, sir.

8 Q. And she goes on to describe how she was pushed into
9 that couch, right?

10 A. Yes, sir.

11 Q. And she describes, and you've heard testimony, but she
12 describes blacking out and going in and out of
13 consciousness as her attacker is raping her?

14 A. That's what the officer -- that was his interpretation
15 of what she told him.

16 Q. Right, right?

17 A. Yes, sir.

18 Q. Now, a couple days later on the 14th, she gave a
19 statement, an official statement to Investigator Branham,
20 right?

21 A. Yes, sir.

22 Q. And he's the lead investigator, and although he didn't
23 go to her apartment and look at it, she came to him at one
24 point and was able to memorialize a statement?

25 A. Yes, sir.

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

515

1 Q. All right. These statements are often helpful because
2 -- especially these initial statements. They're close to
3 the alleged attack, and her recollection may be more fresh,
4 right?

5 A. I don't know that I necessarily agree with that.

6 Q. Okay.

7 A. I have had people who have remembered details later on
8 after the incident. So, I don't necessarily agree with
9 that completely.

10 Q. But you'd agree that part of being thorough and part
11 of being detailed and part of being accurate is attempting
12 to talk to somebody that says something's happened to them
13 closer in proximity to that time frame as opposed to maybe
14 a year later, right? It'd be more beneficial?

15 A. Yes, sir.

16 Q. Okay, and that's why Officer Hicks spoke to Ms. Shealy
17 and that's why Officer -- Investigator Branham's spoke to
18 her?

19 A. Yes, sir.

20 Q. Okay. Now, you'd agree that the date of this
21 statement to Investigator Branham was the 14th?

22 A. He has got on here May 14, 2004.

23 Q. And her position then was that the attacker grabbed
24 her throat with the right and punched with the left, right?

25 A. Let me try to find it in the statement really quick to

1 make sure.

2 After I opened the door, the person grabbed me
3 around the neck, I believe with his right hand,
4 and punched me in the face with his left.

5 Q. Okay, and again what was the date of that?

6 A. May 14, 2004.

7 Q. And I apologize for my handwriting. She describes in
8 a little more detail the allegations that are the basis for
9 these charges. She describes getting prepared to go to
10 work, right?

11 A. Yes, sir.

12 Q. All the lights were dark at that time inside of her
13 apartment?

14 A. Yes.

15 Q. She had just downloaded some music from her computer?

16 A. Yes.

17 Q. Put the dog in its cage?

18 A. Yes, sir.

19 Q. Okay. As she was approaching the door, she heard a
20 knock, right?

21 A. Yes.

22 Q. And opens the door and then is attacked in the way we
23 just have described?

24 A. That's correct.

25 Q. And she's unable in that statement to describe a race,

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

517

1 right?

2 A. That's correct.

3 Q. But then she describes the attack happening right
4 there in the, in the doorway of the apartment, right?

5 A. That's where it initially began, yes, sir.

6 Q. Those are details, right?

7 A. Yes, sir.

8 Q. Details these help you with your investigation, right?

9 A. Yes, sir.

10 Q. Okay. She then describes going in and out of
11 consciousness for a period of she can't really recall,
12 right?

13 A. She does.

14 Q. And then her attacker leaves?

15 A. He did leave at some point.

16 Q. Okay. Now, it appears that by describing blacking out
17 and going out of consciousness that those aren't details
18 because she blacked out, right?

19 A. I think those are -- I think it's significant whether
20 or not she blacked out or became unconscious. Maybe I
21 don't understand your question.

22 Q. I'm just saying those aren't describing details.

23 That's describing a period of not being able to talk about
24 details. She's unconscious.

25 A. Well, that's a detail, though.

1 Q. Okay.

2 A. That she's unconscious.

3 Q. And you'd agree that's one detail of her, of her state
4 of mind back then, that she's not able to give any more
5 information at that point, right?

6 A. During those portions of unconsciousness?

7 Q. Sure.

8 A. Okay.

9 Q. You agree with that?

10 A. I agree that you can't give details when you're
11 unconscious.

12 Q. Exactly, as this rape is happening in her doorway.

13 Now, in this case, you get involved. You're able to
14 go to the Orangeburg County Detention Center and speak with
15 Misty, right?

16 A. Yes, sir.

17 Q. Okay, and she goes ahead and gives you the first
18 statement she's ever given to you, right?

19 A. Yes, sir.

20 Q. And at this point in time, she's going through it
21 again with you, and her position at this point is that the
22 attacker grabbed her throat with the left hand and then
23 punched with his right hand, hitting her on the left side
24 of her face, the left side her face, right?

25 A. Hit me on the left side of my face with his right

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

519

1 hand.

2 Q. Right. Grabbed throat with the left, right?

3 A. Holding my throat with the left hand, that's correct.

4 Q. And punching on the left side of the face?

5 A. Yes, sir.

6 Q. Okay. Grabbed throat with left?

7 A. This is March 23, 2010.

8 Q. Punched with right, hitting on the left side of her
9 face, and you said it was March?

10 A. 23rd.

11 Q. 23rd. Now we're talking ---

12 A. 20 -- 2010.

13 Q. Right, and these other statements were '04?

14 A. Yes, sir.

15 Q. '04. So, she's giving very detailed information to
16 you. She was able to provide details about at least how
17 the attack started, and then after going unconscious is
18 unable to provide as many exact details, right?

