

2012-211267

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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 ORIGINAL

Certiorari to Aiken County  
Doyet A Early, III, Circuit Court Judge

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**RECEIVED**

JUN 15 2012

Opinion No (S C Ct App filed )  
05-CP-02-00039

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SC Supreme Court

JOSEPH WALKER,

RESPONDENT,

V

STATE OF SOUTH CAROLINA,

PETITIONER

Appellate Case No 2012-211267

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PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on March 15, 2012

## QUESTIONS PRESENTED

1 Did the Court of Appeals err in failing to find that the PCR judge correctly found trial counsel ineffective in failing to interview and call as an alibi witness, Robina Reed, when Ms Reed's name and address appear in evidence provided to trial counsel from the State, prior to trial respondent gave trial counsel's investigator Ms Reed's name and place of employment and the investigator's note was in trial counsel's file and Ms Reed's credible testimony at the PCR hearing establishes an alibi?

2 Did the Court of Appeals err in failing to find that the PCR judge correctly found that the cumulative effect of trial counsel's errors in failing to move for a continuance to obtain a forensic report revealing that no semen was identified from the sexual assault evidence kit collected from the complainant, failing to investigate the complainant's alcohol use, failing to cross examine the complainant in regard to discrepancies as to the time of the alleged incident and failing to interview the alibi witness, Ms Reed, resulted in prejudice to respondent?

## STATEMENT OF THE CASE

In August 2002, the Aiken County Grand Jury indicted Walker for criminal sexual conduct first degree, possession of a firearm or knife during the commission of a violent crime and kidnapping. On July 22, 2003, Walker proceeded to jury trial before the Honorable James R. Barber, III. The jury returned a verdict of not guilty of possession of a firearm or knife during the commission of a violent crime and guilty of criminal sexual conduct first degree and kidnapping. Judge Barber sentenced Walker to 24 years concurrent for each charge. An appeal was perfected on Walker's behalf and the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Walker, Op. No. 2004-UP-618 (S.C. Ct. App. filed December 9, 2004).

On January 7, 2005, Walker filed an application for post conviction relief. On March 9, 2007, an evidentiary hearing was held before the Honorable Doyet A. Early, III. Walker, Robina Reed, trial counsel Kelly Perkins Brown and Assistant Solicitor Brenda Brisbin testified at the PCR hearing. In a written order signed May 24, 2007, Judge Early granted post conviction relief, finding that counsel was ineffective in failing to interview Robina Reed as an alibi witness and Walker was prejudiced by counsel's deficient performance. Additionally, Judge Early found that Walker established prejudice through the cumulative effect of trial counsel's errors in failing to obtain a forensic report revealing that no semen was identified from the sexual assault evidence kit collected from the complainant, failing to investigate the complainant's alcohol use, failing to cross examine the complainant in regard to discrepancies as to the time of the alleged incident, and failing to interview the alibi witness, Ms. Reed.

The State filed a notice of intent to appeal. On January 4, 2008, the State filed a petition for writ of certiorari. Respondent filed a return to the State's petition for writ of certiorari on September

2, 2008 In an order dated November 20, 2009, this Court granted the State's petition for writ of certiorari The State filed the brief of petitioner on February 18, 2010 Walker filed the brief of respondent on June 30, 2010 The case was argued before the South Carolina Court of Appeals on October 5, 2011 On February 22, 2012, the Court of Appeals reversed the grant of relief by the PCR judge Walker v State, 397 S C 226, 723 S E 2d 610 (Ct App 2012) The petition for rehearing was filed and denied on March 15, 2012 This petition for writ of certiorari follows

## ARGUMENTS

1 The Court of Appeals erred in failing to find that the PCR judge correctly found trial counsel ineffective in failing to interview and call as an alibi witness, Robina Reed, when Ms Reed's name and address appear in evidence provided to trial counsel from the State, prior to trial respondent gave trial counsel's investigator Ms Reed's name and place of employment and the investigator's note was in trial counsel's file and Ms Reed's credible testimony at the PCR hearing establishes an alibi

Margaret Sanders, the prosecuting witness, testified that on March 2, 2002, her car broke down at the BP gas station in Denmark, South Carolina Ms Sanders testified that a black man repaired her car, replacing a wire, and she told him to follow her to her house so that she could pay him (App p 45, lines 10 – p 46, lines 1-25) According to Ms Sanders, the man followed her into her home, grabbed her, blindfolded her and put her in his truck Ms Sanders testified that when he finally stopped driving, he took her into a house and sexually assaulted her (App p 49, lines 14- p 50, 51, 52) According to Ms Sanders, the man took her back to her house early the next morning (app p 53, lines 9 – 20)

Lieutenant Rhonda Bamberg of the Orangeburg County Sheriff's Office testified that after interviewing Ms Sanders, she obtained a video surveillance tape for March 2, 2002, from the BP station in Denmark (App p 151, lines 3-7) Lieutenant Bamberg showed the tape to Ms Sanders and Ms Sanders picked out a black male on the tape who "was most likely the person that had sexually assaulted her" (App p 152, lines 15 – p 153, lines 1-2) According to Lieutenant Bamberg, the clerk from the BP identified the man selected from the video as respondent, Joseph Walker Based on the information from Ms Sanders and the clerk, Ms Sanders was shown a photo line-up and, predictably, picked Walker as her assailant (App p 154, lines 1-19)

During the PCR hearing, Walker testified that he told Detective Redd that he was at his girlfriend Robina's house during the time of the sexual assault (App p 411, line 25 – p 412, 413,

lines 1-21) Detective Redd was not called as a witness at trial Walker testified that prior to trial Bennie, an investigator working for trial counsel, asked him if he had any witnesses and Walker told him where Robina worked (App p 408, lines 9-13) Robina was not called as a witness at trial

Trial counsel admitted that she never spoke with Robina Reed (App p 371, line 25 – p 372, lines 1-16) Trial counsel claimed that Walker did not tell her about the alibi witness, Robina Reed (App p 372, lines 19 – p 373, lines 1-25) Walker testified that he asked trial counsel and trial counsel’s investigator to talk with Robina Reed (App p 413, lines 14-15, p 408, lines 9-13 ) Trial counsel admitted that there was a note in her file referencing Robina, a manager at Hardees (App p 371, lines 22 – 24) When asked by the PCR judge what Ms Reed’s name was doing in her file, trial counsel testified that Mr Walker had given the name to her investigator, Bennie Williams and the note was written by the investigator, corroborating Walker’s testimony at the PCR hearing (App p 373, lines 9-14) Trial counsel admitted that she did not know if the investigator took any steps to locate the witness, Robina Reed (App p 373, lines 15-19) Trial counsel admitted that she did not discuss with her investigator the significance of the name, Robina, written on a note contained in trial counsel s file The note was admitted in evidence at the PCR hearing as plaintiff’s exhibit No 4 (Supplemental App p 6) Additionally, a receipt provided to trial counsel from the State prior to trial lists Robina Reed’s name and address (App p 371, lines 5 – 12) The receipt was admitted in evidence at the PCR hearing as plaintiff’s exhibit No 3 (Supplemental App p 5)

Robina Reed testified at the PCR hearing that in March of 2002, she and Walker were lovers (App p 393, lines 16-20) While Ms Reed could not remember the specific date, she testified that she and Walker spent every weekend together for six months to a year before Walker “disappeared” in late March (App p 397, lines 21 – p 398, lines 1-2) Ms Sanders’ incident

took place on Saturday, March 2, 2002 (App p 360, lines 2-7) Ms Reed testified that her relationship with Walker ended in late March of 2002, and she was unaware of Walker's arrest on March 22, 2002 (App p 404, lines 5-9, p 395, lines 3-21, p 399, lines 20-21) Ms Reed testified that she believed that Walker "got tired of my mouth" and took off (App p 395, lines 10-14)

Ms Reed testified that she had worked at Hardees since 1988, and worked as the manager of Hardees in March 2002 (App p 388, lines 22 – p 389, lines 1-24) She testified that Walker would spend the night at her house during that time (App p 393, lines 21-22) Ms Reed testified that in March of 2002, her car was broken and Walker would come to the Hardees and wait on her to take her home (App p 394, lines 4-12) The PCR judge asked Ms Reed, "And you're telling me that you spent - - Mr Reed (sic) was staying with you that first weekend in March of 2002?" Ms Reed responded, "Yes " (App p 403, lines 2-5) Upon further questioning, Ms Reed testified, "I know we spent a lot of days together I can't tell you no particular day " (App p 405, lines 17-18) She was able to testify, however, that prior to the last time she saw Walker, they spent every weekend together at either her house or his (App p 406, lines 4-8) PCR counsel asked Ms Reed, "Prior to the last time that saw Mr Walker did y'all spend every weekend together?" (App p 406, lines 4-5) Ms Reed responded, "Yea, we spend every weekend together " (App p 406, line 6)

The PCR judge correctly found trial counsel ineffective in failing to interview and call as an alibi witness, Robina Reed, when Ms Reed's name and address appear in evidence provided to trial counsel from the State, prior to trial respondent gave trial counsel's investigator Ms Reed's name and place of employment and the investigator's note was in trial counsel's file As the PCR judge noted in the order granting relief, "Trial counsel was aware or should have been aware, of the existence of the alleged alibi witness, Robina Reed " (App p 442)

The PCR judge applied the proper standard in granting post conviction relief. In the order the judge wrote, “**THE COURT THEREFORE FINDS AND CONCLUDES** that the Applicant has met his burden to establish both that his Trial Counsel was ineffective, and that prejudice resulted. Strickland, supra, Rule 71 1(e), SCRCF” (App p 444). The order granting post conviction relief applies the correct law and correctly cites Strickland v Washington, 466 U S 668, 685, 104 S Ct 2052, 80 L Ed 2d 674 (1984). The State’s contention that the PCR judge applied an incorrect standard is without merit. In the order granting PCR, the judge wrote, “Trial counsel offered no explanation as to her failure, or the failure of her investigators, to attempt to locate Reed [the alibi witness]” (App p 444). Respondent established that trial counsel was deficient in failing to locate the alibi witness and the PCR judge simply noted that trial counsel offered no strategic reason for failing to contact the alibi witness.

The State’s assertion that trial counsel was not deficient because, according to trial counsel, respondent never provided her with the alibi information is not supported by the record. The record supports the finding that respondent provided trial counsel’s investigator with the alibi witness’s name and place of employment. Trial counsel knew or should have known of the existence of the alibi witness through her investigator as well as discovery provided to her by the State. The record supports that counsel was deficient in failing to contact the alibi witness and that respondent was prejudiced by counsel’s deficient performance.

Ms Reed’s testimony at the PCR hearing establishes an alibi. While, five years later at the PCR hearing, Ms Reed could not remember the specific date of March 2, 2002, her testimony indicated that during that time frame she and Walker spent the weekends together, making it impossible for Walker to have been with Ms Sanders from Saturday night, March 2, 2002, until five in the morning the following day as testified by Sanders. This case is easily distinguished from

Glover v State, 318 S C 496, 458 S E 2d 538 (1995), where the failure to call witnesses did not result in prejudice because the witness' testimony placed the defendant in Florida between 8 00 and 8 30 AM and the crime took place at 8 30 PM in Williamsburg County In Glover the fact that the defendant was in Florida at 8 00 AM did not preclude him from being in Williamsburg County at 8 30 PM Unlike the facts in Glover, Ms Reed's testimony establishes an alibi

Trial counsel was ineffective in failing to interview and call Ms Reed as an alibi witness Walker was prejudiced In order to establish prejudice there must be "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" Cherry v State, 300 S C 115, 117, 386 S E 2d 624, 625 (1989) The State's case against Walker was based entirely on the testimony of the one complaining witness, Ms Sanders There was no forensic evidence linking Walker to an assault of Ms Sanders and no witnesses who could corroborate Ms Sanders' testimony Ms Sanders' identification of Walker was made only after she had viewed a video tape of Walker entering the BP station There is a reasonable probability that Ms Reed's testimony would have made the difference in obtaining an acquittal See Martinez v State, 304 S C 39, 403 S E 2d 113 (1991)

In the order of dismissal the PCR judge wrote, "The Court finds that this failure [trial counsel's failure to locate and call Reed as an alibi witness] severely prejudiced the Applicant's right to a fair trial While it is the role of the jury to gauge the credibility of the witnesses at trial, the Court finds that the testimony of Reed at the PCR hearing was credible The jury would have weighed the credibility of the testimony of the witnesses, and it is reasonable to assume that the outcome of the deliberations may have been different had this witness testified in light of the facts of this case" Walker was prejudiced by trial counsel's deficient performance

PCR findings must be upheld where supported by any evidence of probative value in the record Ard v Catoe, 372 S C 318, 642 S E 2d 590 (2007) The PCR judge’s findings that trial counsel was deficient in failing to interview and call Robina Reed as an alibi witness and that respondent was prejudiced by the deficient performance are supported by evidence in the record The finding of the PCR judge must be upheld

The Court of Appeals found that trial counsel’s failure to investigate Reed as an alibi witness was deficient performance The Court wrote, “We agree with the court’s conclusion that trial counsel’s performance was deficient because we find ‘counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment ’”(Citing Edwards, 392 S C at 456, 710 S E 2d at 64 , quoting Strickland, 466 U S at 687) Walker v State, 397 S C 226, 235, 723 S E 2d 610, 615 (Ct App 2012) The Court of Appeals found, however, relying on Glover v State, 318 S C 496, 458 S E 2d 538 (1995), that Reed’s testimony does not qualify as an alibi and therefore Walker was unable to demonstrate prejudice The Court of Appeals wrote

Reed’s testimony makes it less likely Walker is guilty Taken as a whole, however, her testimony does not account for Walker’s whereabouts on March 2, 2002, such that it was physically impossible that he committed the crimes Although Reed began by saying Walker spent the weekend with her, she eventually said she could not specifically remember whether Walker spent the night with her on March 2 Even her specific testimony that Walker “was staying with [her] that weekend” does not foreclose the possibility that he arrived at her house on Saturday morning after committing the crimes on **Friday** night Therefore, like the testimony of the two witnesses in Glover, Reed’s testimony does not establish an alibi because it leaves open the possibility that Walker is guilty (emphasis added)

Walker, 397 S C at 238, 723 S E 2d at 616 The Court of Appeals erred

First, there is no question that the complaining witness testified that the incident took place on Saturday, March 2, 2002, not on Friday the day before. Second, Reed testified at the PCR hearing that Walker had been spending weekends and Saturday nights with her every weekend for six months to a year. PCR counsel questioned Reed

Q Now, at the first of March – The first weekend of March of 2002 were you and Mr Walker still involved in a sexual relationship?

A Of course

Q And we're now five years later, is that correct?

A Yea

Q Okay. At the time before he disappeared had Mr Walker been spending [sic] with night with you on the weekends and on Saturday night?

A Yes, he has

Q Okay. Had that been going on every weekend for six months to a year?

A Yea

(App p 397, lines 15 – p 398, lines 1-2)

The PCR judge asked Ms Reed, “And you're telling me that you spent - - Mr Reed (SIC) was staying with you that first weekend in March of 2002?” Ms Reed responded, “Yes ” (App p 403, lines 2-5). Upon further questioning, Ms Reed testified, “I know we spent a lot of days together. I can't tell you no particular day ” (App p 405, lines 17-18). She was able to testify, however, that prior to the last time she saw Walker, they spent every weekend together at either her house or his (App p 406, lines 4-8). PCR counsel asked Ms Reed, “Prior to the last time that saw Mr Walker did y'all spend every weekend together?” (App p 406, lines 4-5). Ms Reed responded, “Yea, we spend every weekend together ” (App p 406, line 6).

While on cross examination, Reed admitted that she could not remember specifically being with Walker on March 2, 2002, the jury should have heard her testimony that she and Walker's usual practice during the time frame including March 2, 2002, was to spend the night together. The jury could then make a determination as to the credibility of the alibi testimony and the judge would instruct the jury about assessing the credibility of the alibi testimony.

This Court's reliance on Glover v State, 318 S C 496, 458 S E 2d 538 (1995), is misplaced. In Glover the witness testified that the defendant was in Florida eleven hours before the crime was committed at a location approximately six and a half hours away. The South Carolina Supreme Court found that the testimony of the witness did not establish an alibi because the defendant could have left Florida and traveled to the location within six and half hours and committed the crime. In the present case, if the jury believes the alibi witness, Robina Reed, who testified that she was with Walker on Saturday night March 2, 2002, it would have been impossible for Walker to have committed the crimes.

Reed's testimony establishes an alibi and a jury, not an appellate court, should determine the credibility of the testimony. It is important to note that the PCR judge found Reed's testimony credible. In the order of dismissal the PCR judge wrote, "The Court finds that this failure [trial counsel's failure to locate and call Reed as an alibi witness] severely prejudiced the Applicant's right to a fair trial. While it is the role of the jury to gauge the credibility of the witnesses at trial, the Court finds that the testimony of Reed at the PCR hearing was credible. The jury would have weighed the credibility of the testimony of the witnesses, and it is reasonable to assume that the outcome of the deliberations may have been different had this witness testified in light of the facts of this case." Walker was prejudiced by trial counsel's deficient performance. The PCR judge's order granting relief and ordering a new trial is supported by the record and is not controlled by an

error of law Under the any evidence standard the Court of Appeals erred in reversing the finding of the PCR judge

The Court of Appeals' determination that Reed's testimony did not establish an alibi is in conflict with the reasonable probability standard establish by Strickland In order to establish prejudice there must be "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different " Strickland v Washington, 466 U S 668, 104 S Ct 2052, 80 L Ed 2d 674 (1984), Cherry v State, 300 S C 115, 117, 386 S E 2d 624, 625 (1989) Reed testified that she and Walker spent the night together on Saturday, March 2, 2002 The State's case against Walker was based entirely on the testimony of the one complaining witness, Ms Sanders There were questions about this witness's credibility As discussed below, this Court found counsel ineffective for failing to adequately cross examine the witness about conflicting evidence as to the time the incident is alleged to have happened There was no forensic evidence linking Walker to an assault of Ms Sanders and no witnesses who could corroborate Ms Sanders' testimony Ms Sanders' identification of Walker was made only after she had viewed a video tape of Walker entering the BP station There is a reasonable probability that Ms Reed's testimony would have made the difference in obtaining an acquittal See Martinez v State, 304 S C 39, 403 S E 2d 113 (1991) The Court of Appeals erred in refusing to find that Walker was prejudiced by trial counsel's deficient performance

- 2 The Court of Appeals erred in failing to find that the PCR judge correctly found that the cumulative effect of trial counsel's errors in failing to move for a continuance to obtain a forensic report revealing that no semen was identified from the sexual assault evidence kit collected from the complainant, failing to investigate the complainant's alcohol use, failing to cross examine the complainant in regard to discrepancies as to the time of the alleged incident and failing to interview the alibi witness, Ms Reed, resulted in prejudice to respondent

The PCR judge found three additional instances of ineffective assistance of counsel The PCR judge found counsel ineffective in failing to move for a continuance to await completion of forensic testing that revealed that no semen was identified from the sexual assault evidence kit collected from the complainant, failing to investigate the complainant's alcohol use, as well as failing to cross examine the complainant in regard to discrepancies as to the time of the alleged incident The PCR judge wrote, "THE COURT FURTHER FINDS AND CONCLUDES that the Applicant has independently established a second ground for prejudice with the cumulative effect of Trial Counsel's error in her failure to investigate Sanders' alcohol use, her failure to move to continue the hearing to await the written results of the forensic testing, her failure to cross-examine the witness as to the discrepancy of the conflicting times of the incident, and her failure to investigate or interview Reed, the combination of which prejudiced the Applicant" (App p 444)

The PCR judge applied the proper standard in granting post conviction relief The State's contention that the PCR judge applied an incorrect standard is without merit The PCR judge citing Green v State, 351 S C 184, 569 S E 2d 318 (2002) wrote, "These failures cumulatively prejudiced the Applicant and adversely affected his right to a fair trial under the fact of this case" (App p 445) In Green the South Carolina Supreme Court wrote, "Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in

South Carolina Compare State v Peterson, 287 S C 244, 335 S E 2d 800 (1985) (accumulation of errors warranted reversal, but Court also found each individual error caused prejudice), overruled on other grounds by State v Torrence, 305 S C 45, 406 S E 2d 315 (1991), with State v Freeman, 319 S C 110, 459 S E 2d 867 (Ct App 1995) (finding multiple errors, which were not prejudicial separately, could be prejudicial to deny an individual a right to a fair trial when they were viewed together)” 351 S C at 197, 569 S E 2d at 324 The PCR judge correctly found that, in this case, the multiple errors by trial counsel denied respondent the right to a fair trial

Based on Ms Sanders’ report of a sexual assault, several items were submitted to the South Carolina Law Enforcement Division [SLED] for serology and DNA analysis At the time of Walker’s trial, however, SLED had not completed the written report in regard to the forensic testing Consequently, at the time of trial, counsel did not have a written copy of the results of forensic testing performed by SLED The SLED report is dated August 27, 2003, and was admitted in evidence at the PCR hearing as plaintiff’s exhibit No 1 (Supp App pp 1-2) Walker’s trial was held earlier on July 22 and 23, 2003 Testing of smears, swabs and panties collected in the sexual assault evidence collection kit from Ms Sanders on March 3, 2002, (Ms Sanders alleged that the incident started on March 2, 2002, and continued into the early morning hours of March 3, 2002), revealed no spermatozoa and no semen (Supp App pp 1-2) Ms Sanders testified that the assailant penetrated her more than three times (App p 51, lines 14 – p 52, lines 1 – 3) The nurse’s notes indicate that the assailant did not wear a condom (Supp App p 4)

The State’s contention that respondent was not prejudiced by trial counsel’s failure to await completion of the written report because trial counsel was told by the solicitor, prior to trial, that no semen was found is without merit Trial counsel admitted at the PCR hearing that it would have

been important for the jury to have known about the results of the SLED forensic testing (App p 367, lines 9-11) While there was limited testimony about the lack of DNA evidence, the written SLED report could certainly have called into question the credibility of the complainant, a critical issue in this case as her testimony was the only evidence against respondent

In an interview with Ms Sanders following the incident, a nurse noted the following, “She [Ms Sanders] has been planning on attending ETOH treatment this week and is still planning to begin this week” ((App p 369, lines 1-8, Supp App p 4) The interview was admitted as evidence at the PCR hearing as plaintiff’s exhibit No 2 Trial counsel admitted that she did not cross examine Ms Sanders in reference to the alcohol treatment referenced in the note (App p 386, lines 10-19) Additionally, trial counsel admitted that when Ms Sanders initially reported the incident to law enforcement, the officers noted that she smelled of alcohol (App p 353, lines 21 – 24) Trial counsel admitted it would have been important to cross examine Ms Sanders about her smelling of alcohol at the time of reporting the incident to police (App p 354, lines 1-8) Trial counsel further admitted that she failed to call the nurse or the officers to testify about the alcohol treatment and her smelling of alcohol (App p 354, lines 9-14) In the order of dismissal the PCR judge wrote, “Trial counsel merely made reference that alcohol had been consumed by Sanders during and after the incident as part of a confirmation of events Sanders claimed had transpired The only evidence linking the Applicant to Sanders was Sander’s identification of the Applicant Trial counsel’s failure to investigate the impact of alcohol use prevented the jury from considering Sanders’ credibility in her identification of the Applicant as her assailant” (App pp 445-446)

Counsel admitted failing to cross examine Ms Sanders in regard to discrepancies about the time of day she alleged the incident began (App p 356, lines 18 – p 357, lines 1-25) Ms

Sanders initially told the police she stopped at the BP station at 8 00 PM (App p 357, lines 2-4) Ms Sanders told the nurse that she was at a gas station at 7 00 PM (Supp App p 4) The video surveillance from the BP station, however, reflects that Ms Sanders entered the store at 2 20 PM (App p 357, lines 19-25) Trial counsel admitted it would have been important to explore this significant discrepancy in the time (App p 357, lines 7-9)

The PCR judge correctly found that the cumulative effective of trial counsel's errors independently established prejudice and deprived Walker of the right to a fair trial Trial counsel's multiple errors of failing to move for a continuance to await completion of a written forensic report revealing that no semen or spermatozoa was identified from the sexual assault evidence kit collected from Ms Sanders, failing to investigate and cross examine Ms Sanders about her alcohol use, failing to cross examine Ms Sanders in regard to serious discrepancies as to the time of the alleged incident and failing to interview the alibi witness, Ms Reed, constitutes ineffective assistance of counsel requiring a new trial The PCR judge's finding that Walker was prejudiced by the cumulative effect of multiple errors committed by trial counsel is supported by the record The finding of the PCR judge must be affirmed

The Court of Appeals correctly found that counsel was deficient in failing to cross examine the complainant in regard to discrepancies as to the time of the alleged incident The Court wrote, "We find two instances of trial counsel's deficient performance – her failure to investigate Reed as a potential alibi witness and her failure to cross-examine the victim or call witnesses to testify about conflicting evidence as to the time of the incident" Walker, 397 S C at 243, 723 S E 2d at 619 The Court of Appeals, however, found that Walker failed to prove prejudice "These instances of deficient performance are unrelated to each other and neither one makes the other more prejudicial Therefore, even if we could evaluate them together, there is no cumulative prejudicial effect that

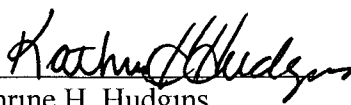
would warrant relief under Strickland ” Walker, 397 S C at 243, 723 S E 2d at 619 The Court of Appeals erred

First, as discussed above, counsel’s failure to investigate and call Robina Reed as an alibi witness constitutes prejudicial deficient performance requiring a new trial, as found by the PCR judge Second, the testimony of the alibi witness and cross examination of the complainant in regard to discrepancies as to the time of the alleged incident are related, as both go to the credibility of the complaining witness Third, the PCR judge correctly found that counsel was additionally deficient in failing to move for a continuance to await completion of forensic testing that revealed that no semen was identified from the sexual assault evidence kit collected from the complainant and failing to investigate the complainant’s alcohol use The Court of Appeals erred in refusing to find that Walker was prejudiced by the cumulative effect of trial counsel’s failure to investigate Sanders’ alcohol use, her failure to move to continue the hearing to await the written results of the forensic testing, and her failure to cross-examine the witness as to the discrepancy of the conflicting times of the incident

CONCLUSION

Based on the above arguments, the decision by the Court of Appeals should be reversed and the case remanded for a new trial based on the PCR judge's finding of prejudicial deficient performance by trial counsel. Alternatively, the Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Respectfully submitted,

  
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Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of June, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Aiken County

Doyet A Early, III, Circuit Court Judge

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Opinion No (S C Ct App filed )  
05-CP-02-00039

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JOSEPH WALKER,

RESPONDENT,

V

STATE OF SOUTH CAROLINA,

PETITIONER

Appellate Case No 2012-211267

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CERTIFICATE OF SERVICE

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I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Mary S Williams, Esquire, and the S C Court of Appeals this 15th day of June, 2012



Kathrine H Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 15th day  
of June, 2012

 (L S )

Notary Public for South Carolina

My Commission Expires August 23, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal From Aiken County  
Honorable Doyet A Early, III, Judge  
05-CP-02-39

---

JOSEPH WALKER,

Respondent,

vs

THE STATE OF SOUTH CAROLINA,

Petitioner

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**APPENDIX**

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

02-GS-02-1294

02-GS-02-1295

02-GS-02-1296

THE STATE OF SOUTH CAROLINA

-VS-

TRANSCRIPT OF RECORD

JOSEPH WALKER

JULY 22 AND 23, 2003  
LEXINGTON, SOUTH CAROLINA

B E F O R E

THE HONORABLE JAMES R BARBER, III, JUDGE, AND  
JURY

A P P E A R A N C E S

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BARBARA R MORGAN, ESQUIRE  
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KELLEY P BROWN, ESQUIRE  
ATTORNEY FOR THE DEFENDANT

DAPHNE D HELMS  
CIRCUIT COURT REPORTER

I N D E X

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County Auton  
 Date 7-22-03

VOIR DIRE

Case No 02-65-02-1294, 1295, 1296 Judge James Barber

Pl / State State State/Pl's Atty Brenda Bushin  
Everett Chandler

Defendant Joseph Walker Defense Atty Kelley Brown

Court Reporter Daphne Helms

Juror No	Name	Sex	Race	*Court	Strikes		Accept
					Plaintiff	Defense	
164	Anne Henry	F	W			✓	
167	Pamela Smith	F	W				✓
72	Stephen Kelly	M	W				✓
20	Monica Chalper	F	W				✓
165	Shirley Jackson	F	W				✓
156	Nicole Gantt	F	W				✓
23	Carolyn Rachels	F	W				✓
92	Barbara Martin	F	B			✓	
33	James Dalsanto	M	W				✓
87	Melrae Luft	F	W				✓
54	Kerry Hanner	M	W		✓		
101	Adam Morris	M	W				✓
58	Cynthia Hutton	F	W			✓	
157	Ronald Grooms	M	W			✓	
65	Bobbie Jackson	F	W			✓	
25	Onnie Coleman	F	B		✓		

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

page 2

County Autauga  
Date 7-22-03

VOIR DIRE

Case No \_\_\_\_\_ Judge \_\_\_\_\_

Pl / State State State/Pl's Atty \_\_\_\_\_

Defendant Joseph Walker Defense Atty \_\_\_\_\_

Court Reporter Daphne Helms

<u>Juror No</u>	<u>Name</u>	<u>Sex</u>	<u>Race</u>	<u>*Court</u>	<u>Strikes</u> <u>Plaintiff</u>	<u>Defense</u>	<u>Ac</u>
160	James Pitts	m	w			✓	
166	John Rowe	m	B				2
88	Bernadette Lynn	F	w			✓	
143	Paul Waters	m	w				2
155	Rosemary Fields	F	w		2		2
	- Alternate #1 -						
115	Brenton Russo	m	w				2
	- Alternate #2 -						
8	Jessica Bartholomeu	F	w				2

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

1 (COURT REPORTER'S NOTE THE COURT REPORTER FOR THE  
2 FIRST PART OF THIS TRIAL WAS BRENDA SIGWALD THE REMAINDER  
3 OF THE TRIAL WAS TAKEN BY DAPHNE HELMS AS FOLLOWS )

4 THE COURT: OKAY, LADIES AND GENTLEMEN WE ARE --  
5 WE ARE ABOUT TO SELECT A JURY AND COMMENCE THE TRIAL IN A  
6 CASE ENTITLED THE STATE OF SOUTH CAROLINA VERSUS JOSEPH  
7 WALKER WHO HAS BEEN CHARGED IN THREE SEPARATE BILLS OF  
8 INDICTMENT BY THE GRAND JURY OF AIKEN COUNTY, AND THESE  
9 INDICTMENTS CHARGE THE DEFENDANT WITH THE OFFENSE OF CRIMINAL  
10 SEXUAL CONDUCT IN THE FIRST DEGREE THE INDICTMENT STATES  
11 THAT MR WALKER DID IN AIKEN COUNTY ON OR ABOUT MARCH 2,  
12 2002, COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT IN THE  
13 FIRST DEGREE IN THAT THE DEFENDANT DID COMMIT A SEXUAL  
14 BATTERY, TO WIT, SEXUAL INTERCOURSE, UPON AND WITH THE BODY  
15 OF MARGARET ANN SANDERS AND SUCH SEXUAL BATTERY WAS  
16 ACCOMPANIED BY THE USE OF FORCE OF A HIGH AND AGGRAVATED  
17 NATURE AND/OR THE VICTIM SUBMITTED TO THE SEXUAL BATTERY  
18 UNDER CIRCUMSTANCES WHERE SHE WAS ALSO THE VICTIM OF FORCIBLE  
19 CONFINEMENT AND KIDNAPPING

20 IN ADDITION TO THAT CHARGE, THE DEFENDANT HAS BEEN  
21 CHARGED -- INDICTED FOR THE OFFENSE OF POSSESSION OF A  
22 FIREARM OR KNIFE DURING THE COMMISSION OF OR ATTEMPT TO  
23 COMMIT A VIOLENT CRIME, AND THAT INDICTMENT STATES THAT MR  
24 WALKER DID IN AIKEN COUNTY ON OR ABOUT MARCH 2, 2002, POSSESS  
25 OR VISIBLY DISPLAY A FIREARM OR VISIBLY DISPLAY A KNIFE

1 DURING THE COMMISSION OR ATTEMPTED COMMISSION OF A VIOLENT  
2 CRIME, TO WIT, CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE  
3 AND, IN ADDITION, LADIES AND GENTLEMEN, THE  
4 DEFENDANT HAS BEEN CHARGED IN THE BILL OF INDICTMENT WITH THE  
5 OFFENSE OF KIDNAPPING, AND THAT INDICTMENT STATES THAT MR  
6 WALKER DID IN AIKEN COUNTY ON OR ABOUT MARCH 2, 2002,  
7 UNLAWFULLY SEIZE, CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT OR  
8 CARRY AWAY MARGARET ANN SANDERS WITHOUT THE AUTHORITY OF LAW  
9 NOW, LADIES AND GENTLEMEN, TO THESE INDICTMENTS THE  
10 DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY AN INDICTMENT --  
11 THESE THREE SHEETS OF PAPER THAT ARE -- USED FOR THE PURPOSE  
12 OF PUTTING A DEFENDANT ON NOTICE OF THE PARTICULAR CHARGES  
13 THEY ARE NO MORE THEY'RE NOT EVIDENCE OF A CRIME THEY ARE  
14 THE NOTICE DOCUMENT SO THAT THE DEFENDANT IN THIS CASE OR ANY  
15 CASE KNOWS THE PARTICULAR CHARGE FOR WHICH THE STATE HAS  
16 BROUGHT AGAINST HIM AND AS I SAID, THE DEFENDANT HAS  
17 ENTERED A PLEA OF NOT GUILTY TO ALL THESE AND WE ARE,  
18 THEREFORE, HERE TO SELECT A JURY FOR THE JURY TO HEAR THE  
19 EVIDENCE IN THE CASE AND ULTIMATELY DETERMINE THE VERDICT IN  
20 THIS CASE

21 NOW, LADIES AND GENTLEMEN, BEFORE WE BEGIN THE TRIAL  
22 AND THE SELECTION OF THE JURY, I NEED TO INTRODUCE YOU TO  
23 SOME INDIVIDUALS WHO MAY BE INVOLVED IN THIS TRIAL AND ALSO  
24 TO ASK YOU SOME QUESTIONS, AND I REMIND YOU THAT YOU WERE  
25 PREVIOUSLY UNDER OATH SO IT IS INCUMBENT UPON YOU TO

1 RESPOND TO THE QUESTIONS THAT I ASK YOU IN A TRUTHFUL AND  
2 ACCURATE MANNER

3 FIRST, LADIES AND GENTLEMEN, LET ME INTRODUCE YOU TO  
4 MR WALKER MR WALKER, IF YOU WOULD PLEASE STAND AND FACE  
5 THE JURY LADIES AND GENTLEMEN, THIS IS THE DEFENDANT, MR  
6 JOSEPH WALKER, AND I WOULD INQUIRE AT THIS TIME IS THERE  
7 ANY MEMBER OF THIS JURY PANEL OR ANY MEMBER OF THE JURY  
8 PANEL'S IMMEDIATE FAMILY -- MR WALKER, IF YOU COULD TURN THE  
9 OTHER WAY AS WELL WE HAVE JURORS ON BOTH IS THERE ANY  
10 MEMBER OF THIS JURY PANEL OR ANY MEMBER OF THE JURY PANEL'S  
11 IMMEDIATE FAMILY WHO IS RELATED BY BLOOD OR CONNECTED BY  
12 MARRIAGE OR EITHER NOW OR IN THE PAST HAS HAD A CLOSE  
13 PERSONAL RELATIONSHIP WITH MR WALKER OR EITHER NOW OR IN THE  
14 PAST HAS HAD AN EMPLOYMENT OR A BUSINESS RELATIONSHIP WITH  
15 MR WALKER? IF YOU HAVE, PLEASE STAND ALL RIGHT THANK  
16 YOU, MR WALKER

17 LADIES AND GENTLEMEN, I NOW WANT TO READ YOU THE  
18 NAMES OF SOME POTENTIAL WITNESSES WHO MAY TESTIFY IN THIS  
19 TRIAL, AND IF ANY OF THOSE WITNESSES ARE IN THE COURTROOM I  
20 WOULD ASK THAT THEY PLEASE STAND SO THAT THE JURY CAN SEE WHO  
21 YOU ARE MARGARET SANDERS IF YOU WOULD FACE THE JURY, MS  
22 SANDERS MARGIE KAMINER GRETCHEN OVERSTOLZ DR ELIZABETH  
23 GIBBS LIEUTENANT RHONDA BAMBERG OF THE ORANGEBURG COUNTY  
24 SHERIFF'S DEPARTMENT INVESTIGATOR TODD WILLIAMS OF THE  
25 ORANGEBURG COUNTY SHERIFF'S DEPARTMENT INVESTIGATOR STUART

1 GRAYBEAL OF THE AIKEN COUNTY SHERIFF'S OFFICE INVESTIGATOR  
2 MARTIN REDD, FORMERLY OF THE AIKEN COUNTY SHERIFF'S OFFICE  
3 DIANE WARREN ELIZABETH KEARSE

4 LADIES AND GENTLEMEN, I WOULD INQUIRE AT THIS TIME  
5 IS THERE ANY MEMBER OF THIS JURY PANEL OR ANY MEMBER OF THE  
6 JURY PANEL'S IMMEDIATE FAMILY WHO IS RELATED BY BLOOD OR  
7 CONNECTED BY MARRIAGE OR EITHER NOW OR IN THE PAST HAS HAD A  
8 CLOSE PERSONAL RELATIONSHIP OR EITHER NOW OR IN THE PAST HAS  
9 HAD AN EMPLOYMENT OR A BUSINESS RELATIONSHIP WITH ANY OF THE  
10 INDIVIDUALS WHOSE NAMES I JUST READ TO YOU? IF SO, PLEASE  
11 STAND ALL RIGHT

12 LADIES AND GENTLEMEN, HAS ANY MEMBER OF THIS PETIT  
13 JURY PANEL FORMED OR EXPRESSED AN OPINION AS TO THE GUILT OR  
14 THE INNOCENCE OF THE DEFENDANT, MR JOSEPH WALKER? IF SO,  
15 PLEASE STAND IS THERE ANY MEMBERS OF THIS JURY PANEL WHO  
16 ARE CONSCIOUS OF ANY INTEREST, ANY BIAS, OR ANY PREJUDICE FOR  
17 OR AGAINST THE DEFENDANT, MR WALKER? IF SO, PLEASE STAND  
18 CAN EACH MEMBER OF THIS JURY PANEL GIVE THE STATE AND THE  
19 DEFENDANT, MR WALKER, A FAIR AND IMPARTIAL TRIAL? IF YOU  
20 CANNOT, PLEASE STAND

21 LADIES AND GENTLEMEN, IF YOU HAVE A RESPONSE TO THIS  
22 QUESTION, I'M GOING TO ASK THAT YOU PLEASE COME DOWN AND MEET  
23 WITH ME ON A PRIVATE BASIS IS THERE ANY MEMBER OF THIS JURY  
24 PANEL OR ANY MEMBER OF THE JURY PANEL'S IMMEDIATE FAMILY WHO  
25 HAS EVER BEEN THE VICTIM OF A VIOLENT CRIME INCLUDING A CRIME

1 OF A SEXUAL NATURE OR HAS EVER BEEN ACCUSED OF A VIOLENT  
2 CRIME OR A CRIME OF A SEXUAL NATURE? IF SO, IF YOU WOULD  
3 PLEASE COME DOWN AND MEET WITH ME

4 (WHEREUPON, THE FOLLOWING COLLOQUIES TOOK PLACE IN  
5 THE PRESENCE AND HEARING OF THE COURT, COURT REPORTER,  
6 ATTORNEYS, AND EACH INDIVIDUAL JUROR AS THEY APPROACHED THE  
7 BENCH )

8 THE COURT: ALL RIGHT LET ME -- YES, MA'AM, IF YOU  
9 WOULD COME DOWN HERE

10 JUROR COLEMAN: HOW DO

11 THE COURT: TELL ME YOUR NAME

12 JUROR COLEMAN: ONNIE RUTH COLEMAN

13 THE COURT: YOU OR A MEMBER OF YOUR FAMILY BEEN A  
14 VICTIM OR WAS THAT YOU?

15 JUROR COLEMAN. YES

16 THE COURT: WHO WAS IT?

17 JUROR COLEMAN: MY BROTHER

18 THE COURT: IS THAT CHARGE STILL PENDING AGAINST  
19 YOUR BROTHER OR IT'S BEEN RESOLVED?

20 JUROR COLEMAN. IT'S BEEN RESOLVED

21 THE COURT: ALL RIGHT HE WAS CONVICTED

22 JUROR COLEMAN UH-HUH YES

23 THE COURT: ALL RIGHT THE FACT THAT YOUR BROTHER  
24 HAD THIS SITUATION, WOULD THAT PREVENT YOU FROM LISTENING TO  
25 THE EVIDENCE IN THIS CASE AND BASED UPON SUCH EVIDENCE

1 RENDERING A FAIR AND IMPARTIAL VERDICT?

2 JUROR COLEMAN. NO, IT WOULDN'T

3 THE COURT: THANK YOU HAVE A SEAT

4 (JUROR COLEMAN LEAVES THE BENCH CONFERENCE, AND

5 JUROR HAZEL JOINS THE BENCH CONFERENCE )

6 THE COURT: YES, MA'AM TELL ME YOUR NAME

7 JUROR HAZEL: JACQUELINE HAZEL

8 THE COURT: MS HAZEL, WHAT IS---

9 JUROR HAZEL: I WAS RAPED

10 THE COURT: YOU WERE A VICTIM OF A RAPE?

11 JUROR HAZEL: UH-HUH

12 THE COURT: ALL RIGHT HAS THE MATTER BEEN

13 RESOLVED?

14 JUROR HAZEL: YES

15 THE COURT: ALL RIGHT THE FACT THAT A SEXUAL

16 ASSAULT OCCURRED, WOULD THAT PREVENT YOU FROM LISTENING TO

17 THE EVIDENCE IN THIS CASE AND BASED UPON SUCH EVIDENCE

18 RENDERING A FAIR AND IMPARTIAL VERDICT?

19 JUROR HAZEL: NO

20 THE COURT: ALL RIGHT THANK YOU

21 MS. BRISBIN: WHAT NUMBER IS SHE?

22 JUROR HAZEL: 98

23 THE COURT: ALL RIGHT

24 MS. BROWN: 98

25 THE COURT: ALL RIGHT THANK YOU BE SEATED

1 (JUROR HAZEL LEAVES THE BENCH CONFERENCE, AND JUROR  
2 KNIGHT JOINS THE BENCH CONFERENCE )

3 THE COURT: GOOD MORNING

4 JUROR KNIGHT: GOOD MORNING

5 THE COURT: TELL ME YOUR NAME

6 JUROR KNIGHT: DENA KNIGHT

7 THE COURT: MS KNIGHT, WHAT IS THE SITUATION?

8 JUROR KNIGHT: MY BEST FRIEND WHEN I WAS 15 WAS SHOT  
9 AND SEXUALLY ASSAULTED, AND SHE'S THE ONE WHO IS BABY-SITTING  
10 MY CHILD RIGHT NOW AND I COULDN'T SIT AND LISTEN TO THIS

11 THE COURT: IT WOULD BE DIFFICULT FOR YOU TO BE FAIR  
12 AND IMPARTIAL?

13 JUROR KNIGHT: OH, YEAH

14 THE COURT. WELL, I'M GOING TO EXCUSE YOU FROM THIS  
15 TRIAL TELL ME YOUR NAME

16 JUROR KNIGHT: DENA KNIGHT

17 THE COURT: MS KNIGHT, YOU STAY WITH US

18 JUROR KNIGHT: OKAY

19 THE COURT: EVEN THOUGH YOU'RE EXCUSED FROM THIS  
20 TRIAL, I CAN'T -- WE HAVE OTHER TRIALS YOU MIGHT BE A JUROR  
21 ON MS KNIGHT HAS BEEN EXCUSED FROM THIS TRIAL

22 MS. MORGAN. DID YOU EXCUSE THE ONE RIGHT BEFORE  
23 THAT?

24 (JUROR KNIGHT LEAVES THE BENCH CONFERENCE, AND JUROR  
25 SNIPES JOINS THE BENCH CONFERENCE )

1 THE COURT: YOUR NAME?

2 JUROR SNIPES. KATIE SNIPES

3 THE COURT: MS SNIPES?

4 JUROR SNIPES: I WAS ASSAULTED AND BATTERED

5 THE COURT: ALL RIGHT IS THAT MATTER STILL  
6 PENDING?

7 JUROR SNIPES: NO

8 THE COURT: THE FACT THAT YOU WERE A VICTIM OF THAT,  
9 WOULD THAT PREVENT YOU FROM LISTENING TO THE EVIDENCE IN THIS  
10 CASE AND BASED UPON SUCH EVIDENCE RENDERING A FAIR AND  
11 IMPARTIAL VERDICT?

12 JUROR SNIPES: NO, SIR

13 THE COURT: ALL RIGHT THANK YOU

14 (JUROR SNIPES LEAVES THE BENCH CONFERENCE, AND JUROR  
15 BARRINEAU JOINS THE BENCH CONFERENCE )

16 THE COURT: GOOD MORNING

17 JUROR BARRINEAU: HI MARY JOHNSON BARRINEAU

18 THE COURT: WHAT'S YOUR SITUATION?

19 JUROR BARRINEAU: ON MAY 20 OF THIS YEAR MY BROTHER  
20 WAS ASSAULTED AND KIDNAPPED AND NOW IT IS GOING BEFORE THE  
21 GRAND JURY

22 THE COURT: THE FACT THAT THIS INCIDENT OCCURRED,  
23 WOULD THAT PREVENT YOU FROM LISTENING TO THE EVIDENCE AND  
24 BASED UPON SUCH EVIDENCE RENDERING A FAIR AND IMPARTIAL  
25 VERDICT?

1 JUROR BARRINEAU: NO, SIR

2 THE COURT: ALL RIGHT THANK YOU, MA'AM.

3 (JUROR BARRINEAU LEAVES THE BENCH CONFERENCE, AND

4 JUROR HENRY JOINS THE BENCH CONFERENCE )

5 THE COURT: GOOD MORNING

6 JUROR HENRY: HI

7 THE COURT: TELL ME YOUR NAME

8 JUROR HENRY: ANNE HENRY

9 THE COURT: ANNE HENRY?

10 JUROR HENRY: UH-HUH

11 THE COURT: MS HENRY, WHAT IS YOUR SITUATION?

12 JUROR HENRY: MY MOTHER WAS A VICTIM OF SEXUAL

13 ABUSE

14 THE COURT: ALL RIGHT

15 JUROR HENRY: AS A CHILD

16 THE COURT: THE FACT THAT YOUR MOTHER WAS THE VICTIM

17 OF SEXUAL ABUSE, WOULD THAT PREVENT YOU FROM LISTENING TO THE

18 EVIDENCE IN THIS CASE AND BASED UPON SUCH EVIDENCE RENDERING

19 A FAIR AND IMPARTIAL VERDICT?

20 JUROR HENRY: I DON'T BELIEVE SO

21 THE COURT: ALL RIGHT WELL, I NEED YOU TO BE FIRM

22 JUROR HENRY: NO

23 THE COURT: YOU CAN BE FAIR AND IMPARTIAL?

24 JUROR HENRY. YES

25 THE COURT: ARE YOU THE LADY THAT GOES TO THE

1 UNIVERSITY?

2 JUROR HENRY: YES

3 MS. MORGAN: SHE'S MY NEIGHBOR

4 THE COURT: THANK YOU YOU CAN HAVE A SEAT

5 (JUROR HENRY LEAVES THE BENCH CONFERENCE, AND JUROR  
6 BOYD-SIMMONS JOINS THE BENCH CONFERENCE )

7 THE COURT: HEY

8 JUROR BOYD-SIMMONS: HEY

9 THE COURT: TELL ME YOUR FULL NAME, MA'AM

10 JUROR BOYD-SIMMONS: DONNA FAITH SIMMONS

11 THE COURT: TELL ME YOUR SITUATION

12 JUROR BOYD-SIMMONS: I HAVE A COUSIN AND UNCLE THAT  
13 HAVE BOTH BEEN CONVICTED SEVERAL TIMES FOR IT AND CHILD  
14 MOLESTATION ALSO MY STEPFATHER HAS BEEN A VICTIM OF SUCH A  
15 CRIME

16 THE COURT: THE FACT THAT YOU'VE HAD A RELATIVE WHO  
17 HAS BEEN CONVICTED OF A CRIMINAL OFFENSE OR -- AND YOU'VE  
18 BEEN A VICTIM, WOULD THAT PREVENT YOU FROM LISTENING TO THE  
19 EVIDENCE IN THIS CASE AND BASED UPON SUCH EVIDENCE RENDERING  
20 A FAIR AND IMPARTIAL VERDICT?

21 JUROR BOYD-SIMMONS: I CAN ONLY SAY THAT I CAN  
22 REALLY

23 THE COURT: YOU THINK YOU WOULD HAVE A DIFFICULT  
24 TIME BEING FAIR AND IMPARTIAL?

25 JUROR BOYD-SIMMONS: YEAH

1 THE COURT: ALL RIGHT I'M GOING TO EXCUSE YOU FROM  
2 THIS JURY DO NOT LEAVE BECAUSE YOU MAY HAVE TO COME BACK  
3 FOR ANOTHER TRIAL MS BOYD HAS BEEN EXCUSED FROM THIS JURY

4 (JUROR BOYD-SIMMONS LEAVES THE BENCH CONFERENCE, AND  
5 JUROR BOHRINGER JOINS THE BENCH CONFERENCE )

6 THE COURT: YES, MA'AM

7 JUROR BOHRINGER: JULIA BOHRINGER

8 THE COURT: NUMBER 9

9 JUROR BOHRINGER: MY EX-HUSBAND ATTEMPTED SEXUAL  
10 RELATIONSHIPS WITH MY DAUGHTER AND I WOULD NOT BE A

11 THE COURT: COULD NOT BE FAIR AND IMPARTIAL?

12 JUROR BOHRINGER: NO

13 THE COURT: ALL RIGHT THIS JUROR IS EXCUSED FROM  
14 THIS JURY THANK YOU, MA'AM MS BOHRINGER? MA'AM?

15 JUROR BOHRINGER: YES, SIR?

16 THE COURT: DON'T LEAVE WE'RE GOING TO DEAL WITH  
17 SOME OTHER MATTERS

18 JUROR BOHRINGER: OKAY

19 (JUROR BOHRINGER LEAVES THE BENCH CONFERENCE, AND  
20 JUROR WILLIS JOINS THE BENCH CONFERENCE )

21 THE COURT: GOOD MORNING TELL ME YOUR NAME AGAIN

22 JUROR WILLIS: SANDRA WILLIS

23 THE COURT: SANDRA WILLIS

24 JUROR WILLIS: I HAVE A C D V CHARGE

25 THE COURT: PENDING AGAINST YOU?

1 JUROR WILLIS: NO, IT WAS A YEAR AGO

2 THE COURT: OH, YOU WERE CONVICTED?

3 JUROR WILLIS: YEAH

4 THE COURT: FOR SIMPLE C D V ?

5 JUROR WILLIS: YEAH

6 THE COURT: WELL, THE FACT THAT OCCURRED, WOULD THAT  
7 PREVENT YOU FROM LISTENING TO THE EVIDENCE IN THIS CASE AND  
8 BASED UPON SUCH EVIDENCE RENDERING A FAIR AND IMPARTIAL  
9 VERDICT?

10 JUROR WILLIS: NO

11 THE COURT: ALL RIGHT YOU CAN HAVE A SEAT THANK  
12 YOU

13 (JUROR WILLIS LEAVES THE BENCH CONFERENCE, AND JUROR  
14 BUSBEE JOINS THE BENCH CONFERENCE )

15 THE COURT: GOOD MORNING

16 JUROR BUSBEE: KELLY BUSBEE MY AUNT WAS SEXUALLY  
17 ASSAULTED, BUT I WAS VERY SMALL AND BESIDES SO

18 THE COURT. THE FACT THIS INCIDENT OCCURRED WITH ONE  
19 OF YOUR RELATIVES, WOULD THAT PREVENT YOU FROM LISTENING TO  
20 THE EVIDENCE IN THIS CASE AND BASED UPON SUCH EVIDENCE  
21 RENDERING A FAIR AND IMPARTIAL VERDICT?