19 A. She also told me in addition to that, I mean, she told
20 me she had blocked out a lot of what happened in an effort
21 to deal with it was part of what ---

22 Q. Sure.

23 A. --- what she told me.

24 Q. Sure. She also mentions that her dog was barking in
25 its cage in her statement to you, right?

1 A. Yes.

2 Q. Okay. So, you've got a dog barking. We've got an
3 attack in a doorway on a couch. She mentioned in these
4 statements that she, right before she goes unconscious or
5 maybe in between, reaches up on her -- with her left hand
6 to try to stop her attacker, right?

7 A. You're saying she said that in this statement?

8 Q. Yes, sir. It could be in Branham's statement.

9 A. I don't see it is in the statement that I did.

10 Q. Okay.

11 A. You think it's in Branham's?

12 Q. So, you don't see it in that statement?

13 A. I didn't see it in the statement.

14 Q. Okay.

15 A. I just quickly reviewed it. I thought you were
16 referencing something specific. You want me to look at ---

17 Q. It could be, it could be in Branham's statement. Do
18 you recall that information about this case?

19 A. I remember her testifying ---

20 Q. Okay.

21 A. --- to it, yes, sir.

22 Q. Testifying to being pushed down into the couch. I
23 think, believe she testifies to her face in the pillow, in
24 the pillows and trying, and reaching up and grabbing him.

25 A. That's in Investigator Branham's statement.

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

521

1 Q. Okay.

2 A. Yes, sir.

3 Q. With her left?

4 A. Yes, sir.

5 Q. Right there. Okay. Now, you have worked obviously
6 investigations where you were the primary investigator from
7 the very front end?

8 A. Yes, sir.

9 Q. Okay. You would have talked to a neighbor? You would
10 have knocked on the door?

11 A. I would say that canvassing is a tool to be used in
12 investigating cases.

13 Q. And you'd feel it would probably be important to talk
14 to some neighbor that was directly across the hall?

15 A. I think I probably would have talked with someone
16 across the hall.

17 Q. To an attack that happens right in the doorway, right?

18 A. I agree, if that's where it happened.

19 Q. Which is -- I mean, this attack is not a description
20 of being punched and then dragged to a back bedroom. This
21 allegation is happening right in the -- when you're walking
22 into the door, right?

23 A. Inside the apartment, yes, sir.

24 Q. And this apartment area also had neighbors upstairs,
25 and I know you weren't or you didn't go upstairs -- or go

1 to that the apartment, but you've seen the pictures of the
2 landing area, right?

3 A. Yes, sir.

4 Q. And were aware that there were neighbors upstairs as
5 well?

6 A. I don't know that those apartments were occupied, but
7 there are apartments upstairs.

8 Q. But you would have known because you would have gone
9 there, right?

10 A. Hindsight's twenty/twenty. I don't know that -- I
11 would like to think that I would have. I don't know that I
12 would have thought of it. Sometimes -- I don't know that
13 I've ever worked an investigation that I didn't forget to
14 do something, if I'm being honest about it.

15 Q. Certainly, but to be thorough and detailed and
16 accurate, talking to neighbors in close proximity to an
17 attack that happens in a doorway very close to a hallway
18 would certainly be important, right? You agree?

19 A. That is a tool that we would use, yes, sir.

20 Q. Now, in your investigative report which you have
21 generated, it's eight pages?

22 A. I think nine.

23 Q. Nine?

24 A. Includes the front, yeah. Yes, sir, one of nine if
25 you include the cover page.

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

523

1 Q. And again you take this report to be thorough and
2 detailed and accurate so you can come up here and testify
3 with knowledge and confidence, right?

4 A. Yes, sir.

5 Q. And in your report, you note as well that Misty's in a
6 relationship at this period of time?

7 A. Give me one second. I just want to look at the exact
8 verbiage.

9 Q. If you, if you refer to the date where you went and
10 talked to her at the jail?

11 A. Yes, sir. Let's see, let's see, let's see. That's
12 correct.

13 Q. Okay, but it's indicated to you that she couldn't
14 remember that person's name at the time?

15 A. Yeah. She's -- apparently the relationship wasn't
16 that significant. She wasn't able to provide me the name
17 of the individual she was in a relationship with.

18 Q. Well, you write that she couldn't remember the name,
19 but she was in a relationship. You don't mention anything
20 about the significance of it in this report?

21 A. Right. She just said she was unable to remember her
22 name.

23 Q. Okay.

24 A. Or the name.

25 Q. Now, you were able to track her relatives down, right?

1 A. That's correct.

2 Q. She also let you know about as a former roommate, Kim
3 Bookman. That's referenced in your report?

4 A. That's correct.

5 Q. Works at the post office or did at that time?

6 A. She did some temp work at the post office.

7 Q. And you asked her about this person because it was
8 relevant to what was going on at that time. You were -- in
9 an attempt to be thorough, detailed, and accurate, figure
10 out who was in her life in 2004, right?

11 A. I asked her did she have a roommate at that time, and
12 her response was that she did not, but she did have a prior
13 roommate. So, I wrote down what she told me.

14 Q. Well, good.

15 A. Which would have been Kim Bookman.

16 Q. Okay. Given the information about the post office,
17 you didn't run Kim Bookman through Accurint?

18 A. No, sir, I didn't. She wasn't living at the residence
19 at the time. I didn't see she -- I didn't see where she'd
20 be a significant witness in this case.

21 Q. Having been a roommate, living there even though not
22 at the time of the alleged attack, you didn't find that
23 significant?

24 A. No, sir. No, sir.

25 Q. She wouldn't be significant to maybe follow up on some

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

525

1 leads about why such a horrendous stranger attack had
2 happened when she has no enemies and has lots of friends?
3 You didn't find that significant?

4 A. That, I think that would have been a more significant
5 lead had Mr. Stukes said that the sexual contact was
6 consensual.

7 Q. So, this is in March 23, 2010?

8 A. Yes, sir.

9 Q. This is before you've ever spoken to Mr. Stukes,
10 before you've ever gotten an arrest warrant. This is right
11 when you're talking to Misty, and she's just given you the
12 name of somebody that was in her life right before, her
13 prior roommate, someone that may have observed someone in
14 her life that she was worried about or anything like that,
15 and your position is that it wasn't relevant to you?

16 A. My position is I talked to Ms. Bruton after I
17 arrested, and I found her significant because she took the
18 victim to the hospital. Had Mr. Stukes at that point said
19 that it was consensual, then maybe I would have delved a
20 little further into people that knew her. He said he did
21 not know the victim. That it was not consent -- or that,
22 that he had never had sex with her. So, I didn't
23 understand what the purpose would be of going back and
24 identifying people in her past.

25 Q. But you are Cold Case?

1 A. I am. Yes, sir.

2 Q. Now, I'm glad you bring up Ms. Bruton. She tells you
3 about a friend that doesn't believe Misty?

4 A. She never identifies a friend.

5 Q. If you would go ---

6 A. She ---

7 Q. --- to that portion of your statement, looking at ---

8 A. I, I identify a nickname of a friend, but I never am
9 provided with a actual name of an individual. I have a
10 nickname.

11 Q. And she used the nickname of Strawberry, right?

12 A. That's correct.

13 Q. Not believing Misty's story?

14 MR. GOLDBERG: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. SHEALEY:

17 Q. Did you ever try -- look, look down further on this.

18 A. Okay.

19 Q. Your last question, if there's anybody else that would
20 know more information about this case, someone that was
21 close to Misty at that time, right?

22 A. I did.

23 Q. She tells you Strawberry then?

24 A. That's correct.

25 Q. Now, this is in May 18, 2010, and you've already

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

527

1 spoken to Misty once at the jail. You didn't feel it
2 necessary to follow up with someone that was close to her
3 at that time in her life?

4 A. I don't know who Strawberry is.

5 Q. Could have asked Misty, but you didn't do that. It's
6 not documented in your report.

7 A. No. I didn't talk to Ms. Shealy again.

8 Q. But we've heard from Ms. Bruton.

9 A. We did.

10 Q. Fair, accurate, detailed. Now, this is a sensational
11 allegation.

12 MR. GOLDBERG: Objection to that editorializing.

13 Q. This is a brutal ---

14 THE COURT: Sustained.

15 BY MR. SHEALEY:

16 Q. This is a brutal attack, right?

17 A. I would agree.

18 Q. It would be important to speak to people that were in
19 Misty's life at that time?

20 A. I think it would have been important had Mr. Stukes
21 told me that he was in -- that he had known the victim, and
22 that he had had consensual sex with the victim. I don't
23 know how interviewing people other than the people that
24 were immediately involved in the incident would have
25 provided me with anything on an unknown perpetrator.

1 Q. So, you're taking Misty at her word then?

2 A. I, I didn't have anything to prove that she was not
3 telling the truth. I knew that Mr. Stukes was lying to me.

4 Q. You knew that he was lying when the facts demonstrate
5 no witnesses, right?

6 A. Well, there is a witness.

7 Q. There was a witness to this attack?

8 A. The victim, yes, sir.

9 Q. The victim, right, so you're taking her word. There
10 are no other independent witnesses?

11 A. No. There is another independent witness. Well, I
12 wouldn't say independent.

13 Q. To the attack, to the allegation of grabbing throat
14 with left, or grabbing throat with the right, either way.
15 In the attack, there's another independent witness?

16 A. I'd say Mr. Stukes is a witness.

17 Q. You would? Any other -- other than the defendant and,
18 and the alleged victim here, are there any other
19 independent witnesses?