22 JUROR BUSBEE: NO

23 THE COURT: ALL RIGHT THANK YOU, MA'AM YOU CAN  
24 HAVE A SEAT

25 (WHEREUPON, THE COLLOQUIES AT THE BENCH CONCLUDED )

1           **THE COURT:** ALL RIGHT THANK YOU, LADIES AND  
2 GENTLEMEN ALL RIGHT LADIES AND GENTLEMEN, ARE YOU OR ANY  
3 OF YOUR CLOSE FRIENDS OR RELATIVES POLICE OFFICERS, STATE LAW  
4 ENFORCEMENT DIVISION OFFICERS, OR EMPLOYED IN THE SOLICITOR'S  
5 OFFICE OF THE SECOND JUDICIAL CIRCUIT, THE ATTORNEY GENERAL'S  
6 OFFICE OR ANY FEDERAL LAW ENFORCEMENT AGENCY OR ANY OTHER  
7 PROSECUTOR'S OFFICE? IF SO, PLEASE STAND YES, SIR, YOUR  
8 NAME

9           **JUROR PITTS:** DOES---

10          **THE COURT:** TELL ME YOUR NAME

11          **JUROR PITTS:** JIMMY PITTS

12          **THE COURT:** ALL RIGHT, MR PITTS

13          **JUROR PITTS:** MY NEIGHBOR IS DETECTIVE JOE COUNT AT  
14 NORTH AUGUSTA POLICE DEPARTMENT

15          **THE COURT:** YOU HAVE A NEIGHBOR THAT IS A -- WORKS  
16 FOR A LAW ENFORCEMENT AGENCY?

17          **JUROR PITTS:** YES

18          **THE COURT:** THE FACT THAT YOU HAVE AN OFF -- I MEAN  
19 A NEIGHBOR THAT WORKS FOR A LAW ENFORCEMENT AGENCY, WOULD  
20 THAT PREVENT YOU FROM LISTENING TO THE EVIDENCE IN THIS CASE  
21 AND BASED UPON SUCH EVIDENCE RENDERING A FAIR AND IMPARTIAL  
22 VERDICT?

23          **JUROR PITTS:** NO, SIR

24          **THE COURT:** THANK YOU, SIR ARE ANY OF YOU OR YOUR  
25 CLOSE RELATIVES OR FRIENDS -- NO, DISREGARD THE FRIENDS I

1 DON'T CARE WHETHER ANY OF -- ARE YOU OR ANY OF YOUR  
2 IMMEDIATE FAMILY - THAT MEANS LIVING IN YOUR HOUSE -  
3 AFFILIATED WITH OR CONTRIBUTORS TO ANY AUXILIARY POLICE  
4 ORGANIZATION OR CITIZENS GROUP WHOSE PRIMARY AIM IS THE  
5 PROSECUTION OR PURSUIT OF INDIVIDUALS INVOLVED IN CRIMINAL  
6 ACTIVITY SUCH AS C A V E , M A D D , OR S A D D ? IF SO,  
7 PLEASE STAND

8 HAS ANYONE WHO IS A MEMBER OF THIS JURY PANEL BEEN  
9 APPROACHED BY ANYONE WITH REGARD TO THIS CASE? HAS ANY  
10 MEMBER OF THIS JURY PANEL READ ANYTHING IN THE NEWSPAPER OR  
11 SEEN ANYTHING ON TELEVISION OR HEARD ANYTHING ABOUT THIS CASE  
12 ON THE RADIO? IF SO, PLEASE STAND ALL RIGHT ANY FURTHER  
13 INQUIRY FROM THE STATE?

14 MS. BRISBIN NOTHING, YOUR HONOR

15 THE COURT: ANYTHING FROM THE DEFENSE?

16 MS. BROWN: NO, YOUR HONOR

17 THE COURT. ALL RIGHT LADIES AND GENTLEMEN, THERE  
18 IS ONE OTHER THING LET ME INTRODUCE YOU TO THE LAWYERS  
19 INVOLVED IN THIS CASE AS IN MOST CASES THAT COME TO COURT,  
20 A LAWYER REPRESENTS THE STATE AND A LAWYER REPRESENTS THE  
21 DEFENDANT IN THIS INSTANCE, AS I TOLD YOU EARLIER, THE  
22 LAWYERS REPRESENTING THE STATE ARE THE SECOND CIRCUIT  
23 SOLICITOR'S OFFICE AND MS MORGAN HAS ASSIGNED THIS CASE OR  
24 HOW EVER THEY GET IT TO TWO LAWYERS WHO ARE -- WILL BE  
25 RESPONSIBLE FOR PROSECUTING THE CASE ONE IS MS BRENDA

1 BRISBIN AND THIS IS MS BRISBIN, AND ONE IS MR EVERETT  
2 CHANDLER THIS IS MR CHANDLER THESE ARE THE SOLICITORS OF  
3 THE SECOND CIRCUIT SOLICITOR'S OFFICE

4 I WOULD INQUIRE AT THIS TIME IS THERE ANY MEMBER  
5 OF THIS JURY PANEL OR ANY MEMBER OF THE JURY PANEL'S  
6 IMMEDIATE FAMILY WHO IS RELATED BY BLOOD OR CONNECTED BY  
7 MARRIAGE OR HAS NOW OR IN THE PAST HAD A CLOSE PERSONAL  
8 RELATIONSHIP WITH EITHER OF THESE INDIVIDUALS OR EITHER NOW  
9 OR IN THE PAST HAS BEEN EMPLOYED BY OR WORKED WITH THESE  
10 INDIVIDUALS OR THE SECOND CIRCUIT SOLICITOR'S OFFICE? IF SO,  
11 PLEASE STAND

12 ALL RIGHT LADIES AND GENTLEMEN, REPRESENTING MR  
13 WALKER IS MS KELLEY BROWN, AND THIS IS MS BROWN RIGHT HERE  
14 MS BROWN IS A MEMBER OF THE SOUTH CAROLINA BAR, LICENSED TO  
15 PRACTICE IN SOUTH CAROLINA, AND I WOULD INQUIRE AT THIS TIME  
16 IS THERE ANY MEMBER OF THE JURY PANEL OR ANY MEMBER OF THE  
17 JURY PANEL'S IMMEDIATE FAMILY WHO IS RELATED BY BLOOD OR  
18 CONNECTED BY MARRIAGE OR EITHER NOW OR IN THE PAST HAS HAD A  
19 CLOSE PERSONAL RELATIONSHIP WITH MS BROWN OR EITHER NOW OR  
20 IN THE PAST HAS HAD AN EMPLOYMENT OR A BUSINESS RELATIONSHIP  
21 WITH MS BROWN? IF SO, PLEASE STAND ALL RIGHT NOW,  
22 ANYTHING FURTHER? ANYTHING FROM THE

23 MS. BRISBIN: NOTHING FROM THE STATE, YOUR HONOR

24 THE COURT: MS BROWN?

25 MS. BROWN: NO

1           **THE COURT:** ALL RIGHT MADAM CLERK, IF WE COULD  
2 DRAW THE JURY Y'ALL WAIVE THE DRAWING OF THE JURY BY A  
3 PERSON WHO IS BLIND OR UNDER 10?

4           **MS. BRISBIN:** YES, YOUR HONOR

5           **MS. BROWN:** YES, YOUR HONOR

6           **THE CLERK:** STRIKES, YOUR HONOR?

7           **THE COURT:** PARDON ME?

8           **THE CLERK:** STRIKES?

9           **THE COURT:** FIVE AND TEN AND WE'RE GOING TO HAVE TWO  
10 ALTERNATES

11           **THE CLERK:** LADIES AND GENTLEMEN, AS I CALL YOUR  
12 NAME, PLEASE COME FORWARD TO THE FRONT OF THE COURTROOM  
13 STAND IN FRONT OF THE BENCH AND FACE THE BACK OF THE  
14 COURTROOM JUROR NUMBER 164, ANNE HENRY WHAT SAY YE FOR  
15 THE STATE, MADAM SOLICITOR?

16           **MS. BRISBIN:** PLEASE PRESENT MS HENRY

17           **THE CLERK:** WHAT SAY YE FOR THE DEFENSE?

18           **MS. BROWN:** PLEASE EXCUSE THE JUROR

19           **THE CLERK:** YOU MAY RETURN TO YOUR SEAT, MA'AM

20 THANK YOU JUROR NUMBER 167, PAMELA SMITH WHAT SAY YE FOR  
21 THE STATE, MADAM SOLICITOR?

22           **MS. BRISBIN:** PLEASE PRESENT MS SMITH

23           **THE CLERK:** WHAT SAY YE FOR THE DEFENSE?

24           **MS. BROWN:** PLEASE SEAT THE JUROR

25           **THE CLERK:** YOU MAY HAVE A SEAT, MA'AM, IN THE JURY

1 BOX TO YOUR LEFT JUROR NUMBER 72, STEPHEN KELLY WHAT SAY  
2 YE FOR THE STATE, MADAM SOLICITOR?

3 MS. BRISBIN: PLEASE PRESENT MR KELLY

4 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

5 MS. BROWN: PLEASE SEAT THE JUROR

6 THE CLERK. YOU MAY HAVE A SEAT, SIR, IN THE JURY

7 BOX TO YOUR LEFT JUROR NUMBER 20, MONICA CHALKER WHAT SAY  
8 YE FOR THE STATE, MADAM SOLICITOR?

9 MS. BRISBIN: PLEASE PRESENT MS CHALKER

10 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

11 MS. BROWN: PLEASE SEAT THE JUROR

12 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY

13 BOX TO YOUR LEFT JUROR NUMBER 165, SHIRLEY JACKSON WHAT  
14 SAY YE FOR THE STATE, MADAM SOLICITOR?

15 MS. BRISBIN: PLEASE PRESENT MS JACKSON

16 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

17 MS. BROWN: PLEASE SEAT THE JUROR

18 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY

19 BOX TO YOUR LEFT JUROR NUMBER 156, NICOLE GANTT WHAT SAY  
20 YE FOR THE STATE, MADAM SOLICITOR?

21 MS. BRISBIN: PLEASE PRESENT MS GANTT

22 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

23 MS. BROWN: PLEASE SEAT THE JUROR

24 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY

25 BOX TO YOUR LEFT JUROR NUMBER 23, CAROLYN RACHELS WHAT

1 SAY YE FOR THE STATE, MADAM SOLICITOR?

2 MS. BRISBIN: PLEASE PRESENT MS RACHELS

3 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

4 MS. BROWN: PLEASE SEAT THE JUROR

5 THE CLERK. YOU MAY HAVE A SEAT, MA'AM, IN THE JURY

6 BOX TO YOUR LEFT JUROR NUMBER 92, BARBARA MARTIN WHAT SAY

7 YE FOR THE STATE, MADAM SOLICITOR?

8 MS. BRISBIN: PLEASE PRESENT MS MARTIN

9 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

10 MS. BROWN: PLEASE EXCUSE THE JUROR FROM THE TRIAL

11 OF THIS CASE

12 THE CLERK: YOU MAY RETURN TO YOUR SEAT, MA'AM

13 THANK YOU JUROR NUMBER 33, JAMES DAL SANTO WHAT SAY YE FOR

14 THE STATE, MADAM SOLICITOR?

15 MS. BRISBIN: PLEASE PRESENT MR DAL SANTO

16 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

17 MS. BROWN: PLEASE SEAT THE JUROR

18 THE CLERK: YOU MAY HAVE A SEAT, SIR, IN THE JURY

19 BOX TO YOUR LEFT JUROR NUMBER 87, MELRAE LUFT WHAT SAY YE

20 FOR THE STATE, MADAM SOLICITOR?

21 MS. BRISBIN: PLEASE PRESENT MS LUFT

22 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

23 MS. BROWN: PLEASE SEAT THE JUROR

24 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY

25 BOX TO YOUR LEFT JUROR NUMBER 54, KERRY HANNON WHAT SAY

1 YE FOR THE STATE, MADAM SOLICITOR?

2 MS. BRISBIN. PLEASE EXCUSE MR HANNON

3 THE CLERK: YOU MAY RETURN TO YOUR SEAT, SIR THANK

4 YOU JUROR NUMBER 101, ADAM MORRIS WHAT SAY YE FOR THE

5 STATE, MADAM SOLICITOR?

6 MS. BRISBIN: PLEASE PRESENT MR MORRIS

7 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

8 MS. BROWN: PLEASE SEAT THE JUROR

9 THE CLERK: YOU MAY HAVE A SEAT, SIR, IN THE JURY

10 BOX TO YOUR LEFT JUROR NUMBER 58, CYNTHIA HATTON WHAT SAY

11 YE FOR THE STATE, MADAM SOLICITOR?

12 MS. BRISBIN: PLEASE PRESENT MS HATTON

13 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

14 MS. BROWN: PLEASE EXCUSE THE JUROR FROM THE TRIAL

15 OF THIS CASE

16 THE CLERK: YOU MAY RETURN TO YOUR SEAT, MA'AM

17 THANK YOU THE STATE HAS EXHAUSTED ONE STRIKE, DEFENSE

18 THREE JUROR NUMBER 157, RONALD GROOMS WHAT SAY YE FOR THE

19 STATE, MADAM SOLICITOR?

20 MS. BRISBIN. PLEASE PRESENT MR GROOMS

21 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

22 MS. BROWN: PLEASE EXCUSE THE JUROR

23 THE CLERK: YOU MAY RETURN TO YOUR SEAT, SIR THANK

24 YOU JUROR NUMBER 65, BOBBIE JACKSON WHAT SAY YE FOR THE

25 STATE, MADAM SOLICITOR?

1 MS. BRISBIN: PLEASE PRESENT MS JACKSON

2 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

3 MS. BROWN: PLEASE EXCUSE THIS JUROR.

4 THE CLERK: YOU MAY RETURN TO YOUR SEAT, MA'AM

5 JUROR NUMBER 25, ONNIE COLEMAN WHAT SAY YE FOR THE STATE,  
6 MADAM SOLICITOR?

7 MS. BRISBIN: PLEASE EXCUSE MS COLEMAN FROM THIS  
8 TRIAL

9 THE CLERK: YOU MAY RETURN TO YOUR SEAT, MA'AM  
10 THANK YOU JUROR NUMBER 160, JAMES PITTS, JR WHAT SAY YE  
11 FOR THE STATE, MADAM SOLICITOR?

12 MS. BRISBIN: PLEASE PRESENT MR PITTS

13 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

14 MS BROWN: PLEASE EXCUSE THE JUROR

15 THE CLERK: YOU MAY RETURN TO YOUR SEAT, SIR THANK  
16 YOU JUROR NUMBER 166, JOHN ROWE WHAT SAY YE FOR THE  
17 STATE, MADAM SOLICITOR?

18 MS. BRISBIN: PLEASE PRESENT MR ROWE

19 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

20 MS. BROWN: PLEASE SEAT THE JUROR

21 THE CLERK: YOU MAY HAVE A SEAT, SIR, IN THE JURY  
22 BOX TO YOUR LEFT JUROR NUMBER 88, BERNADETTE LYNN WHAT  
23 SAY YE FOR THE STATE, MADAM SOLICITOR?

24 MS BRISBIN: PLEASE PRESENT MS LYNN

25 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

1 MS. BROWN: PLEASE EXCUSE THE JUROR

2 THE CLERK: YOU MAY RETURN TO YOUR SEAT, MA'AM

3 THANK YOU STATE HAS EXHAUSTED TWO STRIKES, DEFENSE SEVEN

4 JUROR NUMBER 143, PAUL WATERS WHAT SAY YE FOR THE STATE,

5 MADAM SOLICITOR?

6 MS. BRISBIN: PLEASE PRESENT MR WATERS

7 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

8 MS. BROWN: PLEASE SEAT THE JUROR

9 THE CLERK: YOU MAY HAVE A SEAT, SIR, IN THE JURY

10 BOX TO YOUR LEFT JUROR NUMBER 155, ROSEMARY FIELDS WHAT

11 SAY YE FOR THE STATE, MADAM SOLICITOR?

12 MS. BRISBIN: PLEASE PRESENT MS FIELDS

13 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

14 MS. BROWN: PLEASE SEAT THE JUROR

15 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY

16 BOX TO YOUR LEFT ALTERNATES, YOUR HONOR?

17 THE COURT: TWO, PLEASE TWO AND ONE

18 THE CLERK: JUROR NUMBER 115, BRENTON RUSSO WHAT

19 SAY YE FOR THE STATE, MADAM SOLICITOR?

20 MS. BRISBIN: PLEASE PRESENT MR RUSSO

21 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

22 MS. BROWN: PLEASE SEAT THE JUROR

23 THE CLERK: YOU MAY HAVE A SEAT, SIR, IN THE JURY

24 BOX TO YOUR LEFT JUROR NUMBER 8, JESSICA BARTHOLOMEW WHAT

25 SAY YE FOR THE STATE, MADAM SOLICITOR?

1 MS. BRISBIN· PLEASE PRESENT MS BARTHOLOMEW

2 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

3 MS. BROWN: PLEASE SEAT THE JUROR

4 THE CLERK: YOU MAY HAVE A SEAT, MA'AM, IN THE JURY

5 BOX TO YOUR LEFT

6 THE COURT: WHAT WAS THE JURY NUMBER?

7 THE CLERK: JUROR NUMBER 8

8 (WHEREUPON THE JURY WAS IMPANELED AT 12 03 P M )

9 THE COURT: ALL RIGHT ANYTHING FROM THE STATE WITH  
10 RESPECT TO THE COMPOSITION OF THE JURY?

11 MS. BRISBIN· NO, YOUR HONOR

12 THE COURT: ANYTHING FROM THE DEFENDANT?

13 MS. BROWN: NO, YOUR HONOR

14 THE COURT: OKAY

15 (PAUSE IN PROCEEDINGS WHILE REMAINING JURORS NOT  
16 IMPANELED WERE EXCUSED BY THE COURT FROM THE COURTROOM )

17 THE COURT: ALL RIGHT MADAM CLERK, CAN WE SWEAR  
18 THE JURY?

19 (WHEREUPON, THE JURY WAS SWORN AT 12.05 P M )

20 THE COURT: OKAY LADIES AND GENTLEMEN, IT'S A FEW  
21 MINUTES AFTER 12 AND BEFORE WE BREAK FOR LUNCH WE'RE GOING TO  
22 DO A COUPLE OF THINGS I THINK WHAT WE'RE GOING TO DO -- I'M  
23 GOING TO TAKE A FEW MINUTES AND EXPLAIN TO YOU A LITTLE BIT  
24 ABOUT WHAT'S INVOLVED IN THE COURSE OF THE TRIAL, HOW IT WILL  
25 UNFOLD, SO YOU WILL HAVE SOME IDEA ABOUT THIS PROCESS IN CASE

1 YOU'VE NOT SERVED ON A JURY BEFORE OR IN CASE IT'S BEEN SOME  
2 TIME SINCE YOU'VE HAD THE OPPORTUNITY TO SERVE ON A JURY  
3 AFTER I MAKE MY OPENING REMARKS, I THINK WE'LL LET THE  
4 ATTORNEYS MAKE THEIR OPENING STATEMENTS AND AT THAT TIME  
5 WE'LL PROBABLY BREAK FOR LUNCH AND THEN COME BACK AND BEGIN  
6 THE PRESENTATION OF THE EVIDENCE AFTER LUNCH

7 NOW, LADIES AND GENTLEMEN, THIS CASE IS VERY  
8 IMPORTANT BOTH TO THE STATE AND THE DEFENDANT, SO WE WANT TO  
9 DO EVERYTHING WE CAN TO MAKE SURE THAT BOTH SIDES RECEIVE A  
10 FAIR AND IMPARTIAL TRIAL THE WAY WE DO THAT OR AT LEAST WE  
11 GIVE IT OUR BEST EFFORT IS THE FIRST THING WE WANT TO DO IS  
12 I'M GOING TO ASK THAT YOU BE VERY ATTENTIVE THROUGHOUT THE  
13 COURSE OF THE TRIAL SO THAT THE STATE AND THE DEFENSE HAVE  
14 THE OPPORTUNITY TO PUT FORWARD IN FRONT OF YOU EVERYTHING  
15 THAT THEY ARE ABLE TO DO SO FOR YOUR CONSIDERATION DURING THE  
16 COURSE OF YOUR DELIBERATIONS

17 THE OTHER THING IS WE DON'T WANT TO MAKE ANY  
18 PREMATURE DECISIONS IN THIS CASE OR BEGIN TO FORMULATE AN  
19 OPINION ABOUT THIS CASE UNTIL YOU'VE HEARD ALL THE EVIDENCE  
20 THAT BOTH SIDES WISH TO OFFER IN THIS CASE SO I'M GOING TO  
21 ASK, LADIES AND GENTLEMEN, THAT YOU NOT DISCUSS THE CASE WITH  
22 EACH OTHER OR WITH ANYONE ELSE AT ANY TIME DURING THE COURSE  
23 OF THE TRIAL UNTIL YOU'VE BEEN GIVEN INSTRUCTIONS THAT YOU  
24 CAN BEGIN YOUR DELIBERATIONS SO THAT MEANS IF WE TAKE A  
25 BREAK AND YOU'RE BACK IN THE JURY ROOM, DON'T DISCUSS

1 ANYTHING ABOUT THE CASE WITH EACH OTHER IF YOU GO TO LUNCH  
2 AND YOU SEE SOMEBODY THAT YOU MIGHT KNOW, DON'T DISCUSS THE  
3 CASE IF THIS CASE GOES BEYOND TODAY WHICH I ANTICIPATE IT  
4 WILL, WHEN YOU GO HOME TONIGHT DO NOT DISCUSS THE CASE WITH  
5 ANYBODY THAT YOU MAY COME IN CONTACT WITH

6 THE REASON I ASK THAT YOU DO THIS IS BECAUSE IF YOU  
7 DISCUSS THE CASE WITH SOMEBODY, A COUPLE OF THINGS COULD  
8 HAPPEN AND THEY ARE NOT GOOD ONE, YOU COULD BE INFLUENCED  
9 BY THAT PERSON AND YOU -- THIS IS YOUR DECISION YOU, BASED  
10 ON YOUR OWN CONSCIENCE AND THE COLLECTIVE WISDOM OF THE JURY,  
11 ARE TO MAKE DECISIONS IN THIS CASE, NOBODY ELSE YOU'RE THE  
12 ONLY ONES THAT WILL HEAR ALL THE EVIDENCE YOU'RE THE ONLY  
13 ONES THAT WILL KNOW EXACTLY WHAT'S GOING ON IN THE TRIAL SO  
14 DO NOT DISCUSS IT WITH ANYBODY AND ALLOW THEM TO DISCUSS IT  
15 WITH YOU WHERE YOU MIGHT BE INFLUENCED.

16 THE SECOND THING IS IF YOU DISCUSS THIS CASE WITH  
17 ANYBODY, INCLUDING YOURSELVES, YOU MAY BEGIN TO FORMULATE AN  
18 OPINION ABOUT THE CASE BEFORE ALL THE EVIDENCE IS IN AND  
19 THAT'S NOT FAIR TO EITHER THE STATE OR THE DEFENDANT. I  
20 PROMISE YOU DURING THE COURSE OF YOUR DELIBERATIONS YOU'LL BE  
21 ABLE TO DISCUSS THE CASE AS LONG AS YOU BELIEVE THAT YOU NEED  
22 TO DO IT, AND AFTER THE CASE IS OVER, IF YOU WOULD LIKE AND  
23 YOU'RE NOT OBLIGATED BUT IF YOU WOULD LIKE, THEN YOU CAN  
24 DISCUSS IT WITH ANYBODY OUTSIDE THE CASE THAT YOU WANT TO  
25 TALK TO

1 IF YOU DON'T WANT TO TALK ABOUT THE CASE AND  
2 SOMEBODY APPROACHES YOU ABOUT IT, YOU TELL THEM YOU DON'T  
3 WANT TO TALK ABOUT IT IF THEY CONTINUE TO PURSUE IT, THEN  
4 YOU CONTACT ME AND LET ME KNOW THAT, AND I WILL DEAL WITH  
5 THAT PERSON WHO WAS ATTEMPTING TO HAVE DISCUSSIONS BUT AT  
6 THE END OF THE CASE IT WILL BE YOUR DECISION TO TALK ABOUT  
7 WHATEVER YOU WANT WITH RESPECT TO THIS CASE

8 NOW, LADIES AND GENTLEMEN, THE WAY A TRIAL TAKES  
9 PLACE IS THAT THE STATE IS GIVEN THE OPPORTUNITY TO FIRST GET  
10 UP AND MAKE AN OPENING STATEMENT TO YOU AFTER THE STATE HAS  
11 MADE ITS OPENING STATEMENT, THE DEFENDANT IS GIVEN AN  
12 OPPORTUNITY THROUGH THEIR ATTORNEYS TO MAKE AN OPENING  
13 STATEMENT AND THESE OPENING STATEMENTS ARE A CHANCE FOR BOTH  
14 SIDES TO ATTEMPT TO EDUCATE YOU OR INFORM YOU A LITTLE BIT  
15 ABOUT WHAT THEY THINK WILL COME OUT DURING THE COURSE OF THE  
16 TRIAL IT IS TO LET YOU HAVE SOME PRE-EVIDENCE KNOWLEDGE  
17 ABOUT THE CASE SO THAT YOU WILL HAVE SOME UNDERSTANDING OF  
18 THE OVERALL STORY OF THIS CASE SO YOU CAN CONSIDER THAT  
19 DURING THE COURSE OF THE TRIAL

20 NOW, THERE ARE A COUPLE OF BASIC PRINCIPLES THAT YOU  
21 NEED TO KEEP IN MIND THROUGHOUT THE COURSE OF THIS TRIAL  
22 THEY ARE THE BEDROCKS FROM WHICH OUR CRIMINAL JUSTICE SYSTEM  
23 WAS FORMED FIRST IS IN EVERY INSTANCE, LADIES AND  
24 GENTLEMEN, THE DEFENDANT COMES INTO THE COURTROOM PRESUMED TO  
25 BE INNOCENT, AND THAT PRESUMPTION OF INNOCENCE REMAINS WITH

1 THE DEFENDANT THROUGHOUT THE COURSE OF THIS TRIAL AND ONLY  
2 CHANGES IF THE JURY, AFTER HEARING ALL THE EVIDENCE,  
3 DETERMINES THAT THE DEFENDANT MAY BE GUILTY IT IS A STRONG  
4 PRESUMPTION AND YOU NEED TO KEEP THAT IN MIND

5 THE SECOND BASIC PRINCIPLE IS. IN EVERY CRIMINAL  
6 CASE THE STATE HAS THE BURDEN OF PROOF. THE STATE HAS TO  
7 PROVE A DEFENDANT GUILTY OF ANY AND ALL CHARGES BEYOND A  
8 REASONABLE DOUBT WHICH IS A STIFF BURDEN BUT A BURDEN THAT  
9 THE STATE GENERALLY GLADLY ACCEPTS. THE DEFENDANT HAS NO  
10 BURDEN THE DEFENDANT DOESN'T HAVE TO DO ANYTHING IN A  
11 TRIAL, DOESN'T HAVE TO OFFER ANY EVIDENCE IF THE DEFENDANT  
12 BELIEVES THAT THE STATE HAS FAILED TO MEET ITS BURDEN, THE  
13 DEFENDANT MAY NOT OFFER ANY EVIDENCE, I DON'T KNOW BUT THE  
14 DEFENDANT HAS NO OBLIGATION TO DO ANYTHING THE WHOLE BURDEN  
15 FALLS UPON THE STATE TO PROVE A DEFENDANT GUILTY AND TO PROVE  
16 A DEFENDANT GUILTY BEYOND A REASONABLE DOUBT

17 NOW, BECAUSE THE STATE HAS THAT BURDEN, THE STATE  
18 GETS TO GO FIRST THROUGHOUT THE COURSE OF THE TRIAL AS I  
19 TOLD YOU, THE STATE WILL MAKE ITS OPENING STATEMENT FIRST  
20 THE STATE WILL GO FIRST WITH THE PRESENTATION OF THE EVIDENCE  
21 IN THIS CASE AND THAT OCCURS AFTER WE HAVE CONCLUDED THE  
22 OPENING STATEMENTS

23 NOW, MOST OF THE EVIDENCE IN THIS CASE, LADIES AND  
24 GENTLEMEN, I WOULD IMAGINE WILL COME IN BY WAY OF LIVE  
25 TESTIMONY WITNESSES WILL BE PUT UNDER OATH THEY WILL GET

1 IN THIS WITNESS BOX RIGHT BESIDE THE BENCH HERE AND TELL YOU  
2 WHAT INFORMATION THAT WITNESS HAS ABOUT THIS CASE, AND WE  
3 HAVE GENERALLY TWO TYPES OF WITNESSES ONE IS A FACT  
4 WITNESS THE WITNESS WILL GET UP AND TELL YOU WHAT HE OR SHE  
5 KNOWS FROM HAVING FIRSTHAND KNOWLEDGE HE OR SHE HAS  
6 OBSERVED SOMETHING, FELT SOMETHING, TASTED SOMETHING, SMELLED  
7 SOMETHING, HEARD SOMETHING, LEARNED SOMETHING FROM ONE OF HIS  
8 OR HER SENSES THEY HAVE FIRSTHAND KNOWLEDGE ABOUT IT

9 THE SECOND TYPE OF WITNESS IS WHAT WE CALL AN EXPERT  
10 WITNESS AND I DON'T KNOW THAT THERE WILL BE ANY EXPERTS IN  
11 THIS CASE OR NOT AN EXPERT IS SOMEBODY WHO HAS SPECIAL  
12 KNOWLEDGE OR TRAINING OR EXPERIENCE IN SOME FIELD AND IN AN  
13 AREA WHERE ASSISTANCE MIGHT BE HELPFUL TO THE FINDER OF THE  
14 FACT THAT EXPERT, IF THAT EXPERT IS DETERMINED TO BE AN  
15 EXPERT, CAN OFFER AN OPINION IN HIS OR HER AREA OF EXPERTISE  
16 BECAUSE OF THEIR TRAINING OR EXPERIENCE

17 NOW, AFTER -- OTHER TYPES OF EVIDENCE THAT MAY BE  
18 INTRODUCED IN THIS CASE, LADIES AND GENTLEMEN, ARE WHAT WE  
19 CALL EXHIBITS AND THOSE ARE THINGS LIKE PHOTOGRAPHS OR  
20 DOCUMENTS THOSE ARE ACTUALLY INTRODUCED AND GO WITH THE  
21 JURY TO THE JURY ROOM DURING YOUR DELIBERATIONS TESTIMONY  
22 GOES WITH YOU IN YOUR MEMORY SO YOU NEED TO PAY CLOSE  
23 ATTENTION YOU DON'T HAVE A TRANSCRIPT OF THE TESTIMONY  
24 DURING THE COURSE OF YOUR DELIBERATIONS, SO PAY CLOSE  
25 ATTENTION

1           THE THIRD TYPE OF EVIDENCE THAT MAY COME IN, LADIES  
2 AND GENTLEMEN, IS WHAT WE CALL STIPULATIONS AND THAT'S WHERE  
3 THE PARTIES STIPULATE OR AGREE AS TO SOME MATTER    IF THERE  
4 IS A STIPULATION, YOU ARE TO ACCEPT THAT AS THOUGH THAT FACT  
5 HAS BEEN PROVEN, AND IF THERE IS ONE I'M SURE THE LAWYERS  
6 WILL TELL ME AND I WILL TELL YOU

7           AFTER THE STATE HAS CONCLUDED THE PRESENTATION OF  
8 ALL THE EVIDENCE, THE DEFENDANT IS GIVEN AN OPPORTUNITY TO  
9 PUT UP ANY EVIDENCE THE DEFENSE WISHES TO    THE DEFENSE, AS I  
10 SAID EARLIER, HAS NO OBLIGATION TO OFFER ANY SORT OF EVIDENCE  
11 BECAUSE THE BURDEN FALLS ON THE STATE

12           NOW, LADIES AND GENTLEMEN, WHEN ALL THE EVIDENCE HAS  
13 BEEN PRESENTED, THEN THE PARTIES WILL MAKE WHAT WE CALL  
14 CLOSING ARGUMENTS, AND CLOSING ARGUMENTS ARE DIFFERENT FROM  
15 OPENING STATEMENTS IN THAT CLOSING ARGUMENTS ARE THE CHANCE  
16 FOR THE LAWYERS TO ATTEMPT TO CONVINCEN OR PERSUADE YOU AS TO  
17 WHY YOU SHOULD RETURN A RESPECTIVE -- I MEAN A VERDICT FOR  
18 THEIR RESPECTIVE CLIENT    BOTH SIDES WILL PROBABLY POINT OUT  
19 STRENGTHS OR WEAKNESSES OF THEIR RESPECTIVE CASE OR THE OTHER  
20 CASE    THEY'LL TELL YOU THINGS THAT YOU NEED TO CONSIDER THAT  
21 THEY THINK ARE VERY IMPORTANT DURING THE COURSE OF YOUR  
22 DELIBERATION    THIS IS THEIR CHANCE TO SUMMARIZE, TO TELL YOU  
23 WHY WHEN YOU GO BACK IN THAT VERDICT ROOM TO BEGIN YOUR  
24 DELIBERATION YOUR VERDICT OUGHT TO ULTIMATELY BE FOR THEIR  
25 CLIENT

1           NOW, WHEN BOTH SIDES HAVE CONCLUDED THE CLOSING  
2 ARGUMENTS, THEN I WILL CHARGE YOU OR INSTRUCT YOU AS TO THE  
3 LAW IN SOUTH CAROLINA IN THIS TYPE OF CASE YOU WILL THEN  
4 RETIRE TO THE JURY ROOM, BEGIN YOUR DELIBERATIONS, DETERMINE  
5 THE FACTS, APPLY THE LAW THAT I GIVE YOU, AND ULTIMATELY  
6 REACH YOUR VERDICT

7           NOW, LADIES AND GENTLEMEN, YOUR ROLE IN THIS CASE IS  
8 UNIQUE YOU'RE THE ONLY ONES THAT WILL PARTICIPATE IN YOUR  
9 ROLE AND THAT IS YOU ARE THE FACT-FINDER IT IS YOUR  
10 RESPONSIBILITY TO LISTEN TO ALL THE EVIDENCE AND ULTIMATELY  
11 DETERMINE WHAT YOU BELIEVE TO BE THE FACTS WEIGH THE  
12 CREDIBILITY OF WITNESSES AND DETERMINE WHAT YOU BELIEVE TO BE  
13 THE FACTS

14           MY ROLE IS DIFFERENT FROM YOURS MINE IS THAT OF,  
15 ONE, I'M THE REFEREE SO EVERY STRUCTURED EVENT GENERALLY  
16 HAS SOMEBODY THAT SEES TO IT THAT THE RULES ARE FOLLOWED WE  
17 HAVE RULES FOR WHICH TRIALS ARE CONDUCTED IN SOUTH CAROLINA,  
18 AND IT'S MY RESPONSIBILITY TO SEE TO IT THAT THESE RULES ARE  
19 COMPLIED WITH IN THAT REGARD YOU MAY HEAR A LAWYER GET UP  
20 AND SAY, "I OBJECT, YOUR HONOR," AND I'LL HAVE TO RULE I  
21 MAY SUSTAIN THE OBJECTION OR OVERRULE THE OBJECTION YOU ARE  
22 NOT TO INFER ANYTHING BY THE WAY I RULE I PROBABLY WILL  
23 RULE FOR AND AGAINST BOTH LAWYERS AT SOME POINT IN TIME  
24 THROUGHOUT THE COURSE OF THE TRIAL MY SECOND ROLE IS TO  
25 TELL YOU WHAT THE LAW IS, INSTRUCT YOU IN THE LAW AT THE END

1 OF THE CASE SO THAT YOU CAN APPLY THAT LAW TO THE FACTS

2 NOW, LADIES AND GENTLEMEN, LISTEN VERY CAREFULLY TO  
3 WHAT THE LAWYERS TELL YOU IN THIS CASE THE LAWYERS -- WHAT  
4 THEY TELL YOU IS IMPORTANT, BUT UNDERSTAND THAT THEY ARE NOT  
5 GIVING YOU EVIDENCE WHAT THEY TELL YOU IS NOT EVIDENCE IN  
6 THIS CASE SO PAY CLOSE ATTENTION, BUT UNDERSTAND THEIR ROLE  
7 IS TO REPRESENT THEIR RESPECTIVE CLIENTS IN THIS MATTER

8 AS I TOLD YOU, THE DEFENDANT IN THIS CASE HAS BEEN  
9 CHARGED WITH THREE DISTINCT CRIMINAL OFFENSES ONE, CRIMINAL  
10 SEXUAL CONDUCT IN THE FIRST DEGREE THE SECOND POSSESSION  
11 OF A FIREARM OR KNIFE DURING THE COMMISSION OR ATTEMPT TO  
12 COMMIT A VIOLENT CRIME AND THE THIRD IS KIDNAPPING AND AS I  
13 SAID, THE DEFENDANT HAS PLED NOT GUILTY TO THESE INDICTMENTS  
14 AND, THEREFORE, THE BURDEN NOW FALLS UPON THE STATE TO  
15 ATTEMPT TO PROVE THE DEFENDANT GUILTY OF THESE THE  
16 DEFENDANT IS PRESUMED TO BE INNOCENT THESE -- AS I SAID  
17 EARLIER, THESE INDICTMENTS ARE SOLELY NOTICE DOCUMENTS,  
18 CHARGE DOCUMENTS THEY ARE NOT EVIDENCE, NOT TO BE  
19 CONSIDERED BY YOU FOR ANY PURPOSE OTHER THAN THAT THEY HAVE  
20 NOW PUT THE DEFENDANT ON NOTICE OF THESE RESPECTIVE CHARGES

21 ALL RIGHT WITH THAT SAID, I THINK I'LL CALL ON THE  
22 SOLICITOR AND ASK IF SHE WOULD PLEASE GO FORWARD WITH HER  
23 OPENING STATEMENT

24 MS. BRISBIN: MAY IT PLEASE THE COURT?

25 THE COURT: YES, MA'AM

1 MS. BRISBIN MS BROWN? LADIES AND GENTLEMEN OF  
2 THE JURY, JOSEPH WALKER IS CHARGED WITH KIDNAPPING AN ELDERLY  
3 WOMAN, SEXUALLY ASSAULTING HER, AND HAVING A GUN IN HIS  
4 POSSESSION WHILE THESE CRIMES WERE COMMITTED ON MARCH 2ND  
5 OF 2002 MARGARET SANDERS WAS SHOPPING FOR CURTAIN RODS AT THE  
6 DOLLAR STORE IN DENMARK, SOUTH CAROLINA SHE LIVED IN  
7 NORWAY, SOUTH CAROLINA

8 AFTER SHE BOUGHT CURTAIN RODS AT THE DOLLAR STORE,  
9 SHE STOPPED AT THE B P STATION WHERE SHE WAS ALSO IN  
10 DENMARK, SOUTH CAROLINA WHEN SHE CAME OUT OF THE B P  
11 STATION, HER CAR WOULDN'T START SHE ASKED A STRANGE MAN WHO  
12 WAS OUTSIDE THE B P STATION TO HELP HER START HER CAR HE  
13 DID HELP HER START HER CAR, AND THEN HE TOLD HER SHE OWED HIM  
14 \$30 FOR FIXING HER CAR SHE DIDN'T HAVE \$30 WITH HER AND SHE  
15 OFFERED TO GIVE HIM THE \$30 IF HE WOULD FOLLOW HER BACK TO  
16 HER HOME IN NORWAY WHICH HE DID

17 WHEN HE GOT TO HER HOME IN NORWAY, HE WAS NOT  
18 INVITED IN SHE WENT IN TO GET THE MONEY HE CAME UP BEHIND  
19 HER, GRABBED HER INSIDE HER HOUSE, FORCED HER INTO HIS TRUCK,  
20 BLINDFOLDED HER, AND DROVE HER TO HIS HOME IN SALLEY HE  
21 TOOK THE BLINDFOLD OFF INSIDE THE HOME HE RAPED HER  
22 REPEATEDLY THROUGH THE NIGHT HE TOOK THE BLINDFOLD OFF OF  
23 HER, PUT THE BLINDFOLD BACK ON HER AND DROVE HER HOME BACK TO  
24 NORWAY, PUSHED HER OUT OF THE CAR AND TOLD HER HE WOULD KILL  
25 HER IF SHE TOLD ANYONE WHAT HAPPENED HE ALSO DURING THE

1 NIGHT SHOWED HER A GUN AND THREATENED TO KILL HER IF SHE  
2 DIDN'T COOPERATE

3 THE NEXT MORNING WHEN SHE GOT HOME ABOUT 5 00 IN THE  
4 MORNING AT FIRST SHE DIDN'T THINK SHE WAS GOING TO REPORT IT  
5 BECAUSE SHE WAS AFRAID, BUT SHE EVENTUALLY WENT TO HER  
6 COUSIN'S HOUSE LATER THAT MORNING AND HER COUSIN INSISTED  
7 THAT SHE NEEDED TO REPORT THIS SHE WAS TAKEN TO A MEDICAL  
8 CENTER IN CHARLESTON FOR SEXUAL ASSAULT EXAMINATION, AND YOU  
9 WILL HEAR FROM A DOCTOR THERE ABOUT THE INJURIES TO HER  
10 GENITALS

11 SHE ALSO AT A LATER DATE WAS SHOWN A VIDEOTAPE FROM  
12 THE B P SURVEILLANCE CAMERA AND SHE WAS ABLE TO PICK OUT THE  
13 PERSON WHO DID THIS TO HER THAT VIDEOTAPE WAS ALSO SHOWN TO  
14 THE MANAGER OF THE B P STORE WHO RECOGNIZED THE PERSON THAT  
15 SHE HAD POINTED OUT AS JOSEPH WALKER BECAUSE HE WAS A REGULAR  
16 CUSTOMER AT THE STORE WITH THAT INFORMATION, LAW  
17 ENFORCEMENT MADE A SIX-PHOTO LINE-UP WHICH THEY ALSO SHOWED  
18 TO MS SANDERS AND SHE AGAIN WAS ABLE TO PICK OUT THE  
19 DEFENDANT AS THE PERSON WHO HAD SEXUALLY ASSAULTED HER

20 KNOWING THE NAME OF THE PERSON NOW, LAW ENFORCEMENT  
21 WENT TO MR WALKER'S HOUSE AND TOOK PICTURES OF THE INSIDE OF  
22 HIS HOUSE MRS SANDERS HAD ALREADY GIVEN LAW ENFORCEMENT A  
23 DESCRIPTION OF THE PERSON WHO DID THIS, A DESCRIPTION OF HIS  
24 VEHICLE, AND A DETAILED DESCRIPTION OF THE INSIDE OF HIS  
25 HOUSE LAW ENFORCEMENT FOUND THAT THE TRUCK MATCHED HER

1 DESCRIPTION PERFECTLY, THE INSIDE OF HIS HOUSE MATCHED HER  
2 DESCRIPTION PERFECTLY, AND THIS WAS A MAN THAT SHE DIDN'T  
3 EVEN KNOW, HAD NEVER MET, DIDN'T KNOW HIS NAME PRIOR TO THAT  
4 DAY

5 MRS SANDERS WILL DO SOMETHING THAT WOULD BE  
6 EXTREMELY DIFFICULT FOR ANYONE TO DO SHE WILL GET ON THAT  
7 STAND AND TELL YOU IN DETAIL WHAT THIS MAN DID TO HER I'M  
8 CONFIDENT THAT WHEN YOU'VE HEARD ALL THE EVIDENCE YOU WILL  
9 KNOW BEYOND A REASONABLE DOUBT THAT JOSEPH WALKER IS GUILTY  
10 THANK YOU

11 THE COURT: ALL RIGHT MS BROWN?

12 MS. BROWN THANK YOU, YOUR HONOR MAY IT PLEASE  
13 THE COURT? LADIES AND GENTLEMEN, THERE ARE A COUPLE OF LEGAL  
14 TERMS THAT THE JUDGE JUST SPOKE WITH YOU ABOUT A FEW MINUTES  
15 AGO AND THEY'RE TERMS THAT WE'RE FAMILIAR WITH AND THAT WE  
16 HEAR A LOT AND WE HAVE SOME CONCEPTIONS ABOUT SOMETIMES  
17 THERE ARE MORE POPULAR TERMS THAN OTHERS, DEPENDING ON WHO'S  
18 BEEN ARRESTED IN THE MEDIA LATELY

19 THE FIRST THING IS PRESUMPTION OF INNOCENCE MR  
20 WALKER, LIKE EVERY OTHER INDIVIDUAL WHO IS EVER ACCUSED OF A  
21 CRIME IN THIS COUNTRY, IS BY LAW PRESUMED TO BE INNOCENT  
22 THAT PRESUMPTION OF INNOCENCE AND THAT PHRASE, IT MEANS A LOT  
23 TO US AS AMERICANS SOMETIMES IT'S ONE OF THOSE  
24 UNCOMFORTABLE REALITIES OF LIFE THAT WE HAVE TO DEAL WITH  
25 WHEN WE THINK WE KNOW WHAT HAPPENED IN A SITUATION AND WE SEE

1 A JURY FAR AWAY FROM HERE ISSUE THE WORDS NOT GUILTY THOSE  
2 ARE TIMES WHEN IT MAKES US REALLY UNCOMFORTABLE WITH THAT  
3 PRESUMPTION THAT WE'RE ALL GUARANTEED TO

4 THERE ARE OTHER TIMES WHEN WE'RE REALLY PROUD OF  
5 THAT AND WE'RE GRATEFUL FOR THAT THERE ARE TIMES THAT THAT  
6 PRECEPT OF OUR SOCIETY IS RAISED AS A BANNER AND SOMETHING  
7 THAT WE SHOW TO THE REST OF THE WORLD AS -- AS TO WHY WE'RE  
8 MORALLY SUPERIOR AND WHY OUR CITIZENS HAVE THE RIGHTS THAT WE  
9 THINK THAT THE REST OF THE WORLD SHOULD HAVE SO IT'S ONE OF  
10 THOSE THINGS SOMETIMES WE LOVE IT, SOMETIMES WE'RE KIND OF  
11 UNCOMFORTABLE WITH IT IT'S SOMETHING THAT, DEPENDING ON  
12 WHO'S BEEN ARRESTED AND WHAT MEDIA OUTLET IS COMMENTATING ON  
13 A SITUATION, GETS KIND OF DIFFERENT PLAY A C N N  
14 COMMENTATOR OR AN E S P N COMMENTATOR MAY PUT A DIFFERENT  
15 SPIN ON IT RIGHT NOW WITH THE VARIOUS INDIVIDUALS WHO ARE IN  
16 FRONT OF US IN THE NEWS, AND SOMETIMES IT'S EVEN MORE AMAZING  
17 TO THINK THAT THOSE THINGS THAT WE SEE OUT THERE GO ON AND WE  
18 KNOW ARE THINGS THAT HAPPEN RIGHT HERE IN THIS COURTROOM  
19 RIGHT HERE IN THIS COURTROOM YOU ARE FACED WITH THE AWESOME  
20 RESPONSIBILITY OF UPHOLDING ONE OF THE GREATEST TENETS OF  
21 AMERICAN LIFE

22 THE OTHER IS THE STANDARD OF PROOF IN A CRIMINAL  
23 TRIAL, PROOF BEYOND A REASONABLE DOUBT, AND YOU'VE PROBABLY  
24 HEARD THAT PHRASE A LOT ANYONE WHO WATCHES ANY OF THE  
25 VARIOUS LAWYER SHOWS ON T V OR EVEN A LOT OF TIMES ON THE

1 NEWS YOU'LL HEAR THAT PHRASE AND AT THE END OF THE TRIAL  
2 WHEN THE JUDGE GIVES YOU THOSE INSTRUCTIONS OF THE LAW, HE'S  
3 GOING TO TELL YOU MORE ABOUT WHAT THAT MEANS, ABOUT PROOF  
4 BEYOND A REASONABLE DOUBT BUT THE ESSENTIAL THING THAT THAT  
5 MEANS IS THAT THE STATE HAS THE BURDEN OF PROVING TO EACH AND  
6 EVERY ONE OF YOU BEYOND A REASONABLE DOUBT THAT JOSEPH WALKER  
7 COMMITTED THESE OFFENSES, THAT THIS HAPPENED

8 A LOT OF TIMES A TRIAL IS LIKE A PUZZLE AND THE  
9 WITNESSES AND THE EVIDENCE AND EVERYTHING YOU'LL SEE FROM  
10 RIGHT HERE ARE PIECES OF THE PUZZLE, AND IT'S GOING TO BE  
11 YOUR JOB AS JURORS TO LOOK AT THOSE PIECES AND SEE IF THEY  
12 FIT THE JUDGE IS GOING TO TELL YOU AT THE END OF THIS TRIAL  
13 THAT ONE OF YOUR JOBS IS TO DECIDE THE CREDIBILITY OF  
14 WITNESSES, THE BELIEVABILITY OF WITNESSES, AND ONE OF THE  
15 THINGS HE'S GOING TO TELL YOU IS THAT YOU CAN BELIEVE  
16 EVERYTHING THAT A WITNESS TELLS YOU YOU CAN BELIEVE NONE OF  
17 WHAT A WITNESS TELLS YOU YOU CAN BELIEVE SOME OF IT AND NOT  
18 BELIEVE THE REST OF IT, BUT YOU'RE THE ONLY ONES WHO CAN  
19 DECIDE IF YOU'RE HEARING EVERYTHING WHAT HAPPENED DID HE DO  
20 IT? ALL THAT'S FOR YOU TO DECIDE

21 HE SITS THERE TODAY AND HE'S PLED NOT GUILTY HE  
22 SAYS, I DIDN'T DO WHAT THEY SAY THAT I DID AND THIS IS  
23 GOING TO BE A TOUGH CASE TO HEAR BECAUSE WE DON'T LIKE TO  
24 THINK -- WE DON'T LIKE TO THINK THAT THINGS LIKE THIS COULD  
25 HAPPEN WE DON'T LIKE TO THINK THAT PEOPLE MIGHT NOT BE

1 TRUTHFUL ABOUT SOMETHING LIKE THIS, AND QUITE FRANKLY SOME OF  
2 THE STUFF THAT WE'RE GOING TO HAVE TO TALK ABOUT A LOT OF  
3 PEOPLE JUST DON'T LIKE TO TALK ABOUT THEY'RE PRIVATE  
4 MATTERS

5 BUT I ASK YOU TO LISTEN TO EVERYTHING KEEP AN OPEN  
6 MIND ABOVE ALL ELSE REMEMBER WHAT THE JUDGE TOLD YOU THAT  
7 YOU'RE GOING TO HAVE TO HEAR EVERY PIECE OF INFORMATION, HEAR  
8 THE LAW AS THE JUDGE GIVES IT BEFORE YOU CAN EVEN START TO  
9 MAKE UP YOUR MIND BECAUSE IF YOU START TO THINK THAT YOU KNOW  
10 THE END OF THE STORY, THEN YOU MIGHT MISS SOMETHING VITAL  
11 THAT WOULD MAKE YOU SAY, WELL, WAIT A MINUTE, MAYBE I DON'T  
12 KNOW THAT'S WHY WE ASK YOU NOT TO TALK ABOUT IT, NOT EVEN  
13 AMONGST YOURSELVES UNTIL YOU HAVE EVERYTHING

14 AND AFTER YOU HAVE EVERYTHING, THEN WE'RE -- ALL OF  
15 US IN THIS ROOM ARE GOING TO ASK YOU TO DO THE MOST DIFFICULT  
16 JOB OF ALL AND SIFT THROUGH IT AND TO DECIDE WHETHER OR NOT  
17 YOU'RE FIRMLY CONVINCED THAT HE'S DONE WHAT THE STATE SAYS  
18 HE'S DONE. THAT'S GOING TO BE YOUR JOB AND WE ASK YOU NOT  
19 TO LEAVE ALL THAT OTHER STUFF THAT YOU KNOW OUT THERE YOU  
20 BRING IT WITH YOU YOU BRING YOUR EXPERIENCES WITH YOU YOU  
21 BRING IN HERE WHAT YOU KNOW MAKES SENSE TO YOU AND WHAT  
22 DOESN'T MAKE SENSE TO YOU YOU DON'T HAVE TO FORGET YOUR  
23 COMMON SENSE AND AT THE END OF ALL OF THIS WE'LL STAND UP  
24 IN FRONT OF YOU AGAIN AND WE'RE GOING TO ASK THAT YOU LOOK AT  
25 THE PUZZLE AND WE'RE GOING TO ASK THAT YOU FIND MR WALKER

1 NOT GUILTY THANK YOU

2 THE COURT: OKAY THANK YOU LADIES AND GENTLEMEN,  
3 AS I SAID, I THINK WE'RE GOING TO GO AHEAD AND BREAK NOW AND  
4 COME BACK I'M GOING TO ASK THAT -- TWO THINGS ONE DON'T  
5 DISCUSS THE CASE WITH ANYBODY THAT YOU MAY COME IN CONTACT  
6 WITH I KNOW YOU HAVE A FAIRLY LIMITED KNOWLEDGE, BUT DON'T  
7 DISCUSS ANYTHING ABOUT IT I'LL ATTEMPT TO REMIND YOU OF  
8 THAT EACH AND EVERY TIME YOU LEAVE THE COURTROOM

9 I'M GOING TO ASK YOU TO BE BACK HERE AT QUARTER TILL  
10 2 THAT WILL GIVE YOU A LITTLE MORE THAN AN HOUR TO HAVE  
11 LUNCH ONCE WE GET BACK, WE'LL GO AHEAD AND BEGIN THE  
12 PREPARATION AND THE PRESENTATION OF THE EVIDENCE IN THE CASE  
13 THE BAILIFFS WILL SHOW YOU HOW TO GET OUT OF THE COURTHOUSE  
14 AND GET BACK INTO THE JURY ROOM WHEN YOU COME BACK Y'ALL  
15 HAVE A NICE LUNCH AND WE'LL SEE YOU IN AN HOUR AND 12  
16 MINUTES THANK YOU YOU'RE FREE TO GO TO LUNCH

17 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO  
18 GO TO LUNCH AT 12 31 P M )

19 THE COURT: OKAY WE'LL COME BACK IN AN HOUR AND 15  
20 MINUTES -- I MEAN QUARTER TILL 2 Y'ALL HAVE A NICE LUNCH  
21 NOTHING ELSE WE NEED TO TAKE UP AT THIS TIME, IS THERE?