20 A. Not to the actual incident. I'd say the SANE nurse is
21 significant, and she talked about ---

22 Q. Let me back you up. I'm talking about -- you know
23 what I'm talking about?

24 A. Specifically to this incident?

25 Q. To this. Other than the dog, is anyone else there?

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

529

1 That's ---

2 A. No.

3 Q. --- that's in evidence that we are aware of, and
4 that's why you'd have to agree that it'd be significant to
5 talk to people that were in her life at this time?

6 A. No, I don't have to agree with that.

7 Q. Okay. As a cold cases investigator, you're not
8 agreeing to that, right?

9 A. I completely disagree with that.

10 Q. Being thorough and detailed and accurate, you
11 disagree? That's your testimony?

12 A. On the stance that Mr. Stukes took, I would agree that
13 -- I would not with your statement.

14 Q. So, we'll agree to disagree.

15 A. Yes, sir.

16 Q. All right. Now let's talk about Mr. Stukes. You on
17 April 19th of 2010 signed that arrest warrant for him?

18 A. That's incorrect. I actually faxed the warrants on
19 April 19th. I actually signed the warrants on April 20th
20 after the judge wasn't available. I, I went and picked the
21 warrants up and took them to another judge in an effort to
22 get them signed.

23 Q. Okay. Around April 19th or April 20, 2010, you were
24 in the process of getting warrants for his arrest?

25 A. Yes, sir.

1 Q. That's, that is accurate?

2 A. That is accurate, yes, sir.

3 Q. And it's accurate that you were doing all that before
4 you'd ever spoken to him, right?

5 A. That's correct.

6 Q. So, before ever speaking to someone accused of such a
7 brutal attack, you arrested him? You got the legal
8 documentation in place to send him to the Alvin S. Glenn
9 Detention Center?

10 A. Yes, sir. I established the probable cause in an
11 effort to pick him up and interview him on the incident.

12 Q. Now, he actually wants to speak to you. He comes to
13 you. You, you hear through ---

14 A. I went to him when he requested for me, yes, sir.

15 Q. You -- I believe that Caldwell lets you know that he
16 wants to speak to you?

17 A. Yes, sir.

18 Q. First thing. He's, he's arrested at his sister's
19 home, I believe, on the 10th, right?

20 A. No, sir. He was apprehended on May 5th.

21 Q. You're correct. May 5, 2010, apprehended at his
22 sister's home, and you're getting a phone call, as you
23 testified to, that he's looking to speak to you?

24 A. Yes, sir.

25 Q. Wants -- here's the lead investigator. I want to

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

531

1 speak to the lead investigator?

2 A. Yes, sir.

3 Q. You go down there to the jail and talk to him. He's,
4 he's got his foot, his ankles locked up, chained. He's
5 wearing the belly chain, right?

6 A. Yes, sir.

7 Q. Which holds his wrists, for people who don't know, so
8 he can't, can't move?

9 A. Yes, sir.

10 Q. And you want to speak to him, so you put him in your
11 car, you and Investigator Mincey?

12 A. Yes, sir, and that's, that's standard procedure when
13 we pick someone up from the jail who's under arrest to --
14 in an effort to maintain custody, and we placed him in
15 those restraints.

16 Q. Now, he talks to you, and you read his statement?

17 A. Yes, sir. I did.

18 Q. You type up the statement?

19 A. Yes, sir.

20 Q. Right? You said that's procedure?

21 A. Yes, sir.

22 Q. Now, Ms. Shealy's statement is -- she gets to write
23 that herself?

24 A. No, sir. I know what you're looking at. Investigator
25 Thompson's handwriting, he actually wrote that. We didn't

1 have a laptop in the jail at the Orangeburg County
2 Detention Center.

3 Q. Okay.

4 A. So, Investigator Thompson handwrote it.

5 Q. What kind of phone did you operate with?

6 A. What kind of phone do I operate with?

7 Q. Yes, sir. Do you have a ---

8 A. At that time, I think I had a Blackberry.

9 Q. Okay.

10 A. Not the same that's on that table, but I had, I had a
11 Blackberry at the time.

12 Q. Okay. Recorders aren't too expensive to come by,
13 right?

14 A. It's not the -- specifically we've been told not to
15 record. We don't record.

16 Q. You've been told not to do that?

17 A. We don't do it at the sheriff's department, yes, sir.

18 Q. Okay.

19 A. As a polygraph examiner I am recorded, but other than
20 that, I have never recorded any interview of either a --
21 that I can remember, of a victim or a, or a suspect
22 interview unless it was in an undercover capacity.

23 Q. Now, you've been at Richland County as an investigator
24 in your capacity for your entire career. You ever been to
25 other agencies?

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

533

1 A. No, sir.

2 Q. But you are aware ---

3 A. Always in Richland County.

4 Q. --- there are other agencies in town that record
5 conversations, interrogations? You're aware of that?

6 A. Yeah, I can't -- I, I don't fall under their policies.
7 I fall under the policy of the Richland County sheriff.

8 Q. I understand, but you read that statement? You read
9 his words coming from your mouth, right, just now on this
10 stand?

11 A. Oh, yes, sir. Yes, sir.

12 Q. So, we're never able to hear what he said to you when
13 you were typing it up on your, on your computer?

14 A. You heard it through me.

15 Q. Exactly.

16 A. Just now, yes, sir.

17 Q. Exactly.

18 A. Those were his words.

19 Q. Exactly. We're not able to hear tone, his or yours,
20 right?

21 A. I would agree with that.

22 Q. I'm sorry?

23 A. I would agree with that.

24 Q. Okay.

25 A. Yes, sir.

1 Q. Okay. Now, he consents to DNA?

2 A. Right.

3 Q. He says have my DNA. He tells you that he didn't rape
4 anybody, and -- but, I mean, you are accusing him of rape?

5 A. Yes, sir.

6 Q. Accusing him of rape while he's been arrested already
7 before you've spoken to him, right?

8 A. Yes, sir.

9 Q. Belly chains on, ankle chains on. You're telling he
10 that he raped some woman, right?

11 A. Not the way you said it.

12 Q. Well, I don't know. I -- there's no recording.

13 A. Well, I'm telling you.

14 Q. Okay. Thank you, and he, and he sent those
15 accusations back to you, right? I did not rape any woman,
16 and the jury's going to be able to read his statement.
17 They'll have that back there, but he's telling you I didn't
18 do this?

19 A. That's correct.

20 Q. Have my DNA?

21 A. That's correct.

22 Q. And you're actually telling him that his DNA is inside
23 of her ---

24 A. He had ---

25 Q. --- which is inaccurate?

B. GODFREY - CROSS-EXAMINATION BY MR. SHEALEY

535

1 A. He had that information. He had that information of a
2 DNA match at the time of his arrest three hours prior to me
3 even talking to him. So, he was fully aware why he was
4 sitting where he was sitting before he provided me any
5 statement.

6 Q. Is it protocol to lie to suspects in interrogation?

7 A. I can say you can't lie and there are, there, there
8 are times when you're not, you're not being completely
9 honest, yes. I have ---

10 Q. It didn't matter what he says at that point in time.
11 He's already arrested. You can -- you're lying to him to
12 try to get any kind of response you can, right?

13 A. I disagree with you. It does matter what he says;
14 clearly it matters what he says.

15 Q. And he told you he didn't do it, right?

16 A. He told me a lot of things that I don't believe to be
17 true.

18 Q. Okay. Well, I mean, you work for the prosecution,
19 correct?

20 A. I work for Richland County Sheriff's Department.

21 Q. Right.

22 A. And the state of -- and the county, the citizens of
23 the county, of Richland County.

24 Q. Right. You also noticed that he's right handed?
25 That's in your report?

1 A. Yes, sir. I noted what, what hand that he wrote with,
2 yes, sir.

3 Q. And he signed his name on the signature?

4 A. Yes, sir.

5 Q. Right handed?

6 A. I would agree with that.

7 MR. SHEALEY: Beg the court's indulgence.

8 (A PAUSE.)

9 BY MR. SHEALEY:

10 Q. Just briefly, you testified that he was cooperative
11 with you?

12 A. I would agree with that, yes, sir.

13 Q. He freely gave you DNA material in this case. He gave
14 you a Buccal swab?

15 A. He did. Yes, sir.

16 Q. You have it. He told you he didn't rape anybody?

17 A. That'd be correct.

18 Q. But he also told you that he didn't recognize the name
19 Misty Shealy either, didn't he?

20 A. He didn't recognize the name nor the photos.

21 Q. Let me ask you something.

22 A. Yes, sir.

23 Q. What did you get for your birthday six years ago?

24 A. Let's see. How old am I? I don't generally celebrate
25 birthdays. I don't think I got anything for my birthday

1 this year.

2 Q. What, what did you get for your birthday? Happens
3 once a year, special occasion. What did you get for your
4 birthday six years ago?

5 A. Six years ago, let's see. Let's see, I'm thirty-seven
6 now. Thirty-one. I'll be honest with you. I don't think
7 I got anything for my birthday when I was thirty-one years
8 of age.

9 Q. You didn't get anything? You're not a birthday
10 celebrator?

11 A. No. Especially as the birthdays continue to mount up.

12 Q. So, you're certain about that? You didn't get
13 anything?

14 A. No, sir. I'm, I'm set.

15 Q. Didn't get taken out to dinner?

16 A. No, sir.

17 Q. Where did you eat six years ago?

18 A. At some point throughout, I, I'm sure I ate at
19 Chik-Fil-A. I'm not sure it was that day.

20 Q. And it was good, wasn't it?

21 A. I've also eaten at several -- I enjoy various...

22 Q. It's okay. I don't, I don't know where I ate six
23 years ago either.

24 A. Okay.

25 MR. SHEALEY: No further questions.

1 THE COURT: All right. Yes, sir.

2 MR. GOLDBERG: Thank you, Your Honor.

3 REDIRECT EXAMINATION BY MR. GOLDBERG:

4 Q. The initial investigation by Investigator Branham.

5 A. Yes, sir.

6 Q. It wasn't perfect, was it?

7 A. I didn't hear you.

8 Q. It was not perfect, was it?

9 A. No, sir.

10 Q. A lot of things could have been done differently?

11 A. I see that in a lot of cases.

12 Q. As the lead investigator, did that have an impact on
13 your interaction and your conversation with Mr. Stukes?

14 A. No. No, sir.

15 Q. He asked you about this Strawberry person. Have you
16 ever been given a name of who that is?

17 A. I have no idea who Strawberry is.

18 Q. He asked you about your interview with Ms. Shealy in
19 2010?

20 A. That's correct.

21 Q. And at some point, he directed you to her comments
22 that she told you she was in a relationship around the time
23 of the incident, correct?