22 MS. BRISBIN: NOTHING FROM THE STATE, YOUR HONOR

23 MS. BROWN: NOTHING FROM THE DEFENDANT, YOUR HONOR

24 THE COURT: ALL RIGHT Y'ALL HAVE A NICE LUNCH AND  
25 WE'LL SEE YOU IN A LITTLE WHILE

1 (WHEREUPON, A LUNCH BREAK WAS TAKEN )

2 THE COURT: THANK YOU PLEASE BE SEATED IF YOU  
3 WOULD ALL RIGHT STATE READY?

4 MS. BRISBIN: YES, YOUR HONOR

5 THE COURT: DEFENDANT READY?

6 MS. BROWN: THEY'RE BRINGING HIM OUT

7 THE COURT: ONE LITTLE PROBLEM?

8 MS. BROWN: JUST NO DEFENDANT

9 THE COURT: NO CLIENT, HUH?

10 MS. BROWN: NO CLIENT

11 (THE DEFENDANT, MR WALKER, WAS BROUGHT INTO THE  
12 COURTROOM )

13 THE COURT: ALL RIGHT Y'ALL READY NOW?

14 MS. BROWN: YES, SIR

15 THE COURT: ALL RIGHT CAN WE BRING THE JURY IN,  
16 PLEASE, MR WHITTLE?

17 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT  
18 1 49 P M STATE'S EXHIBITS 4 THROUGH 9 WERE MARKED FOR  
19 IDENTIFICATION ONLY )

20 THE COURT: OKAY LADIES AND GENTLEMEN, I HOPE YOU  
21 HAD A NICE LUNCH AS I TOLD YOU EARLIER, WE'RE NOW IN THE  
22 PORTION OF THE TRIAL WHERE WE'LL BEGIN THE PRESENTATION OF  
23 THE EVIDENCE THE STATE HAS THE OPPORTUNITY TO GO FIRST WITH  
24 THIS I'LL ASK, MADAM SOLICITOR, IF YOU WOULD PROCEED TO  
25 CALL YOUR FIRST WITNESS

1 MS. BRISBIN: THANK YOU, YOUR HONOR THE STATE  
2 CALLS MARGARET SANDERS

3 MARGARET ANN SANDERS, AFTER BEING DULY SWORN,  
4 TESTIFIED AS FOLLOWS

5 THE CLERK: HAVE A SEAT IN THE WITNESS BOX STATE  
6 YOUR FULL NAME FOR THE COURT, SPELLING YOUR LAST

7 THE WITNESS: MARGARET SANDERS S-A-N-D-E-R-S

8 DIRECT EXAMINATION

9 BY MS BRISBIN

10 Q MS SANDERS, WHERE WERE YOU LIVING ON MARCH 2ND OF  
11 2002?

12 A ON HEBERT (PHONETIC) ROAD

13 Q IN WHAT TOWN?

14 A NORWAY

15 Q AND WHAT WERE YOU DOING THAT AFTERNOON?

16 A I HAD GONE TO DENMARK TO GET SOME CURTAIN RODS TO  
17 PUT CURTAINS UP AND---

18 Q WHERE DID YOU GO TO DO THAT?

19 A DOLLAR GENERAL

20 Q OKAY AND WHAT DID YOU DO AFTER THAT?

21 A I STOPPED BY THE LITTLE B P AND RAN IN AND GOT ME A  
22 CUP OF ICE AND PAID FOR IT AND CAME BACK OUT, AND MY CAR  
23 CRANKED UP BUT IT CUT OFF HALFWAY AROUND THE BACK OF THE  
24 STATION OR AROUND AT THE END OF THE STATION

25 Q OKAY AND THEN WHAT HAPPENED?

1           A       THERE WAS TWO PEOPLE PUMPING GAS AND I ASKED THE  
2 WHITE GUY ABOUT HELPING ME AND HE SAID HE DIDN'T KNOW  
3 ANYTHING ABOUT CARS, AND THEN I ASKED THE BLACK MAN AND HE  
4 SAID, YEAH, LET HIM FINISH WITH HIS GAS AND PAY FOR IT AND  
5 THEN HE WOULD -- WOULD LOOK AT IT FOR ME

6           Q       OKAY     AND DID HE DO THAT?

7           A       YES

8           Q       OKAY     WHAT HAPPENED AFTER THAT?

9           A       I HAD THE HOOD UP ALREADY LOOKING AND HE GOT IN HIS  
10 TRUCK AND PULLED OVER AND HE LOOKED AND HE SAID, "HERE'S THE  
11 PROBLEM RIGHT HERE," AND IT LOOKED LIKE THE WIRE WAS CUT    I  
12 DON'T KNOW     BUT THAT WIRE HAS NOT BEEN FOUND AND HE PUT  
13 ANOTHER ONE BACK ON THERE

14          Q       OKAY     WHERE DID HE GET ANOTHER WIRE?

15          A       I DON'T KNOW

16          Q       DID HE LEAVE?

17          A       YEAH

18          Q       OKAY     AND THEN WHAT HAPPENED?

19          A       THEN HE CAME BACK AND HE PUT THE WIRE ON AND HE TOLD  
20 ME THE WIRE WOULDN'T BE BUT ABOUT \$9, AND THEN I ASKED HIM  
21 LATER AND HE SAID 30    I SAID, "WELL, I DON'T HAVE \$30 WITH  
22 ME "   AND SO I DIDN'T THINK MUCH ABOUT IT AND I SAID, "WELL,  
23 JUST FOLLOW ME BACK BY THE HOUSE AND I'LL GIVE IT TO YOU "  
24 WHEN I GOT BACK TO THE HOUSE AND I RAN ON IN AND WAS GETTING  
25 THE MONEY AND WHEN I CAME BACK, I TURNED AROUND AND HE WAS

1 RIGHT THERE IN THE ROOM

2 Q OKAY

3 A AND HE TOOK THE MONEY OUT OF MY HAND, ALL I HAD

4 Q HAD YOU ASKED HIM TO COME INTO THE HOUSE?

5 A NO

6 Q OKAY WHERE WERE YOU IN THE HOUSE?

7 A IN MY BEDROOM

8 Q OKAY AND YOU SAID WHEN YOU TURNED AROUND HE WAS

9 THERE?

10 A RIGHT

11 Q WAS HE IN THE BEDROOM AS WELL?

12 A YEAH

13 Q OKAY AND THEN WHAT HAPPENED?

14 A WELL, IT SHOCKED ME SO UNTIL I DIDN'T KNOW WHAT TO  
15 DO I JUST KIND OF SPACED OUT I GUESS, AND HE JUST GOT A --  
16 GRABBED A HOLD TO ME AND TOOK ME ON OUT OF THE HOUSE

17 Q OKAY AND THEN WHAT HAPPENED?

18 A HE BLINDFOLDED ME AND PUT ME IN THE TRUCK AND TOOK  
19 ME AND I---

20 Q WHOSE TRUCK?

21 A HIS TRUCK

22 Q OKAY WHAT KIND OF TRUCK WAS IT? WHAT DID IT LOOK  
23 LIKE?

24 A WELL, FROM WHAT I CAN REMEMBER AT THE GAS STATION,  
25 IT WAS A SMALL BLACK TRUCK AND IT HAD SOME KIND OF RED ON THE

1 SIDE OF IT

2 Q OKAY DID YOU SEE THE INSIDE OF THE TRUCK?

3 A NO

4 Q DID YOU NOTICE ANYTHING ABOUT THE SOUNDS OR THE ODOR  
5 OF THE INSIDE OF THE TRUCK?

6 A HAD AN ODOR AND HE WAS---

7 Q WHAT KIND OF AN ODOR?

8 A ---SHIFTING GEARS

9 Q WHAT DO YOU MEAN BY AN ODOR?

10 A IT SMELLED

11 Q OKAY

12 A NOT CLEAN

13 Q OKAY AND HE WAS SHIFTING GEARS

14 A UH-HUH

15 Q OKAY AND THEN WHAT HAPPENED AFTER YOU GOT IN THE  
16 TRUCK?

17 A HE JUST KEPT DRIVING AND DRIVING AND DRIVING I WAS  
18 TRYING TO REMEMBER WHERE I WAS GOING, YOU KNOW, AND WHICH WAY  
19 I TURNED AND CROSSED THE RAILROAD TRACKS AND I WAS TRYING TO  
20 REMEMBER BECAUSE I WAS SCARED

21 Q DID YOU STILL HAVE THE BLINDFOLD ON?

22 A YES

23 Q CAN YOU REMEMBER HOW MUCH TIME WENT BY OR DO YOU  
24 KNOW HOW MUCH TIME WENT BY IN THE TRUCK?

25 A I DON'T KNOW

1 Q OKAY

2 A I CAN'T REMEMBER IT SEEMED LIKE A LONG TIME

3 Q OKAY DID HE SAY ANYTHING TO YOU ANY OF THAT TIME?  
4 DID HE SAY ANYTHING TO YOU WHEN HE PUT YOU IN THE TRUCK?

5 A I DON'T REMEMBER

6 Q OKAY DID HE SAY ANYTHING -- DO YOU REMEMBER HIM  
7 SAYING ANYTHING ALONG ON THE DRIVE?

8 A YEAH HE WAS TALKING HE SAID SOMETHING ABOUT, "I  
9 FISH THERE "

10 Q OKAY DO YOU REMEMBER HIM SAYING ANYTHING ELSE ON  
11 THE DRIVE?

12 A NO

13 Q NO? OKAY AND THEN WHAT HAPPENED?

14 A THEN WE FINALLY STOPPED AND HE TOOK ME INTO THIS  
15 HOUSE AND---

16 Q DID YOU STILL HAVE THE BLINDFOLD ON AT THAT POINT?

17 A YES

18 Q OKAY

19 A AND IT WAS TAKEN OFF AFTER I GOT IN THAT ROOM

20 Q WHAT ROOM?

21 A IT WAS A BEDROOM

22 Q OKAY AND DID HE HAVE A WEAPON?

23 A YEAH

24 Q WHAT KIND OF WEAPON? DID YOU SEE IT?

25 A YEAH, BUT I DIDN'T PAY THAT MUCH ATTENTION TO IT

1 Q WHAT WAS IT?

2 A. IT WAS A SMALL PISTOL

3 Q. OKAY WHAT DID HE DO WITH IT?

4 A WELL, HE FLASHED IT AROUND A LITTLE WHILE, YOU KNOW,  
5 AND THEN

6 Q DID HE SAY ANYTHING TO YOU ABOUT IT, ANY KIND OF  
7 THREATS OR

8 A YEAH HE SAID THAT HE WOULD KILL ME

9 Q OKAY AND WHAT DID HE USE TO BLINDFOLD YOU? DO YOU  
10 REMEMBER?

11 A IT WAS A SCARF OF SOME TYPE LIKE YOU SEE  
12 CONSTRUCTION WORKERS WEAR THEY TIE THEM AROUND THEIR HEADS

13 Q OKAY DID YOU GO WITH HIM WILLINGLY?

14 A NO

15 Q AND WHAT HAPPENED NEXT? YOU'RE IN THE BEDROOM WAS  
16 THE BLINDFOLDS TAKEN OFF AT SOME POINT?

17 A YEAH

18 Q OKAY AND THEN WHAT HAPPENED?

19 A HE TOOK MY CLOTHES OFF

20 Q HE TOOK THEM OFF?

21 A (WITNESS NODDED HEAD UP AND DOWN )

22 Q OKAY WHAT -- WHAT WAS HE WEARING?

23 A IT LOOKED LIKE A MECHANIC'S UNIFORM

24 Q OKAY

25 A TO ME THAT'S WHAT I THOUGHT HE WAS AT THE STATION

1 Q OKAY AND WHAT WERE YOU WEARING?

2 A A JOGGING OUTFIT

3 Q JOGGING OUTFIT?

4 A UH-HUH

5 Q OKAY DO YOU MEAN LIKE SHORTS OR SWEAT---

6 A NO, NO LONG JOGGING PANTS AND A JOGGING SHIRT

7 Q OKAY

8 A LONG-SLEEVED

9 Q AND AFTER HE TOOK YOUR CLOTHES OFF, WHAT HAPPENED?

10 A HE RAPED ME

11 Q OKAY WHEN YOU SAY HE RAPED YOU, WHAT EXACTLY DO  
12 YOU MEAN BY THAT?

13 A HE PUT HIS PENIS IN THE VAGINA AREA OR TRIED TO

14 Q DID HE ACTUALLY PUT HIS PENIS IN YOUR VAGINA?

15 A HE TRIED, BUT HE WAS A BIG MAN AND HE HURT ME REAL  
16 BAD

17 Q DID ANY PART OF HIS PENIS GO INSIDE YOUR VAGINA EVEN

18 A SLIGHT AMOUNT?

19 A YES

20 Q OKAY HOW MANY -- DID THIS HAPPEN ONE TIME OR MORE  
21 THAN ONE TIME?

22 A MORE THAN ONE TIME

23 Q DO YOU REMEMBER HOW MANY TIMES IT HAPPENED?

24 A NOT -- NOT -- NO, NOT EXACTLY

25 Q OKAY WAS IT MORE THAN THREE TIMES?

1 A I WOULD THINK SO, YES

2 Q OKAY DID HE DO ANYTHING ELSE TO YOU OTHER THAN  
3 PUTTING HIS PENIS INSIDE YOUR VAGINA?

4 A HE WAS WANTING ME TO PUT IT IN MY MOUTH

5 Q OKAY DID HE FORCE YOU TO DO THAT?

6 A YES

7 Q OKAY DO YOU RECALL HOW MANY TIMES THAT HAPPENED?

8 A ONCE OR TWICE

9 Q DID HE SAY ANYTHING TO YOU WHILE HE WAS DOING THESE  
10 THINGS?

11 A YEAH. HE WAS CALLING ME A BITCH, THINGS LIKE THAT

12 Q WAS HE TELLING YOU WHAT TO DO?

13 A YEAH

14 Q WHAT DID HE TELL YOU TO DO?

15 A HE TOLD ME TO SUCK ON IT

16 Q SUCK ON WHAT?

17 A THE PENIS

18 Q DO YOU REMEMBER WHAT HE CALLED IT?

19 A NO

20 Q OKAY DO YOU REMEMBER HIM SAYING ANYTHING ELSE TO  
21 YOU?

22 A HE JUST KEPT CALLING ME A BITCH. DO THIS, BITCH, DO  
23 THAT

24 Q DID YOU AT ANY TIME HAVE CONSENSUAL SEXUAL RELATIONS  
25 WITH HIM?

1 A NO

2 Q DID YOU EVER TRY TO GET AWAY FROM HIM?

3 A I THOUGHT OF WAYS, BUT I REALLY DIDN'T KNOW WHERE I  
4 WAS AT, YOU KNOW

5 Q DID YOU EVER ASK HIM TO LET YOU GO?

6 A YES

7 Q ONE TIME---

8 A AND I BEGGED AND FINALLY HE DID

9 Q OKAY WHEN DID HE LET YOU GO?

10 A SOMETIME WHEN I GOT HOME AND I LOOKED AT MY CLOCK IT  
11 WAS ABOUT 5 00

12 Q AT NIGHT OR IN THE MORNING?

13 A IN THE MORNING

14 Q OKAY SO IT WAS -- WAS THAT THE NEXT MORNING?

15 A YES, THAT WAS THE NEXT MORNING

16 Q OKAY WAS HE WITH YOU THROUGHOUT THE NIGHT THEN?

17 A YES

18 Q AND WHEN HE LET YOU GO, WERE YOU BLINDFOLDED WHEN  
19 YOU -- WHERE DID HE LET YOU GO?

20 A IN MY YARD

21 Q OKAY HOW DID YOU GET BACK TO YOUR YARD?

22 A HE TOOK ME BACK BECAUSE I BEGGED HIM AND PLEADED TO  
23 TAKE ME BACK

24 Q OKAY WERE YOU BLINDFOLDED ON THE DRIVE BACK?

25 A YES

1 Q OKAY AT SOME POINT DID HE TAKE THE BLINDFOLD OFF?

2 A YES, WHEN HE PUSHED ME OUT OF THE TRUCK

3 Q OKAY HE PUSHED YOU OUT OF THE TRUCK?

4 A UH-HUH

5 Q AT YOUR HOUSE?

6 A YES

7 Q DID HE SAY ANYTHING TO YOU THEN?

8 A HE SAID, "IF YOU TELL ANYBODY, I'LL COME BACK AND  
9 KILL YOU "

10 Q OKAY DID YOU TELL ANYONE RIGHT AWAY?

11 A NOT RIGHT AWAY

12 Q WHO WAS THE FIRST PERSON YOU TOLD?

13 A I WENT UP TO MY COUSIN'S AND TOLD HER

14 Q WHAT'S YOUR COUSIN'S NAME?

15 A MARGIE KRAMER (SIC)

16 Q OKAY WERE YOU PLANNING TO REPORT IT?

17 A I STARTED NOT TO BECAUSE I WAS SCARED, BUT THEN I  
18 WAS BLEEDING AND I GOT REAL UPSET

19 Q WERE YOU IN PAIN?

20 A YES

21 Q OKAY WHERE WERE YOU WHEN YOU DECIDED TO REPORT IT  
22 TO LAW ENFORCEMENT? WERE YOU ALREADY AT YOUR COUSIN'S OR---

23 A NO, NO I WAS SITTING AT MY HOUSE AND THAT'S WHY I  
24 WENT UP THERE

25 Q OH, OKAY AND DID YOU TELL YOUR COUSIN WHAT HAD

1 HAPPENED?

2 A YES, I DID

3 Q OKAY AND DID -- HAD YOU WASHED UP AT THAT POINT?

4 A I HAD WIPED OFF AND CHANGED MY UNDERCLOTHES, YES

5 Q HAD YOU WASHED YOUR GENITAL AREA?

6 A SOME, YES

7 Q OKAY DO YOU KNOW WHY YOU DID THAT?

8 A BECAUSE I WASN'T GOING TO TELL ANYBODY TO START

9 WITH

10 Q OKAY

11 A AND THEN I DECIDED I BETTER

12 Q OKAY DID YOU HAVE -- WERE YOU IN GOOD PHYSICAL

13 HEALTH BEFORE THIS HAPPENED?

14 A WELL, I WAS DIAGNOSED WITH SCLERODERMA AND REYNARD'S

15 AND I HAVE SOME HEART PROBLEM, BUT IT'S GOTTEN WORST (SIC)

16 Q HAD YOU HAD A STROKE AT THAT POINT?

17 A YES

18 MS. BROWN: YOUR HONOR, I OBJECT TO RELEVANCY OF

19 THIS LINE OF QUESTIONING

20 THE COURT: WHAT'S THE RELEVANCE OF THAT?

21 MS. BRISBIN: I THINK IT'S RELEVANT TO THE DANGER

22 THAT SHE WAS IN FROM BEING SEXUALLY ASSAULTED UNDER THOSE

23 CIRCUMSTANCES

24 THE COURT: WELL, I'M GOING TO SUSTAIN THE

25 OBJECTION

1 MS BRISBIN: OKAY

2 BY MS BRISBIN

3 Q WHEN YOU REPORTED THIS INCIDENT TO LAW ENFORCEMENT,  
4 DID YOU -- WHO DID YOU GO TO IN THE BEGINNING? WHICH LAW  
5 ENFORCEMENT DEPARTMENT?

6 A WELL, MY SON TOOK ME TO THE HOSPITAL AT ORANGEBURG

7 Q OKAY

8 A AND I DON'T REMEMBER THE NAMES OF THE PEOPLE THAT  
9 WERE THERE

10 Q OKAY WHAT HAPPENED AT THE HOSPITAL IN ORANGEBURG?

11 A THEY DID NOT CHECK ME THERE THEY SENT ME TO  
12 CHARLESTON TO THE RAPE CENTER

13 Q OKAY

14 A DID A RAPE KIT

15 Q OKAY AND AT SOME POINT DID YOU TALK TO LAW  
16 ENFORCEMENT ABOUT WHAT HAD HAPPENED?

17 A YES

18 Q OKAY WAS THAT BEFORE OR AFTER YOU HAD HAD THE RAPE  
19 KIT DONE?

20 A IT WAS AFTER

21 Q OKAY DO YOU REMEMBER HOW MUCH AFTER YOU TALKED TO  
22 LAW ENFORCEMENT? DID LAW ENFORCEMENT COME TO THE HOSPITAL?  
23 DO YOU KNOW?

24 A YEAH

25 Q OKAY

1 A THE ORANGEBURG POLICE CAME

2 Q AND DID YOU TALK TO THEM THERE?

3 A YES

4 Q AND DID YOU GIVE THEM A DESCRIPTION OF THE PERSON

5 WHO DID THIS TO YOU?

6 A I DON'T THINK I DID AT THAT TIME

7 Q OKAY WHEN DID YOU GIVE LAW ENFORCEMENT A

8 DESCRIPTION?

9 A I THINK WHEN MS BAMBERG -- I TALKED TO HER

10 Q OKAY LIEUTENANT BAMBERG WITH THE ORANGEBURG

11 SHERIFF'S DEPARTMENT?

12 A RIGHT

13 Q DO YOU REMEMBER WHEN YOU TALKED TO HER THE FIRST

14 TIME?

15 A IT WAS ABOUT A WEEK, I THINK, AFTER OR A FEW DAYS

16 Q OKAY DO YOU REMEMBER TALKING TO HER ON -- WHAT DAY

17 OF THE WEEK DID THE ASSAULT HAPPEN?

18 A IT WAS ON A SATURDAY EVENING

19 Q OKAY DO YOU REMEMBER TALKING WITH HER ON THE

20 FOLLOWING MONDAY?

21 A I'M NOT SURE

22 Q OKAY WHEN YOU DID TALK WITH HER, DID YOU GIVE HER

23 A DESCRIPTION OF THE MAN WHO DID THIS TO YOU?

24 A I GAVE HER AS MUCH AS I COULD REMEMBER AT THAT TIME

25 Q DID YOU KNOW HIS NAME?

1           A       I NEVER -- NO, I DID NOT KNOW HIS NAME UNTIL AFTER I  
2 HAD LOOKED AT TWO DIFFERENT SETS OF PICTURES AND I FINALLY  
3 ASKED HER -- I SAID, "WHAT IS HIS NAME?"

4           Q       OKAY     THAT WAS AFTER YOU HAD PICKED HIM OUT

5           A       YEAH

6           Q       OKAY     AND DID YOU GIVE HER A DESCRIPTION OF THE  
7 HOUSE WHERE YOU WERE SEXUALLY ASSAULTED?

8           A       THE INSIDE, YES

9           Q       OKAY.    YOU DIDN'T ACTUALLY SEE THE OUTSIDE?

10          A       HUH-UH.

11          Q       OKAY     AND DID YOU GIVE HER A DESCRIPTION OF THE  
12 VEHICLE THAT HE WAS DRIVING?

13          A       YES

14          Q       OKAY     WHAT DESCRIPTION DID YOU GIVE OF HIM -- OF  
15 THE MAN WHO DID THIS TO YOU?

16          A       I TOLD HER THAT HE WAS A BIG MAN AND HAD SOME FACIAL  
17 HAIR AND HE -- I TOLD HER HE WAS ABOUT SIX FOOT AND 200  
18 POUNDS

19          Q       200 POUNDS?

20          A       YES

21          Q       OKAY

22          A       I ESTIMATED IT THAT

23          Q       DID YOU REMEMBER ANYTHING ABOUT HIS TEETH?

24          A       HE DIDN'T HAVE ANY

25          Q       OKAY     DID YOU REMEMBER ANYTHING ABOUT -- DID YOU

1 TELL THEM WHAT HE WAS WEARING?

2 A I TOLD THEM THAT HE LOOKED LIKE HE WAS WEARING A  
3 MECHANIC'S UNIFORM

4 Q OKAY AND WHAT COLOR WAS IT?

5 A BLUE

6 Q OKAY AND WHAT ABOUT HIS SHOES OR BOOTS?

7 A THEY WERE BLACK BOOTS

8 Q OKAY DID LIEUTENANT RAMBERG EVER SHOW YOU A VIDEO?

9 A YES

10 Q DID YOU SEE YOURSELF IN THE VIDEO?

11 A YES, I SAW MYSELF WHEN I WENT IN AND GOT A CUP OF  
12 ICE

13 Q AND WHERE WAS THAT VIDEO FROM?

14 A IT WAS FROM THE B P IN DENMARK

15 Q OKAY DID YOU RECOGNIZE ANYONE ELSE IN THAT VIDEO?

16 A THE GUY THAT FIXED MY CAR AND---

17 Q AND WHAT ELSE?

18 A AND RAPED ME

19 Q OKAY DID YOU EVER PICK ANYONE ELSE OUT OF THE  
20 VIDEO?

21 A NO

22 Q WERE YOU A HUNDRED PERCENT SURE THAT THAT WAS THE  
23 MAN FROM LOOKING AT THE VIDEO?

24 A I WASN'T A HUNDRED PERCENT SURE AT FIRST, BUT I WAS  
25 PRETTY SURE THAT WAS HIM

1 Q ABOUT HOW MUCH?

2 A ABOUT 90 PERCENT, YES, I WAS PRETTY SURE---

3 Q ABOUT 90 PERCENT SURE THAT WAS HIM.

4 A YES

5 Q OKAY AND AFTER YOU PICKED HIM OUT OF THE VIDEO

6 DID -- WELL, LET ME ASK YOU THIS DID YOU GET A GOOD LOOK AT

7 THE PERSON WHO DID THIS TO YOU THAT AFTERNOON WHEN HE WAS

8 FIXING YOUR CAR?

9 A YES---

10 Q WAS IT DAYLIGHT?

11 A ---AND NO I WROTE -- YOU KNOW, I SAW HIM

12 Q OKAY WAS IT DAYLIGHT?

13 A YES, IT WAS LIGHT OUT

14 Q HOW FAR AWAY WERE YOU FROM HIM?

15 A I WASN'T ANY FARTHER THAN I AM FROM HER

16 Q WHICH IS ABOUT HOW FAR?

17 A TWO OR THREE FEET, YEAH

18 Q OKAY DID YOU SEE HIS FACE?

19 A WELL, YES, I LOOKED AT HIM AND, YOU KNOW -- BUT I

20 DIDN'T THINK ANYTHING LIKE THIS WAS GOING TO HAPPEN---

21 Q SURE

22 A ---SO I DIDN'T .

23 Q OKAY ABOUT HOW MUCH TIME WERE YOU WITH HIM THAT

24 AFTERNOON BEFORE HE TOOK YOU OFF IN THE TRUCK?

25 A REPEAT THAT NOW WHERE?

1 Q ABOUT HOW MUCH TIME WOULD YOU SAY YOU SPENT WITH HIM  
2 BEFORE AND AFTER HE FIXED YOUR TRUCK DURING DAYLIGHT HOURS?

3 A WELL, I SAW HIM THERE AT THE STATION AND HE TOOK OFF  
4 AND HE WAS GONE A GOOD WHILE AND CAME BACK AND FIXED THE CAR  
5 AND THEN I SAID, THANK YOU, BUT I DIDN'T HAVE THAT MUCH  
6 MONEY

7 Q RIGHT SO HOW LONG DID IT TAKE FOR ALL OF THAT TO  
8 HAPPEN---

9 A WELL, HE WAS GONE---

10 Q ---BEFORE HE TOOK YOU AND BLINDFOLDED YOU,  
11 APPROXIMATELY? THIRTY MINUTES? AN HOUR?

12 A WELL, BETWEEN 30 MINUTES AND AN HOUR BECAUSE WE HAD  
13 TO DRIVE FROM DENMARK TO NORWAY AND

14 Q TO GET BACK TO YOUR HOUSE?

15 A RIGHT

16 Q OKAY AND AFTER THE -- YOU PICKED HIM OUT OF THE  
17 VIDEO, DID -- WHEN YOU PICKED HIM OUT OF THE VIDEO, DID  
18 ANYONE SUGGEST TO YOU WHO YOU SHOULD PICK?

19 A NO

20 Q OR GIVE YOU ANY HINTS?

21 A NO

22 Q OKAY AFTER YOU PICKED HIM OUT FROM THE VIDEO, DID  
23 ANYONE SHOW YOU A PHOTO LINE-UP?

24 A YES

25 Q AND DID YOU RECOGNIZE ANYONE IN THAT PHOTO LINE-UP?

1 A I PICKED HIM OUT, HIS PICTURE

2 Q OKAY DID ANYONE TELL YOU WHO TO PICK OUT OF THAT  
3 PHOTO LINE-UP OR SUGGEST OR HINT?

4 A NO

5 Q DID YOU EVER PICK ANYONE ELSE OUT OF THAT PHOTO  
6 LINE-UP?

7 A NO

8 Q AND HOW SURE WERE YOU? WERE YOU A HUNDRED PERCENT  
9 SURE THAT THAT WAS HIM IN THE PICTURE IN THE PHOTO LINE-UP?

10 A I WAS ABOUT 90 PERCENT SURE THAT THAT WAS HIM

11 Q OKAY WAS THERE ANYTHING IN PARTICULAR ABOUT HIM  
12 THAT -- THAT YOU FOCUSED ON THAT HELPED YOU TO KNOW WHO IT  
13 WAS?

14 A WELL, THE FACIAL HAIR AND THE -- AND THE EYE PART,  
15 YOU KNOW

16 Q THE EYES?

17 A YES

18 Q OKAY DO YOU RECOGNIZE THIS?

19 A YES

20 Q HAVE YOU WATCHED THIS---

21 A YES

22 Q ---BEFORE? WHAT IS THIS?

23 A THAT'S THE TAPE OF THE B P STORE AND US GOING IN

24 MS. BRISBIN: OKAY YOUR HONOR, I WOULD ASK AT THIS  
25 TIME THAT THIS BE ADMITTED INTO EVIDENCE AND SHOWN TO THE

1 JURY

2 MS. BROWN: NO OBJECTION, YOUR HONOR

3 THE COURT: SO ADMITTED WITHOUT OBJECTION

4 (STATE'S EXHIBIT 4 WAS RECEIVED IN EVIDENCE )

5 BY MS BRISBIN

6 Q CAN YOU SEE THAT? MS SANDERS, AFTER WE GET THIS  
7 GOING, I'D LIKE YOU TO STEP DOWN AND POINT OUT TO THE JURY  
8 THE PERSON WHO DID THIS WOULD YOU STEP DOWN HERE, PLEASE?  
9 OKAY DON'T STAND IN FRONT OF THE JURY IF YOU CAN AVOID IT  
10 BECAUSE THEY WON'T BE ABLE TO SEE OKAY IF YOU WOULD JUST  
11 POINT TO YOURSELF WHEN YOU SEE YOURSELF, IF YOU SEE YOURSELF,  
12 ON THE VIDEO AND THEN TO HIM (STATE'S EXHIBIT 4 BEGINS TO  
13 BE PLAYED FOR THE JURY )

14 A THAT'S ME COMING UP AND PAYING FOR MY ICE

15 BAILIFF: YOUR HONOR?

16 THE COURT: YES, SIR

17 BAILIFF: ONE OF OUR JURORS IS ILL CAN I TAKE HER  
18 TO THE REST ROOM?

19 THE COURT: NO LET'S TAKE THE WHOLE JURY AND THEN  
20 YOU CAN---

21 BAILIFF: OKAY

22 THE COURT: LADIES AND GENTLEMEN, WHY DON'T Y'ALL  
23 STEP OUT? PLEASE DON'T DISCUSS THE CASE AND

24 MS. BRISBIN: YOU CAN SIT DOWN

25 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT

1 2 23 P M )

2 THE COURT: ALL RIGHT WE'RE GOING TO STAND IN  
3 RECESS A FEW MINUTES UNTIL WE FIND OUT WHAT THE SITUATION IS  
4 MA'AM, YOU MAY STEP DOWN, BUT PLEASE DON'T DISCUSS THE  
5 TESTIMONY AT ALL WHILE WE'RE ON BREAK OKAY?

6 THE WITNESS: YES, SIR

7 (WHEREUPON, A SHORT BREAK WAS TAKEN )

8 THE COURT: PLEASE KEEP YOUR SEATS THE JUROR HAS  
9 INDICATED THAT SHE SHALL PROCEED -- Y'ALL BE SEATED -- THAT  
10 SHE WOKE UP NOT FEELING WELL THIS MORNING, BUT SHE THINKS SHE  
11 IS GOING TO BE ABLE TO CONTINUE AND SHE WILL TRY TO DO SO  
12 SO WE'LL PROCEED WITH ALL RIGHT MA'AM, DO YOU WANT TO  
13 COME BACK UP TO THE STAND, PLEASE? ALL RIGHT LET'S BRING  
14 THE JURY IN IF WE COULD

15 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT  
16 2 35 P M )

17 THE COURT: OKAY IF YOU FEEL BAD, JUST LET US KNOW  
18 AND WE'LL---

19 JUROR: I'M SORRY

20 THE COURT: ---WORK WITH YOU ALL RIGHT IF YOU  
21 WOULD, PLEASE, MADAM SOLICITOR

22 MS. BRISBIN: THANK YOU, YOUR HONOR  
23 BY MS BRISBIN

24 Q MS SANDERS, IF YOU WOULD STEP DOWN AGAIN, PLEASE  
25 (STATE'S EXHIBIT 4 CONTINUES TO BE PLAYED FOR THE JURY )

1 A THAT'S HIM RIGHT THERE

2 Q IS THAT THE SAME PERSON YOU PICKED OUT BACK IN MARCH  
3 OF 2002? WHICH ONE? TOUCH THE T V

4 A (WITNESS COMPLIES )

5 Q OKAY YOU CAN HAVE A SEAT AGAIN, PLEASE HAD YOU  
6 EVER MET JOSEPH WALKER BEFORE MARCH 2ND OF 2002?

7 A NOT THAT I CAN EVER REMEMBER

8 Q OKAY DID YOU KNOW HIS NAME?

9 A NO

10 Q I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT -- FOR  
11 IDENTIFICATION STATE'S EXHIBIT NUMBER 1 DO YOU RECOGNIZE  
12 THIS? NO, JUST DO YOU RECOGNIZE WHAT THIS IS?

13 A YES UH-HUH

14 Q OKAY HAVE YOU SEEN THIS BEFORE?

15 A YES

16 Q WHAT IS IT?

17 A SHE BROUGHT THAT FOR ME TO PICK OUT

18 Q WHO? WHO DID?

19 A LIEUTENANT BAMBERG

20 Q SHE BROUGHT THIS TO YOU TO PICK OUT?

21 A ANYBODY THAT I THOUGHT, YOU KNOW, COULD HAVE BEEN  
22 THE ONE

23 Q OKAY AND IS THIS THE SAME OR A FAIR AND ACCURATE  
24 REPRESENTATION OF WHAT SHE SHOWED YOU, THE PHOTO LINE-UP THAT  
25 SHE SHOWED YOU?

1 A YES

2 MS. BRISBIN: OKAY I'D ASK THAT THIS BE ADMITTED  
3 INTO EVIDENCE AT THIS TIME, YOUR HONOR

4 MS. BROWN: NO OBJECTION

5 THE COURT: SO ADMITTED WITHOUT OBJECTION

6 (STATE'S EXHIBIT 1 WAS RECEIVED IN EVIDENCE )

7 BY MS BRISBIN

8 Q AND DID YOU RECOGNIZE SOMEONE IN THIS PHOTO LINE-UP?

9 A YES

10 Q WHO DID YOU RECOGNIZE?

11 A THIS MAN RIGHT HERE, THE ONE THEY CALL JOSEPH  
12 WALKER

13 Q OKAY WOULD YOU POINT FOR -- FOR THE JURY SO THEY  
14 CAN SEE WHICH ONE YOU RECOGNIZED?

15 A (WITNESS COMPLIES )

16 Q OKAY DID YOU DESCRIBE FOR LAW ENFORCEMENT THE  
17 VEHICLE THAT THE PERSON WHO ASSAULTED YOU WAS DRIVING?

18 A YES

19 Q AND WAS THAT BACK IN MARCH---

20 A YES

21 Q ---THAT YOU DID THAT? AND HOW DID YOU DESCRIBE THAT  
22 VEHICLE?

23 A I DESCRIBED IT AS A SMALL BLACK TRUCK AND IT HAD A  
24 RED TRIM OR SOMETHING ON THE SIDE OF IT

25 Q OKAY DO YOU RECOGNIZE WHAT'S BEEN MARKED STATE'S

1 EXHIBIT NUMBER 8 FOR IDENTIFICATION?

2 A YES THAT LOOKS JUST LIKE IT

3 Q OKAY IS THAT AN ACCURATE REPRESENTATION OF WHAT  
4 YOU SAW---

5 A YES

6 Q ---ON MARCH 2ND?

7 A YES

8 MS. BRISBIN. I'D ASK THAT STATE'S EXHIBIT NUMBER 8  
9 BE ADMITTED INTO EVIDENCE

10 MS. BROWN: NO OBJECTION

11 THE COURT: SO ADMITTED WITHOUT OBJECTION

12 (STATE'S EXHIBIT 8 WAS RECEIVED IN EVIDENCE )

13 BY MS BRISBIN

14 Q DOES THIS <sup>S</sup> LOOK LIKE THE SAME TRUCK THAT YOU RODE IN  
15 WITH THE PERSON WHO SEXUALLY ASSAULTED YOU BACK IN MARCH?

16 A IT LOOKS LIKE IT, YES

17 Q OKAY SHOWING YOU STATE'S EXHIBIT NUMBER 7, DID YOU  
18 GIVE THE LAW ENFORCEMENT A DESCRIPTION OF WHAT YOU HEARD OR  
19 SMELLED INSIDE THE VEHICLE THAT THE PERSON WHO SEXUALLY  
20 ASSAULTED YOU WAS DRIVING?

21 A I TOLD THEM IT SMELLED DIRTY AND THAT IT WAS  
22 SHIFTING GEARS I DIDN'T KNOW WHETHER IT WAS FOUR-SPEED OR  
23 FIVE-SPEED BUT IT WAS -- THERE WAS GEAR SHIFTING IT WASN'T  
24 AUTOMATIC

25 Q OKAY SHOWING YOU STATE'S EXHIBIT NUMBER 7, IS THAT

1 A FAIR AND ACCURATE REPRESENTATION OF WHAT YOU HEARD -- WELL,  
2 WHAT YOU SAW?

3 A WELL, I DIDN'T ACTUALLY SEE IT, BUT IT'S WHAT -- THE  
4 GEARS AND ALL IT -- AND THE CLEANLINESS OF IT, I'M SURE  
5 THAT'S THE ODOR

6 MS. BRISBIN: I'D ASK THAT STATE'S EXHIBIT NUMBER 7  
7 BE ADMITTED INTO EVIDENCE

8 MS. BROWN: YOUR HONOR, I WOULD OBJECT TO THIS -- TO  
9 THIS COMING IN THERE'S BEEN NO FOUNDATION A FOUNDATION  
10 HAS NOT BEEN LAID THAT THAT PICTURE REPRESENTS WHAT MS  
11 SANDERS SAW SHE JUST SAID SHE DIDN'T SEE---

12 MS. BRISBIN: OKAY

13 MS. BROWN: ---WHAT SHE IS DESCRIBING

14 THE COURT. IF SHE SAID SHE DIDN'T SEE IT, HOW CAN  
15 SHE IDENTIFY IT?

16 MS. BRISBIN: I'LL WAIT ON THAT ONE  
17 BY MS BRISBIN

18 Q WHAT DESCRIPTION -- DID YOU GIVE THAT DESCRIPTION OF  
19 THE INSIDE -- OR OF WHAT YOU SMELLED AND SAW OR HEARD RATHER  
20 TO LAW ENFORCEMENT?

21 A YES

22 Q OKAY DID YOU GIVE A DESCRIPTION TO LAW ENFORCEMENT  
23 BACK IN MARCH OF WHAT THE INSIDE OF THE HOUSE LOOKED LIKE OF  
24 THE PERSON WHO SEXUALLY ASSAULTED YOU?

25 A I TOLD THEM WHAT THE ROOM LOOKED LIKE

1 Q OKAY WHICH ROOM?

2 A THE BEDROOM THAT I WAS IN

3 Q OKAY

4 A AND THE BATHROOM

5 Q HOW DID YOU DESCRIBE IT?

6 A I TOLD THEM THAT I WENT THROUGH SOMETHING HANGING AT  
7 THE DOOR AND THAT THERE WAS A HEATER ON IN THERE---

8 Q THAT SOMETHING WAS HANGING AT THE BEDROOM DOOR?

9 A LIVING ROOM, BEDROOM, ALL THE WAY AROUND IN THERE  
10 THERE WAS -- WINDOWS HAD A SHEET OR A QUILT OR SOMETHING  
11 HANGING ON THEM

12 Q OKAY

13 A AND THERE WAS A GAS HEATER IN THERE

14 Q IN WHAT ROOM?

15 A IN THAT PARTICULAR ROOM THAT'S THE ONLY ROOM I  
16 SAW

17 Q AND WHAT KIND OF ROOM IS THAT?

18 A I GUESS IT WAS HIS BEDROOM

19 Q WHAT ELSE WAS IN THAT ROOM?

20 A THERE WAS A LITTLE BATHROOM RIGHT AT THE END OF  
21 THE -- OF THE BEDROOM THERE

22 Q OKAY WAS THERE A BED?

23 A YES

24 Q WHAT SIZE BED? DO YOU REMEMBER? SINGLE? DOUBLE?

25 A DOUBLE

1 Q OKAY WHERE WAS THE BATHROOM LOCATED IN RELATION TO  
2 THE BED?

3 A AT THE FOOT OF THE BED

4 Q DO YOU REMEMBER WHICH SIDE? IF YOU'RE -- IF YOU'RE  
5 IN THE BED, IT'S -- YOU SAID IT'S AT THE FOOT OF THE BED

6 A STRAIGHT

7 Q TO WHICH SIDE? OH, IT'S MORE STRAIGHT?

8 A STRAIGHT, YEAH

9 Q OKAY WAS THERE ANYTHING ELSE THAT YOU DESCRIBED TO  
10 LAW ENFORCEMENT ABOUT THE INSIDE OF THAT BEDROOM?

11 A THERE WAS A TABLE, ASHTRAY, A CHAIR, AND THE HEATER  
12 ON THE LEFT AS I WAS -- AS I WAS GOING IN THE FRONT DOOR  
13 THERE OR COMING THROUGH THAT COMFORTER OR WHATEVER WAS  
14 HANGING AT THAT DOOR

15 Q OKAY WAS THERE A DOOR ON THE DOORWAY?

16 A NO, NO HUH-UH IT WAS A COMFORTER OR A SHEET  
17 HANGING

18 Q OKAY

19 A I DON'T REMEMBER WHICH

20 Q AND YOU SAID THERE WAS A HEATER?

21 A THERE WAS A GAS HEATER, YES

22 Q OKAY AND WHAT DID YOU SAY WAS OVER THE WINDOW?

23 A A SHEET, I THINK

24 Q OKAY AND SHOWING YOU -- WHEN DID YOU TELL LAW  
25 ENFORCEMENT ABOUT THAT?

1 A WHENEVER I WENT DOWN TO MAKE A STATEMENT

2 Q. OKAY WAS THAT BEFORE THEY SHOWED YOU THE VIDEO AND  
3 THE PHOTO LINE-UP?

4 A I'M SURE IT WAS I'M PRETTY SURE IT WAS

5 Q OKAY IT WAS BEFORE YOU KNEW HIS NAME?

6 A RIGHT

7 Q OKAY SHOWING YOU STATE'S EXHIBIT NUMBER 5, DO YOU  
8 RECOGNIZE THIS?

9 A IT LOOKS FAMILIAR, YES

10 Q HAVE YOU SEEN IT BEFORE?

11 A YES

12 Q IS THIS A FAIR AND ACCURATE DEPICTION OF WHAT YOU  
13 SAW?

14 A YES

15 Q OKAY AND WHAT HAPPENED IN THIS ROOM?

16 A I WAS RAPED IN THAT ROOM

17 MS. BRISBIN: OKAY I WOULD ASK THAT STATE'S  
18 EXHIBIT NUMBER 5 BE ADMITTED INTO EVIDENCE AT THIS TIME

19 MS. BROWN: NO OBJECTION

20 THE COURT: SO ADMITTED WITHOUT OBJECTION

21 (STATE'S EXHIBIT 5 WAS RECEIVED IN EVIDENCE )

22 BY MS BRISBIN

23 Q WHAT DO YOU RECOGNIZE ABOUT THIS ROOM? CAN YOU  
24 POINT OUT FOR THE JURY WHAT YOU -- WHAT YOU RECOGNIZE IN THAT  
25 ROOM?

1 A THE SHOES

2 Q WHAT ABOUT THE SHOES?

3 A THEY'RE BLACK SHOES

4 Q ARE THEY SHOES OR

5 A OR BOOTS LIKE THE SHEET ON THE WINDOW.

6 Q OKAY

7 A AND I REMEMBER THE BED WAS LIKE THAT AND THE

8 TABLE---

9 Q WHAT DO YOU MEAN BY IT WAS LIKE THAT?

10 A IT HAD THE BOOKCASE LIKE ABOVE IT

11 Q OKAY AND WHAT ABOUT THE TABLE?

12 A THE NIGHTSTAND BESIDE THE TABLE

13 Q IS THERE ANYTHING ON THE NIGHTSTAND THAT YOU

14 RECOGNIZE?

15 A THE ASHTRAY

16 Q OKAY DO YOU RECOGNIZE WHAT'S BEEN MARKED STATE'S

17 EXHIBIT NUMBER 9?

18 A YES THAT WAS THE BATHROOM

19 Q IS THAT A FAIR AND ACCURATE DEPICTION OF WHAT YOU

20 SAW?

21 A YEAH

22 Q OKAY AND WHAT HAPPENED -- WHAT ROOM IS THIS?

23 A THAT'S THE BEDROOM, AND THE BATHROOM WAS AT THE --

24 LIKE I SAID, AT THE FOOT OF THE BED

25 MS. BRISBIN: OKAY YOUR HONOR, I'D ASK THAT

1 STATE'S EXHIBIT NUMBER 9 BE ADMITTED INTO EVIDENCE

2 MS. BROWN: NO OBJECTION

3 THE COURT: SO ADMITTED WITHOUT OBJECTION

4 (STATE'S EXHIBIT 9 WAS RECEIVED IN EVIDENCE )

5 BY MS BRISBIN

6 Q WHAT DO YOU RECOGNIZE ABOUT THIS ROOM IN THIS --  
7 THIS PICTURE? YOU WERE JUST SAYING IT, BUT I NEED YOU TO SAY  
8 IT AGAIN

9 A I SAID THE BATHROOM IS DOWN AND IT WAS A BLOCK  
10 HOUSE, A WHITE BLOCK---

11 Q OKAY HOW CAN YOU TELL THAT?

12 A I CAN SEE THE BLOCKS

13 Q OKAY AND WHERE WAS THE BATHROOM IN RELATION TO THE  
14 BED?

15 A IT WAS AT THE FOOT

16 Q OKAY AND SHOWING YOU STATE'S EXHIBIT NUMBER 6, DO  
17 YOU RECOGNIZE THIS?

18 A THIS IS THE DOOR I---

19 Q IS THIS -- DO YOU RECOGNIZE IT?

20 A YES

21 Q YES OR NO? IS THIS A FAIR AND ACCURATE  
22 REPRESENTATION OF WHAT YOU SAW?

23 A YES

24 MS BRISBIN: OKAY I'D ASK THAT STATE'S EXHIBIT  
25 NUMBER 6 BE ADMITTED INTO EVIDENCE

1 MS. BROWN: NO OBJECTION

2 THE COURT. SO ADMITTED

3 (STATE'S EXHIBIT 6 WAS RECEIVED IN EVIDENCE.)

4 BY MS BRISBIN

5 Q WHAT ROOM IS THIS?

6 A THAT'S THAT BEDROOM

7 Q THE SAME BEDROOM?

8 A UH-HUH

9 Q AND WHAT DO YOU RECOGNIZE IN THIS PICTURE?

10 A THAT HEATER AND THEN, OF COURSE, THAT NIGHTSTAND AND

11 THOSE SAME SHOES ARE RIGHT THERE

12 Q OKAY AND ARE THOSE THE -- DO THOSE APPEAR TO BE

13 THE SAME BOOTS THAT MR WALKER WAS WEARING THAT NIGHT?

14 A YES

15 Q AND DO YOU RECOGNIZE THE LOCATION OF THE SPACE

16 HEATER?

17 A YES

18 Q WHERE -- WHERE WAS IT IN RELATION TO THE DOORWAY AS

19 YOU CAME IN THE BEDROOM?

20 A THERE WAS A BLANKET OR A SHEET OR SOMETHING UP AT

21 THIS DOOR THAT'S THE ONE I WAS BROUGHT INTO

22 Q OKAY

23 A AND I REMEMBER THE HEATER BEING THERE TO MY LEFT

24 Q WAS THERE A DOOR ON THE DOOR FRAME?

25 A NO

1 Q OKAY AND DID YOU GIVE THAT DESCRIPTION TO LAW  
2 ENFORCEMENT BACK IN MARCH OF 2002?

3 A YEAH

4 Q OKAY MS SANDERS, IS THE MAN WHO SEXUALLY  
5 ASSAULTED YOU IN THIS COURTROOM TODAY?

6 A YES

7 Q WOULD YOU PLEASE POINT HIM OUT FOR THE JURY?

8 A SITTING OVER THERE BY HIS -- BY THE ATTORNEY

9 Q WHAT DOES HE LOOK LIKE? IF YOU COULD DESCRIBE WHAT  
10 HE'S WEARING, HOW HE LOOKS

11 A RIGHT NOW HE'S GOT ON A PLAID SHIRT AND GLASSES

12 Q OKAY THANK YOU

13 A HE DOESN'T HAVE FACIAL HAIR LIKE HE DID

14 Q OKAY IS THIS THE SAME PERSON WHO SEXUALLY---

15 THE COURT: ARE YOU---

16 Q ---ASSAULTED YOU?

17 A YES

18 THE COURT: ARE YOU POINTING TO THE MAN -- THE BLACK  
19 MAN THAT'S SEATED---

20 THE WITNESS: YES

21 THE COURT: ---AT THE DEFENSE TABLE OVER THERE?

22 THE WITNESS: RIGHT THERE

23 THE COURT: ALL RIGHT LET THE RECORD REFLECT SHE'S  
24 IDENTIFIED THE DEFENDANT

25 MS. BRISBIN. THANK YOU I DON'T HAVE ANY FURTHER

1 QUESTIONS, MS SANDERS PLEASE ANSWER ANY THE DEFENSE HAS

2 CROSS-EXAMINATION

3 BY MS BROWN

4 Q MS SANDERS, WHAT TIME WAS IT WHEN YOU WENT OUT TO  
5 GO GET THE CURTAIN RODS THAT DAY?

6 A IT WAS IN THE AFTERNOON

7 Q EARLY? MID? LATE AFTERNOON?

8 A ABOUT MID AFTERNOON

9 Q ABOUT HOW LONG DID IT TAKE YOU TO GET THOSE  
10 CURTAINS?

11 A NOT VERY LONG I JUST RAN IN AND GOT THEM AND I  
12 KNEW WHAT I WANTED, SO I JUST GOT THEM AND PAID FOR THEM AND  
13 CAME OUT

14 Q SO ABOUT WHAT TIME WAS IT THAT YOU GOT TO THE B P  
15 STATION?

16 A WASN'T VERY LONG MAYBE FIVE MINUTES, TEN MINUTES  
17 I DON'T KNOW

18 Q SO WE'RE TALKING BETWEEN 3 AND 5 IN THE AFTERNOON?

19 A YEAH, SOMEWHERE ALONG IN THERE IT'S BEEN A LONG  
20 TIME AND I DON'T REMEMBER THE EXACT TIMES

21 Q DO YOU REMEMBER WHAT TIME YOU TOLD THE POLICE ALL  
22 THIS HAPPENED BACK WHEN YOU ORIGINALLY TALKED TO THEM?

23 A YES, I REMEMBER, BUT I DIDN'T GO TO ANYBODY UNTIL  
24 THE NEXT MORNING OR THE NEXT DAY AND THEN I WAS TAKEN TO  
25 ORANGEBURG HOSPITAL

1 Q AND WHAT TIME DID YOU -- WHEN YOU TOLD THEM THE NEXT  
2 DAY, WHAT TIME DID YOU SAY YOU WENT TO GET THE CURTAIN RODS  
3 AND GO TO THE B P STATION?