24 A. That's correct.

25 Q. And she couldn't remember who it was with. Is that

1 right?

2 A. That's correct.

3 Q. And this conversation where she told you that was six
4 years after the incident, correct?

5 A. That's correct.

6 Q. He also asked you about the DNA. There was DNA found
7 inside her body. Is that correct?

8 A. That's correct.

9 Q. It just wasn't a useable profile that came from that.
10 Is that correct?

11 A. That's correct.

12 Q. And the DNA matching Mr. Stukes came from the panties
13 that she was wearing that night?

14 A. That's correct.

15 Q. Based upon your involvement and your investigation in
16 this case, where did you learn that the actual sexual
17 assault, that the attack, the act took place?

18 A. Inside the apartment on the couch area there, over
19 the, over the couch area there.

20 Q. Did you lie to Melvin Stukes in an effort to mislead
21 him?

22 A. No, sir. I, I -- it was pretty clear why he was
23 sitting there. His DNA profile was developed and matched.
24 It was in the arrest warrant. He had three hours prior to
25 me coming to interview him. It's, it was very clear what

1 we were talking about prior to the interview even being
2 conducted.

3 Q. How many opportunities did you give him to review the
4 statement that you typed for him and make any changes,
5 deletions, or additions if he didn't agree what was typed
6 on that paper?

7 A. Oh, we talked at length and then that statement, I
8 read it. He read it. He had the opportunity to make any
9 corrections. He signed it. He had to read it and sign it
10 eight times, two times each page, to the accuracy of the
11 document.

12 Q. And the man that you interviewed, that you took the
13 statement from, Melvin Stukes, you see him in the courtroom
14 today?

15 A. I do.

16 Q. Can you point him out for the jury?

17 A. Gentleman next to Mr. Shealey to his left, my right,
18 in the blue shirt.

19 MR. GOLDBERG: Thank you. That's all I have.

20 MR. SHEALEY: Briefly, Your Honor.

21 THE COURT: Yes, sir.

22 RECROSS-EXAMINATION BY MR. SHEALEY:

23 Q. You had information that Strawberry was a friend of
24 Ms. Shealy's at the time?

25 A. Through Ms. Bruton.

B. GODFREY - RECROSS-EXAMINATION BY MR. SHEALEY

541

1 Q. Right.

2 A. Yes, sir.

3 Q. So, you had information that Ms. Shealy would know
4 about Strawberry?

5 A. She may. She may have known, known Strawberry.

6 Q. And you never attempted to get information from Ms.
7 Shealy?

8 A. During the course of the investigation, I did not
9 attempt during the course of the investigation as it
10 pertains to the incident and people that were involved. I
11 never saw, heard of a witness name or never identified a
12 witness named Strawberry, that's correct.

13 Q. But you knew that she didn't believe Ms. Shealy's ---

14 MR. GOLDBERG: Objection.

15 THE COURT: Sustained.

16 Please disregard that last question. Thank you.

17 MR. SHEALEY: No further questions, Your Honor.

18 THE COURT: All right, anything else from the state?

19 MR. GOLDBERG: No, ma'am.

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

21 (THE WITNESS EXITS THE STAND.)

22 THE COURT: All right, call your next witness.

23 MR. GOLDBERG: Beg the court's indulgence.

24 THE COURT: All right.

25 (A PAUSE.)

1 MR. GOLDBERG: Please the court? Your Honor, at this
2 time the state rests.

3 THE COURT: All right, ladies and gentlemen of the
4 jury, the state has rested from their case. At this time,
5 there are some matters of law that I need to take up with
6 the lawyers outside your presence, and it is also -- I
7 believe your lunch should be here. It is here, so it is
8 also lunch time. So, we will take a break at this time for
9 you all to have lunch, and we'll bring you back in shortly.
10 Thank you.

11 (THE JURY EXITS AT 12:46 P.M.)

12 THE COURT: All right, we're going to take five
13 minutes for a bathroom break and then we will, we'll come
14 back, and we'll do motions and we'll go from there. All
15 right. Thank you.

16 (OFF THE RECORD.)

17 THE COURT: All right. All right, anything from the
18 state?

19 MR. GOLDBERG: Not at this time, Your Honor.

20 THE COURT: All right, anything from the defense?

21 MS. PINNOCK: Yes, Your Honor. If it pleases the
22 court? At this time, we'd like to renew all of our
23 pretrial motions, our objections, specifically but
24 obviously not limited to the *Riddle* violation where Ms.
25 Shealy testified that she -- the assailant said something

1 to her, something along the lines of don't say anything.

2 That was not provided anywhere in discovery.

3 It was said in the presence of the jury, and there's
4 no way to unring the bell, Your Honor. I requested a
5 mistrial at that point. That was denied. We would like to
6 renew that, Your Honor.

7 We'd also like to renew our, our -- one of our
8 pretrial motions that was denied. Your Honor would not
9 allow us the ability to go into the specifics of the, the
10 nature of the relationship Ms. Shealy was having at the
11 time. We were not intending on trying to go past the rape
12 shield law; that was not our intentions. We were not
13 allowed to pursue that line of questioning, Your Honor.

14 We were also denied on an attempt to question about a
15 specific sexual act when that information was volunteered
16 from the stand by the state's witness, Your Honor. We did
17 believe at that point that was impeachable evidence. It
18 was offered by a witness in response to a question. It was
19 on a direct question from the solicitor, that information,
20 and we believe we were able at that point to go into it for
21 impeachment purposes. We would renew that, that motion,
22 Your Honor.

23 I think that's all the specifics, Judge, but at this
24 time, we would renew all of our previous pretrial motions,
25 all of our objections up to this point.

1 THE COURT: All right.

2 MS. PINNOCK: And Ms. Dyar is going to handle the
3 directed verdict.

4 THE COURT: All right.

5 MS. DYAR: Thank you, Your Honor. At this time, we
6 just make a motion for a directed verdict. There's a lack
7 of any substantial circumstantial or direct evidence in
8 this case. No signs of forced entry, no evidence
9 whatsoever found at the alleged crime scene to substantiate
10 Ms. Shealy's story. There is a lack of physical evidence
11 associated with the alleged rape. Her testimony has been
12 inconsistent with statements to law enforcement.

13 And I believe at this point there's just no, there's
14 no more than just a mere suspicion, and it would have to be
15 more than that, of Mr. Stukes's guilt. Viewing the light
16 -- viewing the evidence in the light most favorable to the
17 state, we just ask that you would grant Mr. Stukes a
18 directed verdict at this time.

19 THE COURT: Any response?

20 MR. GOLDBERG: In regards to renewals of all previous
21 objections and motions, we'd just rely upon your previous
22 rulings on those matters.

23 In regards to directed verdict, Your Honor is aware
24 the court is concerned with the existence or nonexistence
25 of the evidence, not its weight. And if there's any

1 evidence reasonably tending to prove guilt of the accused,
2 taken in the light most favorable to the state, then it is
3 enough to get to the trier of facts, for the jury to make a
4 determination.

5 We believe that by virtue of the evidence proffered in
6 the state's case in chief, primarily the testimony of Ms.
7 Shealy, as well as the friend that she went to that night,
8 and the nurse, and the statement by the defendant, as well
9 as the DNA evidence all combined, we do believe that that
10 is a sufficient amount of evidence to put it in the hands
11 of the jury.

12 THE COURT: All right, based on the evidence that has
13 been presented to the court, defendant's motion will be
14 denied. I find that there is sufficient evidence and facts
15 that have been placed into the record, and that this is an
16 issue that the -- for the jury to decide. So, the
17 defendant's motion is respectfully denied. All right, and
18 all the other objections that were stated by Ms. Pinnock
19 are preserved for the record.

20 All right, let's see now. At this point in time, the
21 state has rested and, Mr. Stukes, we have reached the stage
22 of your -- of this trial where you may present your
23 defense.

24 You have the right to claim the protections given to
25 you by the Fifth Amendment to the Constitution of the

1 United States, and it states -- this statement, this, the
2 amendment states in part: No person should be compelled in
3 any criminal case to be a witness against himself. This
4 means that you cannot be required to testify in this case.
5 You have a right to testify on your own behalf. However,
6 no one can make you testify. This is a personal right, and
7 no one can waive this right except you.

8 If you decide to testify, you would be subject to the
9 same rules that govern other witnesses, and you may be
10 examined, cross-examined on any relevant issues in this
11 case. In addition, if you have any convictions involving
12 dishonesty or false statements, or for crimes punishable by
13 imprisonment for more than one year. And if the court
14 determines that the probative value of admitting this
15 evidence outweighs the prejudicial effect to you, the
16 solicitor would be able to introduce your record to attack
17 your credibility.

18 If you decide to testify, the decision on your part
19 must be freely, voluntarily, and intelligently made with
20 knowledge of the protections given to you by the Fifth
21 Amendment and the consequences of your decision to testify.

22 Should you decide not to testify, I would instruct
23 each juror that they cannot give the fact that you did not
24 testify any consideration whatsoever, and that there is to
25 be absolutely no prejudice to you because you did not

1 testify.

2 It is left entirely up to you whether or not or to
3 testify. You may talk with your attorney, your family, and
4 your friends, or anyone else, but the final decision will
5 be left entirely up to you.