4 A I TOLD THEM THAT AFTERNOON

5 Q AND WHAT TIME WAS IT WHEN YOU GOT BACK TO YOUR HOUSE  
6 AFTER BEING AT THE B P STATION THAT AFTERNOON?

7 A THIRTY MINUTES, 45 MINUTES BECAUSE IT TOOK HIM A  
8 LITTLE WHILE TO GO GET THE PART AND PUT IT ON THE CAR

9 Q OKAY WHAT TIME DID YOU GO IN YOUR HOUSE TO GET THE  
10 MONEY?

11 A AS SOON AS I GOT BACK TO THE HOUSE

12 Q DO YOU REMEMBER WHAT TIME THAT WAS?

13 A NO, I DON'T

14 Q WAS IT DARK OR WAS IT LIGHT OUTSIDE?

15 A IT WAS STILL LIGHT

16 Q HOW FAR DOES IT -- HOW LONG DOES IT TAKE FOR YOU TO  
17 DRIVE FROM YOUR HOUSE TO THIS B P STATION IN DENMARK?

18 A THAT'S LIKE ABOUT EIGHT OR NINE MILES

19 Q SO ABOUT A 10, 15-MINUTE DRIVE?

20 A SOMETHING LIKE THAT

21 Q DEPENDING ON HOW MUCH OF A HURRY YOU'RE IN?

22 A UH-HUH

23 Q NOW, IT WAS DARK WHEN YOU ARRIVED AT THIS STRANGER'S  
24 HOUSE, CORRECT?

25 A RIGHT

1 Q IN FACT, WHEN THE BLINDFOLD CAME OFF AND YOU WERE IN  
2 THE HOUSE, IT WAS DARK

3 A RIGHT

4 Q AND I BELIEVE YOU TOLD LAW ENFORCEMENT THAT HE DID  
5 NOT TURN ON THE LIGHT

6 A NO, HE DIDN'T

7 Q WAS IT DARK THE ENTIRE TIME YOU WERE AT THE HOUSE?

8 A YES THE ONLY LIGHT -- FROM THE GAS HEATER

9 Q YOU'RE TALKING A PILOT LIGHT?

10 A NO, I'M TALKING---

11 Q LIGHT OR---

12 A HEAT

13 Q THE HEAT LIGHT---

14 A YES

15 Q ---FROM THE GAS HEATER NOW, I WANT TO GO BACK TO  
16 THE B P STATION FOR A MINUTE I BELIEVE THAT YOUR TESTIMONY  
17 WAS THAT YOU CAME IN THE STORE AND WE SAW THAT ON THE VIDEO  
18 YOU PAID FOR YOUR STUFF AND WENT OUT TO YOUR CAR IS THAT  
19 RIGHT?

20 A RIGHT

21 Q THE CAR CRANKED UP

22 A UH-HUH

23 Q YOU DROVE AROUND, AND ABOUT TO THE OTHER SIDE OF THE  
24 BUILDING THE CAR CUT OFF ON YOU

25 A RIGHT

1 Q AND YOU ASKED TWO MEN TO GIVE YOU SOME HELP

2 A RIGHT

3 Q WHITE GUY SAID?

4 A NO

5 Q DID HE JUST IGNORE YOU OR DID HE SAY ANYTHING TO  
6 YOU?

7 A HE JUST SAID, "I DON'T KNOW ANYTHING ABOUT CARS "

8 Q AND HE JUST DROVE OFF AND LEFT YOU

9 A RIGHT

10 Q AND THEN THE OTHER GUY SAID WHAT?

11 A HE SAID, "LET ME FINISH PUTTING GAS IN MY CAR AND  
12 GET MY TRUCK AND GO PAY FOR IT AND THEN I'LL SEE "

13 Q OKAY DID YOU NOTICE A HIGHWAY PATROL OFFICER THERE  
14 AT THE B P STATION?

15 A I DID ON THE VIDEO, BUT I DIDN'T PAY ANY ATTENTION  
16 TO HIM BEING IN THE STORE

17 Q YOU DIDN'T NOTICE HIS CAR AROUND THERE THAT DAY

18 A I DIDN'T PAY ANY ATTENTION

19 Q WHEN YOU GOT TO YOUR HOUSE ON THIS AFTERNOON---

20 A UH-HUH

21 Q ---YOU WERE GOING TO GO IN, GIVE THIS MAN THE MONEY  
22 FOR THE PART FOR FIXING YOUR CAR, RIGHT?

23 A RIGHT

24 Q AND IT WAS STILL DAYLIGHT, RIGHT?

25 A YEAH, I COULD SEE YES

1 Q WAS IT BRIGHT DAYLIGHT OR CLOSE TO GETTING DARK OR  
2 DO YOU REMEMBER THAT?

3 A. WELL, IT WAS CLOSE TO GETTING DARK YOU KNOW, IT  
4 WAS GETTING LATER THE SUN WASN'T OUT BRIGHT, SO IT WAS---

5 Q WELL, ABOUT HOW LONG WAS IT -- BY THE TIME YOU GOT  
6 BACK TO YOUR HOUSE, HOW LONG HAD IT BEEN SINCE YOU HAD LEFT  
7 TO GET THE CURTAIN RODS?

8 A AN HOUR? HOUR AND A HALF? I DON'T KNOW, IT'S BEEN  
9 SO LONG

10 Q YOU DIDN'T NOTICE WHAT TIME IT WAS WHEN YOU CAME  
11 IN---

12 A NO

13 Q ---IN YOUR HOUSE?

14 A HUH-UH ~

15 Q NOW, YOU SAID THAT WHEN YOU WENT IN YOUR BEDROOM TO  
16 GET THE MONEY, YOU TURNED AROUND AND THERE HE WAS

17 A YEAH

18 Q PUT A BLINDFOLD AROUND YOU

19 A YEAH

20 Q HOW TIGHT DID HE TIE IT?

21 A JUST TIGHT ENOUGH WHERE I COULDN'T SEE AND TOOK THE  
22 MONEY OUT OF MY HAND WHICH WAS ALL I HAD

23 Q AND HE GRABBED YOU AND DRAGGED YOU OUT?

24 A UH-HUH

25 Q DID HE GRAB YOU HARD?

1 A WELL, YEAH YES

2 Q WHICH ARM?

3 A WELL, KIND OF PULLED ME, YOU KNOW

4 Q SO HE GRABBED YOU BOTH HANDS?

5 A UH-HUH

6 Q BOTH ARMS WAS HE FACING YOU OR WAS HE BEHIND YOU?

7 A HE WAS BEHIND ME AT THAT TIME

8 Q AND THEN -- SO HE'S BEHIND YOU, GRABBED A HOLD OF

9 YOU

10 A UH-HUH

11 Q TAKES YOU OUT OF THE HOUSE

12 A RIGHT

13 Q DID YOU STUMBLE AT ALL?

14 A I DON'T REMEMBER

15 Q TRIP UP?

16 A I DON'T REMEMBER

17 Q THEN YOU GOT IN THE TRUCK

18 A YES HE PUSHED ME IN THE TRUCK

19 Q ANYBODY LIVE AROUND YOU, MS SANDERS?

20 A NOT AT THAT TIME

21 Q HOW FAR IS THE NEAREST NEIGHBOR?

22 A MARGIE IS ABOUT THE CLOSEST

23 Q MARGIE - YOUR COUSIN?

24 A YES

25 Q AND ABOUT HOW FAR IS HER HOUSE FROM YOURS?

1 A ABOUT A HALF A MILE

2 Q SO YOU CAN'T SEE HER HOUSE---

3 A NO

4 Q ---FROM YOURS CAN YOU SEE ANY HOUSES---

5 A YEAH

6 Q ---FROM YOUR HOUSE?

7 A THERE WAS A MOBILE HOME RIGHT NEXT DOOR, BUT NOBODY  
8 HAD MOVED IN IT YET THEY WERE SUPPOSED TO, BUT THEY HADN'T  
9 GOTTEN IN THERE YET

10 Q SO NO ONE WAS LIVING THERE

11 A NO I WAS BACK THERE BY MYSELF

12 Q ALL RIGHT SO YOU'RE BY YOURSELF HOW MANY CARS DO  
13 YOU HAVE?

14 A I HAVE ONE

15 Q YOU GOT ANY OTHER CARS HANGING AROUND YOUR HOUSE,  
16 JUNK CARS, ANYTHING LIKE THAT?

17 A HUH-UH

18 Q SO YOU'RE IN THE TRUCK AND YOU'RE RIDING HOW LONG  
19 WOULD YOU ESTIMATE?

20 A A LONG TIME AN HOUR MAYBE

21 Q UH-HUH

22 A A LONG TIME BEFORE HE STOPPED

23 Q AND YOU DON'T SAY ANYTHING TO HIM THIS WHOLE TIME?

24 A WELL, YES

25 Q WHAT ARE YOU SAYING TO HIM?

1           A       I ASKED HIM WHERE HE WAS TAKING ME, WHAT HE WAS  
2 GOING TO DO   HE WASN'T TALKING BACK TO ME THAT MUCH

3           Q       UH-HUH

4           A       HUSH, BITCH, YOU KNOW

5           Q       NOW, YOU DIDN'T TELL THAT TO LAW ENFORCEMENT  
6 ORIGINALLY, DID YOU?

7           A       I TOLD THEM THAT HE KEPT CALLING ME BITCH

8           Q       IN THE TRUCK OR IN THE BEDROOM?

9           A       BOTH

10          Q       WELL, YOU DIDN'T TELL LAW ENFORCEMENT ABOUT HIM  
11 CALLING YOU BITCH IN THE TRUCK   JUST IN THE BEDROOM, RIGHT?

12          A       I DON'T THINK I MENTIONED IT ABOUT IN THE TRUCK

13          Q       OKAY    BUT YOU MENTIONED THAT HE SAID SOMETHING  
14 ABOUT, "I LIKE TO GO FISHING OVER THERE"?

15          A       YES, HE DID, BUT I DON'T KNOW WHERE IT WAS

16          Q       HE JUST OUT OF THE BLUE SAYS, YOU KNOW, THAT'S WHERE  
17 I GO FISHING

18          A       HE SAID, "THAT'S WHERE I LIKE TO GO FISHING "

19          Q       BUT YOU HAD A BLINDFOLD ON

20          A       RIGHT    I DIDN'T SEE WHERE IT WAS

21          Q       DID HE MAKE ANY OTHER CASUAL CONVERSATION WITH YOU?

22          A       NO

23          Q       ALL RIGHT    SO YOU GET TO THE HOUSE AND YOU STILL  
24 HAVE THE BLINDFOLD ON WHEN YOU GO INSIDE, RIGHT?

25          A       RIGHT

1 Q AND WHERE ARE YOU WHEN HE TAKES THE BLINDFOLD OFF?

2 A IN THE BEDROOM

3 Q IN THE BEDROOM WHERE?

4 A WHERE HE TOOK ME AND I STAYED THAT NIGHT

5 Q WELL, WERE YOU STANDING UP? WERE YOU ON THE BED?

6 WERE YOU ON THE FLOOR? WERE YOU SITTING IN THE CHAIR? WHERE

7 WERE YOU WHEN HE TOOK THE BLINDFOLD OFF?

8 A STANDING UP STANDING UP

9 Q AT WHAT POINT DID HE GET YOU ON THE BED?

10 A RIGHT AFTER THAT

11 Q AND IS THAT WHERE YOU STAYED UNTIL Y'ALL LEFT THE

12 HOUSE?

13 A WELL, I WENT TO THE BATHROOM - I HAD TO - AND I SAT

14 IN THE CHAIR

15 Q SO HE LET YOU GET UP AND---

16 A I MOVED IN THAT ROOM, THAT'S ALL

17 Q DID Y'ALL EVER FALL ASLEEP?

18 A I MIGHT HAVE I DON'T KNOW

19 Q DID HE EVER FALL ASLEEP?

20 A YES, AND I TRIED TO GET UP AND HE THREW HIS ARM

21 ACROSS ME AND HE WOULDN'T LET ME, AT ONE POINT

22 Q AND THEN YOU HAD THE BLINDFOLD BACK ON, TOOK YOU

23 BACK OUT TO THE TRUCK

24 A RIGHT

25 Q DID HE GRAB YOU THEN?

1           A       WELL, HE JUST KIND OF PUSHED ME, YOU KNOW, AND PUT  
2 ME IN THE TRUCK AND BROUGHT ME BACK TO THE HOUSE AND PUSHED  
3 ME OUT

4           Q       WELL, HOW DID YOU GET FROM THE BEDROOM TO THE TRUCK  
5 WITH THE BLINDFOLD ON?

6           A       HE WAS CARRYING ME, YOU KNOW, PUSHING ME

7           Q       HE PICKED YOU UP AND CARRIED YOU?

8           A       NO, HE DIDN'T PICK ME UP   HE JUST BROUGHT ME BY THE  
9 SHOULDERS AND PUT ME IN THERE

10          Q       DID HE GRAB YOU BY THE SHOULDERS?

11          A       YES    I BEGGED HIM NOT TO HURT ME ANYMORE AND TO LET  
12 ME GO

13          Q       AND SO YOU GOT BACK TO YOUR HOUSE   HOW DID YOU GET  
14 OUT OF THE TRUCK?

15          A       HE REACHED OVER AND OPENED THE DOOR AND PUSHED ME  
16 OUT AND TOLD ME THAT IF I TOLD ANYBODY HE'D COME BACK AND  
17 KILL ME

18          Q       DID YOU FALL ON THE GROUND?

19          A       YES

20          Q       ON YOUR FEET OR ON YOUR KNEES OR WHAT?

21          A       WELL, KIND OF ON MY SIDE

22          Q       DID YOU HAVE YOUR CLOTHES BACK ON THEN?

23          A       YES

24          Q       WHAT DID YOU DO AFTER YOU GOT IN YOUR HOUSE?

25          A       THE FIRST THING I DID WAS LOCK THE DOOR

1 Q OKAY THEN WHAT DID YOU DO?

2 A I WENT IN THE BATHROOM AND I WASHED OFF AND PUT ON  
3 SOME CLEAN UNDERCLOTHES AND I HAD -- I WAS ASHAMED I DIDN'T  
4 WANT TO TELL IT AND THEN I GOT UPSET

5 Q AND THEN WHAT HAPPENED?

6 A THEN LATER UP IN THE MORNING I WENT TO MY COUSIN'S  
7 AND I TOLD HER

8 Q ABOUT WHAT TIME?

9 A PROBABLY ABOUT 11, 11.30, SOMETHING LIKE THAT

10 Q SO WHAT DID YOU DO IN THE SIX HOURS IN BETWEEN THE  
11 TIME THAT YOU GOT HOME AND THE TIME THAT YOU WENT TO YOUR  
12 COUSIN'S AT 11 30? DID YOU EAT BREAKFAST?

13 A NO I CRIED AND I WAS TRYING TO FIGURE OUT WHAT TO  
14 DO.

15 Q SO YOU DIDN'T HAVE ANYTHING TO EAT DID YOU HAVE  
16 ANYTHING TO DRINK?

17 A YEAH, I THINK I DRANK SOME CO-COLA

18 Q YOU DRANK SOME CO-COLA IS THAT ALL?

19 A NO I MIXED ME A BIG DRINK AND DRANK IT DOWN  
20 BECAUSE I HAD DECIDED I WASN'T GOING TO TELL ANYBODY AND I  
21 THOUGHT THAT WOULD CALM ME DOWN

22 Q HOW MUCH DID YOU HAVE TO DRINK?

23 A I POURED ABOUT THIS MUCH IN A GLASS AND FILLED IT UP  
24 WITH CO-COLA

25 Q ABOUT -- THIS MUCH BEING?

1 A ABOUT A JIGGER

2 Q OKAY I'M JUST ASKING BECAUSE THE COURT REPORTER  
3 CAN'T TAKE---

4 A I KNOW

5 Q ---SOMETHING DOWN THAT SHE CAN'T SEE

6 A I WAS JUST -- IT'S ABOUT A JIGGER

7 Q WAS THAT WHISKEY OR WHAT?

8 A IT WAS RUM

9 Q AND ABOUT WHAT TIME WAS THAT? WAS THAT RIGHT AFTER  
10 YOU WASHED UP, RIGHT BEFORE YOU WENT TO YOUR COUSIN'S OR WHEN  
11 WAS THAT?

12 A 8 30, 9, 9 I DON'T KNOW EXACTLY WHAT TIME IT WAS

13 Q AND THAT WAS ALL THAT YOU'D HAD TO DRINK THAT DAY?

14 A UH-HUH

15 Q DID YOU EVER EAT ANYTHING?

16 A YEAH

17 Q WHAT DID YOU EAT?

18 A I ATE SOMETHING UP AT MARGIE'S SHE HAD COOKED  
19 DINNER AND I DON'T REMEMBER WHAT SHE HAD

20 Q OKAY DID YOU GO UP AND -- DID YOU EAT AS SOON AS  
21 YOU GOT THERE?

22 A NO, NOT RIGHT AWAY

23 Q WHAT HAPPENED RIGHT AFTER YOU GOT TO MARGIE'S?

24 A WELL, I WAS CRYING AND GOING ON AND THEY WERE TRYING  
25 TO COMFORT ME AND CALLED MY FAMILY, MY SISTERS AND ALL, AND

1 THEY ALL CAME AND MY CHILDREN, AND THEN AFTER THAT THEY TOOK  
2 ME ON TO ORANGEBURG TO THE HOSPITAL TO THE EMERGENCY ROOM AND  
3 FROM THERE TO CHARLESTON TO THE RAPE CENTER

4 Q SO WHEN DID Y'ALL CALL THE POLICE?

5 A I THINK THE HOSPITAL CALLED THE POLICE I KNOW THEY  
6 ENDED UP AT THE EMERGENCY ROOM

7 Q DOES MARGIE HAVE A PHONE?

8 A YES

9 Q SO YOU WENT TO MARGIE'S AND YOU WERE ALL UPSET WHO  
10 ELSE WAS AT MARGIE'S WHEN YOU GOT THERE?

11 A HER MOTHER AND HER HUSBAND

12 Q HOW MANY PEOPLE WERE CALLED TO COME OVER TO SEE YOU  
13 THAT MORNING OR THAT AFTERNOON BY THEN?

14 A MY SON, HIS WIFE

15 Q BUT NOBODY EVER CALLED---

16 A MY THREE SISTERS AND---

17 Q NOBODY EVER CALLED THE POLICE

18 A NO, NOT FROM THERE, NOT TO MY KNOWLEDGE

19 Q WHAT HAPPENED AFTER YOU GOT TO THE HOSPITAL?

20 A THEY DIDN'T CHECK ME THE POLICE CAME IN AND TALKED  
21 WITH ME

22 Q HOW MANY?

23 A THERE WAS A LADY AND A MAN THAT CAME IN AND TALKED  
24 WITH ME AND THEN THEY SENT ME ON TO CHARLESTON

25 Q WHO TOOK YOU TO CHARLESTON?

1 A MY SON AND HIS WIFE

2 Q WHAT DID YOU TELL THE POLICE THERE AT THE HOSPITAL?

3 A I TOLD THEM WHAT HAD HAPPENED

4 Q DID YOU GIVE ANY DESCRIPTIONS OF THE PERSON WHO HAD  
5 DONE THIS OR THE TRUCK OR ANYTHING LIKE THAT AT THAT TIME?

6 A I TOLD THEM SOME, BUT THEY DIDN'T ASK ME A LOT OF  
7 QUESTIONS AT THAT TIME THEY WERE TRYING TO GET ME TO GO ON  
8 AND HAVE THE -- THE KIT DONE

9 Q DID THEY HAVE TO TRY TO TALK YOU INTO THAT?

10 A WELL, NO HUH-UH

11 Q. SO WHAT WERE THEY DOING? WERE THEY MAKING  
12 ARRANGEMENTS FOR YOU TO GO, TALKING TO YOU ABOUT GOING---

13 A YES

14 Q ---GIVING Y'ALL DIRECTIONS?

15 A YES

16 Q BUT NOT ASKING YOU ANYTHING ABOUT WHO THIS PERSON  
17 WAS---

18 A YES, THEY ASKED ME THAT---

19 Q ---AT THAT TIME

20 A ---BUT NOT A LOT, AS I CAN REMEMBER

21 Q HOW LONG WERE YOU IN CHARLESTON?

22 A IT TAKES ABOUT AN HOUR AND A HALF TO DRIVE THERE,  
23 AND I GUESS I WAS IN THERE MAYBE AN HOUR WITH HER DOING THE  
24 KIT OR HOUR AND A HALF MAYBE

25 Q DID YOU EVER SEE -- DID YOU EVER SEE THE DOCTOR

1 WHILE YOU WERE THERE?

2 A NO SHE JUST DID THE RAPE KIT AND THE PICTURES  
3 AND

4 Q WAS THAT GRETCHEN OVERSTOLZ?

5 A I DON'T REMEMBER WHAT HER NAME WAS

6 Q YOU DON'T REMEMBER HER NAME?

7 A HUH-UH.

8 Q BUT YOU JUST SAW ONE PERSON IN CHARLESTON

9 A RIGHT

10 Q DID YOU TALK TO ANY LAW ENFORCEMENT ANY MORE THAT  
11 DAY?

12 A NO

13 Q WHEN WAS THE NEXT TIME YOU SPOKE WITH LAW  
14 ENFORCEMENT?

15 A I THINK LIEUTENANT BAMBERG CAME OVER TO MY SISTER'S  
16 AT THE RESIDENTIAL HOME AND TALKED WITH ME

17 Q AND WHEN WAS THAT? WAS THAT THE NEXT DAY?

18 A IT WAS THE NEXT DAY OR TWO, BUT MY SON WAS TALKING  
19 BACK AND FORTH AND---

20 Q YOUR SON WAS TALKING TO WHO?

21 A TO MS BAMBERG AND THEY WERE TRYING TO, YOU KNOW,  
22 FIND OUT WHO WAS THE PERSON BECAUSE I DIDN'T KNOW AND THEY  
23 WENT TO THE HOUSE AND CHECKED

24 Q WELL, WHY WERE THEY TALKING TO YOUR SON ABOUT WHO  
25 THIS PERSON WAS?

1 A BECAUSE I WAS VERY UPSET AND HAD TOLD HIM

2 Q SO YOU TALKED TO LIEUTENANT BAMBERG ON, FAIR TO SAY,  
3 MONDAY MORNING?

4 A YEAH---

5 Q DOES THAT SOUND ABOUT RIGHT?

6 A ---SOMETIME THAT WEEK

7 Q AND YOU GAVE HER A STATEMENT ABOUT WHAT HAPPENED

8 A YES

9 Q AND YOU GAVE HER A DESCRIPTION OF THE MAN

10 A RIGHT AND I ALSO CAME OVER HERE TWICE AND GAVE  
11 STATEMENTS

12 Q RIGHT AND WHEN WAS THAT? DO YOU REMEMBER?

13 A NO, I DON'T REMEMBER

14 Q WELL, WAS IT A COUPLE OF DAYS LATER? A COUPLE OF  
15 WEEKS LATER? A COUPLE OF MONTHS LATER?

16 A MORE LIKE A COUPLE OF MONTHS LATER IT WAS WHENEVER  
17 WE COULD GET EVERYTHING WORKED IN, YOU KNOW, AND GET  
18 APPOINTMENTS SET I DON'T REMEMBER THE EXACT DATES OR DAY  
19 THAT IT WAS

20 Q NOW, TELL ME ABOUT THAT DAY THAT YOU WERE WATCHING  
21 THIS VIDEOTAPE DO YOU REMEMBER HOW LONG THAT WAS AFTER YOU  
22 FIRST TALKED TO LIEUTENANT BAMBERG?

23 A WELL, AFTER SHE GOT IT FROM THE B P AND THEY GOT IT  
24 PUT TOGETHER I GUESS A COUPLE OF WEEKS I DON'T KNOW I'M  
25 NOT SURE OF THE DATE

1 Q HOW MUCH OF THAT TAPE DID YOU WATCH?

2 A I WATCHED A LOT OF IT

3 Q YOU WATCHED FROM THE TIME YOU CAME IN THE STORE?

4 A UH-HUH

5 Q UNTIL THE TIME THAT YOU POINTED OUT---

6 A RIGHT

7 Q ---THE MAN THAT YOU RECOGNIZED

8 A SURE DID

9 Q BUT YOU SAID AT THE TIME YOU WEREN'T A HUNDRED  
10 PERCENT SURE THAT THAT WAS HIM

11 A I SAID---

12 Q ISN'T THAT RIGHT?

13 A I SAID, I'M NOT A HUNDRED PERCENT SURE, BUT I'M  
14 PRETTY SURE, ABOUT 90 PERCENT SURE, THAT THAT'S HIM

15 Q NOW, YOU DIDN'T ACTUALLY SAY AT THAT TIME 90 PERCENT  
16 SURE

17 A. NO, NOT AT THAT PARTICULAR TIME I JUST TOLD HER  
18 THAT I WAS PRETTY SURE, WASN'T A HUNDRED PERCENT BUT LATER  
19 AFTER I SAW THE PICTURES I WAS SURE THAT WAS HIM, ABOUT 90  
20 PERCENT SURE, YES

21 Q OKAY NOW, AFTER YOU -- YOU WATCHED THAT VIDEO WITH  
22 LIEUTENANT BAMBERG, YOU THINK IT WAS A COUPLE OF WEEKS LATER  
23 HOW LONG AFTER THAT DID YOU SEE THAT PHOTO LINE-UP?

24 A I DON'T KNOW HOW LONG

25 Q WAS IT THE NEXT DAY? WAS IT A WEEK?

1           A       IT WAS -- IT WASN'T THE NEXT DAY    IT WAS LONGER,  
2 BUT I DON'T REMEMBER WHETHER IT WAS A WEEK OR A WEEK AND A  
3 HALF OR WHAT

4           Q       DO YOU EVER HAVE TROUBLE REMEMBERING THINGS, MS  
5 SANDERS?

6           A       NO, NOT REALLY BUT, I MEAN, SINCE I DON'T WORK AND I  
7 DON'T HAVE TO KEEP UP WITH THE TIME, I DON'T REMEMBER THINGS,  
8 YOU KNOW, SPECIFICALLY LIKE I USED TO BECAUSE I DON'T HAVE  
9 TO

10          Q       WHAT KIND OF WORK DID YOU DO WHEN YOU WERE WORKING?

11          A       I WAS NURSING

12          Q       A NURSING---

13          A       ASSISTANT

14          Q       WERE YOU A NURSE?

15          A       NURSING ASSISTANT

16          Q       HOW MANY YEARS DID YOU DO THAT?

17          A       ABOUT 30

18          Q       WHERE ALL DID YOU WORK?

19          A       I WORKED IN ORANGEBURG HOSPITAL, BAMBERG HOSPITAL  
20 THE LAST 18 OR 20 YEARS I WORKED AT CARRIGG MANOR RESIDENTIAL  
21 CARE

22          Q       BEG THE COURT'S INDULGENCE ONE MOMENT    JUST A  
23 COUPLE MORE QUESTIONS, MS SANDERS    WHEN YOU GOT INTO THE  
24 TRUCK -- WHEN YOU WERE PUT INTO THE TRUCK ORIGINALLY AT YOUR  
25 HOUSE AND I'M BACKTRACKING A LITTLE BIT, DID YOU PUT A SEAT

1 BELT ON?

2 A NO

3 Q DID YOU TOUCH ANYTHING AT ALL?

4 A I IMAGINE I PROBABLY TOUCHED THE SEAT I DON'T

5 KNOW

6 Q HOW FAST WAS HE DRIVING? COULD YOU TELL?

7 A NOT REALLY I WAS TOO SCARED

8 Q WELL, DID YOU EVER HAVE TO REACH OUT AND GRAB---

9 A YES

10 Q ---SO YOU WOULDN'T BE SLUNG AROUND IN THE TRUCK

11 SINCE YOU DIDN'T HAVE YOUR SEAT BELT ON?

12 A RIGHT YES

13 Q DID YOU TOUCH ANYTHING WHEN YOU WERE AT HIS HOUSE?

14 A I PROBABLY DID

15 Q DID HE EVER GIVE YOU ANYTHING?

16 A YEAH, HE GAVE ME A BEER

17 Q HE GAVE YOU A BEER TO DRINK?

18 A YES HE SAID, "DRINK THIS "

19 Q HE JUST OUT OF THE BLUE HANDED YOU A BEER TO DRINK

20 A YEAH, BECAUSE HE WAS DRINKING ONE

21 Q HE WAS DRINKING A BEER AND JUST GAVE YOU ONE, TOO?

22 A UH-HUH

23 Q WHERE WERE YOU WHEN YOU DRANK THAT BEER?

24 A IN THAT SAME ROOM

25 Q WERE YOU STANDING UP? WERE YOU ON THE BED? WERE

1 YOU SITTING DOWN?

2 A ON THE BED ON THE BED

3 Q DO YOU REMEMBER TOUCHING ANYTHING ELSE?

4 A NO

5 Q DO YOU SMOKE?

6 A YES

7 Q DID YOU HAVE A CIGARETTE WHILE YOU WERE THERE?

8 A YES

9 Q HOW MANY CIGARETTES?

10 A I DON'T KNOW HOW MANY

11 Q SO YOU WERE USING THAT ASHTRAY?

12 A YES, I USED THAT ASHTRAY

13 Q WHERE DID YOU GET THE CIGARETTES?

14 A I HAD MY POCKETBOOK ON MY SHOULDER WHEN I WAS TAKEN

15 OUT OF THE HOUSE AND I HAD CIGARETTES IN THERE, AND HE ALSO

16 WENT THROUGH MY POCKETBOOK

17 Q NOW, YOU NEVER TOLD ANYBODY THAT BEFORE NOW, DID

18 YOU?

19 A NO, I DON'T THINK SO

20 Q SO HE LET YOU HAVE YOUR CIGARETTES

21 A YES

22 Q WHAT ELSE DID YOU HAVE IN YOUR POCKETBOOK? ANYTHING

23 ELSE?

24 A MY WALLET AND HE WENT THROUGH THERE AND LOOKED AT MY

25 CARDS AND THINGS

1 Q BUT YOU DIDN'T TELL THE POLICE THAT

2 A I DON'T THINK SO I COULDN'T REMEMBER EVERYTHING  
3 THAT HAPPENED I THINK HE WAS LOOKING FOR MORE MONEY  
4 PROBABLY

5 Q WELL, DIDN'T THE POLICE ASK YOU TO TELL THEM  
6 EVERYTHING THAT YOU KNEW THAT COULD HAVE HELPED THEM TO  
7 IDENTIFY OR FIND THIS PERSON?

8 A YES

9 Q DID YOU EVER THINK THAT MAYBE THEY COULD HAVE GOT  
10 FINGERPRINTS OFF OF THE STUFF IN YOUR POCKETBOOK OR ANYTHING  
11 LIKE THAT?

12 A NEVER CROSSED MY MIND

13 Q DO YOU WATCH A LOT OF T V ?

14 A Y-ES

15 Q WHAT KIND OF SHOWS DO YOU WATCH?

16 A I WATCH SOME OF THE SOAP OPERAS AND I LIKE "E R ",  
17 "SEVENTH HEAVEN " I LIKE THE DETECTIVE MOVIES

18 Q DO YOU WATCH A LOT OF DETECTIVE SHOWS?

19 A "LAW AND ORDER " I WATCH SOME, YES

20 Q WATCH A LOT OF "LAW AND ORDER"? IT'S ON PRACTICALLY  
21 EVERY TIME YOU TURN AROUND, ISN'T IT?

22 A YEAH UH-HUH

23 Q DO YOU HAVE CABLE?

24 A YES

25 Q YOU KNOW, YOU CAN CATCH "LAW AND ORDER" ABOUT FIVE

1 TIMES A DAY, CAN'T YOU?

2 A. NO, I'VE NEVER WATCHED IT THAT MANY TIMES A DAY

3 Q YEAH BUT YOU DIDN'T THINK THE POLICE WOULD WANT TO  
4 KNOW THAT HE HAD TOUCHED STUFF IN YOUR POCKETBOOK

5 A I DIDN'T THINK ABOUT IT

6 Q NOW, WHEN YOU WERE BLINDFOLDED AND LEFT THE HOUSE,  
7 YOU HAD TOOK YOUR POCKETBOOK WITH YOU, RIGHT?

8 A I NEVER TOOK IT OFF MY SHOULDER WHEN I GOT OUT OF MY  
9 CAR I JUST THREW MY CURTAIN RODS IN THERE AND WENT ON TO  
10 THE BEDROOM TO GET MY MONEY

11 Q NO, NO, NO YOU SAID THAT YOU HAD THE POCKETBOOK ON  
12 YOUR SHOULDER WHEN THE PERSON TOOK YOU---

13 A YES

14 Q ---PUT YOU IN THE TRUCK, WERE IN THE HOUSE YOU'RE  
15 IN THE HOUSE ALL NIGHT, RIGHT?

16 A OH, YEAH, I TOOK MY POCKETBOOK OFF

17 Q OKAY WHEN DID YOU GET IT BEFORE YOU WENT BACK OUT  
18 TO THE TRUCK?

19 A WHEN I KEPT BEGGING HIM TO TAKE ME HOME AND HE SAID  
20 HE WOULD, AND THEN I GRABBED MY POCKETBOOK

21 Q SO YOU GRABBED YOUR POCKETBOOK AND HE TIED THE---

22 A YES

23 Q ---BLINDFOLD BACK AROUND AND YOU---

24 A YES

25 Q ---WENT BACK OUT

1 A UH-HUH

2 Q DID YOU HAVE TO ASK HIM IF YOU COULD GET YOUR  
3 POCKETBOOK OR DID HE HAND IT TO YOU OR---

4 A NO, HE DIDN'T HAND IT TO ME I JUST GRABBED IT

5 Q AND HE DIDN'T OBJECT TO YOU TAKING IT

6 A. NO

7 Q DID YOU HAVE A SEAT BELT ON THE SECOND TIME YOU WERE  
8 IN THE TRUCK?

9 A NO

10 Q DID HE SAY ANYTHING TO YOU WHEN YOU WERE BACK IN THE  
11 TRUCK---

12 A NO

13 Q ---WHILE YOU WERE DRIVING?

14 A THAT WAS A QUIET RIDE BACK

15 Q AND YOU DIDN'T SAY ANYTHING TO HIM

16 A NO

17 Q AND HE JUST DROPPED YOU OFF AT YOUR HOUSE

18 A THAT'S RIGHT

19 Q AND YOU WENT INSIDE AND YOU CHECKED THE CLOCK AND IT  
20 WAS ABOUT 5 00 IN THE MORNING

21 A YEAH, AFTER I RUN IN AND I LOCKED THE DOOR AND THEN  
22 I CHECKED TO SEE WHAT TIME IT WAS

23 Q AND IT WAS STILL DARK---

24 A YEAH

25 Q ---WHEN YOU LEFT HIS HOUSE AND IT WAS DARK WHEN YOU

1 GOT HOME

2 A YEAH IT MIGHT HAVE BEEN GETTING JUST DAYLIGHT

3 Q BUT YOU COULDN'T SEE A WHOLE LOT

4 A HUH-UH

5 Q DO YOU HAVE A PHONE AT YOUR HOUSE? DID YOU AT THAT  
6 TIME?

7 A NO

8 Q HOW OFTEN -- WELL, LET ME ASK YOU THIS YOU  
9 MENTIONED YOUR SON AND HIS WIFE HOW MANY KIDS DO YOU HAVE  
10 LIVING AROUND THE AREA AND FAMILY?

11 A I HAVE TWO SISTERS THAT LIVE ABOUT TWO MILES AND THE  
12 OTHER ONE LIVES IN BAMBERG AND MY SON LIVES ABOUT FIVE  
13 THE OTHER SON LIVES IN LEXINGTON

14 Q HOW OFTEN -- DO YOU SPEAK WITH OR SEE YOUR FAMILY ON  
15 A REGULAR BASIS OR WOULD YOU AT THAT TIME?

16 A MY SISTER I WAS SEEING OFTEN

17 Q EVERY DAY?

18 A YEAH AS A MATTER OF FACT, SHE SAID SHE HAD COME BY  
19 MY HOUSE THAT AFTERNOON

20 Q UH-HUH

21 A AND I HAD GONE TO GET MY CURTAIN RODS

22 Q OKAY

23 A AND SHE SAID SHE STARTED TO COME BACK BY WHICH SHE  
24 DIDN'T SHE WENT ON TO HER HOUSE

25 Q UH-HUH BUT WHEN YOU CAME BACK, YOU HAD YOUR PURSE

1 AND YOUR CAR KEYS AND EVERYTHING LIKE THAT, RIGHT?

2 A RIGHT

3 MS. BROWN: THANK YOU, YOUR HONOR I HAVE NO  
4 FURTHER QUESTIONS

5 THE COURT: ALL RIGHT ANYTHING ON REDIRECT?

6 MS. BRISBIN: JUST BRIEFLY, YOUR HONOR

7 REDIRECT EXAMINATION

8 BY MS BRISBIN

9 Q YOU SAID THAT YOU WERE 90 PERCENT SURE WHEN YOU  
10 PICKED OUT JOSEPH WALKER FROM THE VIDEO AND THE PHOTO  
11 LINE-UP?

12 A RIGHT

13 Q NOW THAT YOU SEE HIM IN PERSON IN COURT TODAY, HOW  
14 SURE -- ARE YOU SURE THAT -THIS IS THE PERSON -- JOSEPH WALKER  
15 IS THE PERSON WHO SEXUALLY ASSAULTED YOU?

16 A YES

17 Q IS THERE ANY DOUBT IN YOUR MIND?

18 A NO DOUBT

19 MS. BRISBIN: THANK YOU

20 THE COURT: ANYTHING? RECROSS?

21 MS. BROWN: NO, YOUR HONOR

22 THE COURT: ALL RIGHT THANK YOU, MA'AM YOU MAY  
23 STEP DOWN LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A  
24 LITTLE BIT OF A BREAK IF YOU'LL STEP BACK TO THE JURY ROOM  
25 PLEASE DON'T DISCUSS THE CASE WHILE YOU'RE BACK THERE WE'LL

1 BRING YOU BACK IN JUST A FEW MINUTES, ABOUT 15 MINUTES OR SO  
2 THANK YOU

3 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT  
4 3 34 P M )

5 THE COURT: ALL RIGHT WE'RE GOING TO TAKE A  
6 15-MINUTE BREAK Y'ALL RELAX AND WE'LL BE BACK IN A LITTLE  
7 BIT

8 (WHEREUPON, A SHORT BREAK WAS TAKEN STATE'S  
9 EXHIBITS 10 THROUGH 12 WERE MARKED FOR IDENTIFICATION ONLY )

10 THE COURT: ALL RIGHT WE'VE GOT TO FIND US A  
11 LAWYER, DON'T WE? OH, THERE SHE IS WHEN YOU'RE SHORT AND  
12 YOU HIDE BEHIND T V 'S, IT'S HARD TO SEE

13 MS. BROWN: THAT'S WHY I'M ASKING TO MOVE IT SO I  
14 HAVE A GOOD VIEW WITH THE JUDGE

15 THE COURT: WITH THE WHO? ALL RIGHT STATE READY  
16 TO CALL ITS NEXT WITNESS?

17 MS. BRISBIN: YES, YOUR HONOR

18 THE COURT: ALL RIGHT DEFENDANT READY TO GO?

19 MS. BROWN: YES, YOUR HONOR

20 THE COURT: ALL RIGHT LET'S BRING THE JURY IN IF  
21 WE COULD, PLEASE

22 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT  
23 4 02 P M )

24 THE COURT OKAY MADAM SOLICITOR, IF YOU'D CALL  
25 YOUR NEXT WITNESS

1 MS. BRISBIN: THANK YOU, YOUR HONOR THE STATE  
2 CALLS DR ELIZABETH GIBBS

3 DR ELIZABETH GIBBS, AFTER BEING DULY SWORN,  
4 TESTIFIED AS FOLLOWS

5 THE CLERK: HAVE A SEAT IN THE WITNESS BOX STATE  
6 YOUR FULL NAME FOR THE COURT, SPELLING YOUR LAST

7 THE WITNESS: MY NAME IS DR ELIZABETH LYNN HARVEY  
8 BAKER GIBBS G-I-B-B-S

9 DIRECT EXAMINATION

10 BY MS BRISBIN

11 Q DR GIBBS, WHERE ARE YOU EMPLOYED?

12 A I'M EMPLOYED AT CAROLINA FORENSIC HEALTHCARE IN  
13 CHARLESTON

14 Q AND WHAT TYPE OF FACILITY IS THIS?

15 A CAROLINA FORENSIC HEALTHCARE IS AN L L C AND WE  
16 PROVIDE MEDICAL DIRECTING FOR THE CHILDREN'S MEDICAL  
17 ASSESSMENT CENTER WHICH IS IN CHARLESTON C M A C IS A  
18 NONPROFIT PRIVATE KIND OF MEDICAL CLINIC AND WE PROVIDE  
19 SERVICES, FORENSIC SERVICES, FOR VICTIMS OF CHILD PHYSICAL  
20 ABUSE, CHILD SEXUAL ABUSE, ADULT SEXUAL ASSAULT, AND DOMESTIC  
21 VIOLENCE

22 Q AND HOW LONG HAVE YOU BEEN EMPLOYED IN THIS TYPE OF  
23 POSITION?

24 A I STARTED C M A C IN 1996

25 Q AND WHAT WERE YOU DOING PRIOR TO THAT?

1 A PRIOR TO THAT, I WORKED FOR THE ORANGEBURG FAMILY  
2 HEALTH CENTER AND I RAN A FORENSIC HEALTHCARE PROGRAM OUT OF  
3 THE FAMILY HEALTH CENTER IN ORANGEBURG FROM 1990 TO 1996

4 Q AND WHAT IS YOUR POSITION AT THE C M A C NOW?

5 A. I'M THE MEDICAL DIRECTOR

6 Q AND WHAT'S YOUR EDUCATIONAL BACKGROUND?

7 A I RECEIVED A B S DEGREE IN BIOLOGY FROM THE  
8 UNIVERSITY OF SOUTH CAROLINA IN 1982, AND THEN I RECEIVED A  
9 DOCTORATE OF MEDICINE FROM THE UNIVERSITY OF SOUTH CAROLINA  
10 SCHOOL OF MEDICINE AND THAT WAS IN 1986 I WENT TO  
11 GREENVILLE MEMORIAL HOSPITAL WHERE I DID A ROTATING  
12 INTERNSHIP YEAR, AND THEN I RETURNED TO COLUMBIA AND FINISHED  
13 MY PEDIATRIC RESIDENCY IN DECEMBER OF 1989

14 Q AND SO YOU ARE TRAINED AS A PEDIATRICIAN?

15 A YES

16 Q DO YOU HAVE ANY SPECIALIZED TRAINING IN SEXUAL  
17 ASSAULT EXAMINATIONS?

18 A YES, I DO

19 Q AND WHAT TYPE OF TRAINING DO YOU HAVE IN THAT?

20 A IN 1989 I WENT TO HARBOR-UCLA AND THE UNIVERSITY OF  
21 SAN DIEGO TO LEARN HOW TO DO FORENSIC -- FORENSIC EXAMS FOR  
22 VICTIMS OF CHILD ABUSE AND ADOLESCENT SEXUAL ASSAULT, AND  
23 THEN SINCE THEN IN 19 -- 1999 I BEGAN ALSO PROVIDING FORENSIC  
24 HEALTHCARE EXAMS FOR ADULT DOMESTIC VIOLENCE VICTIMS AND  
25 ADULT SEXUAL ASSAULT AND THROUGH -- OVER THE LAST TEN YEARS

1 I'VE ATTENDED MANY CONFERENCES ALL AROUND THE UNITED STATES

2 Q DO YOU HAVE ANY IDEA HOW MANY SEXUAL ASSAULT  
3 EXAMINATIONS YOU'VE DONE IN YOUR EXPERIENCE?

4 A TOTAL SINCE 19 -- 1990 I'VE SEEN BETWEEN 6 AND 7,000  
5 VICTIMS OF EITHER SEXUAL ASSAULT OR PHYSICAL ABUSE AND ABOUT  
6 90 PERCENT OF THOSE ARE SEXUAL ASSAULT

7 Q HAVE YOU EVER BEEN QUALIFIED TO TESTIFY AS AN EXPERT  
8 WITNESS IN THE FIELD OF SEXUAL ASSAULT EXAMINATION?

9 A YES, I HAVE

10 Q AND APPROXIMATELY HOW MANY TIMES?

11 A I QUIT KEEPING TRACK OF THAT IN 1994 WHENEVER I  
12 REACHED 50

13 MS. BRISBIN: OKAY YOUR HONOR, AT THIS TIME I  
14 WOULD ASK THAT DR GIBBS BE QUALIFIED AS AN EXPERT IN SEXUAL  
15 ASSAULT EXAMINATION

16 MS. BROWN: NO OBJECTION

17 THE COURT: ALL RIGHT I'M GOING TO FIND THAT --  
18 LADIES AND GENTLEMEN, I THINK I TOLD YOU SCIENTIFIC,  
19 TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE THAT WILL ASSIST  
20 THE TRIER OF THE FACT, THAT BEING THE JURY, IN UNDERSTANDING  
21 THE EVIDENCE OR DETERMINING A FACT THAT MAY BE IN ISSUE, A  
22 WITNESS QUALIFIED AS AN EXPERT BY VIRTUE OF HIS OR HER  
23 KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION MAY  
24 TESTIFY THERETO IN THE FORM OF AN OPINION AND IN THEIR AREAS  
25 OF EXPERTISE I'M GOING TO FIND DR GIBBS TO BE QUALIFIED AS

1 AN EXPERT IN THE FIELD OF MEDICINE AND THEN ALSO IN THE FIELD  
2 OF SEXUAL ASSAULT EXAMINATION AND AS SUCH SHE CAN TESTIFY  
3 WITH OPINIONS IN HER AREAS OF EXPERTISE YOU ARE TO GIVE HER  
4 TESTIMONY SUCH WEIGHT AND CREDIBILITY AS YOU DEEM APPROPRIATE  
5 AS YOU WILL WITH ANY AND ALL WITNESSES WHO TESTIFY IN THIS  
6 TRIAL

7 MS. BRISBIN: THANK YOU, YOUR HONOR

8 THE COURT: YES, MA'AM

9 BY MS BRISBIN-

10 Q DID -- WAS MARGARET SANDERS A PATIENT AT -- WHAT DO  
11 YOU CALL OUT-CARE CENTERS?

12 A CARE CENTERS

13 Q CARE CENTERS ON MARCH 3RD OF 2002?

14 A YES, SHE WAS

15 Q AND WHAT TYPE OF EXAMINATION DID SHE HAVE?

16 A SHE RECEIVED A SEXUAL ASSAULT FORENSIC HEALTHCARE  
17 ASSESSMENT AND AN EVIDENCE COLLECTION KIT

18 Q IS THAT EVIDENCE COLLECTION KIT WHAT SOME PEOPLE  
19 REFER TO AS A RAPE KIT?

20 A YES

21 Q AND WHAT'S INVOLVED IN THAT EXAMINATION?

22 A BASICALLY WHENEVER THE PATIENT COMES IN WE GET A  
23 MEDICAL HISTORY ABOUT THEIR PAST MEDICAL PROBLEMS THEY MIGHT  
24 HAVE HAD, ANY CURRENT PROBLEMS THAT THEY ARE HAVING ALSO WE  
25 GET A HISTORY OF THE INCIDENT THAT OCCURRED THAT BROUGHT THEM

1 IN OR THE INCIDENT THAT PUT THEM AT RISK OF BEING SEXUALLY  
2 ASSAULTED TYPICALLY

3 WE GET INFORMATION THAT WILL HELP WITH WHAT WE WILL  
4 NEED TO COLLECT IN THE EXAM ROOM AND ANY KIND OF PROBLEMS  
5 THAT THEY'RE HAVING WITH THEIR BODY THOSE ALSO INCLUDE  
6 QUESTIONS THAT WE CALL TRIAGE QUESTIONS AROUND THE SYMPTOMS  
7 THAT THEY'RE CURRENTLY HAVING AND ANY KIND OF IMMEDIATE  
8 MEDICAL ATTENTION THEY MIGHT NEED

9 AFTER WE GET THE HISTORY, THEN WE DO A PHYSICAL EXAM  
10 WHERE WE HAVE A ROOM THAT'S SPECIALLY SUITED FOR THIS WE  
11 HAVE A PIECE OF EQUIPMENT CALLED A COLPOSCOPE WHICH IS LIKE A  
12 MICROSCOPE ON A STAND THAT STANDS ABOUT THAT HIGH, AND THAT  
13 IS HOOKED TO A MONITOR AND TO A GRAPHIC VIDEO PRINTER SO THAT  
14 WE CAN -- WE CAN GET PHOTO DOCUMENTATION OF THE EXAM AND  
15 THEN WE BRING THEM IN AND WE COLLECT WHATEVER EVIDENCE THAT  
16 THE HISTORY TELLS US THAT WE NEED TO COLLECT, AND WE DO A  
17 PHYSICAL ASSESSMENT FROM HEAD TO TOE AND PHOTO-DOCUMENT THAT  
18 AFTERWARDS WE GET WHATEVER LABORATORY TESTS WE NEED,  
19 SOMETIMES GIVE THEM TREATMENT FOR EITHER PREGNANCY PREVENTION  
20 OR SEXUALLY TRANSMITTED INFECTIONS AND THEN WE PROCESS AND  
21 STORE THE EVIDENCE COLLECTION KIT UNTIL LAW ENFORCEMENT CAN  
22 COME AND RETRIEVE IT

23 Q WHAT IS YOUR ROLE IN THIS PROCESS?

24 A I'M THE MEDICAL DIRECTOR WE HAVE SEVERAL FORENSIC  
25 NURSE EXAMINERS WE ARE A 24-HOUR CLINIC AND I'M THE ONLY

1 PHYSICIAN THAT IS THERE SO WE HAVE FORENSIC NURSE EXAMINERS  
2 THAT ARE TRAINED TO COME IN AND DO THE ASSESSMENT, COLLECT  
3 THE EVIDENCE, FILL OUT THE REPORT, GET PHOTO DOCUMENTATION  
4 AND THEN I COME IN AND REVIEW THE CHART, REVIEW THE  
5 PHOTOGRAPHS, VIDEO IF NEEDED, AND THE OVERALL EVIDENCE  
6 COLLECTION AND THEN I MAKE THE MEDICAL DIAGNOSIS

7 Q DID YOUR NAME APPEAR ON MS SANDERS' MEDICAL RECORD?

8 A YES

9 Q AND DID YOU REVIEW THE EXAMINATION REPORTS AND THE  
10 PHOTOS?

11 A YES, I DID

12 Q AND WHAT WERE THE FINDINGS ON MS SANDERS'  
13 EXAMINATION?

14 A THE INDIVIDUAL FINDINGS?

15 Q YES

16 A OKAY SHE HAD -- SHE HAD REDNESS OF HER SOFT  
17 PALATE, WHICH IS THE ROOF OF THE MOUTH, KIND OF TOWARDS THE  
18 BACK SHE HAD REDNESS AND SHE ALSO HAD PETECHIAE PETECHIAE  
19 ARE LITTLE SMALL PINPOINT AREAS OF BLEEDING UNDER THE SKIN  
20 SHE HAD A BRUISE ON HER FOREHEAD THAT HAD BEEN FROM A  
21 PREVIOUS INCIDENTAL TRAUMA AND IT WAS NOT RELATED AND THEN  
22 FOR THE FINDINGS IN HER GENITAL AREA, THOSE ARE KIND OF HARD  
23 TO VERBALLY EXPLAIN IF I COULD DRAW THOSE, THAT WOULD BE  
24 GREAT

25 Q OKAY LET'S GO BACK TO THE PETECHIAE---

1 A OKAY

2 Q ---AND THE REDNESS IN THE SOFT PALATE

3 A UH-HUH

4 Q COULD YOU EXPLAIN THAT A LITTLE FURTHER? WHAT'S A  
5 SOFT PALATE FOR THOSE OF US WHO MIGHT NOT KNOW?

6 A BASICALLY IT'S THE ROOF OF THE MOUTH IF YOU TAKE  
7 YOUR TONGUE AND YOU PUT YOUR TONGUE UP TO THE ROOF OF YOUR  
8 MOUTH, THEN THE SOFT PALATE IS THE LITTLE AREA THAT YOU'RE  
9 FEELING THE HARD PALATE IS ALL THE WAY TOWARDS THE BACK AND  
10 IT'S KIND OF HARD TO GET YOUR TONGUE BACK THERE THE SOFT  
11 PALATE IS MORE TOWARD -- A LITTLE MORE TOWARDS THE FRONT  
12 SHE HAD PETECHIAE IN THE BACK OF THE SOFT PALATE WHICH WOULD  
13 BE RIGHT AROUND THE MIDDLE OF WHERE YOU CAN PUT YOUR TONGUE

14 Q AND WHAT WOULD BE THE SIGNIFICANCE OF THAT FINDING  
15 IN RELATION TO THIS PATIENT'S HISTORY?

16 A SHE HAD GIVEN A HISTORY OF BEING---

17 MS. BROWN: OBJECTION, YOUR HONOR, TO POTENTIAL  
18 HEARSAY

19 MS. BRISBIN: YOUR HONOR, I BELIEVE IT WOULD COME IN  
20 UNDER THE MEDICAL DIAGNOSIS AND TREATMENT EXCEPTION TO THE  
21 HEARSAY RULE

22 THE COURT: SUSTAINED -- I MEAN OVERRULED YOU MAY  
23 PROCEED

24 BY MS BRISBIN

25 Q YOU CAN ANSWER

1           A        OKAY     SHE HAD GIVEN A HISTORY OF BEING SEXUALLY  
2 ASSAULTED IN HER MOUTH WITH A PENIS AND YOU CAN SEE THOSE  
3 PETECHIAE WHERE THERE'S IMPACT LIKE THE LITTLE SMALL BRUISING  
4 AND WE DO FREQUENTLY SEE THEM IN ORAL SEXUAL ASSAULTS    YOU  
5 CAN SEE THEM IN OTHER CONDITIONS SUCH AS STREPTOCOCCAL OR  
6 VIRAL INFECTIONS IN THE MOUTH    THOSE ARE ALMOST ALWAYS AT  
7 THE VERY, VERY BACK RIGHT AROUND THE TONSIL OR PILLARS    BUT  
8 HERS WERE, LIKE I SAID, RIGHT WHERE IF YOU PUT THE TONGUE AT  
9 THE ROOF OF YOUR MOUTH THAT'S WHERE HERS WERE WHICH IS THE  
10 AREA OF IMPACT THAT WE TYPICALLY SEE WITH AN ORAL SEXUAL  
11 ASSAULT

12           Q        OKAY     AND YOU SAID YOU NEED TO DESCRIBE THE GENITAL  
13 FINDINGS HOW?    WHAT WERE YOU---

14           A        IT WOULD BE GREAT TO DRAW IT IF I COULD

15           Q        OKAY     LET'S SEE WHAT WE CAN DO HERE    IF YOU WOULD  
16 LIKE TO STEP DOWN AND DRAW THAT, THAT WOULD BE GREAT

17           COURT REPORTER:   MS BRISBIN, HAVE HER FACE TOWARDS  
18 ME, IN OTHER WORDS NOT---

19           THE COURT:   LET HER -- LET HER TALK -- IF YOU'LL GET  
20 ON THE SIDE THAT THE SOLICITOR IS ON---

21           THE WITNESS.   THIS WAY?

22           THE COURT:   ---YOUR VOICE WILL CARRY THIS WAY AS  
23 WELL AS THAT WAY AS WELL

24           THE WITNESS.   OKAY     IF IT'S OKAY, THE FIRST THING  
25 I'M GOING TO DO IS DRAW THE NORMAL STRUCTURES SO THAT I CAN

1 LABEL THEM SO WHEN I'M TALKING ABOUT THE FINDINGS, THEN  
2 YOU'LL BE ABLE TO TELL WHAT I'M TALKING ABOUT I'M DRAWING  
3 THE FEMALE GENITALIA AND THESE ARE THE LARGER OUTER FATTY  
4 LIPS THEY'RE CALLED THE LABIA MAJORA AND I'M GOING TO LABEL  
5 THOSE L M A J THEN YOU HAVE THE SMALLER INNER LIPS THAT  
6 ACTUALLY COME DOWN IN A PUBERTAL OR A MATURE PERSON DOWN TO  
7 THE LITTLE V AT THE BOTTOM AND THOSE ARE CALLED THE LABIA  
8 MINORA WHICH ARE THE SMALL -- SMALLER INNER LIPS.