6 Let me have you stand up, sir. Do you understand what
7 I just explained to you?

8 DEFENDANT: Yes, ma'am.

9 THE COURT: Do you have any questions about what I
10 just explained to you?

11 DEFENDANT: No, ma'am.

12 THE COURT: And have you discussed, and I know we kind
13 of went straight into this, but have you discussed with
14 your lawyer whether you should or should not testify?
15 You're just answering if you discussed it with your lawyer.

16 DEFENDANT: Yeah, I have.

17 THE COURT: You have discussed it with your ---

18 DEFENDANT: Yes, ma'am.

19 THE COURT: And I'm going to give you more time. I'm
20 going to give you some time to talk to your lawyer over the
21 -- we'll take a short lunch break, and I'll give you an
22 opportunity to speak with your lawyer, if you need to speak
23 with your lawyer, regarding your desire to testify.

24 DEFENDANT: Yes, ma'am.

25 THE COURT: All right, or to present any, any defense.

1 DEFENDANT: Yes, ma'am.

2 THE COURT: All right, anything else?

3 MR. SHEALEY: What time would you like us back?

4 THE COURT: How much time do you need?

5 MR. SHEALEY: Lunch.

6 THE COURT: Well, I know you -- I'm asking you
7 because you need, I know you need to talk with him, and
8 I'm guessing you probably want to get something to eat.
9 The jurors have their food. I'm sure they're eating, but
10 we can come back about a quarter till. Is that enough
11 time?

12 MS. PINNOCK: Yes, ma'am.

13 THE COURT: It is?

14 MS. PINNOCK: Yes, ma'am.

15 THE COURT: Okay. All right. So, we'll, we'll start
16 back at 1:45.

17 (A PAUSE.)

18 THE COURT: Also we are getting possibly close to the
19 end of the trial. Do you have any proposed charges? And I
20 have your memo.

21 MS. PINNOCK: Okay. Thank you.

22 MR. GOLDBERG: Do we need to get those to Aaron prior
23 to coming back, or when or how do you want to do that?

24 THE COURT: I mean, as soon as you can.

25 MR. GOLDBERG: Okay.

1 (OFF THE RECORD.)

2 THE COURT: All right. All right, is Mr. Stukes, are
3 you -- is he going to testify?

4 DEFENDANT: Yes, ma'am.

5 THE COURT: He is going to testify.

6 All right, you want to go ahead and put him -- does he
7 have -- he has the leg shackles on?

8 MR. SHEALEY: Yes, Your Honor. I'd -- certainly we
9 want to have him up there before the jury comes in.

10 THE COURT: He's your first witness?

11 MR. SHEALEY: First witness, Your Honor. I'd also ask
12 that he be unshackled and allowed to walk up like every
13 other witness in this case unless it's a security risk.
14 But, you know, bonded clients get to walk up. People that
15 can't make bond don't get to walk up, and he will be the
16 only witness in this case doesn't get to walk up and get
17 sworn in like everybody else. So, I, of course, have to
18 ask you.

19 THE COURT: I know you do.

20 MR. SHEALEY: But if you deny it, yes. I'd certainly
21 ask that he be already positioned so they can't see his
22 shackles at any point.

23 THE COURT: And I had to go by what the sheriff's
24 department tells me because they -- all right? And I think
25 in the past they've told us leave the shackles on. We'll

1 let him just walk up there, and then I'll bring the jurors
2 in.

3 MR. SHEALEY: We need to settle his record as well.

4 THE COURT: Yes, we need to do that. That was the
5 other thing. I knew it was one other thing.

6 Yes, sir, Mr. Goldberg. I mean, you're not planning
7 on going into anything?

8 MS. PINNOCK: Yes, it's our position, Your Honor, that
9 nothing on his record is admissible.

10 MR. GOLDBERG: Yeah, at this point I would agree with
11 that. Obviously ---

12 THE COURT: Is there anything else? I mean ---

13 MR. GOLDBERG: Well, just for the court's information,
14 he has a prior conviction for possession of crack in 1998,
15 simple assault and battery in '98, possession of crack in
16 2004, and entering premises after warning 2004. That 2005,
17 is that a ---

18 MS. PINNOCK: Probation violation.

19 MR. GOLDBERG: --- probation violation.

20 MS. PINNOCK: Dismissed.

21 MR. GOLDBERG: So, I don't plan on going into any of
22 that unless he...

23 THE COURT: Says I've never been arrested before,
24 never been in jail.

25 MR. GOLDBERG: Never been in trouble.

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

DeAndrea G. Benjamin, Circuit Court Judge

RECEIVED

APR 03 2014

THE STATE,

RESPONDENT SC Court of Appeals

V.

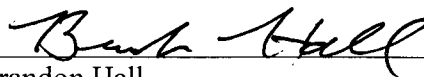
MELVIN P. STUKES,

APPELLANT

APPELLATE CASE NO. 2012-212628

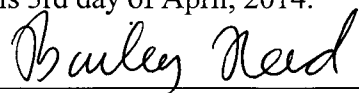
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mary S. Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 3rd day of April, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 3rd day of April, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021