9 RIGHT IN THIS AREA UNDERNEATH HERE YOU HAVE THE  
10 CLITORAL HOOD AND UNDERNEATH THAT IS THE CLITORIS AND I  
11 LABELED THAT C , AND THEN YOU HAVE THE OPENING TO THE  
12 URETHRA THE URETHRA IS A LITTLE, SHORT TUBE THAT CONNECTS  
13 THE BLADDER TO THE OUTSIDE THAT THE URINE COMES OUT OF AND I  
14 LABELED THAT U , AND THEN YOU HAVE THE OPENING TO THE VAGINA  
15 THE OPENING TO THE VAGINA IS ACTUALLY SET DOWN  
16 INSIDE THESE STRUCTURES SO IF WE WERE LOOKING AT A 3-D VIEW  
17 OF THIS IT WOULD BE BACK BEHIND THE BOARD AND IT'S SET DOWN  
18 INSIDE THERE BY ANYWHERE FROM THREE-QUARTERS TO THREE-EIGHTHS  
19 OF AN INCH AND SO THEN THE OUTSIDE PART WHERE THE LABIA  
20 COME DOWN AND JOIN IS CALLED THE POSTERIOR FOURCHETTE AND  
21 I'LL LABEL THAT P F ---

22 COURT REPORTER: WILL YOU SPELL THAT OR SAY IT  
23 AGAIN?

24 THE WITNESS: POSTERIOR FOURCHETTE  
25 P-O-S-T-E-R-I-O-R F-O-U-R-C-H-E-T-T-E I BELIEVE THAT'S

1 RIGHT OKAY BUT THE POSTERIOR FOURCHETTE IS ON THE OUTSIDE  
2 WHERE ALL THESE AREAS COME TO A POINT AND THEN THE -- KIND OF  
3 A VALLEY THAT CONNECTS THE OPENING TO THE VAGINA TO THIS  
4 POSTERIOR FOURCHETTE ON THE OUTSIDE IS CALLED THE FOSSA  
5 NAVICULARIS AND I'LL PUT THAT AS F N DO YOU NEED THAT ONE?

6 COURT REPORTER: (SHOOK HEAD FROM SIDE TO SIDE )

7 THE WITNESS: NO? OKAY AND SO THESE ARE THE  
8 NORMAL FEMALE STRUCTURES THEN YOU HAVE THE PERINEUM WHICH  
9 I'LL LABEL P WHICH IS THE AREA BETWEEN THE FEMALE GENITALIA  
10 AND THE ANUS, AND THEN YOU HAVE THE ANAL AREA WHICH I'LL  
11 LABEL A THE OPENING TO THE VAGINA I'M GOING TO DRAW OVER ON  
12 THE SIDE THE LABIA MAJORA AND THE OUTER PART OF THE LABIA  
13 MINORA ARE COVERED BY SKIN THAT'S LIKE THE SKIN ON YOUR ARM  
14 & ONCE YOU GET UNDERNEATH LIKE THE INSIDE OF THE LABIA  
15 MINORA, THE AREA AROUND THE URETHRA, THE AREA AROUND THE  
16 VAGINA AND THE FOSSA NAVICULARIS, IT'S COVERED BY SKIN THAT  
17 IS SORT OF A SPECIAL SKIN THAT IS THERE TO STRETCH AND IT  
18 STAYS MOIST IT'S CALLED MUCOSA AND IT'S LIKE THE SAME KIND  
19 OF SKIN THAT'S ON THE INSIDE OF YOUR MOUTH SO IF YOU TAKE  
20 YOUR TONGUE AND YOU RUB IT ALONG YOUR CHEEK, THAT'S THE KIND  
21 OF SKIN THAT THIS IS MADE OUT OF

22 THE OPENING TO THE VAGINA HAS AROUND THE ENTRANCE OF  
23 IT THAT SAME KIND OF SKIN IT DOESN'T COVER IT, BUT IT COMES  
24 RIGHT AROUND THE EDGES OF IT AND IT'S THAT SAME KIND OF SKIN,  
25 THAT MUCOSA IT'S JUST SORT OF BUNCHED UP AROUND THE --

1 AROUND THE OPENING TO THE VAGINA

2 SHE HAD SEVERAL DIFFERENT FINDINGS. THE FIRST  
3 FINDING WAS IN THIS AREA CALLED THE FOSSA NAVICULARIS THIS  
4 AREA, ESPECIALLY WHEN THERE'S NOT A LOT OF ESTROGEN IN THE  
5 BODY, CAN TEAR FAIRLY EASILY BEFORE MS OVERSTOLZ BEGAN THE  
6 ASSESSMENT, SHE DOCUMENTS THAT WITH THE PHOTOS AND IN HER  
7 CHART THAT THAT AREA WAS -- HAD TRAUMA TO IT AND PRIOR TO HER  
8 ACTUALLY TOUCHING IT ONCE SHE STARTED THE ASSESSMENT, THEN  
9 THE WHOLE AREA WAS VERY TENDER

10 ON THE LABIA MAJORA WHICH IS THE LARGER OUTER LIPS,  
11 IT WAS EDEMATOUS WHICH JUST MEANS SWOLLEN ON THE AREA  
12 AROUND THE CLITORAL HOOD SHE NOTES THAT THERE'S REDNESS TO  
13 THIS AREA RIGHT HERE THERE'S A SMALL ABRASION IN BETWEEN  
14 THE CHART AND THEN WHAT YOU CAN SEE, AND THEN THERE'S AREAS  
15 OF LACERATION RIGHT IN HERE AND THEN THERE'S ANOTHER KIND OF  
16 SMALL ABRASION ON THE CLITORAL HOOD

17 RIGHT NEXT TO THE URETHRA WHICH IS THE OPENING RIGHT  
18 IN HERE THERE IS -- THERE'S ECCHYMOUSIS WHERE THE PETECHIAE  
19 ARE LITTLE, SMALL PINPOINT AREAS OF BLEEDING UNDER THE SKIN,  
20 ECCHYMOUSIS ARE LARGER AREAS OF BLEEDING UNDER THE SKIN, AND  
21 NEXT TO HER URETHRA ON BOTH SIDES WERE AREAS OF VERY RED AND  
22 DISTINCT ECCHYMOUSIS OR BLEEDING UNDER THE SKIN THEN THE  
23 RIGHT SIDE OF THE LABIA MINORA AND THE INNER SIDE THERE'S TWO  
24 FAIRLY LARGE LACERATIONS TO THE SIDE, AND THEN THERE'S  
25 SEVERAL OTHER SMALLER AREAS RIGHT ON THE -- RIGHT NEXT TO THE

1 HYMEN THIS PROBABLY SHOULD BE DRAWN UP A LITTLE BIT, BUT  
2 BASICALLY IT'S ON THE INNER PART OF THE LABIA, AND REMEMBER  
3 ALL THIS IS THAT KIND OF SKIN THAT WE TALKED ABOUT THAT'S ON  
4 THE INSIDE OF YOUR MOUTH

5 AND THE FOSSA NAVICULARIS, THERE ARE TWO AREAS OF  
6 LACERATION LACERATION MEANS THAT THE SKIN HAS BEEN RIPPED.  
7 ABRASION MEANS THAT THE OUTER LAYERS OF THE SKIN HAS BEEN  
8 KIND OF TORN OFF, BUT AN ABRASION IS SOMETHING THAT GOES A  
9 LITTLE DEEPER I MEAN, A LACERATION IS SOMETHING THAT GOES A  
10 LITTLE DEEPER

11 WE USE A CLOCK TO DOCUMENT POSITION SO THAT 12 00 IS  
12 TOWARDS THE FRONT 6 00 IS TOWARDS THE BACK 3 00 IS ON THE  
13 LEFT AND 9 00 IS ON THE RIGHT THESE LACERATIONS THAT ARE IN  
14 THE FOSSA NAVICULARIS ARE AT 5 AND 6 00 DOWN INSIDE THE  
15 FOSSA

16 THEN ALL THAT LEAVES IS THE HYMEN AND THERE WERE  
17 SEVERAL AREAS ON THE HYMEN UP IN THIS -- THE AREA RIGHT UP  
18 IN HERE RIGHT AROUND -- AROUND 10 TO 11 00 - I'LL CALL IT 11  
19 - IS ONE AREA THERE'S ANOTHER AROUND 7 00 AND THEN THIS  
20 WHOLE AREA BETWEEN 1 AND 2, IT WAS JUST VERY RED AND ACTUALLY  
21 WAS OOZING AT THE TIME SO THERE MUST HAVE BEEN ABRASION  
22 THERE THE SKIN WAS CERTAINLY BROKEN BECAUSE IT WAS JUST  
23 KIND OF OOZING AT THE TIME AND THEN AT 3 00 THERE WAS  
24 SOMETHING CALLED A TRANSECTION WHICH IS A TRAUMATIC  
25 INTERRUPTION IN THE HYMEN THAT MEANS THAT THERE IS AN

1 INTERRUPTION TO THE HYMEN THAT WAS CAUSED BY TRAUMA WE CAN  
2 TELL THIS BECAUSE IT'S FRESH AND OOZING AT THE TIME THAT THE  
3 -- OF THE ASSESSMENT AND THAT'S -- I THINK THAT'S BASICALLY  
4 IT THERE WAS NO TRAUMA TO THE PERINEUM AND THERE WAS NO  
5 TRAUMA TO THE ANUS THAT WAS NOTED

6 BY MS BRISBIN

7 Q THANK YOU YOU CAN HAVE A SEAT AGAIN

8 A OKAY

9 Q DO YOU RECOGNIZE WHAT HAVE BEEN MARKED STATE'S  
10 EXHIBIT NUMBER 10, 11, AND 12 FOR IDENTIFICATION PURPOSES?

11 A YES, I DO

12 Q AND HAVE YOU SEEN THOSE BEFORE?

13 A YES, I HAVE

14 Q AND WHEN DID YOU SEE THOSE INITIALLY?

15 A I FIRST SAW THESE ON MARCH 4TH, THE DAY AFTER THE  
16 ASSESSMENT, WHENEVER I WAS PRECEPTING (PHONETIC) THE CHART

17 Q AND WHAT ARE THEY?

18 A THEY'RE GRAPHIC VIDEO PRINTS THEY'RE THE PHOTO  
19 DOCUMENTATION THAT'S TAKEN THROUGH THE COLPOSCOPE OR THE  
20 MICROSCOPE THAT'S ON OUR STAND AND IT'S -- THEY'RE NOT  
21 ACTUALLY PICTURES THEY'RE -- BUT THEY'RE GRAPHIC VIDEO  
22 PRINTS THAT -- THAT WERE DONE AT THE TIME OF THE ASSESSMENT

23 Q AND ARE THESE THE ACTUAL PHOTOS OR PRINTS, WHATEVER  
24 YOU CALL THEM, FROM MARGARET SANDERS' EXAMINATION---

25 A YES---

1 Q ---ON MARCH---

2 A ---THEY ARE

3 Q ---3RD---

4 A YES---

5 Q ---OF 2002?

6 A ---THEY ARE

7 MS. BRISBIN: YOUR HONOR, AT THIS TIME I'D ASK THAT  
8 THESE STATE'S EXHIBIT 10, 11, AND 12 BE ADMITTED INTO  
9 EVIDENCE

10 MS BROWN: NO OBJECTION

11 THE COURT: ALL RIGHT SO ADMITTED WITHOUT  
12 OBJECTION

13 (STATE'S EXHIBITS 10 THROUGH 12 WERE RECEIVED IN  
14 EVIDENCE )

15 BY MS BRISBIN

16 Q COULD YOU -- WOULD IT HELP YOU TO USE THESE PHOTOS  
17 TO EXPLAIN TO THE -- SHOW THE JURY WHAT YOU JUST DESCRIBED?  
18 IF YOU COULD MAYBE STEP DOWN AND POINT IT OUT -- POINT OUT  
19 THE INJURIES

20 A I DON'T KNOW HOW MUCH YOU CAN ACTUALLY SEE FROM  
21 THERE, BUT THERE IS THE CLITORAL HOOD RIGHT HERE AND JUST UP  
22 UNDERNEATH THAT IS THE OPENING TO THE URETHRA THAT I HAVE  
23 DRAWN THERE WITH THE U , AND THIS IS THE AREA OF ECCHYMOSIS  
24 OR THE BLEEDING UNDER THE SKIN THAT'S RIGHT NEXT TO THAT  
25 YOU CAN START SEEING THE LESIONS ON THE HYMEN JUST UNDERNEATH

1 THERE

2 THIS IS -- THIS IS ACTUALLY THE OPENING TO THE  
3 VAGINA, AND THIS PIECE OF SKIN THAT GOES RIGHT ALONG THROUGH  
4 THERE IS THE -- IS THE HYMEN, AND YOU CAN SEE RIGHT HERE AT 1  
5 AND 2 00 THERE'S JUST -- IT LOOKS VERY RED AND IT'S  
6 DOCUMENTED AS OOZING THEN YOU CAN LOOK OVER HERE AT WHAT  
7 WOULD BE 11 TO 12 00 AND IT'S SWOLLEN AND RED RIGHT HERE AT  
8 3 IS THE ACUTE TRANSECTION OR THE FRESH TRANSECTION, AND THEN  
9 THERE'S THAT AREA AT 7 THAT I'M NOT SURE IS IN THESE

10 I THINK YOU CAN START TO SEE IT DOWN IN HERE, BUT I  
11 DON'T THINK IT SHOWS UP VERY WELL ON THESE THEN HERE YOU  
12 HAVE THE AREA THAT IS -- THAT'S THE FOSSA THAT'S RIGHT IN  
13 HERE AND YOU CAN SEE THAT THROUGH ONE OF THE LITTLE  
14 LACERATIONS THERE THIS IS DYE ON HERE WE USE A TOLUENE  
15 BLUE DYE BECAUSE THE OUTER LAYS OF SKIN OF MUCOSA DON'T HAVE  
16 ANY NUCLEI IN IT THE INNER LAYERS OR THE UNDER LAYS DO, SO  
17 WHEN THERE'S AN INTERRUPTION OF THE SKIN WE PUT ON THIS BLUE  
18 DYE THAT STAINS THE NUCLEAR MATERIAL, AND IF IT'S -- IF THE  
19 SKIN IS INTACT, IT JUST WASHES RIGHT OFF BECAUSE THERE'S  
20 NOTHING THERE FOR IT TO ADHERE TO IF THE SKIN IS NOT  
21 INTACT, IF THERE IS AN INTERRUPTION IN THE OUTER LAYERS OF  
22 SKIN, THEN THE DYE ACTUALLY ADHERES TO IT AND WE CAN SEE IT  
23 AND THAT'S WHAT YOU'RE SEEING RIGHT HERE AND THESE ARE THE  
24 SMALL AREAS THAT I HAVE -- THAT I'VE GOTTEN DRAWN RIGHT UP IN  
25 HERE, BUT THESE ARE THE TWO PRIMARY FINDINGS LET'S SEE

1 THIS IS THE CLITORAL HOOD WHICH IS THIS AREA

2 THE COURT: DOCTOR, WOULD YOU IDENTIFY WHAT THE  
3 EXHIBIT NUMBER IS OF THE

4 THE WITNESS: OKAY THIS IS EXHIBIT NUMBER 12

5 THE COURT: ALL RIGHT

6 THE WITNESS: AND I WAS JUST TALKING ABOUT -- WHEN I  
7 WAS TALKING ABOUT THE INNER ASPECT OF THE LABIA, THAT WAS  
8 EXHIBIT 11, AND WHEN I WAS TALKING ABOUT THE FINDINGS ON THE  
9 URETHRA AND THE HYMEN, THAT WAS EXHIBIT 10

10 THE COURT: THANK YOU, MA'AM

11 THE WITNESS: YOU'RE WELCOME BUT THIS IS THE  
12 CLITORAL HOOD; I'M BACK ON 12 NOW THIS IS THE CLITORAL HOOD  
13 AND YOU CAN SEE RIGHT HERE WHERE THERE'S LACERATIONS OR  
14 INTERRUPTIONS IN THE SKIN THAT GO FAIRLY DEEP RIGHT TO HERE  
15 THEN YOU CAN ALSO SEE THE LITTLE AREAS ON THE -- ON THE OTHER  
16 SIDE, BUT THESE ARE THE PICTURES THAT ACTUALLY DOCUMENT ALL  
17 OF THESE FINDINGS

18 MS. BRISBIN: THANK YOU OKAY THANK YOU OKAY  
19 YOU CAN HAVE A SEAT

20 THE COURT: LADIES AND GENTLEMEN, I DON'T MIND YOU  
21 PASSING THOSE PHOTOGRAPHS AROUND OR PRINTS, BUT DON'T MISS  
22 THE TESTIMONY AS I TOLD YOU, THE EXHIBITS WILL GO WITH YOU  
23 TO THE JURY ROOM---

24 MS. BRISBIN: THAT'S TRUE

25 THE COURT: ---BUT THE TESTIMONY WON'T IF YOU MISS

1 IT, YOU'RE JUST OUT OF LUCK SO MAKE SURE THAT YOU  
2 UNDERSTAND WHAT'S BEING SAID AND HEAR WHAT'S BEING SAID HERE  
3 TODAY  
4 BY MS BRISBIN

5 Q YOU HAVE GONE OVER THE INDIVIDUAL FINDINGS CAN YOU  
6 SUMMARIZE IN GENERAL WHAT THE FINDINGS OF MS SANDERS' SEXUAL  
7 ASSAULT EXAMINATION WERE?

8 A THE FINDINGS, PARTICULARLY THE LACERATIONS AND THE  
9 TRAUMA TO THE HYMEN, ARE DIAGNOSTIC OF BLUNT-FORCE-  
10 PENETRATIVE TRAUMA, AND THE FINDINGS TOGETHER ARE CONSISTENT  
11 WITH THE HISTORY THAT SHE GAVE OF A PAINFUL SEXUAL ASSAULT

12 MS. BRISBIN: THANK YOU I DON'T HAVE ANY FURTHER  
13 QUESTIONS PLEASE ANSWER ANY THE DEFENSE HAS

14 CROSS-EXAMINATION

15 BY MS BROWN

16 Q DR GIBBS, YOU'VE TESTIFIED THAT THE FINDINGS ARE  
17 DIAGNOSTIC OF BLUNT-FORCE-PENETRATIVE TRAUMA MEANING THAT  
18 IT'S DIAGNOSTIC OF A PAINFUL SEXUAL ASSAULT WAS THAT WHAT  
19 YOU JUST SAID?

20 A NO ACTUALLY THOSE ARE TWO DIFFERENT TERMS

21 Q OKAY

22 A WE USE MEDICAL CERTAINTY ON THE PHYSICAL FINDINGS  
23 THAT ARE IN THE CATEGORIES OF NORMAL, NONSPECIFIC  
24 NONSPECIFIC MEANS THAT THAT CAN CAUSE IT, BUT SO CAN A LOT OF  
25 OTHER THINGS AND YOU CAN'T WEIGH THAT OUT SUSPICIOUS OF

1 MEANS THAT IT MAKES YOU STRONGLY CONSIDER A CAUSE, BUT IT  
2 DOESN'T REALLY GIVE YOU MUCH INFORMATION ABOUT THE LEVEL OF  
3 MEDICAL CERTAINTY CONSISTENT WITH AS IT RELATES TO PHYSICAL  
4 FINDINGS MEANS MORE PROBABLE THAN NOT, AND DIAGNOSTIC MEANS  
5 THAT YOU CAN LOOK AT THEM WITHOUT ANY OTHER HISTORY, THAT YOU  
6 CAN TELL THAT'S WHAT CAUSED IT WHEN YOU LOOK AT HER, THEN  
7 THE FINDINGS -- PHYSICAL FINDINGS ARE DIAGNOSTIC OF  
8 BLUNT-FORCE-PENETRATIVE TRAUMA AND THEY ARE CONSISTENT  
9 MEANING THAT, YOU KNOW, THEY ARE -- CERTAINLY CAN BE  
10 EXPLAINED BY HER HISTORY

11 Q THEY COULD BE EXPLAINED BY OTHER POTENTIAL FACTORS  
12 AS WELL, CORRECT?

13 A YES

14 Q WHAT WOULD SOME OF THOSE FACTORS BE, OR WHAT WOULD BE  
15 OTHER CAUSES FOR THAT DIAGNOSIS?

16 A THE MAIN FACTOR THAT WOULD BE AN ALTERNATIVE  
17 EXPLANATION WOULD BE A FORM OF CONSENSUAL INTERCOURSE THAT  
18 WAS FAIRLY ROUGH AND FAIRLY PAINFUL THAT WOULD THEN CAUSE  
19 TRAUMA TO THOSE AREAS

20 Q NOW, ACCORDING TO YOUR -- YOU DID NOT ACTUALLY DO  
21 THE EXAM OF MS SANDERS, CORRECT?

22 A NO, I DID NOT

23 Q BUT YOU HAVE HAD THE OPPORTUNITY TO REVIEW THAT EXAM  
24 AND YOU ACTUALLY USED THAT EXAM TO MAKE YOUR DIAGNOSES,  
25 CORRECT?

1 A YES THAT'S CORRECT

2 Q AND SHE PRESENTED AT THAT TIME AS A 58-YEAR-OLD  
3 WOMAN? IS THAT RIGHT?

4 A 59 YEARS OLD

5 Q 59 YEARS OLD AND SHE HAD HAD A HYSTERECTOMY?

6 A YES, SEVERAL YEARS AGO

7 Q AND SO SHE -- IS IT FAIR TO SAY SHE WAS  
8 POSTMENOPAUSAL?

9 A IT'S KIND OF HARD AND, QUITE HONESTLY, I DON'T KNOW  
10 BECAUSE IT'S NOT IN THE RECORD WHETHER WHEN THEY DID A  
11 HYSTERECTOMY THEY TOOK HER OVARIES OUT IF THE OVARIES ARE  
12 REMOVED, THEN -- THEN THERE IS NO ESTROGEN THAT'S BEING  
13 PRODUCED BY THE OVARIES IF THE OVARIES HAVEN'T BEEN  
14 REMOVED, THEN THEY CAN PRODUCE ESTROGEN UNTIL SHE REACHES  
15 MENOPAUSE, BUT I DO KNOW THAT LOOKING AT THE GRAPHIC VIDEO  
16 PRINTS THAT HER SKIN WAS -- WAS MORE CONSISTENT WITH SOMEONE  
17 WHO WAS AT THE VERY LEAST IN EARLY MENOPAUSE

18 Q SO THE SKIN THAT YOU -- THAT YOU SAW LOOKED AS  
19 THOUGH IT DID NOT OR IT HAD DIMINISHED ESTROGEN

20 A YES THAT'S CORRECT

21 Q AND I BELIEVE YOU TESTIFIED EARLIER THAT WHEN A  
22 WOMAN'S ESTROGEN LEVELS DROP, THAT SKIN IS MORE PRONE TO  
23 TEARING

24 A YES THAT'S CORRECT

25 Q AND THAT'S ACROSS THE BOARD, NOT PARTICULARLY -- NOT

1 SPECIFIC TO MRS SANDERS BUT---

2 A YES

3 Q ---FOR ANY WOMAN THAT'S TRUE.

4 A THAT'S CORRECT

5 Q SO ANY WOMAN IN THAT SITUATION WITH LOWERED  
6 ESTROGEN, HER SKIN IS GOING TO TEAR MORE EASILY THAN A WOMAN  
7 WITH NORMAL ESTROGEN LEVELS IS THAT CORRECT?

8 A YES

9 Q AND I MEAN THE SKIN IN THIS GENITAL AREA, THE---

10 A RIGHT I MEAN EVERYBODY---

11 Q I'LL CALL IT F N

12 A OKAY EVERYBODY IS DIFFERENT AND SO I DON'T WANT TO  
13 MAKE IT ACROSS THE BOARD, BUT AS TRENDS GO AND AS PATTERNS  
14 GO, YES, THE LOWER YOUR ESTROGEN THE MORE LIKELY YOU ARE TO  
15 TEAR WITH TRAUMA

16 Q AND SO WOULD IT BE FAIR TO SAY THAT IT TAKES LESS  
17 TRAUMA TO MAKE THIS KIND OF INJURY IN SKIN THAT IS -- THAT  
18 HAS LESS ESTROGEN THAN IN SKIN WITH NORMAL ESTROGEN LEVELS OR  
19 DO I NEED TO REPHRASE THAT QUESTION?

20 A COULD YOU REPHRASE IT?

21 Q IN A WOMAN WHO HAS LOWER ESTROGEN LEVELS, WILL IT  
22 TAKE LESS FORCE OR TRAUMA FOR TEARING TO OCCUR OR FOR THESE  
23 KINDS OF INJURIES TO OCCUR THAN FOR A WOMAN WITH NORMAL  
24 ESTROGEN LEVELS?

25 A YES

1 Q AND I BELIEVE YOU STATED THAT THE DIAGNOSTIC  
2 FINDINGS COULD HAVE BEEN DUE TO ROUGHER CONSENSUAL  
3 INTERCOURSE, DIDN'T JUST HAVE TO BE NONCONSENSUAL TRAUMA,  
4 CORRECT?

5 A IF YOU TAKE THE -- IF YOU TAKE THE PHYSICAL FINDINGS  
6 ALONE, THAT'S CORRECT THAT WASN'T THE HISTORY THAT WAS  
7 GIVEN, BUT IF YOU LOOK AT THE PHYSICAL FINDINGS ALONE WITHOUT  
8 ANY HISTORY, THAT WOULD BE CORRECT

9 Q WHAT OTHER TYPES OF EXAMS WERE CONDUCTED OF MS  
10 SANDERS?

11 A SHE HAD EVIDENCE COLLECTION THE EVIDENCE  
12 COLLECTION INCLUDED HAIR SAMPLES, PUBIC HAIR SAMPLES, PUBIC  
13 HAIR COMBINGS THERE WAS A HISTORY OF BEING LICKED IN HER  
14 EAR AND SO THAT AREA WAS ACTUALLY SWABBED FOR SALIVA A  
15 KNOWN SALIVA SAMPLE WAS ALSO TAKEN HER UNDERWEAR WAS  
16 COLLECTED EVEN THOUGH THIS WAS -- THIS WAS NOT THE UNDERWEAR  
17 THAT SHE HAD ON AT THE TIME I BELIEVE SHE HAD ALREADY GIVEN  
18 THOSE TO LAW ENFORCEMENT

19 A WET PREP WAS DONE WHICH MEANS THAT THE VAGINAL  
20 FLUIDS THAT WERE LOOKED AT UNDER THE MICROSCOPE THAT THAT --  
21 THAT WAS DONE THAT WAS NEGATIVE AND GRETCHEN DID NOT MARK  
22 THAT VAGINAL SWABS HAD BEEN TAKEN, BUT SHE DID DO A WET PREP  
23 AND I WOULD IMAGINE THAT SHE DID TAKE THOSE, BUT QUITE  
24 HONESTLY THEY'RE NOT MARKED ON THE -- ON THE CHART

25 Q AND WHO IS GRETCHEN AGAIN?

1 A GRETCHEN OVERSTOLZ WAS THE FORENSIC NURSE EXAMINER

2 Q OKAY SO THOSE SWABS -- SO EVEN THOUGH IT'S NOT  
3 MARKED, THOSE SWABS WERE TAKEN

4 A YES, I BELIEVE THEY WERE

5 Q WHAT IS THE PURPOSE OF ALL THOSE SWABS AND  
6 EVERYTHING THAT YOU JUST MENTIONED? WHAT'S THE PURPOSE OF  
7 THAT?

8 A DO YOU WANT ME TO GO ONE BY ONE?

9 Q SURE

10 A THE HAIR SAMPLES -- THE REASON WE TAKE HAIR SAMPLES  
11 IS BECAUSE SOMETIMES LAW ENFORCEMENT WILL GO TO THE SCENE OF  
12 THE INCIDENT AND TO ESTABLISH OR FOR THE POSSIBILITY OF  
13 ESTABLISHING THAT THE PERSON WAS ACTUALLY AT THE SCENE THEY  
14 CAN TAKE HAIR SAMPLES THAT WERE COLLECTED AT THE SCENE  
15 SOMETIMES, IF THEY'RE PRESENT, AND COMPARE THEM TO THE HAIR  
16 SAMPLE OF THE -- OF THE PATIENT AND SEE IF IT'S A MATCH SO,  
17 THEREFORE, WE HAVE TO PULL SEVERAL -- SEVERAL HAIRS FROM  
18 DIFFERENT PARTS OF THE HEAD

19 THE PUBIC HAIR COMBINGS, WE DO THOSE BECAUSE  
20 SOMETIMES WITH -- WITH GENITAL-TO-GENITAL CONTACT SOME HAIRS  
21 CAN BE SHED FROM THE -- FROM THE ACCUSED AND THAT CAN BE USED  
22 TO HELP DETERMINE, YOU KNOW, WHETHER THEY'RE THERE, IF THOSE  
23 ARE PRESENT AND THEN TO HAVE A MATCH FOR TELLING THE  
24 DIFFERENCE BETWEEN THE PATIENT AND ANOTHER PERSON, WE HAVE TO  
25 PULL SAMPLES OF THE PATIENT'S PUBIC HAIR

1 THE SALIVA, THE REASON THAT WE GET SALIVA IS BECAUSE  
2 THERE ARE CERTAIN SUBSTANCES THAT ARE SECRETED IN THE  
3 POPULATION AND IT'S NOT ANYWHERE CLOSE TO D N A BUT THAT  
4 SOMETIMES YOU CAN, YOU KNOW, KIND OF NARROW DOWN THE  
5 POPULATION IF YOU HAVE A SUBSTANCE OR BODILY FLUIDS FROM  
6 ANOTHER PERSON AND YOU HAVE THE SAME BODILY FLUIDS FROM THE  
7 PATIENT AND YOU CAN TELL THAT THEY'RE DIFFERENT PEOPLE AND  
8 THAT'S WHY WE COLLECT THE SALIVA

9 THE BLOOD WE COLLECT FOR D N A THE VAGINAL SWABS  
10 ARE LOOKING FOR ANY KIND OF LUBRICANT OR SOMETIMES DEBRIS  
11 THAT GETS IN THAT AREA IF THE INCIDENT OCCURRED IN THE WOODS  
12 OR SOMEPLACE LIKE THAT AND ALSO LOOKING FOR SEMEN OR BODILY  
13 FLUIDS FROM THE PERSON WHO'S ACCUSED AND THE WET PREP IS TO  
14 LOOK FOR SPERM UP UNDERNEATH THE MICROSCOPE I THINK THAT'S  
15 ALL OF THEM

16 Q OKAY WHAT ABOUT PHYSICAL EXAMINATION? ANY -- DO  
17 YOU DO ANY OTHER TYPE OF PHYSICAL EXAMINATION LOOKING FOR  
18 BRUISING OR ANYTHING LIKE THAT?

19 A YES YES

20 Q AND THAT EXAM WAS CONDUCTED IN THIS CASE?

21 A YES

22 Q AND WHAT -- WHAT BRUISES WERE NOTED?

23 A SHE HAD THE PETECHIAE THAT WAS ON HER PALATE THAT WE  
24 TALKED ABOUT AND THEN SHE HAD A BRUISE ON HER FOREHEAD, BUT  
25 NOT TO CONFUSE YOU SHE WAS VERY CLEAR THAT THE BRUISE HAD

1 OCCURRED FROM JUST AN INCIDENTAL TRAUMA THAT HAD HAPPENED  
2 EARLIER

3 Q THERE WAS NO BRUISING NOTICED ON HER ARMS?

4 A NO

5 Q NO BRUISING NOTICED ON HER SHOULDERS?

6 A THERE WAS NO BRUISING ANYWHERE ELSE ON THE SKIN

7 Q. AND THAT -- AGAIN, THAT WAS -- EXAMINATION IS DONE  
8 IN THAT -- FOR THAT AS WELL?

9 A YES

10 Q NOW, YOU MENTIONED THAT BLOOD IS DRAWN---

11 A YES

12 Q ---IN THE COURSE OF THAT AND THAT'S DONE FOR  
13 TOXICOLOGY AS WELL AS SEROLOGY OR D N A ?

14 A SOMETIMES WE DRAW FOR TOXICOLOGY WE DON'T ALWAYS  
15 DO IT IT'S A DIFFERENT TUBE AND WE DON'T ALWAYS DO THAT  
16 IN THIS CASE IT WAS ONLY -- ONLY A LAVENDER-TOP TUBE WAS  
17 DRAWN FOR SEROLOGY, NOT FOR TOXICOLOGY

18 Q WHY WAS A TOXICOLOGY TUBE NOT DRAWN?

19 A THERE WAS NO HISTORY OF ANY SUBSTANCES BEING  
20 INGESTED AT THE TIME OF THE ASSAULT

21 Q NONE THAT WAS -- THERE WAS NO HISTORY?

22 A THERE WAS NO HISTORY GIVEN, CORRECT

23 Q AND JUST FOR EXPLANATION PURPOSES, WHAT IS  
24 TOXICOLOGY?

25 A TOXICOLOGY IS WHERE THEY TAKE THE BLOOD AND TAKE IT

1 TO THE -- WELL, ALL THE EVIDENCE COLLECTED GOES IN A KIT AND  
2 THEN LAW ENFORCEMENT TAKES IT TO OUR STATE LAW ENFORCEMENT  
3 DIVISION AND THEN THEY PROCESS IT AND WHAT THEY WERE  
4 PROCESSING TOXICOLOGY FOR ARE LEVELS OF DRUGS, MEDICATIONS,  
5 AND ALSO FOR ALCOHOL

6 Q OKAY ARE THERE ANY -- ARE THERE ANY OTHER CULTURES  
7 DONE AS FAR AS -- YOU MENTIONED -- YOU MENTIONED EARLIER THAT  
8 TESTING IS DONE FOR SEXUALLY TRANSMITTED DISEASES

9 A WE DON'T TEST SOMETIMES WE TREAT PROPHYLACTICALLY  
10 WHENEVER WE SEE SOMEBODY THAT'S VERY, VERY CLOSE IN PROXIMITY  
11 TO THE TIME OF THE INCIDENT, THEN THE CULTURES WOULD COME  
12 BACK NEGATIVE ANYWAY AND SO FREQUENTLY, MOST OF THE TIME  
13 ACTUALLY, WE GO AHEAD AND TREAT WE GIVE ANTIBIOTICS WE  
14 GIVE ZYTHROMAX AND FLAGYL WHICH WOULD TREAT FOR GONORRHEA AND  
15 CHLAMYDIA AND TRICHOMONAS

16 Q OKAY NOW, THE -- YOU WORK WITH -- LET ME REPHRASE  
17 THAT YOU HAVE ACTUALLY TWO DIFFERENT TYPES OF FORMS AND  
18 REPORTS THAT YOU FILL OUT, CORRECT?

19 A YES THAT'S CORRECT

20 Q COULD YOU EXPLAIN THE DIFFERENCE?

21 A THE STATE LAW ENFORCEMENT DIVISION, S L E D , THEY  
22 ACTUALLY PUBLISH THE PROTOCOL THAT IS IN THE EVIDENCE  
23 COLLECTION KIT THAT PROTOCOL IS DESIGNED AS -- PRIMARILY AS  
24 A TOOL FOR LAW ENFORCEMENT IT HELPS WITH THE INVESTIGATION  
25 AND IT ALSO HELPS WITH THE LAB TECHS WHEN THEY GO TO PROCESS

1 THE INFORMATION SO THAT FORM IS DONE REALLY PRIMARILY FOR  
2 LAW ENFORCEMENT BECAUSE WE ARE A HEALTHCARE FACILITY AND WE  
3 DO PROVIDE FORENSIC HEALTHCARE, THERE'S MORE INFORMATION THAT  
4 WE NEED SPECIFICALLY AROUND PAST MEDICAL HISTORY, SYMPTOMS  
5 THEY MIGHT BE HAVING, ALSO MEDICATIONS, THOSE KINDS OF THINGS  
6 AND THEN, QUITE HONESTLY, WE LIKE A MORE DETAILED FORM TO BE  
7 ABLE TO RECORD THE PHYSICAL FINDINGS

8 Q SO YOU GENERALLY WOULD DO EVERYTHING THAT IS  
9 PRESCRIBED IN THE S.L.E.D. PROTOCOL AND THEN ADD TO IT WITH  
10 YOUR OWN FORM?

11 A WE DON'T ALWAYS DO EVERYTHING WE DO THE PARTS THAT  
12 ARE PERTINENT TO US THE S L E D PROTOCOL IS A GUIDELINE  
13 IT'S NOT A DOGMA PROTOCOL IT'S A GUIDELINE, BUT WE DO TRY  
14 AND BE AS THOROUGH AS WE CAN

15 Q NOW, THE S L E D PROTOCOL ASKS THAT -- ASKS THAT  
16 CERTAIN TESTS BE DONE, CORRECT?

17 A WELL, IT SUGGESTS THAT THEY BE DONE YOU DON'T HAVE  
18 TO DO ALL OF THE TESTS THAT ARE IN THE PROTOCOL

19 Q THEY SUGGEST, FOR EXAMPLE, A URINALYSIS BE DONE

20 A CORRECT

21 Q WHAT WOULD BE THE PURPOSE OF A URINALYSIS?

22 A LOOKING FOR BLOOD, WELL, AND SOMETIMES SPERM  
23 SOMETIMES SPERM CAN ACTUALLY BE IN THE URINE, BUT THAT'S VERY  
24 UNUSUAL BUT REALLY WHAT THEY'RE MAINLY LOOKING FOR IS  
25 BLOOD

1 Q WAS A URINALYSIS CONDUCTED IN THIS CASE?

2 A I DON'T THINK IT WAS IN HER CASE WE COULD  
3 CERTAINLY LOOK AT THE GENITAL AREA AND SEE THAT THERE WAS  
4 BLOOD PRESENT, BUT LET ME LOOK AGAIN TO BE SURE I TOOK MY  
5 CHART APART FOR THE PICTURES LET ME GET TO NO, A  
6 URINALYSIS WAS NOT DONE IN HER CASE

7 Q WHY WOULD THAT NOT HAVE BEEN DONE?

8 A WE COULD LOOK AT THE GENITAL FINDINGS AND REALIZE  
9 THAT IT WOULD BE POSITIVE FOR BLOOD EVEN MICROSCOPIC BLOOD  
10 SHOWS UP ON A URINALYSIS SO, YOU KNOW, I MEAN SHE CERTAINLY  
11 COULD HAVE CHOSEN TO DO ONE, BUT IT WAS NOT NECESSARY

12 Q NOW, THERE ARE ALSO SEVERAL CULTURES LISTED ON THE  
13 S L E D PROTOCOL G C CULTURE, ORAL, VAGINAL, AND RECTAL  
14 WHAT IS THAT?

15 A THE GONORRHEA CULTURE IS THE G C CULTURE, AND ORAL  
16 MEANS OF THE THROAT THEN IT'S GOT G C CULTURE VAGINAL  
17 THAT MEANS A GONORRHEAL CULTURE OF THE VAGINA, AND THEN A  
18 G C CULTURE RECTAL MEANS A GONORRHEAL CULTURE OF THE RECTUM  
19 OR THE ANUS

20 Q AND WERE THOSE CULTURES TAKEN IN THIS CASE?

21 A NO, THEY WERE NOT

22 Q WHY NOT?

23 A THEY WOULD NOT HAVE BEEN POSITIVE AT THAT POINT WE  
24 WERE -- WE WERE ONLY 24 HOURS OUT IT TAKES AT LEAST THREE  
25 DAYS AND IN SOME CASES THREE TO FIVE DAYS FOR MOST CULTURES

1 TO BE POSITIVE

2 Q ALSO LISTED ON HERE WOULD BE AN H I V TEST WOULD  
3 THAT HAVE BEEN DONE IN THIS CASE?

4 A NO

5 Q WHY NOT?

6 A AN H I V WON'T TURN POSITIVE FOR AT A MINIMUM FIVE  
7 OR SIX WEEKS AND THE RECOMMENDATION IS TO HAVE THAT DONE AT  
8 SIX WEEKS, TWELVE WEEKS, AND SIX MONTHS AND SHE WAS  
9 REFERRED TO HER PRIMARY CARE PHYSICIAN FOR SEXUALLY-  
10 TRANSMITTED-INFECTION TESTING AND FOR H I V TESTING

11 Q ARE YOU AWARE OF WHETHER OR NOT THERE WAS ANY  
12 FOLLOW-UP?

13 A I'M NOT AWARE, BUT I KNOW THAT MS OVERSTOLZ DID  
14 TALK TO HER PRIMARY CARE PROVIDER

15 Q ABOUT DOING THOSE---

16 A YES

17 Q ---KINDS OF TESTING? NOW, AGAIN BACKING UP, I'M NOT  
18 GOING TO TRY TO USE ANY OF THESE TERMS THAT YOU USED, BUT THE  
19 GENITAL INJURIES THAT YOU DESCRIBED THAT YOU DREW OUT---

20 A UH-HUH

21 Q ---ON THE DIAGRAM AND POINTED OUT IN THE PICTURES,  
22 WOULD ANY OF THOSE INJURIES HAVE BEEN -- COULD -- LET ME  
23 REPHRASE COULD ANY OF THOSE INJURIES HAVE BEEN WORSENERD BY  
24 RUBBING WITH A WASHCLOTH TO CLEANSE THE AREA AFTER THE  
25 INCIDENT?

1 A NO, I DON'T THINK SO I MEAN, THE INJURIES THAT I  
2 SAW -- I MEAN, THAT WOULD BE PRETTY PAINFUL WHEN PEOPLE  
3 WASH WITH A WASHCLOTH, IF THEY'RE -- IF THEY'RE CAUSING PAIN,  
4 THEN THEY TYPICALLY WOULD NOT DO THAT THEY WOULDN'T DO IT  
5 TO THAT EXTENT

6 Q WERE THERE ANY SPERM PRESENT?

7 A NO THERE WERE -- WELL, THERE WERE NO -- THERE WERE  
8 NO SPERM SEEN UNDER THE MICROSCOPE WET PREPS ARE ONLY ABOUT  
9 50 PERCENT SENSITIVE, SO YOU'RE ONLY GOING TO CATCH ABOUT  
10 HALF OF THEM BUT I -- AND I DON'T KNOW WHAT THE S.L E D.  
11 REPORT SAID

12 Q OKAY HOW LONG AFTER -- HOW LONG AFTER AN INCIDENT  
13 DO YOU EXPECT TO STILL SEE -- I THINK YOU CALL IT MOTILE  
14 SPERM?

15 A MOBILE SPERM?

16 Q MOBILE SPERM

17 A YOU KNOW, IT REALLY DEPENDS ON -- ON THE PATIENT AND  
18 ON THE CONDITIONS IN THE VAGINA, BUT USUALLY YOU CAN CATCH  
19 SPERM THAT -- MOBILE JUST MEANS OR MOTILE JUST MEANS THAT  
20 IT'S STILL ALIVE AND SWIMMING WITHIN 24 HOURS SOMETIMES AS  
21 FAR OUT AS 36 HOURS BUT USUALLY WITHIN 24 HOURS

22 Q NOW, WOULD -- WHAT KIND OF -- WHAT KIND OF AN EXAM  
23 IS DONE TO DETERMINE THE PRESENCE OF SEMEN? IS IT JUST AN  
24 EXTERNAL? IS IT AN INTERNAL EXAM? WHAT KIND OF SWABS ARE  
25 TAKEN FOR THAT?

1 A THE SWABS THAT ARE TAKEN ARE ACTUALLY AT THE  
2 ENTRANCE AND THEN ALSO INSIDE THE VAGINA

3 Q BACK NEAR THE CERVIX?

4 A YES WELL, NEAR -- THERE'S A -- THERE'S A LITTLE  
5 BULBUS AREA THAT IS -- THAT'S WHERE THE CERVIX KIND OF  
6 CRADLES AND SO WE TRY AND GO IN POSTERIORLY AND INFERIORLY  
7 MEANING TOWARDS THE BACK AND DOWN SO THAT YOU CATCH THAT  
8 LITTLE SORT OF BULBUS AREA

9 Q AND AGAIN ARE YOU AWARE OF ANY S L E D RESULTS THAT  
10 CAME IN---

11 A I'M NOT AWARE OF ANY S L E D RESULTS WE'RE NOT  
12 ALLOWED TO GET THE -- THE RESULTS

13 Q OKAY THANK YOU VERY MUCH I HAVE NO FURTHER  
14 QUESTIONS

15 A THANK YOU

16 THE COURT: MS BRISBIN, ANYTHING?

17 REDIRECT EXAMINATION

18 BY MS BRISBIN

19 Q WHAT ARE SOME OF THE REASONS WHY THERE MIGHT NOT BE  
20 SEMEN PRESENT IN YOUR EXAMINATION?

21 A THERE'S TWO -- THERE'S TWO DIFFERENT WAYS TO  
22 DETERMINE SEMEN ONE IS TO SEND THE -- THE SWABS TO S L E D  
23 AND THE OTHER IS UNDER THE WET PREP I'LL TAKE THE WET PREP  
24 FIRST BECAUSE THAT'S EASIER WHENEVER WE LOOK AT THE WET  
25 PREP UNDER THE MICROSCOPE, LIKE I SAID, IT'S ONLY ABOUT 50

1 PERCENT SENSITIVE MEANING THAT WHEN THERE'S SPERM PRESENT  
2 WE'RE ONLY GOING TO SEE IT IN HALF OF THE CASES AND THAT'S  
3 JUST BECAUSE, YOU KNOW, AS WE'RE PUTTING SWABS IN IT'S KIND  
4 OF A HIT-AND-MISS THING AND THEN YOU'RE TAKING THAT LITTLE  
5 SAMPLE THAT WAS -- THAT WAS TAKEN FROM THE -- THE VAGINA  
6 YOU'RE DILUTING IT AND THEN TAKING A VERY SMALL -- LIKE TWO  
7 DROPS OF THAT AND PUTTING IT ON A MICROSCOPE SO IT JUST IS  
8 A HIT-AND-MISS KIND OF THING SO FREQUENTLY THERE IS SPERM  
9 PRESENT THAT WE DON'T CATCH UNDER THE MICROSCOPE

10 AS FAR AS THE SAMPLES THAT ARE SENT TO S L E D WHEN  
11 THEY'RE LOOKING FOR SEMEN, IF A CONDOM WAS USED, FREQUENTLY  
12 THERE'S NO SEMEN IF THE PERSON DIDN'T EJACULATE, THEN  
13 THERE'S NO SEMEN IF THE PERSON HAD SOME KIND OF  
14 STERILIZATION OR WAS INFERTILE, YOU MAY FIND SEMEN BUT NOT  
15 FIND ACTUAL SPERM SO THERE'S SEVERAL DIFFERENT KINDS OF  
16 REASONS WHY

17 Q OKAY WOULD MRS SANDERS' FINDINGS IN THE GENITAL  
18 AREA BE DIAGNOSTIC OF GENITAL TRAUMA REGARDLESS OF WHETHER OR  
19 NOT SHE HAD ESTROGEN?

20 A OH, THERE WAS DEFINITELY GENITAL TRAUMA THERE, YES

21 Q AND WOULD HER -- THESE INJURIES BE CONSISTENT WITH  
22 PAINFUL SEXUAL ASSAULT WHETHER OR NOT THERE WAS ESTROGEN  
23 PRESENT?

24 A WELL, YES WELL, ACTUALLY THE DECREASE IN ESTROGEN  
25 INCREASES THE AMOUNT OF PAIN TYPICALLY ON A WHOLE SO, YES

1 Q OKAY AND WOULD THE PETECHIAE IN THE ROOF OF HER  
2 MOUTH BE CONSISTENT WITH FORCE -- FORCIBLE ORAL SEX  
3 REGARDLESS OF WHETHER THERE WAS ESTROGEN IN HER SYSTEM?

4 A THE ESTROGEN DOES NOT AFFECT THE MOUTH AT ALL SO  
5 REGARDLESS OF HER ESTROGEN LEVEL, THE PETECHIAE IN THE MOUTH  
6 WOULD -- THAT WOULD NOT BE AFFECTED

7 MS. BRISBIN: THANK YOU

8 MS. BROWN: BRIEFLY, YOUR HONOR

9 RE-CROSS EXAMINATION

10 BY MS BROWN

11 Q AND BOTH THE DIAGNOSTIC FOR THE GENITAL INJURIES AND  
12 THE PETECHIAE ON THE -- IN THE SOFT PALATE---

13 A RIGHT

14 Q ---THOSE DIAGNOSES DO NOT MAKE A DETERMINATION AS TO  
15 WHETHER OR NOT THOSE ACTS WERE CONSENSUAL OR NOT IS THAT  
16 CORRECT?

17 A WELL, THERE'S NO WAY FROM A PHYSICAL EXAM TO  
18 DETERMINE INTENT SO, NO, I CAN'T DETERMINE INTENT FROM THE  
19 PHYSICAL EXAM ALONE

20 Q THAT COULD HAVE BEEN -- THOSE INJURIES COULD HAVE  
21 BEEN CAUSED BY A CONSENSUAL ACT

22 A THEY'RE MUCH LESS COMMON BUT, YES, THEY COULD BE

23 Q IT IS POSSIBLE

24 A YES

25 MS. BROWN: THANK YOU VERY MUCH

1 THE COURT: ALL RIGHT DOCTOR, THANK YOU VERY MUCH

2 THE WITNESS: THANK YOU

3 THE COURT: YOU CAN STEP DOWN HAVE YOU GOT ANOTHER  
4 WITNESS YOU WANT TO CALL?

5 MS. BRISBIN: YES, YOUR HONOR THE STATE CALLS  
6 MARGIE KAMINER

7 MARGIE KAMINER, AFTER BEING DULY SWORN,  
8 TESTIFIED AS FOLLOWS

9 THE CLERK: HAVE A SEAT IN THE WITNESS BOX STATE  
10 YOUR FULL NAME FOR THE COURT, SPELLING YOUR LAST

11 THE COURT: MADAM SOLICITOR, BEFORE WE GET STARTED  
12 LET ME -- I NEED TO MEET WITH -- WE NEED TO FIGURE OUT WHAT  
13 WE'VE GOT TO TELL THE REST OF THE JURORS SO IF Y'ALL COULD  
14 BEAR WITH US ONE SECOND

15 MS. BRISBIN: YES, YOUR HONOR

16 (PAUSE IN PROCEEDINGS )

17 THE COURT: ALL RIGHT EXCUSE ME I'M SORRY I'M  
18 SORRY, LADIES AND GENTLEMEN IF YOU WOULD, PLEASE

19 MS. BRISBIN: THANK YOU, YOUR HONOR

20 DIRECT EXAMINATION

21 BY MS BRISBIN

22 Q MS KAMINER, HOW DO YOU KNOW MARGARET SANDERS?

23 A WE'RE COUSINS

24 Q AND WHERE DO YOU LIVE?

25 A I LIVE AT -- ON HEBERT ROAD, 726 HEBERT ROAD

1 Q IN WHAT TOWN?

2 A NORWAY

3 Q AND DID YOU SEE MARGARET SANDERS ON MARCH 2ND OF  
4 2002?

5 A YES, MA'AM

6 Q OR, EXCUSE ME, MARCH 3RD OF 2002?

7 A I DON'T REMEMBER WHAT DAY IT WAS, BUT IT WAS THE  
8 MORNING AFTER THAT HAD HAPPENED

9 Q OKAY ABOUT WHAT -- DO YOU REMEMBER ABOUT WHAT TIME  
10 YOU SAW HER?

11 A IT WAS PROBABLY AROUND 10 30 OR 11, SOMEWHERE AROUND  
12 IN THERE

13 Q OKAY AND DID MS SANDERS TELL YOU THAT SHE HAD  
14 BEEN SEXUALLY ASSAULTED?

15 A YES, MA'AM

16 Q DID SHE SAY WHEN IT HAPPENED?

17 A SHE SAID IT WAS THAT NIGHT

18 Q THAT NIGHT?

19 A WELL, THAT -- THE EVENING, THAT SATURDAY EVENING AND  
20 THAT NIGHT

21 Q THE SATURDAY EVENING AND THE NIGHT---

22 A SATURDAY NIGHT UH-HUH

23 Q AND WHAT DAY OF THE WEEK WAS IT WHEN SHE CAME TO  
24 YOUR HOUSE?

25 A IT WAS SUNDAY MORNING

1 Q I DON'T THINK I ASKED YOU THAT WHERE WAS IT SHE  
2 WAS WHEN SHE TOLD YOU THAT?

3 A PARDON ME?

4 Q WHERE DID -- WHERE WAS SHE WHEN SHE TOLD YOU ABOUT  
5 THIS?

6 A AT MY HOUSE YES, MA'AM

7 Q AND DID SHE CALL FIRST OR DID SHE JUST SHOW UP AT  
8 YOUR HOUSE?

9 A NO, SHE JUST CAME UP

10 Q OKAY AND WHAT WAS HER Demeanor LIKE WHEN SHE TOLD  
11 YOU ABOUT THIS?

12 A SHE WAS VERY UPSET, CRYING, VERY UPSET

13 Q WHAT DID YOU DO?

14 A WELL, I TRIED TO CALM HER DOWN I HUGGED HER, YOU  
15 KNOW. SHE WAS CRYING AND I HUGGED HER AND BROUGHT HER INTO  
16 THE LIVING ROOM AND SIT HER DOWN AND TRIED TO CALM HER DOWN  
17 AND I ASKED HER, YOU KNOW, WHAT HAD HAPPENED AND SHE TOLD ME  
18 THAT SHE HAD BEEN RAPED AND I SAID, "WELL, DO YOU WANT ME TO  
19 CALL SOMEONE?" I SAID -- SHE -- AT FIRST SHE SAID SHE WAS  
20 TOO ASHAMED, SHE DIDN'T WANT TO TELL ANYONE I SAID, "WELL,  
21 MARGARET, YOU'VE GOT TO " I SAID, "YOU CAN'T, YOU KNOW, KEEP  
22 THIS "

23 MS. BROWN: OBJECTION TO ANY HEARSAY

24 THE COURT: SUSTAINED

25 BY MS BRISBIN

1 Q YOU CAN'T SAY WHAT SHE TOLD YOU

2 A OH, OKAY

3 Q WHAT DID YOU DO?

4 A I CALMED HER DOWN, GOT HER TO SIT DOWN, AND I CALLED  
5 HER SON RICHARD AND TOLD HIM WHAT HAD HAPPENED AND TOLD HIM  
6 -- YOU KNOW, HE CAME OVER TO MY HOUSE THEN I ALSO CALLED  
7 HER SISTER AND THEY CAME OVER SHE WAS IN CHURCH, BUT THEN  
8 SHE CAME THE TIME CHURCH WAS OUT WHEN SHE GOT THE MESSAGE

9 Q AND WHAT HAPPENED AFTER THAT?

10 A WELL, WHEN RICHARD GOT THERE HE TOOK HER ON TO THE  
11 HOSPITAL AND GOT IN TOUCH WITH THE LAW, I THINK, ON THE TRIP  
12 TO THE HOSPITAL I DON'T KNOW ABOUT THAT NOW

13 Q OKAY SO YOU DIDN'T GO WITH THEM TO THE HOSPITAL?

14 A NO, MA'AM

15 Q OKAY AND IS THAT PRETTY MUCH IT FOR WHAT -- YOUR  
16 PART IN IT?

17 A YES, MA'AM

18 Q OKAY THANK YOU PLEASE ANSWER ANY QUESTIONS THE  
19 DEFENSE HAS

20 A PARDON?

21 CROSS-EXAMINATION

22 BY MS BROWN

23 Q IS IT MS KAMINER?

24 A KAMINER

25 Q MS KAMINER, YOU SAID THAT MS SANDERS, YOUR COUSIN,

1 CAME OVER TO YOUR HOUSE ABOUT -- BETWEEN 10 30 AND 11

2 A SOMEWHERE ALONG IN THERE, YEAH

3 Q DID SHE USUALLY COME OVER SUNDAY MORNINGS OR COME--

4 A NO, MA'AM

5 Q ---OVER FOR SUNDAY DINNER?

6 A NO

7 Q NOW, YOU SAID THAT SHE LOOKED TO BE VERY UPSET AND  
8 WAS CRYING.

9 A YES, MA'AM

10 Q DID SHE APPEAR TO HAVE BEEN DRINKING?

11 A WELL, NO, NOT APPEARED TO BE

12 Q COULD YOU SMELL ANY ALCOHOL?

13 A SHE HAD A CUP IN HER HAND AND SHE TOLD ME THAT SHE  
14 HAD MIXED HER A DRINK TO CALM HER NERVES

15 Q SO SHE BROUGHT THAT CUP WITH HER?

16 A YES, MA'AM

17 Q AND YOU CALLED HER SON AND ONE OF HER SISTERS YOU  
18 DID NOT CALL THE POLICE

19 A NO, MA'AM

20 Q DID SHE -- HOW LONG WAS IT BEFORE HER SON RICHARD  
21 GOT THERE?

22 A IT WASN'T LONG AFTER I HAD CALLED HIM I'D SAY 30,  
23 45 MINUTES

24 Q AND HOW LONG -- HOW LONG IN BETWEEN THE TIME WHEN  
25 SHE GOT TO YOUR HOUSE AND -- HOW LONG WAS IT BETWEEN THE TIME

1 SHE GOT TO YOUR HOUSE AND YOU CALLED HER SON?

2 A WITHIN 30 MINUTES

3 Q OKAY

4 A IT WASN'T LONG

5 Q DURING THAT TIME SPAN SHE SAID THAT YOU HAD PREPARED

6 -- I'M GUESSING IT WAS SUNDAY

7 A WELL, I WAS COOKING---

8 Q YOU HAD PREPARED SUNDAY LUNCH?

9 A YEAH, I WAS COOKING LUNCH

10 Q AND SHE ATE LUNCH?

11 A I GAVE HER SOMETHING TO EAT, IT WASN'T MUCH BUT I  
12 CAN'T REMEMBER WHAT I EVEN HAD THAT DAY, IT'S BEEN SO LONG  
13 BUT, YEAH, SHE ATE A LITTLE BIT

14 Q OKAY AND THEN RICHARD TOOK HER ON TO THE HOSPITAL  
15 ABOUT WHAT TIME?

16 A AFTER HE GOT THERE, IT WAS PROBABLY 45 MINUTES TO AN  
17 HOUR I'M -- I'M GUESSING

18 Q SO ABOUT WHAT TIME? JUST A -- JUST A GUESS

19 A I DON'T KNOW

20 Q IF SHE GOT THERE ABOUT 10 -- BETWEEN 10 30 AND 11---

21 A THEN IT WAS ABOUT 30 MINUTES WHEN HE GOT THERE SO  
22 I'D SAY FROM THE TIME SHE GOT THERE IT WAS PROBABLY ABOUT AN  
23 HOUR AND A HALF

24 Q TILL ABOUT 12 30 OR 1 BECAUSE HER SISTER HAD COME --  
25 HAD GOTTEN BACK FROM CHURCH, RIGHT, AND THEN HAD COME OVER TO

1 THE HOUSE?

2 A WELL, HE WAS THERE NOW BEFORE THE SISTER CAME

3 Q OKAY BUT THE SISTER WAS AT CHURCH WHEN YOU

4 ORIGINALLY CALLED

5 A UH-HUH

6 Q SO SHE---

7 A AND I LEFT A MESSAGE ON HER MACHINE

8 Q UH-HUH

9 A WHEN SHE GOT HOME AND GOT THE MESSAGE, THEN SHE CAME

10 ON OVER

11 Q OKAY CHURCH GETS OUT AROUND 12 IF YOU'RE LUCKY

12 A YEAH WELL, SHE WAS STILL THERE THEN YEAH.

13 Q OKAY SO IT WOULD HAVE BEEN AT LEAST 12 30 OR 1 00

14 BEFORE THEY WOULD HAVE LEFT

15 A YEAH

16 MS. BROWN: OKAY OKAY BEG THE COURT'S INDULGENCE

17 ONE MOMENT (PAUSE ) NO FURTHER QUESTIONS

18 THE COURT: ALL RIGHT. THANK YOU, MA'AM YOU MAY

19 STEP DOWN LET ME SEE Y'ALL JUST A MINUTE

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD )

21 THE COURT: ALL RIGHT DO YOU WANT TO CALL YOUR

22 NEXT WITNESS?

23 MS. BRISBIN: THE STATE CALLS DIANE WARREN

24 DIANE WARREN, AFTER BEING DULY SWORN, TESTIFIED

25 AS FOLLOWS

1 THE CLERK: HAVE A SEAT IN THE WITNESS BOX STATE  
2 YOUR FULL NAME FOR THE COURT, SPELLING YOUR LAST

3 THE WITNESS: DIANE WARREN W-A-R-R-E-N

4 DIRECT EXAMINATION

5 BY MS BRISBIN

6 Q MS WARREN, WHERE ARE YOU EMPLOYED?

7 A RAINBOW GAS GARDENS EVERYBODY KNOWS IT AS THE  
8 B P.

9 Q OKAY THAT'S THE SAME PLACE AS THE RAINBOW

10 A. YES

11 Q OKAY AND IT'S A GAS STATION?

12 A YES, MA'AM

13 Q DO YOU HAVE MECHANICS THERE OR JUST GAS?

14 A JUST GAS

15 Q OKAY HOW LONG HAVE YOU WORKED THERE?

16 A FIVE YEARS

17 Q AND WHAT'S YOUR POSITION THERE?

18 A STORE MANAGER

19 Q DO YOU HAVE VIDEO SURVEILLANCE CAMERAS IN THE STORE?

20 A YES, MA'AM

21 Q AND WAS THERE A VIDEOTAPE IN THE SURVEILLANCE  
22 CAMERAS ON MARCH 2ND OF 2002?

23 A YES

24 Q DO YOU KNOW -- DID YOU HAVE THE OPPORTUNITY TO WATCH  
25 THAT VIDEO?

1           A       NO     I NORMALLY PULL THEM WHEN I COME IN     I PULL  
2 THEM AND I MARK THEM OR I PUT THEM BACK IN THE SLOT AND PUT  
3 THEM BACK SO I'LL KNOW WHICH DAY, AND THEN I PUT A NEW ONE IN  
4 WHICH MEANS I WOULD HAVE PUT A SUNDAY ONE OR A SATURDAY --  
5 I'D HAVE PUT A SATURDAY IN BECAUSE I'D HAVE PULLED FRIDAYS  
6 AND I'D PUT SATURDAYS IN THERE

7           Q       OKAY     WHEN DID YOU PULL SATURDAYS?

8           A       SUNDAY

9           Q.       OKAY     AND WHAT DID YOU DO WITH THAT TAPE?

10          A.       I PUT IT IN ITS -- IN THE CONTAINER, IN THE HOLDER  
11 THAT VIDEOS COME IN     I PUT IT ON MY -- ON MY V C R     HOLDER  
12 THERE WHERE I PLACE ALL MY VIDEOS

13          Q       OKAY     AND DO YOU PLACE THEM ACCORDING TO THE DATE?

14          A       I TRY TO     YOU KNOW, I TRY TO PUT THEM LIKE MONDAY  
15 THROUGH SUN -- MONDAY THROUGH SUNDAY SO IF ANYBODY NEEDS ONE,  
16 MY SUPERVISOR, OR IF SOMEBODY TELLS ME ABOUT AN INCIDENT THAT  
17 TOOK PLACE THAT -- THAT I NEED TO LOOK AT, I CAN GO RIGHT TO  
18 THAT DAY

19          Q       OKAY     AND WERE YOU ABLE TO DETERMINE WHICH TAPE  
20 CAME FROM MARCH 2ND OF 2002?

21          A       YEAH, BECAUSE I HAD -- LIKE I SAID, I'VE GOT THEM  
22 LINED UP AND I HAD JUST PUT THE TAPE RIGHT -- YOU KNOW, RIGHT  
23 THERE     SO I KNEW THE BOTTOM LAYER WAS WHAT I NEEDED FOR THAT  
24 -- FOR THE ENDING OF THAT WEEK

25          Q       OKAY     AND IS THERE -- ON THE VIDEOTAPE ITSELF DOES

1 IT TELL YOU WHAT DATE IT'S FROM?

2 A YES, MA'AM, AND THE TIME IS OFF ON IT DUE TO  
3 DAYLIGHT SAVINGS TIMES

4 Q HOW MUCH IS IT OFF?

5 A I THINK IT'S ABOUT AN HOUR.

6 Q WHAT ABOUT THE DATE?

7 A THE DATE MIGHT BE OFF, TOO, BECAUSE WE'VE HAD --  
8 WE'VE HAD SOME PROBLEMS EVERY NOW AND THEN WITH THE V C R  
9 NOT PUTTING THE RIGHT DATE ON, BUT IF -- WE HAVE WHAT WE CALL  
10 INTERFACINGS IN OUR CAMERAS AND IN OUR REGISTERS, AND WHAT AN  
11 INTERFACING IS WHEN A CUSTOMER PURCHASES AND I CAN ALWAYS  
12 -- IF THE DATE'S NOT RIGHT, THEN I CAN ALWAYS DO THIS I CAN  
13 PULL THE VIDEO UP, GO TO THE INTERFACING, AND ON THE  
14 INTERFACING IT WILL GIVE ME THE NAME OF MY LOCATION, WHAT THE  
15 PERSON -- WHAT THEY BOUGHT, THE DATE AND THE TIME, AND THAT'S  
16 HOW I KNEW I HAD THE PROPER TAPE WAS BECAUSE---

17 Q YOU COMPARE THE INTERFACING -- IS THAT INTERFACING  
18 ON THE CASH REGISTER?

19 A YES, MA'AM

20 Q SO YOU COMPARED THE TAPE WITH THE INTERFACING ON THE  
21 CASH REGISTER TO COME UP WITH THE DATE?

22 A YES, MA'AM

23 Q OKAY SO WHAT DID YOU DO WITH THE TAPE FROM THAT  
24 DATE---

25 A WELL, I TOOK IT---

1 Q ---AFTER DETERMINING WHAT -- WHICH TAPE WENT WITH  
2 THAT DATE?

3 A WELL, I PUT IT -- I PUT IT WHERE THE TAPES WENT, AND  
4 ON MONDAY -- I BELIEVE IT WAS MONDAY - I DON'T KNOW WHAT TIME  
5 IT WAS - OFFICER BAMBERG CAME INTO MY -- INTO MY STORE AND  
6 ASKED ME DID I HAVE SATURDAY'S VIDEO AND I SAID, "YEAH,  
7 PROBABLY BACK THERE " SHE SAID, "WOULD YOU PLEASE---

8 Q DON'T SAY WHAT SHE SAID

9 A I'M SORRY

10 Q JUST SAY WHAT YOU DID

11 A OKAY I WENT TO THE BACK AND I PUT IT IN TO MAKE  
12 SURE I HAD THE PROPER TAPE, AND I WENT TO THE INTERFACING AND  
13 I SAW THAT I HAD SATURDAY'S TAPE BECAUSE I WAS LOOKING FOR  
14 THE DATE, NOT A -- NOT A -- SHE DIDN'T GIVE ME A TIME SHE  
15 JUST TOLD ME THAT SHE NEEDED SATURDAY'S DATE SO I WENT  
16 THE V C R , PUT IT IN, PULLED THE INTERFACING ON IT AND SAW  
17 THAT I HAD MARCH THE 2ND, I GUESS IT WAS, AND I PUT IT BACK  
18 IN THE CASE AND HANDED IT TO HER AND SHE THANKED ME AND THAT  
19 WAS IT

20 Q OKAY AND AT SOME LATER DATE WERE YOU ASKED TO LOOK  
21 AT THE VIDEO?

22 A YES, MA'AM

23 Q AND DID YOU DO THAT?

24 A YES, MA'AM

25 Q AND DID YOU -- WERE YOU ASKED -- WELL, DID YOU

1 RECOGNIZE SOMEONE WHO WAS POINTED OUT TO YOU ON VIDEOTAPE?

2 A YES, MA'AM

3 Q AND WHO WAS THAT PERSON?

4 A JOSEPH WALKER

5 Q AND IS THERE ANY DOUBT IN YOUR MIND WHO THAT WAS,  
6 THAT THAT WAS JOSEPH WALKER?

7 A NO, MA'AM I'VE HAD DEALINGS WITH MR WALKER SO  
8 WHEN SHE ASKED ME TO PUT THE TAPE IN, I PUT IT IN AND ALL SHE  
9 ASKED ME WAS, "DO YOU KNOW THIS PERSON?" AND WHEN I LOOKED  
10 UP AT HIM I SAID, "YEAH " I SAID, "THAT'S JOSEPH WALKER,"  
11 AND SHE SAID, "THANK YOU " AND SHE SAID, "ARE YOU ABSOLUTELY  
12 SURE?" SO WE REWOUND IT AND WENT BACK OVER IT AGAIN AND I  
13 SAID, "YEAH I'VE HAD SEVERAL DEALINGS WITH MR WALKER "

14 Q DID SHE KNOW WHAT HIS NAME WAS BEFORE SHE CAME TO  
15 YOU, TO YOUR KNOWLEDGE?

16 A NO, MA'AM, SHE DIDN'T SHE DIDN'T SAY ANYTHING TO  
17 ME AT THAT TIME THAT, YOU KNOW

18 Q SHE DIDN'T GIVE YOU ANY HINTS ABOUT WHO IT WAS OR  
19 SUGGESTIONS

20 A NO, MA'AM SHE JUST ASKED ME DID I KNOW THIS PERSON  
21 AND---

22 Q OKAY WAS HE A REGULAR IN YOUR STORE?

23 A SORT OF NOT EVERY DAY LIKE IF YOU WOULD COME IN  
24 EVERY DAY, BUT I KNEW MR JOSEPH -- MR WALKER FROM A  
25 PREVIOUS -- ANOTHER BUSINESS TRANSACTION THAT HAD HAPPENED IN

1 OUR -- IN MY LOCATION AND THAT'S HOW I GOT TO KNOW MR  
2 WALKER

3 Q OKAY BUT HE DID COME IN YOUR STORE---

4 A YES, MA'AM

5 Q ---FROM TIME TO TIME

6 A YES, MA'AM

7 Q OKAY DID YOU -- WERE YOU ABLE TO DESCRIBE MR  
8 WALKER'S VEHICLE TO LAW ENFORCEMENT AT THAT TIME?

9 A YES, MA'AM

10 Q AND WHAT TYPE OF VEHICLE DID HE DRIVE?

11 A I TOLD LAW ENFORCEMENT WHEN I IDENTIFIED HIM THAT HE  
12 DROVE A BLACK PICKUP TRUCK

13 Q OKAY AND HOW DID YOU KNOW THAT?

14 A BECAUSE WHEN I HAD SPOKEN TO MR WALKER IN THE PAST,  
15 HE WOULD ALWAYS PARK IT -- I HAVE TWO DOUBLE DOORS AND ALL  
16 GLASS AND HE WOULD PARK IT AWAY FROM THE DOOR AND HE WOULD  
17 GET OUT, AND THE TIMES THAT WE SPOKE WAS USUALLY RIGHT THERE  
18 I HAVE AN ICE CREAM BOX, AND THE BIG GLASS WOULD BE RIGHT  
19 THERE AND HIS TRUCK WOULD BE RIGHT THERE AND HE WOULD -- HE  
20 WOULD GET OUT AND THEN WHENEVER WE GOT THROUGH SPEAKING  
21 ABOUT THE STORE BUSINESS WE WERE TALKING ABOUT, HE WOULD  
22 ENTER THE TRUCK AND LEAVE AND THAT'S THE SAME TRUCK HE'S  
23 ALWAYS DRIVEN THE TIMES THAT I'VE SPOKEN WITH HIM

24 MS. BRISBIN: THANK YOU I DON'T HAVE ANY FURTHER  
25 QUESTIONS

1 THE COURT: ANYTHING?

2 MS. BROWN: NO QUESTIONS, YOUR HONOR

3 THE COURT: ALL RIGHT THANK YOU, MA'AM YOU MAY  
4 STEP DOWN ALL RIGHT LADIES AND GENTLEMEN, THE SOLICITOR  
5 TELLS ME THAT THE NEXT COUPLE OF WITNESSES ARE GOING TO BE  
6 LENGTHY WITNESSES SO RATHER THAN BEGIN THIS AFTERNOON, WE  
7 WILL START BACK TOMORROW MORNING AT 9 30 I'M GOING TO ASK  
8 YOU TO BE HERE A FEW MINUTES BEFORE SO THAT WHEN 9.30 COMES  
9 WE WILL BE IN A POSITION TO GO FORWARD

10 NOW, YOU'VE INVESTED A GOOD PORTION OF THE DAY IN  
11 THIS CASE SO FAR, SO LET'S NOT DO ANYTHING TO JEOPARDIZE IT  
12 DON'T DISCUSS THE CASE WITH ANYBODY THAT YOU COME IN CONTACT  
13 WITH TONIGHT IF YOUR FAMILY OR YOUR FRIENDS OR SOMEBODY  
14 ASKS YOU ABOUT IT, JUST TELL THEM YOU'VE BEEN INSTRUCTED BY  
15 THE JUDGE THAT YOU'RE NOT ALLOWED TO TALK ABOUT IT YOU  
16 ACKNOWLEDGE THAT YOU'RE SITTING ON A JURY, BUT TELL THEM THAT  
17 YOU'LL BE HAPPY TO DO WHATEVER YOU'RE WILLING TO DO AFTER THE  
18 CASE IS OVER SO Y'ALL HAVE A NICE EVENING AND WE WILL SEE  
19 YOU BACK HERE SO THAT WE CAN BEGIN AT 9 30 MR WHITTLE WILL  
20 SHOW YOU HOW TO GET OUT AND WE'LL SEE YOU TOMORROW

21 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR  
22 THE DAY AT 5 05 P M )

23 THE COURT: ANYTHING WE NEED TO TAKE UP TONIGHT?

24 MS. BRISBIN: NOTHING FROM THE STATE, YOUR HONOR

25 MS. BROWN: NOTHING FROM THE DEFENSE, YOUR HONOR

1           THE COURT. ALL RIGHT IF Y'ALL ARE GOING TO HAVE  
2 ANY CHARGES YOU WANT ME TO LOOK AT AT ANY TIME, IF YOU'LL GET  
3 THEM UP AS SOON AS YOU CAN AND LET ME HAVE THEM I WOULD  
4 APPRECIATE IT, IF THERE'S ANYTHING YOU NEED ME TO REVIEW FOR  
5 YOU SO Y'ALL HAVE A NICE EVENING AND WE'LL SEE YOU TOMORROW  
6 MORNING

7           (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 5 06  
8 P M AND RESUMED THE FOLLOWING DAY, JULY 23, 2003, AS  
9 FOLLOWS )

10           THE COURT: THANK YOU GOOD MORNING, LADIES AND  
11 GENTLEMEN Y'ALL PLEASE BE SEATED I APOLOGIZE FOR BEING  
12 LATE, BUT I HAD SOMETHING AT 9 15 THAT RAN LONGER THAN I  
13 ANTICIPATED. ALL RIGHT THE STATE READY TO GO?

14           MS. BRISBIN: YES, YOUR HONOR

15           THE COURT: ARE YOU READY TO GO, MS BROWN?

16           MS. BROWN: YES, SIR

17           THE COURT: ALL RIGHT LET'S BRING US THE JURY IN  
18 IF YOU COULD

19           (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT  
20 9 44 A M )

21           THE COURT: OKAY GOOD MORNING, LADIES AND  
22 GENTLEMEN SORRY TO KEEP YOU WAITING, BUT I HAD A MATTER  
23 SCHEDULED AT 9 15 THAT RAN A LITTLE BIT LONGER THAN I  
24 ANTICIPATED WAS ANYBODY APPROACHED ABOUT THIS CASE LAST  
25 NIGHT OR ANYBODY HAVE ANY CONVERSATION WITH ANYONE ABOUT IT?

1 OKAY GOOD I THANK YOU FOR THAT AND AS YOU'LL RECALL, WE  
2 WERE IN THE MIDST OF THE STATE PRESENTING ITS EVIDENCE IN ITS  
3 CASE IN CHIEF, AND I'LL CALL ON THE SOLICITOR AND ASK IF SHE  
4 WOULD CALL HER NEXT WITNESS

5 MS. BRISBIN. THANK YOU, YOUR HONOR THE STATE  
6 CALLS LIEUTENANT RHONDA BAMBERG

7 RHONDA RAY BAMBERG, AFTER BEING DULY SWORN,  
8 TESTIFIED AS FOLLOWS

9 THE CLERK: HAVE A SEAT IN THE WITNESS BOX, STATING  
10 YOUR FULL NAME, SPELLING YOUR LAST, PLEASE

11 THE WITNESS: MY NAME IS RHONDA RAY BAMBERG  
12 B-A-M-B-E-R-G

13 DIRECT EXAMINATION

14 BY MS BRISBIN

15 Q WHERE ARE YOU EMPLOYED?

16 A I'M EMPLOYED WITH THE ORANGEBURG COUNTY SHERIFF'S  
17 OFFICE

18 Q AND HOW LONG HAVE YOU BEEN THERE?

19 A TWO AND A HALF YEARS

20 Q WHAT'S YOUR POSITION THERE?

21 A I'M A LIEUTENANT OVER THE INVESTIGATION DIVISION

22 Q AND WERE YOU THE INITIAL INVESTIGATOR IN THIS CASE?

23 A I WAS

24 Q HOW DID YOU GET INVOLVED?

25 A I WAS CONTACTED ON THE AFTERNOON OF THE 3RD OF MARCH

1 BY THE RESPONDING DEPUTY HE WAS AT ORANGEBURG REGIONAL  
2 MEDICAL CENTER WITH AN ALLEGED RAPE VICTIM, MS SANDERS.  
3 THEY WERE GOING TO TRANSFER HER TO CHARLESTON TO CONDUCT THE  
4 RAPE EXAM

5 Q OKAY AND DID YOU MEET WITH MRS SANDERS AT THAT  
6 TIME?

7 A NO, I DID NOT

8 Q WHEN DID YOU FIRST MEET WITH HER?

9 A I INSTRUCTED THE DEPUTY THAT WAS AT THE HOSPITAL  
10 WITH HER THAT SHE NEEDED TO COME TO THE SHERIFF'S OFFICE ON  
11 THE MORNING OF THE 4TH OF MARCH

12 Q OKAY AND DID SHE DO THAT?

13 A SHE DID

14 Q DID SHE DISCLOSE TO YOU THAT SHE HAD BEEN SEXUALLY  
15 ASSAULTED?

16 A YES, SHE DID

17 Q DID SHE SAY WHEN THAT HAPPENED?

18 A YEAH SHE STATED THAT ON THE AFTERNOON OF THE 2ND  
19 OF MARCH WHILE AT THE B P STATION HER VEHICLE HAD RAN -- HAD  
20 BROKEN DOWN SHE HAD GOT THE ASSISTANCE OF A BLACK GENTLEMAN  
21 APPROXIMATELY 40 TO 50 YEARS OF AGE---

22 Q OKAY WE DON'T NEED TO GO INTO ALL OF THAT RIGHT  
23 NOW

24 A OKAY.

25 Q DID SHE KNOW WHERE IT HAD HAPPENED?

1 A NO, SHE DID NOT

2 Q AND WHAT DID YOU DO AT THAT POINT?

3 A AT THAT POINT I GOT A WRITTEN STATEMENT FROM MS  
4 SANDERS AFTER SHE GAVE ME THE DESCRIPTION OF EVERYTHING, I  
5 THEN WENT TO DENMARK TO THE B P AND PICKED UP THE VIDEOTAPE

6 Q OKAY AND WHERE DID YOU GET THE VIDEOTAPE?

7 A FROM MS WARING (SIC) AT THE B P IN DENMARK

8 Q AND DO YOU RECOGNIZE WHAT'S BEEN MARKED STATE'S  
9 EXHIBIT NUMBER 4 AND ADMITTED INTO EVIDENCE?

10 A YES, I DO

11 Q AND WHAT IS THAT?

12 A THAT IS A VIDEOTAPE OF THE B P

13 Q AND HOW WAS IT THAT THERE WAS A VIDEOTAPE AT THE  
14 B P ? WHAT KIND OF TAPE IS THIS?

15 A IT'S A -- THE VIDEOTAPE OF THE B P MOST B P 'S  
16 HAVE VIDEO SURVEILLANCE CAMERAS IN THEM THAT ARE SET UP FOR  
17 STORE SECURITY AND THAT IS THE TAPE OF THE INSIDE OF THE  
18 STORE

19 Q OKAY AND DID YOU -- CAN YOU DESCRIBE WHAT THE  
20 LAYOUT OF THE B P STATION AND THE PARKING FOR IT IS?

21 A SURE THE B P IN DENMARK, IT'S OFF OF A MAIN  
22 HIGHWAY, HIGHWAY 78, WHICH RUNS STRAIGHT THROUGH DENMARK  
23 WHEN YOU COME IN, THERE'S TWO ENTRANCES TO THE B P , ONE ON  
24 THE LEFT, ONE ON THE RIGHT THE FRONT OF THE B P AS YOU'RE  
25 FACING HIGHWAY 78 IS ALL GLASS WINDOWS ON BOTH SIDES THERE

1 ARE DOORS TO ENTER THE B P AND ALSO TO FILL UP WITH YOUR GAS  
2 ON BOTH SIDES IT'S GLASS HALFWAY THROUGH THE B P WITH THE  
3 BACK PART OF IT BEING BRICK IT'S TOTALLY BRICK -- IT'S  
4 STORAGE OFFICES BACK THERE THERE'S NO WINDOWS IN IT YOU  
5 CAN COME IN EITHER ON THE LEFT-HAND SIDE OR THE RIGHT-HAND  
6 SIDE

7 Q IF SOMEONE WAS GETTING GAS ON ONE SIDE, WOULD THEY  
8 NECESSARILY BE ABLE TO SEE SOMEONE GETTING GAS ON THE OTHER  
9 SIDE?

10 A NO

11 Q OKAY WHAT DID YOU DO WITH THE VIDEOTAPE?

12 A WITH THE VIDEOTAPE I TOOK IT BACK TO MY OFFICE AND I  
13 ATTEMPTED TO WATCH IT IN OUR -- IN OUR V C R.

14 Q AND THEN WHAT DID YOU DO?

15 A AFTER I WATCHED THE TAPE IN THE V C R , I IDENTIFIED  
16 MS SANDERS ON THE TAPE, MADE CONTACT WITH MS SANDERS TO  
17 COME IN SO THAT SHE COULD IDENTIFY IF SHE SAW HER ASSAILANT  
18 ON THE TAPE

19 Q AND WAS SHE ABLE TO DO THAT?

20 A YES, SHE WAS

21 Q DID YOU TELL HER OR SUGGEST TO HER OR HINT IN ANY  
22 WAY WHO TO PICK?

23 A NO, I DID NOT

24 Q AND WHO DID SHE PICK OUT?

25 A SHE PICKED OUT A BLACK MALE WITH SOME FACIAL HAIR

1 THE PERSON SHE -- IT WAS MOST LIKELY THE PERSON THAT HAD  
2 SEXUALLY ASSAULTED HER SHE DIDN'T GIVE ME A NAME

3 Q OKAY WAS SHE A HUNDRED PERCENT SURE?

4 A SHE WAS NOT

5 Q OKAY DID SHE KNOW THE NAME OF THE PERSON---

6 A SHE DID NOT

7 Q ---WHO DID THIS? HOW DID YOU FIND OUT THAT IT WAS  
8 JOSEPH WALKER?

9 A I TOOK THE VIDEOTAPE BACK TO THE B P IN DENMARK AND  
10 I SHOWED IT TO MS WARING SHE IDENTIFIED MR WALKER

11 Q AND THAT WAS THE MANAGER OF THE STORE?

12 A THAT IS THE MANAGER OF THE STORE

13 Q WAS THERE ANY HESITATION IN HER IDENTIFICATION?

14 A NONE

15 Q WHAT DESCRIPTION WERE YOU GIVEN OF THE -- WHAT  
16 PHYSICAL DESCRIPTION WERE YOU GIVEN OF THE SUSPECT?

17 A THE PHYSICAL DESCRIPTION THAT I WAS GIVEN WAS THAT  
18 HE WAS A BLACK MALE APPROXIMATELY 40 TO 50 YEARS OF AGE WITH  
19 SOME FACIAL HAIR HE WAS MISSING SOME OF HIS TEETH AT THE  
20 TIME HE WAS WEARING A BLUE UNIFORM, MS SANDERS THOUGHT IT  
21 WAS A MECHANIC'S UNIFORM AND HE HAD ON BOOTS AND SHE  
22 THOUGHT IT WAS BLACK

23 Q OKAY DID MS SANDERS EVER PICK OUT ANYONE ELSE IN  
24 THE VIDEO THAT SHE THOUGHT MIGHT BE HER ATTACKER?

25 A NO, SHE DID NOT

1 Q DID YOU ALSO SHOW MS SANDERS A PHOTO LINE-UP?

2 A I DID

3 Q DO YOU RECOGNIZE STATE'S EXHIBIT NUMBER 1 WHICH IS  
4 ADMITTED INTO EVIDENCE?

5 A YES THIS IS THE PHOTOGRAPHIC LINE-UP THAT I SHOWED  
6 TO MS SANDERS

7 Q AND HOW MANY PHOTOS ARE IN THE PHOTOGRAPHIC LINE-UP?

8 A SIX

9 Q AND WHAT DID YOU TELL MS SANDERS WHEN YOU SHOWED  
10 HER THE PHOTOGRAPHIC LINE-UP?

11 A I HANDED HER THE PHOTOGRAPHIC LINE-UP AND I ASKED  
12 HER TO LOOK AT THE PICTURES AND IF SHE COULD IDENTIFY HER  
13 ASSAILANT TO POINT HIM OUT TO ME

14 Q AND DID SHE DO THAT?

15 A YES, SHE DID

16 Q WHICH PHOTO DID SHE IDENTIFY?

17 A SHE IDENTIFIED THIS PHOTO RIGHT HERE

18 Q AND WHOSE PHOTO IS THAT?

19 A THIS HERE IS THE PHOTO OF JOSEPH WALKER

20 Q OKAY DOES MR WALKER LOOK ESSENTIALLY THE SAME IN  
21 THE COURTROOM TODAY AS HE DID BACK THEN?

22 A HE LOOKS LIKE HE'S LOST A LITTLE BIT OF WEIGHT

23 Q OKAY WHAT -- AT THE TIME THAT -- BACK IN MARCH,  
24 WHAT WAS -- DO YOU HAVE A RECORD OF HIS HEIGHT AND WEIGHT AT  
25 BOOKING?

1           A     AT OUR -- AT OUR BOOKING WHEN WE BOOKED HIM IN? WE  
2 USED WHAT WAS ON THE DRIVER'S LICENSE AND THAT WAS SIX FEET  
3 THREE, 230 POUNDS

4           Q     OKAY    AFTER YOU DID THE PHOTO LINE-UP AND THE  
5 VIDEO, WHAT DID YOU DO NEXT?

6           A     AFTER I DID THE PHOTO LINE-UP AND THE VIDEO, I  
7 TURNED IT OVER TO AIKEN COUNTY

8           Q     WHY DID YOU TURN IT OVER TO AIKEN COUNTY?

9           A     I FOUND OUT THAT IT WAS IN AIKEN COUNTY

10          Q     WHY -- HOW DID YOU KNOW IT WAS IN AIKEN COUNTY?

11          A     PRIOR TO ME DOING THE PHOTOGRAPHIC LINE-UP, AFTER  
12 MS WARRING (SIC) IDENTIFIED MR WALKER FROM THE VIDEOTAPE, I  
13 GOT AN ADDRESS OF SALLEY, SOUTH CAROLINA    I WENT TO SALLEY,  
14 SOUTH CAROLINA, AND IDENTIFIED MR WALKER'S RESIDENCE AS  
15 BEING A WHITE BLOCK HOUSE    AND WHEN I WENT UP IT WAS A WHITE  
16 BLOCK HOUSE AND YOU COULD SEE THAT THERE WERE SHEETS ON THE  
17 OUTSIDE OF THE WINDOW    I THEN WENT BACK TO MY OFFICE AND I  
18 CONTACTED AIKEN COUNTY

19          Q     WHAT DESCRIPTION DID YOU HAVE OF THE INTERIOR OF THE  
20 HOUSE?

21          A     OF THE INTERIOR OF THE HOUSE IT WAS THE FACT THAT  
22 WHEN YOU WALK INTO IT THERE WOULD BE SOME QUILTS OR SHEETS UP  
23 TO THE WINDOWS AND DOORS    IN THE BEDROOM THERE WOULD BE A  
24 DOUBLE BED, AND AS YOU COME IN THERE WOULD BE A GAS HEATER ON  
25 THE LEFT-HAND SIDE    DIRECTLY---

1 Q IN WHICH ROOM?

2 A THIS WOULD BE THE BEDROOM

3 Q OKAY

4 A THERE WOULD BE AN END TABLE OR A TABLE OF SOME SORT  
5 IN THE ROOM WITH AN ASHTRAY ON IT AND THAT IN THE BATHROOM --  
6 THE BATHROOM WOULD BE OFF THE FOOT OF THE BED AND THAT'S THE  
7 DESCRIPTION SHE GAVE ME

8 Q OKAY WAS THERE ANY DESCRIPTION ABOUT HOW THE HOUSE  
9 SMELLED?

10 A YES SHE STATED THAT THE HOUSE AND THE VEHICLE HAD  
11 AN ODOR TO IT

12 Q AN ODOR?

13 A AND IT WAS DIRTY YES, AN ODOR AND IT WAS DIRTY

14 Q WHAT DESCRIPTION DID YOU HAVE OF THE SUSPECT'S  
15 VEHICLE?

16 A THE VEHICLE, SHE DESCRIBED IT AS A BLACK SMALL  
17 PICKUP TRUCK

18 Q OKAY WAS THERE ANY DESCRIPTION OF WHETHER IT WAS  
19 AN AUTOMATIC OR A STICK SHIFT?

20 A THERE WAS SHE STATED THAT SHE ASSUMED THAT IT WAS  
21 A STICK SHIFT BECAUSE SHE COULD HEAR THAT HE WAS CHANGING  
22 GEARS

23 Q AND WAS THAT DESCRIPTION -- DID YOU HAVE THAT  
24 DESCRIPTION BACK IN MARCH OF 2002?

25 A I DID. SHE GAVE THAT DESCRIPTION ON HER INITIAL

1 INTERVIEW ON THE 4TH OF MARCH

2 Q AND YOU SAID THE -- THE SUSPECT'S HOUSE WAS IN  
3 SALLEY?

4 A YES

5 Q IS THAT IN AIKEN COUNTY?

6 A THAT IS IN AIKEN COUNTY, CORRECT

7 Q WHAT DID YOU DO WHEN YOU REALIZED THAT IT WAS IN  
8 AIKEN COUNTY?

9 A I CONTACTED THE AIKEN COUNTY AUTHORITIES

10 Q WHY IS THAT?

11 A BECAUSE I'M FROM ORANGEBURG COUNTY AND I HAVE NO  
12 JURISDICTION IN AIKEN COUNTY

13 MS. BRISBIN: THANK YOU PLEASE ANSWER ANY  
14 QUESTIONS THE DEFENSE HAS

15 CROSS-EXAMINATION

16 BY MS BROWN

17 Q GOOD MORNING, LIEUTENANT

18 A GOOD MORNING

19 Q YOU WERE NOT THE INITIAL RESPONDING OFFICER, IS THAT  
20 CORRECT?

21 A NO, I WAS NOT THE INITIAL RESPONDING OFFICER  
22 WHENEVER WE HAVE -- WE HAVE A DEPUTY THAT GOES TO THE SCENE  
23 INITIALLY

24 Q OKAY THE INITIAL RESPONDING OFFICER WAS AN R L  
25 STOKES?

1 A THAT IS CORRECT

2 Q AND WHAT'S R L STAND FOR?

3 A I DON'T KNOW I DON'T KNOW HIS FIRST NAME

4 Q OKAY SO OFFICER -- DEPUTY STOKES?

5 A DEPUTY STOKES, YES

6 Q ALL RIGHT SO DEPUTY STOKES RESPONDED TO THE  
7 EMERGENCY ROOM?

8 A YES DEPUTY STOKES RESPONDED TO THE EMERGENCY ROOM  
9 ALONG WITH OUR VICTIM'S ADVOCATE, TRACY HICKS

10 Q AND WHO CONTACTED DEPUTY STOKES?

11 A I DON'T KNOW THAT

12 Q YOU DON'T HAVE THAT INFORMATION?

13 A I DON'T HAVE THAT INFORMATION, NO

14 Q WOULD YOU HAVE THAT INFORMATION IN YOUR CASE FILE?

15 A NO, IT'S NOT I MEAN, I DON'T KNOW WHO CONTACTED  
16 HIM

17 Q OKAY AND DEPUTY STOKES TOOK AN INITIAL REPORT,  
18 CORRECT?

19 A THAT IS CORRECT

20 Q NOW, YOU SAID THAT YOU HAD BEEN WITH THE ORANGEBURG  
21 COUNTY SHERIFF'S OFFICE FOR TWO AND A HALF YEARS, CORRECT?

22 A THAT IS CORRECT

23 Q WHAT OTHER TRAINING OR EXPERIENCE DO YOU HAVE AS A  
24 LAW ENFORCEMENT OFFICER?

25 A PRIOR TO THE ORANGEBURG COUNTY SHERIFF'S OFFICE, I

1 WAS EMPLOYED BY THE BAMBERG COUNTY SHERIFF'S OFFICE I WAS  
2 EMPLOYED BY THE DENMARK POLICE DEPARTMENT, AND I SERVED IN  
3 THE UNITED STATES ARMY MILITARY POLICE CORPS

4 Q SO HOW MANY YEARS?

5 A I HAVE A TOTAL OF 18 YEARS

6 Q AND WHAT KIND OF TRAINING HAVE YOU HAD TO  
7 INVESTIGATE CASES OF THIS NATURE?

8 A I HAVE ATTENDED THE UNITED STATES ARMY MILITARY  
9 POLICE INVESTIGATIONS WHICH WAS A 16-WEEK COURSE I ATTENDED  
10 SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY DETECTIVE COURSE I  
11 HAVE RECEIVED NUMEROUS SEMINARS, TRAININGS, SCHOOLS IN  
12 INVESTIGATIONS AND LAW ENFORCEMENT

13 Q AND YOU ARE TRAINED TO DO CERTAIN THINGS IN THE  
14 INVESTIGATION OF A CASE OF THIS NATURE IS THAT CORRECT?

15 A YES, WE ARE

16 Q YOU ARE TRAINED AS ARE -- WELL, LET ME JUST FOCUS ON  
17 YOUR TRAINING YOU ARE TRAINED IN THE TAKING OF REPORTS?

18 A YES, WE ARE TRAINED IN THE TAKING OF REPORTS

19 Q AND WHAT'S THE PURPOSE OF TAKING -- TAKING DOWN,  
20 PUTTING ALL THIS IN WRITING IN A REPORT?

21 A WELL, THE -- ACTUALLY FOR THE INITIAL REPORT THAT WE  
22 USE, THE INCIDENT REPORT IS FOR S L E D REPORTING PURPOSES  
23 THAT IS SO THAT S L E D CAN KEEP UP WITH STATS

24 Q NOW -- BUT THERE'S A GREATER -- I MEAN A BROADER  
25 REASON WHY YOU WOULD WRITE ALL THIS INFORMATION DOWN, RIGHT?

1 A YEAH ME AS AN INVESTIGATOR, YES

2 Q I MEAN, HOW MANY CASES DO YOU WORK IN A YEAR?

3 A. OH, LORD KNOWS WELL OVER 300

4 Q AND WOULD YOU BE EXPECTED TO REMEMBER OFF THE TOP OF  
5 YOUR HEAD WHAT HAPPENED IN ALL 300 OF THOSE CASES?

6 A NO

7 Q WOULD DEPUTY STOKES BE EXPECTED TO REMEMBER OFF THE  
8 TOP OF HIS HEAD ALL THE CASES HE RESPONDED TO---

9 A NO

10 Q ---OVER THE COURSE---

11 A NO

12 Q ---OF EVEN A MONTH, MUCH LESS A YEAR?

13 A NO

14 Q SO IT'S IMPORTANT TO GET PERTINENT INFORMATION DOWN  
15 IN THE REPORT

16 A IT IS

17 Q BECAUSE YOU WANT TO BE ABLE TO TESTIFY IF THE CASE  
18 COMES UP FOR TRIAL AS TO WHAT YOU WERE TOLD OR AS TO WHAT  
19 HAPPENED

20 A THAT IS CORRECT

21 Q AND THOSE REPORTS ARE WHAT HELPS REFRESH YOUR MEMORY  
22 OF WHAT HAPPENED

23 A THAT IS CORRECT

24 Q AND YOU -- AS THE INVESTIGATING OFFICER IN THIS  
25 CASE, YOU HAVE CHARGE OF THE ENTIRE CASE FILE, CORRECT?

1 A THAT IS CORRECT

2 Q INCLUDING REPORTS MADE BY THE INITIAL RESPONDING  
3 OFFICER

4 A THAT IS CORRECT

5 Q AND THAT WAS AGAIN DEPUTY STOKES

6 A CORRECT

7 Q AND DEPUTY STOKES DID MAKE AN INITIAL INCIDENT  
8 REPORT, CORRECT?

9 A THAT IS CORRECT

10 Q DO YOU RECALL THE INFORMATION THAT IS IN THAT  
11 INITIAL INCIDENT REPORT?

12 A SOME OF THE INFORMATION, YES, I DO RECALL

13 Q DO YOU RECALL WHETHER OR NOT -- DO YOU RECALL MS  
14 SANDERS -- LET ME REPHRASE THAT DO YOU RECALL DEPUTY STOKES  
15 INDICATING IN HIS REPORT THAT MS SANDERS INDICATED THAT  
16 THERE WAS A GUN INVOLVED IN THIS INCIDENT?

17 A THAT I DON'T RECALL I DON'T KNOW IF IT'S IN THERE  
18 OR NOT

19 Q WOULD LOOKING AT YOUR REPORT REFRESH YOUR  
20 RECOLLECTION?

21 A I DO KNOW THAT IT IS IN MY REPORT THAT THERE'S A  
22 GUN, IN THE REPORT

23 Q WOULD LOOKING AT THE INITIAL INCIDENT REPORT REFRESH  
24 YOUR RECOLLECTION OF WHAT IS IN DEPUTY STOKES' REPORT?

25 A SURE, IF I CAN TESTIFY TO WHAT'S IN HIS REPORT

1 Q WELL, YOU CAN TESTIFY IF IT'S -- IF IT REFRESHES  
2 YOUR RECOLLECTION

3 MS. BRISBIN: YOUR HONOR, I WOULD OBJECT TO HER  
4 TESTIFYING TO WHAT SOMEONE -- IS IN SOMEONE ELSE'S REPORT  
5 THAT WOULD BE HEARSAY

6 MS. BROWN: YOUR HONOR, I BELIEVE AS THE OFFICER WHO  
7 IS IN CHARGE OF THIS CASE FILE, IF SHE'S THE OFFICER IN  
8 CHARGE OF THE CASE FILE AND IT'S ASSUMED THE ORIGINAL  
9 INCIDENT REPORT, SHE CAN LOOK AT THAT REPORT AND IF IT  
10 REFRESHES HER RECOLLECTION, SHE CAN TESTIFY TO THAT

11 THE COURT: WELL, SHE CAN TESTIFY AS TO WHETHER IT  
12 REFRESHES HER RECOLLECTION SHE CAN'T TESTIFY AS TO WHAT THE  
13 REPORT SAYS

14 MS. BROWN. ABSOLUTELY, YOUR HONOR

15 THE COURT: SHE CAN LOOK AT IT AND SEE IF IT  
16 REFRESHES HER RECOLLECTION

17 BY MS BROWN

18 Q. DO YOU RECOGNIZE WHAT I'VE HANDED TO YOU?

19 A YES, THIS IS DEPUTY STOKES' REPORT

20 Q OKAY WOULD YOU PLEASE TAKE A MOMENT AND REVIEW  
21 THAT AND TELL ME IF IT REFRESHES YOUR RECOLLECTION AS TO THE  
22 ORIGINAL INCIDENT REPORT?

23 A I DON'T UNDERSTAND THE QUESTION

24 Q JUST READ THAT AND TELL ME IF -- IF THAT HELPS YOU  
25 REMEMBER WHAT YOU WERE INFORMED AS TO THE INITIAL INCIDENT

1 REPORT

2 MS. BRISBIN: YOUR HONOR, I HAVE THE SAME OBJECTION  
3 I THINK THAT'S HEARSAY IF SHE'S REFRESHING -- TRYING TO  
4 REFRESH HER MEMORY OF WHAT SOMEBODY ELSE SAID---

5 THE COURT: LOOK, IF IT DOESN'T REFRESH HER  
6 RECOLLECTION, SHE'LL SAY NO IF SHE SAYS IT DOES, SHE'LL SAY  
7 YES NOW, WHETHER THEY CAN ASK HER WHAT IT SAYS THAT'S A  
8 THE WITNESS. I MEAN, YEAH, I MEAN

9 BY MS BROWN

10 Q DO YOU RECALL WHETHER OR NOT THERE WAS MENTION OF A  
11 GUN IN THE INITIAL INCIDENT REPORT?

12 A IN HIS WRITTEN INITIAL INCIDENT REPORT THERE IS NO  
13 MENTION OF A GUN HOWEVER, ON THE 4TH OF MARCH WHEN I  
14 INTERVIEWED MS SANDERS SHE DID TELL ME ABOUT A GUN

15 Q BUT THAT WAS NOT MENTIONED ORIGINALLY, CORRECT?

16 A IT IS NOT MENTIONED ORIGINALLY THE INITIAL  
17 RESPONDING DEPUTIES DO NOT GO INTO GREAT DETAIL WITH RAPE  
18 VICTIMS WE TRY NOT TO VICTIMIZE VICTIMS OVER AND OVER  
19 AGAIN SO THEY GET A BASIC OF WHO, WHAT, WHERE, WHEN, WHY,  
20 AND HOW IN THEIR INITIAL INCIDENT REPORTS IT IS THEN TURNED  
21 OVER TO US AND WE GO INTO GREATER DETAIL

22 Q AND SHE GAVE SOME OTHER PRETTY DETAILED THINGS IN  
23 THAT INITIAL REPORT---

24 A SHE DID

25 Q ---DIDN'T SHE?

1 A SHE DID

2 Q SHE MENTIONED THE BLINDFOLD

3 A SHE DID

4 Q SHE ACTUALLY SAID THAT SHE WAS BLINDFOLDED ALL NIGHT  
5 LONG, DIDN'T SHE?

6 A SHE DID

7 Q SO SHE GAVE SOME FAIRLY DETAILED STATEMENTS IN THAT  
8 INITIAL REPORT---

9 A CORRECT

10 Q ---TO THE OFFICER, DIDN'T SHE?

11 A. I CAN'T -- I CANNOT TESTIFY TO WHETHER OR NOT SHE  
12 TOLD HIM ABOUT A GUN AND WHETHER OR NOT HE PUT IT IN HIS  
13 REPORT OR NOT I CAN'T SAY THAT SHE MAY HAVE TOLD HIM  
14 ABOUT A GUN THAT'S A QUESTION YOU'D HAVE TO ASK HIM

15 Q WELL, THAT WOULD HAVE BEEN FAIRLY IMPORTANT  
16 INFORMATION, WOULD IT NOT?

17 A IT WOULD BE

18 Q THAT WOULD BE INFORMATION YOU WOULD EXPECT A DEPUTY  
19 TO PUT IN A REPORT, CORRECT?

20 A CORRECT

21 Q AND MS SANDERS GAVE YOU A WRITTEN STATEMENT AFTER  
22 SPEAKING WITH YOU ON THE MORNING OF MARCH THE 4TH, CORRECT?

23 A CORRECT

24 Q DO YOU REMEMBER HER INITIAL STATEMENT?

25 A YES

1 Q DO YOU RECOGNIZE WHAT I HAVE JUST HANDED TO YOU,  
2 LIEUTENANT BAMBERG?

3 A THIS IS A STATEMENT I TOOK FROM MS SANDERS ON MARCH  
4 THE 4TH

5 Q NOW, IN THAT ORIGINAL STATEMENT DID SHE MENTION A  
6 GUN, HER -- HER FIRST NARRATIVE PORTION, DID SHE MENTION A  
7 GUN?

8 A NO, SHE DID NOT

9 Q SHE, IN FACT, DID NOT MENTION A GUN UNTIL YOU  
10 FURTHER QUESTIONED HER AS TO WHETHER OR NOT THERE WAS A  
11 WEAPON

12 A THAT IS CORRECT

13 Q AND IT WAS AT THAT POINT THAT SHE MENTIONED THAT  
14 THERE WAS A PISTOL, IS THAT CORRECT?

15 A THAT IS CORRECT

16 Q. AND SHE GAVE NO DESCRIPTION OF THAT PISTOL, DID SHE?

17 A SHE JUST SAID THAT IT WAS A SMALL CALIBER PISTOL

18 Q AND SHE COULDN'T SAY WHAT COLOR IT WAS?

19 A I DIDN'T ASK HER WE DIDN'T GO INTO GREAT DETAIL

20 Q YOU DIDN'T ASK HER WHAT COLOR IT WAS?

21 A NO

22 Q YOU DIDN'T ASK HER FOR ANY KIND OF DESCRIPTION?

23 A I DID -- I DID NOT

24 Q SO YOU HAD NO IDEA WHAT YOU WOULD HAVE BEEN LOOKING  
25 FOR HAD YOU BEEN ABLE TO GO OUT TO THE SCENE AND FIND A GUN

1 A I WOULD HAVE BEEN LOOKING FOR A SMALL CALIBER GUN

2 Q BUT YOU WOULD HAVE HAD NO IDEA WHAT COLOR GUN YOU  
3 WERE LOOKING FOR

4 A NO

5 Q AND YOU DIDN'T THINK IT WAS IMPORTANT TO ASK

6 A AT THE TIME IT'S JUST AN OVERSIGHT ON MY PART

7 Q WHO IS RESPONSIBLE FOR RECEIVING THE S L E D  
8 ASSAULT FORM, THAT INFORMATION FROM -- FROM THE HOSPITAL IN  
9 CHARLESTON?

10 A ORIGINALLY IT WOULD HAVE BEEN MYSELF

11 Q AND DID YOU?

12 A I DID

13 Q AND WHAT DID YOU DO WITH THAT?

14 A I PICKED UP THE RAPE EXAM KIT ON THE 13TH OF MARCH  
15 AND THEN I TURNED IT OVER TO AIKEN COUNTY WHEN THEY ASSUMED  
16 THE INVESTIGATION

17 Q AND YOU DIDN'T KNOW ANYTHING ABOUT IT FROM THERE

18 A I KNOW ABSOLUTELY NOTHING ABOUT IT FROM THERE

19 Q OKAY NOW, YOU SAID THAT YOU WERE -- YOU GOT THE  
20 ADDRESS -- THIS ADDRESS FOR JOSEPH WALKER LIVING SOMEWHERE IN  
21 SALLEY, SOUTH CAROLINA

22 A THAT IS CORRECT.

23 Q WHERE DID YOU GET THAT ADDRESS?

24 A FROM THE DRIVER'S LICENSE

25 Q YOU GOT THAT ADDRESS FROM HIS DRIVER'S LICENSE?

1 A CORRECT

2 Q HOW DID YOU GET HIS DRIVER'S LICENSE?

3 A ONCE I GOT THE INFORMATION ON MR WALKER, WE RAN HIS  
4 DRIVER'S LICENSE I HAD HIS NAME AND HIS DATE OF BIRTH AND  
5 YOU CAN RUN A DRIVER'S LICENSE CHECK ON THE COMPUTER FROM A  
6 NAME AND DATE OF BIRTH

7 Q WHO GAVE YOU HIS DATE OF BIRTH?

8 A I GOT THAT INFORMATION FROM AN INCIDENT REPORT IN  
9 DENMARK WHERE MS WARREN TOLD ME SHE HAD HAD OTHER INCIDENTS  
10 WITH MR WALKER SO THAT I COULD GO TO THE DENMARK POLICE  
11 DEPARTMENT AND THEY WOULD HAVE AN INCIDENT REPORT ON FILE  
12 WHICH IS WHERE I WENT AND THEY DID HAVE AN INCIDENT REPORT ON  
13 FILE

14 Q AND SO YOU WENT OUT TO THAT ADDRESS

15 A I WENT OUT TO SALLEY

16 Q YOU WENT OUT TO SALLEY AND YOU WENT TO THE ADDRESS  
17 THAT HAD BEEN GIVEN TO YOU

18 A NO, I WENT TO SALLEY AND WHEN I GOT THERE, BECAUSE  
19 I'M NOT FAMILIAR WITH SALLEY, I HAD TO ASK SOME PEOPLE ON THE  
20 STREET WHEN THEY WERE THERE -- IT WAS BY A CONVENIENCE STORE  
21 AND I ASKED THEM IF THEY KNEW A MR WALKER AND THEY GAVE  
22 ME

23 Q YOU ENDED UP AT THE ADDRESS THAT HAD BEEN GIVEN TO  
24 YOU, CORRECT?

25 A NO, I ENDED UP AT POPULAR (SIC) STREET

1 Q UH-HUH AND YOU ENDED UP AT A PLACE THAT YOU  
2 IDENTIFIED TO BE MR WALKER'S RESIDENCE?

3 A THAT IS CORRECT

4 Q AND YOU FOUND IT TO BE A WHITE BLOCK HOUSE?

5 A I DID

6 Q WITH SHEETS ON THE WINDOWS?

7 A YES

8 Q AND, AGAIN, MS SANDERS HAD GIVEN YOU A FAIRLY  
9 DETAILED DESCRIPTION OF THE -- OF THE INTERIOR OF THIS HOUSE,  
10 CORRECT?

11 A THAT IS CORRECT

12 Q BUT GAVE YOU NO DESCRIPTION OF THIS GUN

13 A I DIDN'T -- I MEAN, I DIDN'T ASK ABOUT THE  
14 DESCRIPTION OF THE GUN WHENEVER I ASKED HER DIRECT  
15 QUESTIONS, SHE WOULD -- SHE WOULD GIVE IT IN GREATER DETAIL  
16 AND AGAIN, LIKE I SAID, THAT'S AN OVERSIGHT I ASKED ABOUT  
17 THE GUN, SHE SAID A SMALL CALIBER GUN

18 Q SO YOU HAD TO ASK HER DIRECT QUESTIONS TO GET  
19 INFORMATION OUT OF HER?

20 A WELL, WHENEVER I DID ASK HER DIRECT QUESTIONS SHE  
21 WOULD GO INTO GREATER DETAIL

22 Q AND THE DESCRIPTION THAT SHE GAVE YOU OF HER  
23 ASSAILANT, DID SHE MENTION THAT HE WORE GLASSES?

24 A NO, SHE DID NOT

25 Q DID SHE MENTION HE WAS WEARING A JACKET?

1 A NO, SHE DID NOT

2 Q WERE YOU IN THE ROOM WITH HER WHEN SHE WAS WATCHING  
3 THE VIDEOTAPE?

4 A I WAS IN AND OUT OF THE ROOM I WAS NOT IN THE ROOM  
5 THE WHOLE TIME

6 Q ABOUT HOW LONG DID SHE WATCH THAT VIDEOTAPE?

7 A APPROXIMATELY 30 MINUTES THE VIDEOTAPE IS A TIME-  
8 LAPSE VIDEOTAPE FROM THE B P IT'S ON MULTIPLEX WHICH MEANS  
9 THAT YOU HAVE TO WATCH IT ONE FRAME AT THAT TIME SO FOR A  
10 10-MINUTE FRAME IT WOULD TAKE MUCH MORE TIME TO WATCH IT ON A  
11 TIME-LAPSE

12 Q SO THIS -- THIS VIDEOTAPE THAT WE'RE SEEING TODAY,  
13 IS THAT NOT THE EXACT VIDEOTAPE THAT SHE WAS WATCHING?

14 A THAT IS NOT THE EXACT VIDEOTAPE THAT IS -- WE TOOK  
15 IT TO S L E D AND BROKE IT DOWN TO -- FOR SPEED PURPOSES

16 Q I SEE SO THAT'S NOT THE EXACT -- SO THIS IS NOT  
17 THE EXACT VIDEOTAPE THAT THE MANAGER TOOK OUT OF---

18 A NO THAT IS---

19 Q ---THE STORE?

20 A THAT'S A VIDEOTAPE THAT WE TOOK TO S L E D FOR --  
21 IT'S A MULTIPLEX CAMERA WHICH YOU WATCH ONE CAMERA AT A TIME  
22 TO SLOW IT DOWN THAT'S THE EXACT -- THAT'S EVERYTHING THAT  
23 WAS ON THERE, BUT IT'S SLOWED DOWN FOR YOUR PURPOSES SO THAT  
24 IT WOULDN'T TAKE 30, 40, 50 MINUTES

25 Q IT WAS TESTIFIED TO YESTERDAY THAT THIS TAPE WAS

1 PHYSICALLY TAKEN FROM THE B P STATION THIS TAPE RIGHT HERE  
2 WAS TAKEN FROM THE B P STATION, AND NOW YOU'RE SAYING THAT  
3 THIS IS NOT THE EXACT TAPE TAKEN FROM THE B P STATION?

4 A THAT IS -- THAT IS NOT THE EXACT TAPE THAT IS A  
5 COPY OF THE TAPE

6 Q I SEE BEG THE COURT'S INDULGENCE ONE MOMENT. WHO  
7 ACTUALLY TOOK THE VIDEOTAPE FROM THE STORE TO S L E D ?

8 A I DID

9 Q YOU TOOK THAT TO S L E D

10 A I DID

11 Q AT WHAT POINT?

12 A WHEN WE WERE PREPARING FOR COURT TO BREAK IT DOWN TO  
13 SLOW IT DOWN FOR COURT PURPOSES AND I STOOD THERE WHILE THEY  
14 PUT IT ON THAT TAPE RIGHT THERE

15 Q NOW, I THOUGHT YOU TURNED OVER ALL THE INFORMATION  
16 ON THIS CASE TO AIKEN COUNTY WHEN YOU DETERMINED THAT THIS  
17 WAS NOT---

18 A I DID NOT TURN THE TAPE OVER TO AIKEN COUNTY I  
19 TURNED OVER THE RAPE EXAM KIT AND THE CLOTHES TO AIKEN  
20 COUNTY WE STILL HAVE A PART OF THIS IN ORANGEBURG COUNTY

21 Q I SEE SO YOU TOOK THIS TAPE TO S L E D WHEN?

22 A I CAN'T REMEMBER THE EXACT DATE

23 Q DO YOU HAVE THAT INFORMATION IN YOUR CASE FILE?

24 A I BELIEVE I MIGHT

25 Q WOULD YOU LIKE TO LOOK AT YOUR CASE FILE?

1 A SURE, IF I COULD

2 Q TO HAVE YOUR

3 A CAN I STEP DOWN AND GET IT?

4 Q IS THIS IT, THE MANILA

5 A IT IS

6 Q (MS BROWN HANDS THE CASE FILE TO THE WITNESS )

7 A I DON'T HAVE THE DATE THAT I TOOK IT TO S L E D IN  
8 THERE ALTHOUGH, LIKE I SAID, IT WAS WHILE WE WERE PREPARING  
9 FOR COURT

10 Q WELL, WOULD IT HAVE BEEN A MONTH AGO? THREE MONTHS  
11 AGO?

12 A IT WAS RIGHT BEFORE THE CASE WAS CALLED THE FIRST  
13 TIME WHEN THEY WERE PREPARING IT FOR THE FIRST TIME

14 Q SO APRIL?

15 A NO, IT WAS TWO MONTHS AGO ABOUT TWO MONTHS AGO

16 Q SO YOU TOOK -- YOU TOOK THE ORIGINAL TAPE TO  
17 S L E D TWO MONTHS AGO

18 A YES

19 Q AND YOU RECEIVED THIS TAPE BACK

20 A CORRECT

21 Q SO THIS IS NOT THE TAPE THAT MARGARET SANDERS  
22 WATCHED IN YOUR OFFICE IN ORANGEBURG, IS IT?

23 A NO, THAT IS NOT THE TAPE SHE WATCHED IN OUR OFFICE  
24 IN ORANGEBURG THAT IS THE -- ACTUALLY IT'S AN EXACT COPY OF  
25 THE TAPE IT'S JUST SLOWED DOWN FOR COURT PURPOSES

1 Q WITH THE OTHER CAMERAS EDITED OUT?

2 A NO ACTUALLY ALL THE CAMERAS ARE THERE IT'S JUST  
3 SLOWED DOWN FOR COURT PURPOSES IF YOU PUT THIS TAPE IN,  
4 IT'S GOING TO GO REAL FAST IT'S A MULTIPLEX SYSTEM ON A  
5 TIME-LAPSE AND---

6 Q AND I BELIEVE IT'S BEEN---

7 A ---SO YOU HAVE TO SLOW IT DOWN

8 Q AND I BELIEVE IT'S BEEN -- LET ME REPHRASE THAT  
9 ARE THERE ACTUALLY MULTIPLE CAMERAS IN THAT STORE?

10 A THERE ARE

11 Q HOW MANY CAMERAS ARE IN THAT STORE?

12 A I BELIEVE THERE'S FOUR OR FIVE CAMERAS IN THAT  
13 STORE

14 Q OKAY SO WHEN YOU'RE TALKING ABOUT A MULTIPLEX  
15 VIDEO SYSTEM, IS THIS ONE THAT HAS THE -- THE SPLIT SCREENS  
16 SO YOU SEE ALL FOUR---

17 A EXACTLY SO YOU SEE---

18 Q ---ANGLES AT ONCE?

19 A SO YOU SEE ALL FOUR ANGLES AT ONCE.

20 Q OKAY NOW, THE TAPE THAT WE VIEWED YESTERDAY ONLY  
21 HAD ONE SCENE ON THE TAPE DO YOU REMEMBER THAT?

22 A I DIDN'T SEE THAT TAPE YESTERDAY, SO I CAN'T---

23 Q HAVE YOU VIEWED THIS TAPE?

24 A I HAVE VIEWED THIS TAPE

25 Q AND THERE'S ONLY ONE---

1 A THERE'S ONE -- CAMERA ONE I BELIEVE IS THE ONE THAT  
2 IT'S SHOWING

3 Q CAMERA ONE

4 A RIGHT

5 Q SO THE OTHER THREE CAMERAS HAVE BEEN EDITED OUT OF  
6 THIS PORTION OF THE TAPE, CORRECT?

7 A I BELIEVE THAT IS CORRECT, BUT I CAN'T -- I'M NOT  
8 REAL SURE WITHOUT LOOKING AT THIS AND LOOKING AT THAT

9 Q WELL, DID YOU SEE THREE OTHER---

10 A NO, I DID NOT

11 Q ---CAMERA ANGLES ON THAT TAPE?

12 A NO, I DID NOT

13 Q SO IT'S SAFE TO SAY THE OTHER THREE HAVE BEEN EDITED  
14 OUT OF THE TAPE

15 A YEAH, I WOULD SAY THAT'S SAFE TO SAY

16 Q AND IT'S BEEN SLOWED DOWN.

17 A AND IT'S BEEN SLOWED DOWN, CORRECT I DON'T -- I  
18 DON'T KNOW THE ACTUAL COMPLEXITY OF IT, HOW THEY GET TO STOP  
19 THE OTHER SO YOU'RE NOT WATCHING ONE FRAME AT A TIME IS WHAT  
20 IT ACTUALLY COMES DOWN TO

21 MS. BROWN: I HAVE NO FURTHER QUESTIONS FOR THIS  
22 WITNESS

23 REDIRECT EXAMINATION

24 BY MS BRISBIN

25 Q LIEUTENANT BAMBERG, DO YOU HAVE THE ORIGINAL

1 VIDEOTAPE WITH YOU?

2 A I DO RIGHT HERE

3 Q IS THIS TAPE A FAIR AND ACCURATE REPRESENTATION OF  
4 WHAT'S ON THE ORIGINAL TAPE?

5 A YES, IT'S THE SAME EXACT THING, IT'S JUST SLOWED  
6 DOWN

7 Q OKAY WHERE DID YOU GET THIS TAPE?

8 A I GOT THAT TAPE FROM MS WARREN

9 Q OKAY AND HAVE YOU VIEWED THAT TAPE AS WELL?

10 A I HAVE

11 MS. BRISBIN: YOUR HONOR, AT THIS TIME I WOULD ASK  
12 THAT THIS -- THE ORIGINAL ALSO BE ADMITTED INTO EVIDENCE

13 MS. BROWN: NO OBJECTION

14 THE COURT: SO ADMITTED WITHOUT OBJECTION

15 MS. BROWN: WHAT NUMBER IS THAT, PLEASE?

16 (STATE'S EXHIBIT 13 WAS RECEIVED IN EVIDENCE )

17 BY MS BRISBIN

18 Q HOW MUCH TIME WAS THERE ON THE VIDEOS BETWEEN THE  
19 VICTIM'S APPEARANCE AND THE DEFENDANT'S APPEARANCE?

20 A APPROXIMATELY 12 MINUTES

21 Q OKAY WOULD THAT TIMING BE ACCURATE ON THE COPY?

22 A CORRECT IT'S THE SAME EXACT THING IT'S JUST  
23 SLOWED DOWN SO YOU DON'T HAVE TO WATCH ALL THE OTHER CAMERAS

24 Q OKAY AND SO ALTHOUGH THE TIME WAS ONE HOUR OFF  
25 BECAUSE OF DAYLIGHT SAVINGS TIME, THE AMOUNT OF TIME BETWEEN

1 THE TWO PEOPLE APPEARING WOULD BE THE SAME

2 A CORRECT

3 Q OKAY JUST TO CLARIFY, WHAT DATE WAS IT THAT  
4 MARGARET SANDERS TOLD YOU THAT THE SUSPECT HAD A GUN?

5 A THAT WAS ON THE 4TH OF MARCH

6 MS. BRISBIN: THANK YOU

7 THE COURT: ANYTHING FURTHER?

8 MS. BROWN- NO, YOUR HONOR, BUT I DIDN'T GET THE  
9 NUMBER FOR THE TAPE THAT WAS INTRODUCED

10 THE COURT: MADAM COURT REPORTER, WHAT NUMBER WOULD  
11 THAT BE?

12 COURT REPORTER. 13

13 MS. BROWN THANK YOU NO FURTHER QUESTIONS, YOUR  
14 HONOR

15 THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN  
16 CALL YOUR NEXT WITNESS

17 MS. BRISBIN: THE STATE CALLS INVESTIGATOR STUART  
18 GRAYBEAL

19 STUART GRAYBEAL, AFTER BEING DULY SWORN,  
20 TESTIFIED AS FOLLOWS

21 THE CLERK: HAVE A SEAT IN THE WITNESS BOX, STATING  
22 YOUR FULL NAME, SPELLING YOUR LAST, PLEASE

23 THE WITNESS: INVESTIGATOR STUART GRAYBEAL LAST  
24 NAME IS SPELLED G-R-A-Y-B-E-A-L

25

DIRECT EXAMINATION

BY MR BRISBIN

Q WHERE ARE YOU EMPLOYED?

A I'M EMPLOYED BY THE AIKEN COUNTY SHERIFF'S OFFICE

Q AND HOW LONG HAVE YOU BEEN THERE?

A I'VE BEEN THERE APPROXIMATELY 10 YEARS

Q WHAT IS YOUR POSITION THERE?

A I'M CURRENTLY A CRIMINAL INVESTIGATOR

Q AND WERE YOU THE INVESTIGATING OFFICER FOR AIKEN COUNTY IN THIS CASE?

YES, I WAS

Q WHEN DID YOU TAKE OVER THE CASE?

OVER THE CASE ON MARCH THE 25TH, 2002

Q HOW DID THAT COME ABOUT?

AS BRIEFED BY MY SUPERVISOR, I BELIEVE THAT WAS A

I WAS PROVIDED COPIES OF THE STATEMENTS, REPORTS, AND CASE DOCUMENTS THAT HAD BEEN COMPLETED BY ORANGEBURG COUNTY

Q OKAY WHY WAS THIS TURNED OVER TO AIKEN COUNTY?

A BECAUSE THE SEXUAL ASSAULT OCCURRED IN THE JURISDICTION OF AIKEN COUNTY

Q AND WHAT ADDRESS WERE YOU GIVEN FOR THAT CRIME SCENE?

A THAT WAS POPLAR STREET IN SALLEY, SOUTH CAROLINA THE NUMBERS WERE 228

1 Q 228 POPLAR STREET?

2 A THAT'S CORRECT

3 Q AND IS THAT IN AIKEN COUNTY?

4 A YES, MA'AM

5 Q WHOSE ADDRESS WAS THAT?

6 A THAT WAS THE ADDRESS OF THE DEFENDANT, MR WALKER

7 Q JOSEPH WALKER?

8 A YES, MA'AM

9 Q DID YOU TALK WITH THE VICTIM, MARGARET SANDERS?

10 A NOT THAT DAY

11 Q WHEN DID YOU TALK WITH HER?

12 A I INTERVIEWED MRS SANDERS ON THE MORNING OF APRIL  
13 THE 5TH, 2002

14 Q AND DID SHE DISCLOSE TO YOU THAT SHE HAD BEEN  
15 SEXUALLY ASSAULTED?

16 A SHE DID

17 Q DID SHE SAY WHEN IT HAPPENED?

18 A SHE DID

19 Q AND WHAT DATE WAS THAT?

20 A SHE INDICATED THAT THAT WAS ON MARCH THE 2ND, 2002,  
21 EVENING OF MARCH THE 2ND, MORNING OF MARCH THE 3RD

22 Q DID SHE KNOW WHERE IT HAPPENED?

23 A SPECIFICALLY, NO

24 Q AND WHY WAS THAT?

25 A SHE INDICATED THAT SHE WAS BLINDFOLDED SHE

1 PROVIDED A DESCRIPTION, YOU KNOW, AS FAR AS

2 Q OKAY

3 A SHE STATED SHE WAS -- SHE WAS TAKEN TO ANOTHER  
4 LOCATION FROM HER RESIDENCE BY THE DEFENDANT

5 Q OKAY

6 A IT WAS A LENGTHY DRIVE SHE WAS NOT FAMILIAR WITH  
7 WHERE SHE WAS AT

8 Q DO YOU RECOGNIZE WHAT'S BEEN MARKED STATE'S EXHIBIT  
9 NUMBER 7?

10 A I DO

11 Q AND HOW DO YOU RECOGNIZE THAT?

12 A THAT IS A PHOTOGRAPH WHICH I TOOK

13 Q OKAY AND WHEN DID YOU TAKE THIS PHOTOGRAPH?

14 A I TOOK THAT ON THE EVENING OF MARCH THE 25TH, 2002

15 Q OKAY AND WHY DID YOU TAKE THIS PHOTOGRAPH?

16 A THAT WAS TAKEN DURING THE EXAMINATION OF MR  
17 WALKER'S RESIDENCE I EXAMINED THE DWELLING AND ALSO  
18 EXAMINED HIS VEHICLE IN THE DRIVEWAY

19 MS BRISBIN: OKAY YOUR HONOR, AT THIS TIME I'D  
20 ASK THAT THIS STATE'S EXHIBIT NUMBER 7 BE ADMITTED INTO  
21 EVIDENCE

22 MS. BROWN: YOUR HONOR, I STILL DON'T BELIEVE HE'S  
23 QUITE LAID A PROPER FOUNDATION FOR THAT TO COME IN AT THIS  
24 TIME

25 THE COURT: WELL, I'M NOT SURE WHAT THAT MEANS I'M

1 GOING TO -- SO YOU'RE OBJECTING TO IT?

2 MS. BROWN: YES, YOUR HONOR

3 THE COURT: ALL RIGHT OVERRULED SO ADMITTED AS

4 PLAINTIFF'S EXHIBIT -- I MEAN STATE'S EXHIBIT NUMBER 14

5 (SIC)

6 MS. BRISBIN: THANK YOU, YOUR HONOR

7 (STATE'S EXHIBIT 7 WAS RECEIVED IN EVIDENCE )

8 BY MS BRISBIN

9 Q WHAT IS THIS EXACTLY?

10 A THAT IS THE INTERIOR OF JOSEPH WALKER'S FORD RANGER

11 PICKUP TRUCK AS IT APPEARED ON THE EVENING OF MARCH 25TH,

12 2002

13 Q AND YOU TOOK THIS PHOTO?

14 A I DID

15 Q WHERE WAS HIS TRUCK AT THAT TIME?

16 A IT WAS PARKED IN THE DRIVEWAY OF HIS RESIDENCE ON

17 POPLAR STREET IN SALLEY

18 Q OKAY AND WHAT DESCRIPTION DID YOU HAVE OF THE

19 SUSPECT'S VEHICLE?

20 A THAT IT WAS A BLACK COMPACT PICKUP TRUCK AND HAD

21 SOME TYPE OF RED STRIPE OR GRAPHIC RUNNING DOWN EACH SIDE

22 Q DID YOU HAVE ANY DESCRIPTION OF THE INTERIOR?

23 A ONLY THAT IT WAS HEAVILY SOILED, IT HAD FOUL ODOR

24 IT WAS VERY DIRTY AND THAT IT POSSIBLY HAD A MANUAL

25 TRANSMISSION IN IT

1 Q A MANUAL? THAT'S A STICK SHIFT?

2 A A STICK SHIFT THAT'S CORRECT

3 Q OKAY AND WHAT WAS SIGNIFICANT IN YOUR OBSERVATION  
4 ABOUT THIS PHOTO?

5 A IT SHOWS THE LAYOUT OF THE INTERIOR OF THE TRUCK  
6 ON THE TRANSMISSION HUMP YOU CAN SEE THE GEARSHIFT AND A  
7 CLUTCH PEDAL WHICH INDICATES IT IS A MANUAL OR STICK SHIFT  
8 TRANSMISSION AS YOU CAN SEE ON THE PICTURE, IT'S HEAVILY  
9 SOILED WITH DUST THERE'S A LOT OF CLUTTER THERE'S PAPERS,  
10 FOOD WRAPPERS, DEBRIS

11 Q DID YOU NOTICE ANY ODOR IN THE TRUCK?

12 A YES IT HAD A STRONG UNPLEASANT ODOR CONSISTENT  
13 WITH BODY ODOR, UNCLEAN UPHOLSTERY

14 Q THANK YOU

15 A SPOILED FOOD

16 Q OKAY DO YOU RECOGNIZE WHAT'S ALREADY BEEN ADMITTED  
17 INTO EVIDENCE STATE'S EXHIBIT NUMBER 8?

18 A THAT'S THE EXTERIOR OF MR WALKER'S TRUCK

19 Q WHO TOOK THIS PHOTO?

20 A I TOOK THAT PHOTO

21 Q AND WHERE WAS THIS TRUCK WHEN YOU TOOK THE PHOTO?

22 A THAT WAS PARKED IN THE DRIVEWAY OF MR WALKER'S  
23 RESIDENCE ON POPLAR STREET I BELIEVE YOU CAN JUST BARELY  
24 SEE THIS IS THE EDGE OF THE ROADWAY AND THE DRIVEWAY COMING  
25 UP HERE HIS RESIDENCE WOULD BE IN FRONT AND JUST TO THE

1 LEFT OF THE TRUCK IF YOU'RE SITTING IN IT

2 Q DID YOU HAVE A DESCRIPTION OF THE SIZE OF THE  
3 SUSPECT'S VEHICLE?

4 A THAT IT WAS A SMALL BLACK TRUCK

5 Q IS THIS A FULL SIZE OR A COMPACT TRUCK?

6 A FORD RANGER'S A COMPACT

7 Q THANK YOU SHOWING YOU STATE'S EXHIBIT NUMBER 9  
8 WHICH HAS ALSO BEEN ADMITTED INTO EVIDENCE, WHAT IS THIS?

9 A THAT IS A PHOTOGRAPH I TOOK OF THE INTERIOR OF MR  
10 WALKER'S HOUSE I BELIEVE THIS WAS TAKEN IN HIS BEDROOM

11 THE COURT: MADAM SOLICITOR, WHY DON'T YOU LET HIM  
12 SHOW THE JURY---

13 MS. BRISBIN: IF YOU WOULD STEP DOWN

14 THE COURT IF THEY'RE PASSING PICTURES AROUND,  
15 THEY'RE GOING TO MISS HIS TESTIMONY

16 MS. BRISBIN: YES, SIR

17 THE COURT: YOU CAN CERTAINLY SHOW IT TO THEM ALL AT  
18 ONCE

19 MS. BRISBIN. IF YOU WOULD JUST POINT OUT TO THE  
20 JURY WHAT---

21 THE COURT: YOU GOT JURORS ON BOTH SIDES OF YOU,  
22 INVESTIGATOR

23 THE WITNESS: CAN EVERYONE SEE THIS? THIS IS A  
24 PHOTOGRAPH I TOOK OF THE INTERIOR OF JOSEPH WALKER'S  
25 RESIDENCE THIS IS WHAT I REFER TO AS THE MIDDLE ROOM, A

1 BEDROOM IN THE HOUSE THIS IS A DOUBLE BED THERE'S A  
2 BATHROOM WITH A CINDER BLOCK WALL AT THE FOOT OF THE BED ON  
3 THE FAR RIGHT OF THE PICTURE THERE'S BED LINENS I BELIEVE  
4 THAT WAS A SHEET COVERING THE WINDOW AND YOU CAN SEE PART OF  
5 A -- I BELIEVE IT WAS A TABLE THERE'S CLUTTER, CLOTHING,  
6 BOXES, EMPTY BAGS, SOILED CLOTHING VISIBLE IN VARIOUS AREAS  
7 OF THE ROOM THERE'S ALSO A TELEVISION AND A V C R AND SOME  
8 TAPES VISIBLE ON THE DRESSER

9 BY MS BRISBIN

10 Q DID YOU NOTICE ANY ODOR IN THAT ROOM?

11 A YES, I DID IT WAS AGAIN CONSISTENT WITH BODY ODOR  
12 THE HOUSE ITSELF WAS UNHYGIENIC IT WAS A FOUL GARBAGE-TYPE  
13 SMELL

14 Q WHAT DESCRIPTION HAD YOU BEEN GIVEN OF THE INSIDE OF  
15 THE HOME OF THE SUSPECT?

16 A AS FAR AS THE LAYOUT OR THE CONDITION OR BOTH?

17 Q BOTH

18 A THE LAYOUT -- ENTERING THE FRONT DOOR, THERE WOULD  
19 BE I GUESS YOU'D CALL IT A LIVING AREA THEN YOU WOULD ENTER  
20 A BEDROOM AREA WHICH WAS CONSISTENT WITH THIS BEING THE  
21 MIDDLE ROOM THE HOUSE AGAIN WAS DESCRIBED AS HAVING A VERY  
22 UNPLEASANT ODOR, VERY DIRTY, VERY CLUTTERED

23 Q AND SPECIFICALLY WHAT WAS INSIDE THE BEDROOM?

24 A THE LAYOUT OF THE BEDROOM THERE WOULD BE THE BED  
25 WHICH IS VISIBLE IN THIS PICTURE THERE WOULD BE A

1 NIGHTSTAND I BELIEVE IT WAS DESCRIBED AS HAVING AN ASHTRAY  
2 AND SOME CLUTTER ON TOP OF THAT AS YOU ENTERED THE BEDROOM  
3 FROM THE LIVING ROOM, THERE WAS A GAS FLOOR HEATER DESCRIBED  
4 AS BEING ON THE IMMEDIATE LEFT AGAIN, IT WAS DESCRIBED AS  
5 NOT HAVING WOODEN DOORS, AND IN THE FRAMES JUST SHEETS HUNG  
6 UP IN THEIR PLACE

7 Q WHAT SIZE BED WAS DESCRIBED?

8 A A DOUBLE BED DOUBLE BED

9 Q DO YOU RECOGNIZE WHAT'S BEEN MARKED STATE'S EXHIBIT  
10 NUMBER 5 AND ADMITTED INTO EVIDENCE?

11 A I DO THAT'S ANOTHER PHOTOGRAPH I TOOK OF THIS  
12 ROOM, THE MIDDLE BEDROOM THIS SHOWS THE BED ITSELF YOU  
13 CAN SEE A PAIR OF BLACK WORK BOOTS

14 THE COURT. YOU GOT JURORS ON YOUR RIGHT NOW

15 THE WITNESS THERE'S ALSO TENNIS SHOES, CLUTTER,  
16 YOU KNOW, ON THE TABLE, ON THE DRESSER YOU CAN SEE THE BED  
17 LINEN COVERING THE WINDOW BEHIND THE BED THERE'S PILLOWS  
18 THERE'S -- I DON'T KNOW IF YOU CAN SEE IT IN THE PICTURE  
19 THIS IS SUPPOSED TO BE A WHITE COVERING---

20 COURT REPORTER: I'M SORRY SUPPOSED TO BE A WHAT?

21 THE WITNESS A WHITE COVERING ON THE BED, A  
22 COMFORTER I BELIEVE IT'S VISIBLY SOILED A PACK OF  
23 CIGARETTES THERE'S AN ASHTRAY ON THE NIGHTSTAND AND  
24 EVERYTHING GENERAL CLUTTER

25 BY MS BRISBIN

1 Q WHAT DESCRIPTION DID YOU HAVE OF THE SHOES OR BOOTS  
2 OF THE SUSPECT?

3 A BLACK WORK SHOES OR WORK BOOTS

4 Q ARE THEY VISIBLE IN THIS PHOTO?

5 A YES, THEY'RE VISIBLE RIGHT HERE AT THE BOTTOM I  
6 DON'T KNOW IF Y'ALL CAN SEE THAT IT'S IN THE EXTREME BOTTOM  
7 RIGHT CORNER

8 Q SHOWING YOU STATE'S EXHIBIT NUMBER 6 WHICH IS ALSO  
9 ADMITTED INTO EVIDENCE, WHAT DO YOU RECOGNIZE IN THIS PHOTO?

10 A THIS IS A PHOTOGRAPH OF THE GAS HEATER IN THAT  
11 MIDDLE BEDROOM THIS AREA IS THE LIVING ROOM AREA WHEN YOU  
12 ENTER THE HOUSE YOU PASS THROUGH THIS ROOM COMING INTO  
13 THE BEDROOM, THIS FURNACE OR FLOOR HEATER WOULD BE ON YOUR  
14 IMMEDIATE LEFT JUST INSIDE THE DOOR

15 Q DID YOU HAVE A DESCRIPTION OF A GAS SPACE HEATER IN  
16 THE BEDROOM?

17 A YES, I DID THAT WAS ONE OF THE PROMINENT FEATURES  
18 I WAS LOOKING FOR IN THE HOUSE

19 Q AND -- GO AHEAD

20 A AGAIN, THIS IS A LITTLE BIT BETTER SHOT OF THE BLACK  
21 WORK BOOT OR WORK SHOES THAT WERE VISIBLE IN THE BEDROOM

22 Q THANK YOU WHAT ELSE DID YOU DO AT THE RESIDENCE OF  
23 THE SUSPECT?

24 A AFTER MY ARRIVAL I INSPECTED THE EXTERIOR OF THE  
25 HOUSE, DO A QUICK WALK-AROUND AS IT WERE I OBSERVED THAT IT

1 WAS A WHITE CINDER BLOCK HOUSE

2 Q DID YOU HAVE A DESCRIPTION OF WHAT KIND OF HOUSE IT  
3 WAS?

4 A YES, A WHITE CINDER BLOCK HOUSE AFTER I WENT OVER  
5 THE EXTERIOR OF THE HOUSE, I ENTERED THROUGH THE FRONT DOOR  
6 I EXAMINED THE INTERIOR ROOM BY ROOM AFTER I HAD DONE A  
7 WALK-THROUGH OF THE HOUSE, I PHOTOGRAPHED THE INTERIOR OF THE  
8 HOUSE USING A DIGITAL CAMERA I ALSO PHOTOGRAPHED THE  
9 EXTERIOR AND THE VEHICLE I THEN PROCESSED THE HOUSE FOR  
10 LATENT FINGERPRINT IMPRESSIONS I DUSTED FOR FINGERPRINTS

11 Q WERE YOU ABLE TO OBTAIN ANY USABLE FINGERPRINTS?

12 A NO, I WAS NOT

13 Q AND WHY IS THAT?

14 A I DID COLLECT SEVERAL LIFTS, BUT THEY WERE OF POOR  
15 QUALITY THE REPORT I GOT BACK, AS I STATED, THEY WERE OF NO  
16 VALUE THAT WAS DUE MOSTLY TO THE CONDITION OF THE INTERIOR  
17 OF THE HOUSE THE LEVEL OF FILTH, THE DUST, THE DIRT ON ALL  
18 SURFACES JUST MADE THE PRINTS UNUSABLE I WAS NOT ABLE TO  
19 GET A CLEAR, CLEAN LIFT THAT'S TRUE FOR THE VEHICLE AS  
20 WELL

21 Q DID YOU ATTEMPT TO GET FINGERPRINTS FROM THE  
22 VEHICLE?

23 A YES, I DID I PROCESSED FAIRLY EXTENSIVELY

24 Q AND WHY WERE YOU UNABLE TO GET USABLE FINGERPRINTS?

25 A AGAIN, MOST NEWER VEHICLES ARE UPHOLSTERED IN CLOTH

1 OR A TEXTURED VINYL PRODUCT WHICH MAKES PROCESSING FAIRLY  
2 DIFFICULT TO BEGIN WITH I DID PROCESS THAT AND THE SMOOTH  
3 PAINTED SURFACES, THE GLASS SURFACES THEY APPEARED TO BE  
4 AGAIN COATED WITH THE FILTH THERE WAS A LOT OF DUST, DIRT,  
5 A FILM CONSISTENT WITH NICOTINE FILM, SPILLED BEVERAGES IT  
6 WAS JUST VERY DIRTY, A LOT OF SURFACE CONTAMINANTS

7 Q HOW MUCH TIME HAD GONE BY WHEN YOU INSPECTED THE  
8 SUSPECT'S HOME AND VEHICLE?

9 A TIME IN RELATION TO?

10 Q IN RELATION TO THE SEXUAL ASSAULT

11 A I WAS INFORMED THE SEXUAL ASSAULT TOOK PLACE ON THE  
12 2ND -- EVENING OF THE 2ND, MORNING OF THE 3RD OF MARCH AND  
13 THIS WAS MARCH THE 25TH SO 21, 22 DAYS

14 Q WERE YOU ABLE TO FIND A WEAPON?

15 A NO, I WAS NOT

16 Q SO HOW MUCH TIME HAD GONE BY SINCE THE INCIDENT?

17 A AGAIN, THAT WOULD BE 22, 23 DAYS

18 Q OKAY AND WAS THERE ANY DNA INVOLVED IN THIS  
19 CASE?

20 A ARE YOU ASKING IF ANY WAS---

21 Q IF ANY WAS FOUND

22 A ---COLLECTED? NO, MA'AM

23 Q AND---

24 A NOT DURING MY INVESTIGATION THAT I'M AWARE OF

25 Q IN YOUR EXPERIENCE IS IT -- DO YOU NORMALLY FIND

1 D N A IN SEXUAL ASSAULT CASES?

2 A I'VE SEEN IT THAT I CAN RECALL ONE TIME IN 10 YEARS  
3 WITH THE AIKEN COUNTY SHERIFF'S OFFICE

4 MS. BRISBIN: THANK YOU PLEASE ANSWER ANY  
5 QUESTIONS THE DEFENSE HAS

6 CROSS-EXAMINATION

7 BY MS BROWN

8 Q YOUR TESTIMONY HERE TODAY IS THAT IN THE 10 YEARS  
9 WITH THE AIKEN COUNTY SHERIFF'S OFFICE YOU'VE ONLY SEEN ONE  
10 CASE INVOLVING A SEXUAL ASSAULT WHERE THERE WAS D N A  
11 EVIDENCE COLLECTED AT THE SCENE?

12 A THAT I WAS INVOLVED WITH I CAN RECALL ONE CASE, ONE  
13 SPECIFIC CASE, THAT'S CORRECT

14 Q ONLY ONE THAT YOU WERE INVOLVED WITH

15 A THAT'S CORRECT

16 Q AND HOW MANY INVESTIGATORS ARE THERE AT ANY GIVEN  
17 TIME WITH THE AIKEN COUNTY SHERIFF'S OFFICE?

18 A RIGHT NOW I WOULD GUESS UPWARDS OF 20, 25, NOT  
19 COUNTING NARCOTICS

20 Q HOW LONG IN THOSE 10 YEARS HAVE YOU BEEN  
21 INVESTIGATING CRIMINAL SEXUAL CONDUCT CASES?

22 A AS AN INVESTIGATOR?

23 Q YES, SIR

24 A SINCE FALL OF '94

25 Q AND THERE ARE PROBABLY 20 OTHER INVESTIGATORS AT ANY

1 GIVEN TIME?

2 A COUNTING JUVENILE, THAT'S CORRECT

3 Q NOW, INVESTIGATOR GRAYBEAL, ON THIS DATE---

4 A I'M SORRY FALL OF '97 MY APOLOGIES

5 Q FALL OF '97---

6 A YES, MA'AM

7 Q ---SINCE YOU'VE BEEN---

8 A INVESTIGATOR MY APOLOGIES

9 Q THANK YOU NOW, ON THIS DATE THAT YOU WERE OUT AT  
10 MR WALKER'S RESIDENCE WAS AGAIN MARCH THE 25TH?

11 A THAT'S CORRECT

12 Q AND YOU DID NOT ACTUALLY INTERVIEW MS SANDERS UNTIL  
13 APRIL THE 5TH IS THAT CORRECT?

14 A I BELIEVE IT WAS APRIL 5TH IT WAS SEVERAL DAYS  
15 LATER

16 Q SO WHEN YOU'RE REFERRING TO THESE DESCRIPTIONS THAT  
17 YOU'VE BEEN GIVEN, YOU HAD NOT BEEN GIVEN THOSE DESCRIPTIONS  
18 BY MS SANDERS IS THAT CORRECT?

19 A THAT'S CORRECT

20 Q YOU WERE RELYING ON THE REPORTS FROM THE ORANGEBURG  
21 COUNTY SHERIFF'S OFFICE IS THAT CORRECT?

22 A AND THE BRIEFING BY LIEUTENANT REDD THAT'S  
23 CORRECT

24 Q THE BRIEFING BY LIEUTENANT REDD AND HOW HAD --  
25 WHERE HAD LIEUTENANT REDD RECEIVED HIS INFORMATION, TO YOUR

1 KNOWLEDGE?

2 A I BELIEVE HE COMMUNICATED DIRECTLY WITH LIEUTENANT  
3 BAMBERG

4 Q AND ON WHAT DATE DID YOU ACTUALLY PHYSICALLY RECEIVE  
5 THE REPORTS AND THE EVIDENCE IN THIS CASE FROM ORANGEBURG?

6 A I BELIEVE I RECEIVED ALL THE DOCUMENTS OR MOST OF  
7 THE DOCUMENTS AGAIN ON MARCH THE 25TH LIEUTENANT REDD  
8 BRIEFED ME ON HIS KNOWLEDGE OF THE CASE, WHAT HE HAD DONE,  
9 AND HE TURNED OVER HIS NOTES AND THE DOCUMENTS HE'D RECEIVED  
10 FROM ORANGEBURG COUNTY

11 Q AND YOU RECEIVED THE ACTUAL SEXUAL ASSAULT KIT ON  
12 APRIL THE 12TH? IS THAT CORRECT?

13 A I BELIEVE THAT'S THE CORRECT DATE YES, MA'AM, I  
14 RECEIVED THAT ON THE MORNING OF APRIL 12TH

15 Q AND YOU ALSO RECEIVED A V H S CASSETTE TAPE?

16 A I DID

17 Q AT THAT TIME?

18 A I DID

19 Q AND WHAT WAS THE CONTENTS OF THAT TAPE?

20 A THAT TAPE TURNED OUT TO BE UNWATCHABLE WHETHER IT  
21 WAS MIS-RECORDED, WHETHER OUR EQUIPMENT COULDN'T PLAY IT, I  
22 DON'T KNOW THAT WAS IDENTIFIED TO ME AS A DUPLICATE COPY OF  
23 THE ORIGINAL TAPE

24 Q WAS IT IDENTIFIED TO YOU AS BEING A DUPLICATE COPY  
25 OF THE ORIGINAL TAPE?

1 A YES, MA'AM, IT WAS A DUPLICATE I WAS NOT GIVEN AN  
2 ORIGINAL

3 Q AND DID YOU TAKE ANY STEPS TO RECEIVE ANOTHER COPY  
4 OF THAT TAPE---

5 A NO, MA'AM

6 Q ---AFTER FINDING IT TO BE UNWATCHABLE?

7 A NO, MA'AM

8 Q WERE YOU AWARE THAT LIEUTENANT BAMBERG WAS GOING TO  
9 TAKE THE ORIGINAL TO S L E D TO HAVE IT CLEANED UP?

10 A I DON'T RECALL TO THE BEST OF MY KNOWLEDGE, NO

11 Q HAVE YOU EVER VIEWED THE TAPE THAT WAS SHOWN IN  
12 COURT YESTERDAY?

13 A NO, MA'AM

14 Q YOU RECEIVED THE SEXUAL ASSAULT COLLECTION KIT ON  
15 APRIL THE 12TH

16 A THAT IS CORRECT

17 Q WHAT DID YOU DO WITH IT?

18 A I SUBMITTED THAT AS EVIDENCE TO THE AIKEN COUNTY  
19 SHERIFF'S OFFICE

20 Q WAS IT EVER SENT TO S L E D FOR TESTING?

21 A I HAVE NO IDEA

22 Q WHOSE RESPONSIBILITY WOULD IT HAVE BEEN TO SEND IT  
23 TO S L E D FOR TESTING?

24 A THAT WOULD HAVE BEEN THE EVIDENCE CUSTODIAN

25 Q AND YOU ARE THE LEAD INVESTIGATOR IN THIS CASE?

1 A THAT IS CORRECT

2 Q CAN YOU TELL BY LOOKING AT YOUR CASE FILE WHETHER OR  
3 NOT THIS KIT WAS EVER SENT TO S L E D FOR TESTING?

4 A ACCORDING TO MY COPY, IT WAS NOT IT WAS PLACED IN  
5 THE EVIDENCE ROOM OR LOCKER BY LIEUTENANT MCGOWAN AND IT WAS  
6 LOGGED IN TO THE EVIDENCE ROOM THAT SAME DAY

7 Q NOW, WHOSE RESPONSIBILITY WOULD IT HAVE BEEN TO  
8 REQUEST THAT THE EVIDENCE CUSTODIAN SEND THIS KIT TO S L E D  
9 FOR TESTING?

10 A THAT WOULD BE MINE

11 Q AND DID YOU REQUEST THAT THIS KIT BE SENT TO  
12 S L E D FOR TESTING?

13 A NO WE HAD NOTHING TO COMPARE IT WITH AT THAT TIME

14 Q DID YOU AT ANY POINT RECEIVE THE ABILITY TO GAIN  
15 ANYTHING TO COMPARE WITH WHAT YOU HAD?

16 A IF YOU'RE ASKING DID WE REQUEST A HEARING TO OBTAIN  
17 THE DEFENDANT'S D N A , NO

18 Q YOU DID NOT DO THAT

19 A DID NOT

20 Q SO YOU DID NOT MAKE ANY ATTEMPT TO DO WHAT WAS  
21 NECESSARY IN ORDER TO SEND THIS KIT TO S L E D FOR TESTING,  
22 DID YOU?

23 A I -- I'M NOT SURE I FOLLOW NECESSARY, BUT IF YOU'RE  
24 ASKING DID I GO THROUGH THE STEPS, COLLECT EVIDENCE AND  
25 SUBMIT IT, NO, I DID NOT

1 Q WELL, THERE ARE NECESSARY STEPS IN ORDER TO COMPLETE  
2 A PROCESS, CORRECT?

3 A YES, MA'AM

4 Q AND THOSE STEPS WERE NOT TAKEN, WERE THEY?

5 A THAT IS CORRECT

6 Q I BELIEVE YOU ALSO INDICATED IN YOUR REPORT THAT YOU  
7 FOUND A CAP IN THE TRUCK WITH WHAT LOOKED LIKE TO HAVE  
8 CAUCASIAN HAIR IS THAT CORRECT?

9 A THAT IS CORRECT

10 Q AND I BELIEVE YOU REQUESTED KNOWN HEAD HAIR SAMPLES  
11 FROM MS SANDERS---

12 A YES, MA'AM

13 Q ---FOR COMPARISON

14 A THAT IS CORRECT

15 Q AND DID THAT GO TO S L E D FOR TESTING?

16 A TO THE BEST OF MY KNOWLEDGE, IT DID

17 Q IT DID

18 A I WAS INFORMED THAT HER HAIR OR HER HAIRS WERE  
19 COMBED HAIRS THAT IS, THEY ARE BRUSHED OUT OF HER HAIR AND  
20 THAT S L E D REQUIRED PLUCKED HAIRS TO DO D N A TESTING

21 Q WERE THERE NOT PLUCKED HAIRS IN THE SEXUAL ASSAULT  
22 KIT?

23 A I DON'T KNOW I DON'T KNOW IF IT WAS COMPLETELY  
24 COMPLETED, IF YOU WILL ACCEPT THE TERM

25 Q WELL, YOU HAD THE S L E D PROTOCOL KIT IN YOUR

1 POSSESSION, DID YOU NOT?

2 A YES I DID NOT BREAK THE SEALS

3 Q SO YOU DID NOT SEND THAT KIT WHICH MOST PROBABLY  
4 WOULD HAVE HAD PLUCKED HAIRS IN IT TO COMPARE WITH THAT CAP,  
5 DID YOU?

6 A TO THE BEST OF MY KNOWLEDGE, NO, IT WAS NOT SENT TO  
7 S L E D

8 Q WELL, TO THE BEST OF YOUR KNOWLEDGE YOU'VE JUST  
9 INDICATED FROM LOOKING AT YOUR REPORT THAT THAT KIT WAS NOT  
10 SENT

11 A ACCORDING TO MY REPORT I DON'T KNOW IF IT WAS  
12 SUBSEQUENTLY SENT TO S L E D OR NOT TO THE BEST OF MY  
13 KNOWLEDGE, IT WAS NOT

14 Q WELL, IF IT HAD BEEN SENT TO S L E D YOU WOULD HAVE  
15 DOCUMENTATION OF THAT, CORRECT?

16 A SHOULD

17 Q SHOULD

18 A SHOULD

19 Q BUT YOU DO NOT HAVE SUCH DOCUMENTATION, DO YOU?

20 A THAT IS CORRECT FOR THE RECORD, I WAS GONE ABOUT  
21 THREE MONTHS, THREE AND A HALF MONTHS, FOLLOWING THIS WHEN  
22 I RETURNED, I DIDN'T HAVE ANY DOCUMENTATION THAT IT HAD BEEN  
23 SENT

24 Q WELL, WHOSE RESPONSIBILITY WOULD IT HAVE BEEN TO  
25 FOLLOW UP WITH THIS CASE DURING THE THREE AND A HALF MONTHS

1 THAT YOU WERE GONE?

2 A I HAVE NO IDEA I WAS OUT OF TOWN ON A FAMILY  
3 EMERGENCY IF ANYTHING PRESSING HAD COME UP, I WOULD PRESUME  
4 THAT ONE OF MY SUPERVISORS WOULD EITHER HANDLE IT OR DELEGATE  
5 IT

6 Q SO ESSENTIALLY THAT KIT SAT IN THE EVIDENCE LOCKER  
7 FOR THREE AND A HALF MONTHS WITH NO ATTEMPTS FOR ANYTHING TO  
8 BE DONE WITH IT

9 A TO THE BEST OF MY KNOWLEDGE, THAT'S -- THAT'S  
10 ACCURATE

11 Q NOW, WHEN YOU MET WITH MS SANDERS ON APRIL THE 5TH,  
12 SHE GAVE YOU A WRITTEN STATEMENT IS THAT CORRECT?

13 A YES, SHE DID

14 Q AND SHE DID NOT MENTION A GUN IN THAT WRITTEN  
15 STATEMENT, DID SHE?

16 A IF YOU WOULD BEAR WITH ME I DON'T RECALL SPECIFIC  
17 MENTION OF IT LET ME GLANCE OVER THE REPORT OR, EXCUSE ME,  
18 OVER THE STATEMENT I DON'T SEE ANY MENTION OF IT I DON'T  
19 RECALL ANY MENTION OF IT

20 Q AND SHE GAVE YOU A FAIRLY DETAILED WRITTEN STATEMENT  
21 ABOUT WHAT HAPPENED, DID SHE NOT?

22 A FAIRLY DETAILED, YES

23 Q BUT THERE WAS NO MENTION OF A GUN IN THAT STATEMENT

24 A NO

25 Q WHERE ALL DID YOU PROCESS FOR PRINTS IN THE BEDROOM?

1           A        IN THE BEDROOM? I BELIEVE I ATTEMPTED SOME ON THE  
2 END TABLE, THE HEADBOARD OF THE BED, SOME OF THE SMOOTHER  
3 WOODEN SURFACES WHICH I DIDN'T ~~HAVE~~ ANY SUCCESS WITH I  
4 BELIEVE I PROCESSED SOME OF THE CONTENTS OF THE GARBAGE CAN  
5 NEXT TO THE BED    WHATEVER SMOOTH SURFACE THAT I -- I DON'T  
6 -- WITHOUT LOOKING AT THE CARDS, I COULDN'T TELL YOU WHAT  
7 EXACT SURFACES I RECOVERED PRINTS FROM, BUT ANYTHING IN THAT  
8 MIDDLE BEDROOM OR CLOSE PROXIMITY THAT APPEARED LIKELY TO  
9 HAVE BEEN TOUCHED BY ANYONE I---

10           Q        DID YOU PROCESS THE ASHTRAY?

11           A        NO

12           Q        WHY NOT?

13           A        IT WAS FILTHY

14           Q        HAD YOU BEEN INFORMED THAT SHE HAD USED THAT  
15 ASHTRAY?

16           A        I DON'T RECALL IF SHE SPECIFICALLY MENTIONED IT I  
17 KNOW SHE SMOKED

18           Q        DID SHE RECALL -- DID SHE MENTION TO YOU THAT SHE  
19 HAD SMOKED ON THAT EVENING?

20           A        I DON'T RECALL

21           Q        DID YOU -- WHAT -- YOU SAID YOU PROCESSED SOME ITEMS  
22 THAT WERE IN THAT TRASH CAN

23           A        CANS, ANYTHING THAT WOULD BE SMOOTH AND RELATIVELY  
24 CLEAN THAT SOMEONE MAY HAVE HANDLED    THERE MAY HAVE BEEN A  
25 PACK OF CIGARETTES THAT I PROCESSED    AGAIN, I DON'T RECALL

1 SPECIFIC CONTENTS

2 Q DID YOU PROCESS A BEER CAN?

3 A YES, MA'AM

4 Q AND HOW MANY BEER CANS DID YOU FIND IN THE GARBAGE  
5 CAN?

6 A TWO OR THREE

7 Q AND YOU PROCESSED ALL FOR PRINTS?

8 A I DON'T KNOW IF I PROCESSED ALL OF THEM THE ONES  
9 AT THE BOTTOM MAY HAVE BEEN WET I WOULDN'T HAVE PROCESSED  
10 IT IF THEY WERE STICKY OR WET

11 Q NOW, I BELIEVE YOU STATED IN YOUR REPORT THAT YOU  
12 USED SOME KIND OF METHOD TO DETERMINE IF THERE WAS THE  
13 PRESENCE OF D N A IN THE FORM OF SPERM OR SEMEN ON THE  
14 SHEETS IS THAT CORRECT?

15 A THE SHEETS AND THE LIVING ROOM, WHAT I DID -- SEMEN  
16 WILL GENERALLY FLUORESCCE UNDER ULTRAVIOLET RADIATION OR  
17 ULTRAVIOLET LIGHT ONE OF THE METHODS THAT SOMETIMES IS  
18 EMPLOYED IN THESE CASES WE'LL TURN OFF THE LIGHTS I'VE  
19 GOT A SMALL ULTRAVIOLET LIGHT OR A WOOD'S LAMP AND YOU HOLD  
20 IT CLOSE TO ANYTHING THAT MAY BE SOILED WITH -- POTENTIALLY  
21 SOILED WITH SEMEN, AND GENERALLY IF IT'S NOT TOO DEGRADED IT  
22 WILL FLUORESCCE OR GLOW I PROCESSED I BELIEVE THE BED AND  
23 SOME OF THE LIVING ROOM FURNITURE WITH THAT

24 Q AND YOU HAVE PROCESSED THAT BEFORE IN OTHER CASES,  
25 CORRECT?

1           A       OCCASIONALLY    USUALLY WE LET FORENSICS DO THAT, BUT  
2 IT'S A GOOD PRELIMINARY PROCEDURE

3           Q       AND DID ANYONE FROM FORENSICS COME OUT TO THE HOUSE  
4 TO PROCESS THE SCENE?

5           A       NO       THERE WAS NOTHING ADDITIONAL TO DO BEYOND WHAT  
6 I DID, THE DUSTING FOR PRINTS AND THE USING THE WOOD'S LAMP

7           Q       I'M SHOWING YOU WHAT'S BEEN INTRODUCED INTO EVIDENCE  
8 AS STATE'S EXHIBIT NUMBER 5 AND THIS IS THE PICTURE---

9           A       I'M SORRY    WOULD YOU---

10          Q       ---OF THE BED?

11          A       ---MIND IF I STEPPED DOWN?

12          Q       SURE     PLEASE    NOW, IS THIS PICTURE A FAIR AND  
13 ACCURATE REPRESENTATION OF HOW THE BED WAS WHEN YOU  
14 ORIGINALLY ENTERED THE HOUSE?

15          A       IT IS

16          Q       AND LET ME CLARIFY    YOU ENTERED THE HOUSE UPON THE  
17 CONSENT OF MR WALKER, IS THAT CORRECT?

18          A       THAT'S CORRECT, BOTH VERBAL AND WRITTEN STATEMENTS

19          Q       NOW, YOU SAID THAT YOU---

20                 **THE COURT:** MS BROWN, CAN YOU AND THE WITNESS  
21 SWITCH PLACES AND LET HIM TALK BACK TOWARDS---

22                 **MS. BROWN:** CERTAINLY, YOUR HONOR

23                 **THE COURT:** ---THE COURT REPORTER?

24                 **MS. BROWN.** CERTAINLY

25                 **THE COURT:** THANK YOU

1 BY MS BROWN

2 Q YOU -- FOR LACK OF KNOWING THE TERMINOLOGY, IS IT  
3 CORRECT TO SAY THAT YOU FLUOROSCOPED THIS BED, USED THE  
4 ULTRAVIOLET LIGHT?

5 A YES

6 Q OKAY SO YOU USED THE ULTRAVIOLET LIGHT ESSENTIALLY  
7 SHOWN -- I GUESS IT'S LIKE A FLASHLIGHT WITH A SPECIAL COVER  
8 OR---

9 A IT'S---

10 Q ---HELP ME UNDERSTAND

11 A IT'S A SMALL FLUORESCENT LANTERN IT HAS A -- IN  
12 PLACE OF A REGULAR WHITE FLUORESCENT TUBE LIKE YOU NORMALLY  
13 SEE, IT'S GOT AN ULTRAVIOLET TUBE MOUNTED ON THE SIDE THAT'S  
14 MAYBE EIGHT INCHES LONG WHAT YOU WOULD NORMALLY DO YOU  
15 WOULD TURN THE LIGHTS OFF AGAIN, THIS IS SORT OF A  
16 PRELIMINARY EXAMINATION IT'S VERY LOW POWER YOU TURN THE  
17 LIGHTS OFF AND YOU WOULD HOLD IT SEVERAL INCHES UP OFF WHAT  
18 YOU WERE EXAMINING IN THIS CASE IT WOULD BE THE MATTRESS,  
19 BED CLOTHES, ET CETERA, AND YOU WOULD JUST -- YOU WOULD GO  
20 BACK AND FORTH ALMOST LIKE YOU WERE IRONING, HOLDING IT A FEW  
21 INCHES OFF, AND IF YOU SEE ANYTHING THAT GLOWED OR FLUORESCED  
22 YOU WOULD INVESTIGATE FURTHER, EITHER COLLECT THAT FOR  
23 EXAMINATION OR HAVE FORENSICS COME OUT AND COLLECT IT

24 Q NOW, SO YOU SHOWED THAT LIGHT ON THE TOP OF THIS  
25 BED?

1           A     AS I RECALL, I DID THE BED COVERS     THEN I ROLLED  
2 THE BED COVERS OFF AND INSPECTED THE MATTRESS ITSELF

3           Q.     DID YOU EXPECT EACH INDIVIDUAL LAYER?

4           A.     AS I RECALL, YES, THAT WOULD BE NORMAL PROCEDURE

5           Q     THANK YOU     AND NOTHING IMMEDIATELY FLUORESCED, IS  
6 THAT CORRECT?

7           A     NOTHING THAT WAS CONSISTENT WITH THE HISTORY AND  
8 WITH SEMEN     THERE WERE A FEW SMALL AREAS IN THE LIVING ROOM  
9 I BELIEVE WE DETERMINED WERE LINT OR SOME OTHER LIGHT-COLORED  
10 OBJECT     NOTHING CONSISTENT WITH SEMEN

11          Q     OKAY     AND AFTER EXAMINING THAT BED WITH THOSE  
12 BEDCLOTHES, DID YOU THEN TAKE THOSE BEDCLOTHES INTO EVIDENCE  
13 AND SEND THEM TO S L E D ?

14          A     NO, THERE WAS NO REASON TO SUBMIT THEM     THERE WAS  
15 NOTHING FOUND IN THERE, YOU KNOW, FOR FURTHER EXAMINATION

16          Q     COULD S L E D     HAVE FOUND HAIRS EMBEDDED IN THOSE  
17 SHEETS?

18          A     I HAVE NO IDEA     IF THERE WAS SOME THERE, THEY MAY  
19 HAVE     BUT GIVEN THE TIME AND EVERYTHING ELSE, I HAVE NO WAY  
20 OF KNOWING THAT

21          Q     IS IT POSSIBLE?

22          A     IF THEY WERE THERE, I'M SURE IT WOULD BE, YES

23          Q     DID YOU CONSIDER TAKING THOSE SHEETS INTO EVIDENCE  
24 AND SENDING THEM FOR TESTING?

25          A     NO     AGAIN, WE HAD NO WAY OF EVEN KNOWING IF THAT

1 WAS THE SAME BEDCLOTHES THAT WERE ON THERE WHEN THIS INCIDENT  
2 OCCURRED THERE WAS NOTHING TO WARRANT FURTHER FORENSIC  
3 EXAMINATION

4 Q WELL, WITH THE CONDITION OF THIS HOUSE AND THE  
5 CONDITION OF THIS BED, WAS IT APPARENT TO YOU THAT -- I MEAN,  
6 WOULD YOU HAVE THOUGHT THAT THESE SHEETS HAD BEEN CHANGED IN  
7 ANY RECENT---

8 MS. BRISBIN CALLS FOR SPECULATION, YOUR HONOR

9 MS. BROWN: YOUR HONOR, I'M ASKING HIM TO TESTIFY AS  
10 TO HIS OBSERVATION

11 THE COURT: ALL RIGHT WELL, HE CAN TESTIFY AS TO  
12 HIS OBSERVATION HE CAN'T TESTIFY AS TO WHAT MAY OR MAY NOT  
13 HAPPEN IN THE FUTURE

14 MS BROWN YES, YOUR HONOR  
15 BY MS BROWN

16 Q YOUR OBSERVATION OF THIS, DID IT LOOK LIKE THESE  
17 SHEETS HAD BEEN RECENTLY CHANGED?

18 A CHANGED? I HAVE NO IDEA THEY DID NOT APPEAR TO  
19 HAVE BEEN RECENTLY WASHED

20 Q DID THEY APPEAR TO BE CLEAN?

21 A NO

22 Q SO YOU JUST DIDN'T CONSIDER TAKING THOSE SHEETS IN  
23 INTO EVIDENCE

24 A I'M NOT SURE WHAT YOU MEAN BY CONSIDER, BUT I DIDN'T  
25 SEE ANYTHING THAT WOULD WARRANT ME TAKING THEM IN THERE WAS

1 NOTHING -- IF THAT ANSWERS YOUR QUESTION

2 Q DID YOU -- I BELIEVE YOU TESTIFIED THAT YOU SHONE  
3 THE LIGHT ON THE MATTRESS ITSELF

4 A YES AS FAR AS I KNOW, THAT -- THAT IS NORMAL  
5 PROCEDURE

6 Q DID YOU FLIP THE MATTRESS AND CHECK THE UNDERSIDE?

7 A NOT THAT I RECALL

8 Q WOULD THAT HAVE BEEN NORMAL PROCEDURE?

9 A NOT USUALLY

10 Q WHY NOT?

11 A IT'S NOT THAT TERRIBLY OFTEN -- I WOULDN'T PRESUME  
12 IT'S THAT OFTEN THAT PEOPLE FLIP THE MATTRESS OVER USUALLY  
13 WE'LL LIFT THE MATTRESS UP AND -- AND GIVE A QUICK PEEK, MAKE  
14 SURE THERE'S NOTHING IN THERE THAT WOULD HURT US LIKE A  
15 WEAPON OR BLOODSTAINS OR ANYTHING SEEMS LIKE WE DID LIFT  
16 THE MATTRESS THERE ARE TWO BEDS IN THERE, WE DID INSPECT  
17 THEM AND IT SEEMS TO ME WE LOOKED UNDER THE MATTRESS, BUT I  
18 COULDN'T I COULDN'T TESTIFY TO WHETHER WE PUT A WOOD'S  
19 LAMP ON THERE I DON'T BELIEVE WE DID I DON'T THINK THERE  
20 WAS ANY---

21 Q THIS DIDN'T SEEM TO BE THE KIND OF HOUSE WHERE THE  
22 MATTRESS-FLIPPING INSTRUCTIONS WOULD HAVE BEEN FOLLOWED ON A  
23 REGULAR BASIS IS THAT WHAT YOU'RE SAYING?

24 A I DON'T KNOW IF I WOULD PRESUME THAT FAR BUT I -- I  
25 DON'T RECALL THE MATTRESS BEING FLIPPED

1 Q NOW, SPEAKING OF WEAPONS, DID YOU LOOK FOR A WEAPON?

2 A WE DID A CURSORY INSPECTION OF THE HOUSE WE DIDN'T  
3 -- IF YOU'RE ASKING DID WE MAKE A SPECIFIC SEARCH FOR ONE,  
4 NO THAT'S PART OF THE GENERAL -- I CAN'T THINK OF WHAT THE  
5 CORRECT WORD IS WELL, NORMALLY WE WILL -- WE'LL GO INTO A  
6 ROOM WE'LL TAKE NOTE OF WHAT'S THERE WE DIDN'T RECEIVE  
7 SPECIFIC PERMISSION FROM YOUR CLIENT TO GO THROUGH ALL OF THE  
8 DRAWERS, MOVE FURNITURE, ET CETERA WE DIDN'T GO TO THAT  
9 LEVEL

10 Q BUT YOU RECEIVED FROM HIM CONSENT TO SEARCH THE  
11 RESIDENCE LOCATED AT 228 POPLAR STREET, SALLEY, SOUTH  
12 CAROLINA

13 A THAT IS CORRECT

14 Q NOW, THE CONSENT THAT HE SIGNED DIDN'T SAY ANYTHING  
15 SPECIFICALLY ABOUT, "THAT SHALT NOT GO THROUGH MY DRAWERS,"  
16 DID IT?

17 A THAT'S CORRECT I DON'T RECALL IF WE WERE AWARE OF  
18 THE GUN AT THAT POINT NORMALLY -- AND YOUR CLIENT WAS WITH  
19 US WHAT WE WOULD DO, WE WOULD -- IS GIVE A QUICK WALK-  
20 THROUGH THROUGH THE ROOM, MAKE SURE THERE'S NO WEAPON,  
21 NOTHING THAT HE COULD -- WITHIN HIS IMMEDIATE AREA OF CONTROL  
22 TO HURT US, ANYTHING OF OBVIOUS EVIDENTIARY VALUE HE COULD  
23 DESTROY YOU GO THROUGH YOUR ROOMS AND YOU BASICALLY BLOCK  
24 THEM OUT IN A GRID AND LOOK

25 Q SO NOWHERE IN THE BRIEFING THAT YOU RECEIVED FROM

1 YOUR SUPERVISOR WERE YOU GIVEN INFORMATION THAT A GUN WAS  
2 ALLEGED TO HAVE BEEN USED?

3 A I DON'T RECALL I DON'T RECALL

4 Q HAD YOU RECEIVED SUCH INFORMATION, WOULD YOU HAVE  
5 SPECIFICALLY LOOKED FOR THE WEAPON?

6 A I THINK THE FIRST THING I WOULD HAVE DONE AND I  
7 BELIEVE WAS DONE JUST AS A GENERAL PROCEDURE ARE THERE ANY  
8 WEAPONS IN THE HOUSE? I BELIEVE HIS RESPONSE WAS NEGATIVE  
9 BECAUSE OTHERWISE WE WOULD ASK WHERE THOSE WEAPONS ARE, WHAT  
10 IS IT, AND PROCEED FROM THERE

11 Q BUT IF YOU'RE SPECIFICALLY LOOKING FOR A WEAPON, YOU  
12 DON'T TAKE A PERSON AT THEIR WORD WHEN THEY SAY THERE'S NO  
13 WEAPON IN THE HOUSE, DO YOU?

14 A NO

15 Q SO IT'S SAFE TO SAY YOU WERE NOT SPECIFICALLY  
16 LOOKING FOR A WEAPON AT THIS RESIDENCE, CORRECT?

17 A AGAIN, I DON'T RECALL SPECIFICALLY LOOKING FOR A  
18 WEAPON IT CERTAINLY IS NOT ILLEGAL AS LONG AS IT'S NOT --  
19 IF ONE WAS MENTIONED, WE WOULD HAVE MADE A SPECIFIC SEARCH  
20 FOR IT, BUT I DON'T RECALL THAT

21 Q AT ANY RATE YOU DIDN'T FIND ONE

22 A THAT IS CORRECT

23 Q AND YOU DIDN'T FIND ONE IN THE VEHICLE

24 A THAT IS CORRECT

25 Q NOW, YOU HAD BEEN GIVEN VIA THE REPORTS FROM

1 ORANGEBURG A DESCRIPTION OF CLOTHING THAT THE ASSAILANT WAS  
2 TO HAVE WORN, CORRECT?

3 A CORRECT

4 Q DID YOU TAKE INTO EVIDENCE ANY CLOTHING?

5 A FROM THE RESIDENCE? NO

6 Q DID YOU LOOK FOR ANY CLOTHING?

7 A YES THERE WAS CLOTHING EVERYWHERE

8 Q DID YOU FIND ANY CLOTHING THAT WAS CONSISTENT WITH  
9 THE DESCRIPTION GIVEN IN THE REPORTS FROM ORANGEBURG?

10 A NO

11 Q DID YOU FIND ANYTHING THAT YOU TOOK INTO EVIDENCE  
12 THAT WAS BELIEVED TO HAVE POSSIBLY BEEN THE BLINDFOLD?

13 A YES, MA'AM I BELIEVE THAT WOULD HAVE BEEN THE  
14 KNITTED WOOL HAT LET ME CHECK MY CHAIN OF CUSTODY, I  
15 BELIEVE THAT WAS THE ONLY THING THAT WAS A POLO BRAND KNIT  
16 CAP THAT YOU HAD MENTIONED EARLIER THAT CONTAINED THE -- WHAT  
17 APPEARED TO BE CAUCASIAN HEAD HAIRS

18 Q NOW, I BELIEVE IN HER STATEMENTS IN THE REPORTS FROM  
19 ORANGEBURG SHE REFERRED TO HAVING HAD A BLINDFOLD TIED AROUND  
20 HER HEAD, CORRECT?

21 A YES, MA'AM

22 Q AND SO YOU TOOK INTO EVIDENCE A KNITTED CAP---

23 A YES

24 Q ---THAT COULD HAVE BEEN PULLED OVER HER HEAD AND  
25 OVER HER EYES

1           A       PULLED OR TIED OR AFFIXED OVER HER FACE       PEOPLE  
2       SOMETIMES PRESUME THEY KNOW WHAT SOMETHING IS, I GUESS YOU'D  
3       SAY    IF SHE COULDN'T SEE IT -- GIVEN THE FACT THAT MR  
4       WALKER WOULDN'T HAVE, YOU KNOW, STRAIGHT HEAD HAIRS IN THE  
5       CAP, IT APPEARED NOT TO BELONG IN THE TRUCK    SO WE TOOK IT  
6       FOR FURTHER EVALUATION

7           Q       WELL, A PERSON CERTAINLY KNOWS THE DIFFERENCE  
8       BETWEEN SOMETHING BEING PULLED ON TOP OF THEIR HEAD VERSUS  
9       SOMETHING BEING WRAPPED AROUND THEIR EYES AND TIED IN THE  
10       BACK OF THEIR HEAD, WOULD THEY NOT?

11          A       I WASN'T THE PERSON, I COULDN'T ANSWER THAT    IF SHE  
12       IS UNDER STRESS, IF SHE'S AFRAID, I DON'T KNOW THAT SHE WOULD  
13       KNOW EXACTLY WHAT IT WAS THAT WAS PUT OVER HER OR AROUND HER

14          Q       OKAY    SO---

15          A       IT'S JUST -- IT'S GOOD -- GOOD PROCEDURE IF  
16       SOMETHING LOOKS CLOSE, YOU SEIZE IT AND YOU EVALUATE IT    IT  
17       MAY OR MAY NOT BE OF ANY VALUE

18          Q       SO YOU DIDN'T FIND ANYTHING IN THE HOUSE THAT  
19       MATCHED THE DESCRIPTION OF SOMETHING BEING TIED AROUND HER  
20       EYES AND AFFIXED IN THE BACK OF THE HEAD, DID YOU?

21          A       NO, MA'AM

22          Q       AND YOU DIDN'T TAKE ANYTHING INTO EVIDENCE

23          A       OTHER THAN WHAT I MENTIONED EARLIER, THE LIFT CARDS  
24       AND THE KNIT CAP, THAT IS CORRECT

25          Q       WHEN DID YOU FIND THE KNIT CAP IN RELATION TO WHEN

1 YOU STARTED YOUR SEARCH? DID YOU SEARCH THE TRUCK FIRST?

2 A NO, SEARCHED THE -- AGAIN, WE MADE A WALK-THROUGH OF  
3 THE ENTIRE PREMISES AND PHOTOGRAPHED AND PROCESSED THE  
4 INTERIOR OF THE HOUSE THEN WE MOVED OUTSIDE TO THE VEHICLE

5 Q AND THEN YOU PHOTOGRAPHED AND PROCESSED THE VEHICLE

6 A THAT IS CORRECT

7 Q AND IT WAS AT THAT -- AT THAT POINT IN TIME THAT YOU  
8 FOUND THIS CAP.

9 A YES, MA'AM, DURING PROCESSING OF THE VEHICLE

10 Q SO DID YOU LOOK ANY FURTHER FOR A BANDANA-TYPE---

11 A YES MA'AM

12 Q ---PIECE OF CLOTH?

13 A YES, MA'AM

14 Q AND YOU FOUND NOTHING

15 A THAT IS CORRECT

16 Q AND, AGAIN, YOU FOUND NO CLOTHING THAT MATCHED THE  
17 DESCRIPTION

18 A NO, MA'AM

19 Q BUT NOTHING ELSE LOOKED LIKE IT HAD BEEN TIDIED UP  
20 OR CLEANED UP IN QUITE SOMETIME IS THAT CORRECT?

21 A NOTHING IN THE HOUSE I DON'T KNOW WHAT IT LOOKED  
22 LIKE AT THE TIME THIS INCIDENT OCCURRED

23 Q WELL, YOU KNEW WHAT THE DESCRIPTION WAS

24 A I KNOW WHAT THE DESCRIPTION WAS AND IT WAS  
25 CONSISTENT VERY UNKEMPT, VERY CLUTTERED, AND VERY DIRTY

1 Q IN FACT, YOU HAD A RATHER DETAILED DESCRIPTION IN  
2 THE REPORTS OF WHAT YOU WERE LOOKING FOR IN THE HOUSE ISN'T  
3 THAT CORRECT?

4 A CORRECT

5 Q IS IT USUAL OR UNUSUAL FOR YOU TO RECEIVE SUCH A  
6 DETAILED DESCRIPTION OF A -- OF A RESIDENCE OR A ROOM?

7 A IT VARIES CASE TO CASE I'VE RECEIVED SOME THAT'S  
8 GOOD AND BETTER, AND I'VE RECEIVED SOME WHERE PEOPLE DON'T  
9 KNOW IF IT'S A HOUSE, TRAILER, BARN IT DEPENDS ON THE  
10 VICTIM OR THE WITNESS

11 Q BUT SHE WAS FAIRLY OBSERVANT ABOUT THAT ROOM

12 A YES

13 Q AND FAIRLY SPECIFIC ABOUT THAT ROOM

14 A YES, SHE WAS

15 Q NOW, WHEN YOU -- WHEN YOU INTERVIEWED MS SANDERS ON  
16 APRIL THE 5TH, DID SHE MENTION THAT IT HAD BEEN DARK WHILE  
17 SHE WAS IN THAT ROOM?

18 A I DON'T BELIEVE SHE MENTIONED THAT SPECIFICALLY IN  
19 HER STATEMENT, BUT I DO RECALL HER MAKING SOME REFERENCE TO  
20 IT BEING IN THE EVENING OR HOURS OF NIGHTTIME

21 Q DO YOU RECALL HER MENTIONING THAT NO LIGHT WAS  
22 TURNED ON?

23 A I DON'T RECALL LIGHT ONE WAY OR THE OTHER

24 Q DID SHE MENTION ANYTHING TO YOU ABOUT THE HEATER?

25 A SHE DESCRIBED ITS LOCATION IF YOU'RE ASKING ME

1 WHETHER IT WAS TURNED ON OR NOT, I DON'T RECALL HER SAYING

2 Q WOULD YOU HAVE ASKED HER THAT?

3 A NOT NORMALLY

4 Q DID YOU PROCESS THE BATHROOM FOR FINGERPRINTS?

5 A IF I DID, IT WAS VERY, VERY CURSORY AGAIN, THE  
6 WHOLE HOUSE, GIVEN THE CONDITION, THE LEVEL OF FILTH, THERE  
7 WOULD HAVE BEEN VERY LITTLE I COULD HAVE PROCESSED

8 Q WELL, LET ME ASK YOU THIS, INVESTIGATOR GRAYBEAL  
9 YOU HAVE ALLUDED TO THE FACT THAT YOU ARE NOT SPECIFICALLY  
10 TRAINED IN FORENSIC INVESTIGATION IS THAT CORRECT?

11 A I DON'T KNOW THAT -- DEPENDS ON WHAT -- WHAT LEVEL  
12 I'M NOT A FORENSICS TECHNICIAN I HAVE RECEIVED SPECIFIC  
13 TRAINING IN VARIOUS ASPECTS OF FORENSICS

14 Q WELL, LET ME PUT IT THIS WAY YOU MADE MENTION THAT  
15 THERE IS A FORENSICS TEAM ATTACHED WITH THE AIKEN COUNTY  
16 SHERIFF'S OFFICE CORRECT?

17 A YES, MA'AM

18 Q AND THAT IN AN APPROPRIATE CASE, AN INVESTIGATOR  
19 SUCH AS YOURSELF CAN REQUEST THAT THAT TEAM COME AND FURTHER  
20 PROCESS THE SCENE

21 A CORRECT

22 Q AND THEY HAVE DIFFERENT EQUIPMENT?

23 A TO AN EXTENT, YES WHAT WE WOULD CALL THEM FOR  
24 WOULD BE SOMETHING THAT -- EITHER TAKE AN IMPRESSION OF A  
25 TIRE TRACK OR FOOT TRACK BECAUSE WE DON'T NORMALLY KEEP

1 CASTING MEDIUM IN THE CAR, A LARGE FOOTPRINT OR HAND PRINT IN  
2 THE RESIDENCE WE USE SOMETHING CALLED A GEL LIFT WHICH HAS  
3 TO BE KEPT COOL THAT WE DON'T NORMALLY KEEP IN THE CARS FOR  
4 EXAMPLE, IF WE'D FOUND WHAT APPEARED TO BE SEMEN ON A WALL,  
5 WE WOULD EITHER SWAB THAT OR WE WOULD, YOU KNOW, TAKE A --  
6 DEPENDING ON WHAT THE WALL IS, WE MAY REMOVE A SECTION OF THE  
7 WALL WHICH I DON'T KEEP, YOU KNOW, SAWS AND THAT KIND OF  
8 TOOLS IN THE -- IN THE CAR

9 Q. HOW MANY DIFFERENT TECHNIQUES ARE THERE FOR LIFTING  
10 LATENT FINGERPRINT IMPRESSIONS?

11 A PROBABLY DOZENS

12 Q AND HOW MANY ARE YOU SPECIFICALLY TRAINED IN?

13 A YOU CAN PROCESS WITH DIFFERENT POWDERS, LIFT WITH  
14 TAPE YOU CAN USE SOMETHING CALLED -- I WAS TRYING TO  
15 REMEMBER WHAT IT'S CALLED I DON'T NORMALLY KEEP IT A  
16 SILICONE PRODUCT? YOU CAN PHOTOGRAPH THEM SOMETHING WE  
17 WOULDN'T NORMALLY USE IN THE FIELD YOU CAN COLLECT THE ITEM  
18 ITSELF, BRING IT TO THE SHERIFF'S OFFICE IT CAN BE FUMED  
19 WITH A SUPER GLUE IT COULD BE FUMED WITH IODINE IT COULD  
20 BE SPRAYED WITH AN ANHYDRANT (PHONETIC) I MEAN, THERE'S --  
21 THERE'S DOZENS, DEPENDING ON WHAT THE SURFACE IS, WHAT YOU'RE  
22 TRYING TO COLLECT FROM IT YOU CAN USE MAGNETIC POWDERS  
23 YOU CAN USE GLUE

24 Q IS IT POSSIBLE THAT HAD ANY OF THOSE OTHER METHODS  
25 BEEN USED THAT DIFFERENT IMPRESSIONS COULD HAVE BEEN LOCATED

1 AND LIFTED?

2 A I WOULD SAY THAT WOULD BE UNLIKELY---

3 Q IS IT POS---

4 A ---FROM WHAT I SAW

5 Q IS IT POSSIBLE?

6 A BEING AS HOW I CAN'T TELL YOU WHAT WAS OR WASN'T  
7 THERE, I'M SURE IF THEY WERE THERE IT WOULD BE POSSIBLE THEY  
8 COULD BE LIFTED

9 Q BUT YOU DID NOT EXPLORE THAT POSSIBILITY---

10 A I'M NOT SURE---

11 Q ---TO CHECK

12 A ---WHAT YOU MEAN BY THAT

13 Q WELL, YOU DIDN'T TAKE THE ITEM IN TO BE PROCESSED AT  
14 THE SHERIFF'S OFFICE, DID YOU?

15 A WHICH ITEM ARE YOU REFERRING TO?

16 Q WELL, LET'S PICK ONE THE BEDSIDE TABLE

17 A THERE WOULD BE NO REASON TO I PROCESSED THAT AT  
18 THE SCENE WELL, POWDER WILL SHOW -- SAY I TOUCH THE JUDGE'S  
19 BENCH HERE AND I APPLY A FINGERPRINT POWDER IT WILL SHOW  
20 THAT THERE'S SOMETHING THERE NOW, WHETHER IT'S ANYTHING  
21 USABLE, WHETHER IT'S DETAILED OR NOT, YOU KNOW, I DON'T KNOW.

22 ON THE OTHER HAND, IF THERE'S -- IF IT'S DIRTY, IF  
23 SOMEONE SPILLED A CO-COLA OR WHATEVER, YOU'LL JUST GET A BIG  
24 GLOB AND YOUR BRUSH WILL STICK TO IT THERE'S NOTHING USABLE  
25 OF ANYTHING -- OF ANY NATURE THAT'S JUST GOING TO BE A

1 CONTAMINATED AREA OF GOO

2 IF WE HAD FOUND SOMETHING ON AN IRREGULAR SURFACE,  
3 SOMETHING THAT COULD NOT BE PROCESSED AT THE SCENE, YOU KNOW,  
4 THAT WAS POTENTIALLY A USEFUL BIT OF EVIDENCE, A FINGERPRINT  
5 OR PALM PRINT, SOMETHING LIKE THAT CERTAINLY COULD BE  
6 COLLECTED, BUT THERE WAS NOTHING FOUND AT THE SCENE THAT I  
7 WOULD HAVE ANY REASON TO COLLECT

8 Q AND AGAIN NOTHING WAS SENT TO S L E D FOR  
9 EVALUATION EITHER IS THAT CORRECT?

10 A OTHER THAN WHAT -- WHAT YOU ASKED ME ABOUT BEFORE,  
11 NOT TO THE BEST OF MY KNOWLEDGE, NO

12 Q AND AS FAR AS YOU KNOW ABOUT THE CAP, THAT WAS NOT  
13 FURTHER TESTED BECAUSE THE PLUCKED HEAD HAIRS WERE NOT THEN  
14 SENT UP TO S L E D FOR COMPARISON IS THAT CORRECT?

15 A TO THE BEST OF MY KNOWLEDGE, YES

16 Q TO THE BEST OF YOUR KNOWLEDGE YES OR NO?

17 A THE CAP WAS SENT TO S L E D YOU ASKED ME

18 Q YOU TESTIFIED EARLIER THE CAP WAS SENT---

19 A LET -- YOU KIND OF CONFUSED ME WITH THE QUESTION  
20 TO THE BEST OF MY KNOWLEDGE, THERE WAS NO ADDITIONAL TESTING  
21 DONE TO THAT CAP OTHER THAN WHAT YOU HAD ASKED ABOUT WITH THE  
22 HEAD HAIRS THE INITIAL EXAMINATION WAS DONE IT WAS  
23 COMPARED TO THE COMBED HAIRS WHICH WERE UNSUITABLE FOR  
24 COMPARISON, AND TO THE BEST OF MY KNOWLEDGE THERE WAS NO  
25 ADDITIONAL COMPARISON OR TESTING DONE, IF THAT ANSWERS YOUR

1 QUESTION

2 Q DID YOU EVER RECEIVE FROM S L E D AN ANALYSIS  
3 REPORT STATING THAT THEY COULD NOT MAKE COMPARISON OF THAT  
4 CAP?

5 A I DON'T KNOW IF I RECEIVED A REPORT OR I WAS JUST  
6 TOLD BY ONE OF THE EVIDENCE PEOPLE AGAIN, I WAS IN AND OUT  
7 QUITE A BIT DURING THAT TIME OF THE YEAR I REMEMBER I WAS  
8 INFORMED, YOU KNOW, THAT HAIRS WERE NOT SUITABLE, THE COMBED  
9 HAIRS WHETHER IT CAME -- I DON'T RECALL A WRITTEN REPORT,  
10 BUT I'M SURE THERE WAS SOME TYPE OF COMMUNICATION, EITHER BY  
11 PHONE OR BY REPORT

12 MS. BROWN YOUR HONOR, NO FURTHER QUESTIONS

13 THE COURT: ALL RIGHT ANYTHING ON REDIRECT?

14 MS BRISBIN. JUST BRIEFLY, YOUR HONOR

15 REDIRECT EXAMINATION

16 BY MS BRISBIN

17 Q HOW LONG WERE YOU OUT ON FAMILY LEAVE?

18 A ALL TOLD BETWEEN THREE AND FOUR MONTHS

19 Q AND IS IT POSSIBLE THAT THE SEXUAL ASSAULT KIT WAS  
20 SENT TO S L E D DURING THAT TIME BY SOMEONE ELSE?

21 A CERTAINLY

22 Q AND DID YOU ASK MS SANDERS IF THERE WAS A GUN  
23 INVOLVED?

24 A I DON'T RECALL

25 Q OKAY AND---

1           A       IF I WAS MADE AWARE OF THAT DURING THE INITIAL  
2 BRIEFING THEN, YES, I WOULD HAVE CERTAINLY ASKED THAT, BUT I  
3 DON'T RECALL WHETHER IT WAS OR NOT

4           Q       OKAY     IN YOUR REPORT DID YOU INDICATE THAT THERE  
5 WAS A GUN?

6           A       NOT THAT I'M AWARE OF

7           Q       WOULD YOU REFRESH YOUR MEMORY, IF NEEDED, BY LOOKING  
8 AT YOUR REPORT?

9           A       ARE YOU ASKING ME TO PUBLISH IT OR JUST LOOK OVER  
10 IT?

11          Q       JUST LOOK AT IT AND REFRESH YOUR MEMORY, IF  
12 NECESSARY

13          A       (THE WITNESS LOOKS AT THE DOCUMENT ) SHE DID STATE  
14 THAT SHE OBSERVED HIM TO BE VISIBLY ARMED WITH A PISTOL  
15 THERE'S NO OTHER DESCRIPTION BEYOND THAT

16          Q       OKAY     AND HOW MUCH TIME HAD GONE BY WHEN YOU  
17 SEARCHED THE INSIDE OF THIS HOUSE?

18          A       FROM THE TIME THE INCIDENT OCCURRED?

19          Q       YES

20          A       AGAIN, 22, 23 DAYS

21          Q       OKAY     WOULD YOU EXPECT TO FIND CIGARETTES THAT THE  
22 VICTIM MAY HAVE SMOKED IN THE ASHTRAY THREE WEEKS LATER?

23          A       NO, I WOULD NOT

24          Q       WOULD THE SUSPECT'S SEMEN ON HIS OWN BED BE OF ANY  
25 VALUE?

1           A       IT WOULD BE A PART OF THE PUZZLE, I GUESS, BUT BY  
2 ITSELF THAT WOULDN'T BE REMARKABLE

3           MS. BRISBIN:   THANK YOU

4           THE COURT:    ANYTHING?

5           MS. BROWN.    YES, YOUR HONOR

6                           RECROSS EXAMINATION

7 BY MS BROWN

8           Q        IN YOUR REPORT WHERE YOU INDICATE THAT MS SANDERS  
9 HAD STATED THAT SHE HAD OBSERVED HIM TO BE VISIBLY ARMED WITH  
10 A PISTOL, THAT SECTION OF YOUR REPORT IS WHERE YOU'RE  
11 SUMMARIZING WHAT YOU HAD RECEIVED IN THE ORANGEBURG REPORTS,  
12 IS IT NOT?

13          A        WHETHER IT WAS WRITTEN OR VERBAL STATEMENTS, I DON'T  
14 KNOW I DIDN'T DIFFERENTIATE IN THERE

15          Q        BUT THAT SECTION OF YOUR REPORT IS WHERE YOU ARE  
16 RELATING WHAT HAS TAKEN PLACE WITH THE ORANGEBURG  
17 INVESTIGATION

18          A        YES

19          Q        THAT---

20          A        THAT IS CORRECT

21          Q        THAT STATEMENT IS NOT IN THERE BASED ON YOUR  
22 INDEPENDENT INVESTIGATION OF THIS INCIDENT, IS IT?

23          A        NO, MA'AM I HADN'T SPOKEN WITH HER AT THAT POINT

24          Q        AND AGAIN WHEN YOU SPOKE WITH HER, YOU DID NOT  
25 INDICATE THAT SHE RELATED THAT THERE WAS A GUN PRESENT, DID

1 YOU?

2 A NO, NOT TO THE BEST -- NOT THAT I RECALL, NO

3 Q AND IT'S NOT IN YOUR REPORT, IS IT?

4 A NOT THAT I SEE, NO, OTHER THAN WHAT YOU JUST ASKED  
5 ME ABOUT

6 Q AGAIN FROM THE ORANGEBURG REPORT

7 A CORRECT

8 MS BROWN. THANK YOU NO FURTHER QUESTIONS

9 THE COURT: ALL RIGHT THANK YOU YOU MAY STEP  
10 DOWN ANY FURTHER WITNESSES?

11 MS. BRISBIN. NO, YOUR HONOR THE STATE RESTS

12 THE COURT. ALL RIGHT LADIES AND GENTLEMEN, WE'RE  
13 GOING TO GO AHEAD AND TAKE A BREAK, LET YOU STEP BACK TO THE  
14 JURY ROOM PLEASE DON'T DISCUSS THE CASE WHILE YOU'RE BACK  
15 THERE, AND WE'LL BRING YOU BACK IN A LITTLE BIT

16 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT  
17 11 08 A M )

18 THE COURT: ALL RIGHT ANYTHING WE NEED TO TAKE UP?

19 MS. BROWN: YOUR HONOR, MAY I REVIEW THE INDICTMENTS  
20 BRIEFLY BEFORE I MAKE THE MOTIONS? (MS BROWN REVIEWS THE  
21 INDICTMENTS ) THANK YOU, YOUR HONOR YOUR HONOR, AT THIS  
22 TIME ON BEHALF OF MR WALKER I WOULD MOVE FOR A DIRECTED  
23 VERDICT OF NOT GUILTY AS TO ALL THREE CHARGES YOUR HONOR,  
24 TAKING THE EVIDENCE THAT HAS BEEN PRESENTED IN THE LIGHT MOST  
25 FAVORABLE TO THE STATE, THE STATE HAS NOT PROVIDED COMPETENT

1 EVIDENCE BY WHICH WOULD -- WOULD RISE TO THE LEVEL OF  
2 CREATING A JURY QUESTION ON ANY OF THE THREE INDICTMENTS  
3 PARTICULARLY, YOUR HONOR, AS TO THE INDICTMENT OF  
4 POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A  
5 VIOLENT CRIME, YOUR HONOR, I BELIEVE TAKING IN THE TOTALITY  
6 OF THE EVIDENCE THERE HAS NOT BEEN COMPETENT EVIDENCE  
7 PRESENTED BY WHICH A JURY -- BY WHICH IT WOULD RISE TO THE  
8 LEVEL OF A JURY QUESTION AS TO WHETHER OR NOT A FIREARM WAS  
9 PRESENT SPECIFICALLY -- THAT WOULD BE THE EXTENT OF OUR  
10 MOTION AT THIS TIME, YOUR HONOR

11 THE COURT: ANYTHING?

12 MS. BRISBIN: YES, YOUR HONOR THE VICTIM TESTIFIED  
13 THAT THE DEFENDANT USED A GUN OR WAVED A GUN IN FRONT OF HER  
14 AND THREATENED HER WITH IT DURING THE ASSAULT, AND SHE ALSO  
15 TOLD LAW ENFORCEMENT -- LAW ENFORCEMENT -- LIEUTENANT BAMBERG  
16 TESTIFIED THAT SHE TOLD HER THAT SHE HAD A GUN ON MARCH 4TH  
17 WHEN SHE INTER -- THAT HE HAD A GUN WHEN SHE INTERVIEWED MS  
18 SANDERS ON MARCH 4TH AND THE LAW DOES NOT REQUIRE ANY  
19 CORROBORATION OF THE VICTIM'S TESTIMONY IN A CRIMINAL SEXUAL  
20 CONDUCT CASE AND, THEREFORE, THE STATE'S POSITION IS THAT  
21 THERE IS SUFFICIENT EVIDENCE FOR CONVICTION IN EACH OF THE  
22 THREE INDICTMENTS

23 MS. BROWN: YOUR HONOR, MY ONLY RESPONSE WOULD BE  
24 WHILE IT IS TRUE THAT THERE'S A STATUTE ON POINT THAT SAYS  
25 THAT CORROBORATION IS NOT NECESSARY FOR A CONVICTION IN A

1 CRIMINAL SEXUAL CONDUCT CASE, I DON'T BELIEVE THAT POSSESSION  
2 OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME WOULD BE  
3 INCLUDED UNDER THAT STATUTE STATING THAT CORROBORATION IS NOT  
4 NECESSARY, YOUR HONOR

5 THE COURT: WELL, I -- I'M GOING TO -- TAKING  
6 EVERYTHING IN THE LIGHT MOST FAVORABLE TO THE NON-MOVING  
7 PARTY, THE QUESTION IS IS THERE ANY DIRECT EVIDENCE, ANY  
8 SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE THAT INDICATES THAT THESE  
9 PARTICULAR OFFENSES WERE COMMITTED TO ALLOW THIS CASE TO GO  
10 TO THE JURY? I'M GOING TO DENY YOUR MOTION I MEAN, SHE  
11 CLEARLY TESTIFIED THAT THERE WAS A GUN THE GUN WAS HELD BY  
12 THE DEFENDANT AND IT WAS PART OF THE WHOLE SCHEME THAT HE  
13 USED IN ATTEMPTING OR GETTING HER TO LEAVE HER RESIDENCE AND  
14 ULTIMATELY GO TO THE -- THE ALLEGED SCENE WHERE THE ASSAULT  
15 OCCURRED

16 SO WITH RESPECT -- THERE'S ALSO DIRECT EVIDENCE FROM  
17 HER THAT THE -- THAT SHE LEFT HER RESIDENCE INVOLUNTARILY  
18 SHE DID IT BY FORCE FROM HIM, INCLUDING THE USE OF A WEAPON,  
19 AND SHE TESTIFIED THAT SHE WAS SEXUALLY ASSAULTED BY HIM AND  
20 THAT IT WAS UNWANTED SO I'M GOING TO FIND THERE IS  
21 SUFFICIENT EVIDENCE TO SEND IT TO THE JURY ALL RIGHT ARE  
22 Y'ALL GOING TO OFFER ANY EVIDENCE?

23 MS. BROWN: YOUR HONOR, IT'S NOT ANTICIPATED AT THIS  
24 TIME I WOULD LIKE TO HAVE A CHANCE TO REVIEW WITH MY CLIENT  
25 JUST -- JUST TO BE SAFE ONE MORE TIME HIS---

1 THE COURT: ALL RIGHT

2 MS. BROWN ---HIS RIGHTS TO TESTIFY

3 THE COURT: ALL RIGHT WELL, WE'LL TAKE A BREAK AND  
4 THAT WILL GIVE YOU A CHANCE TO TALK TO YOUR CLIENT BEFORE I  
5 TALK TO HIM LET ME ASK YOU SOMETHING NOW DID Y'ALL HAVE  
6 ANY CHARGES? BECAUSE IF THAT'S THE CASE, WE WILL GO DIRECTLY  
7 INTO THE CLOSING ARGUMENTS DID Y'ALL HAVE ANY CHARGES THAT  
8 YOU WANTED ME TO LOOK AT?

9 MS. BRISBIN: YOUR HONOR, THE ONLY STATE'S REQUEST  
10 FOR A CHARGE OTHER THAN THE USUAL CIRCUMSTANTIAL EVIDENCE  
11 WHICH I THINK YOU ALWAYS CHARGE -- IS THAT CORRECT?

12 THE COURT: WELL---

13 MS. BRISBIN: DO YOU ALWAYS -- WE WOULD REQUEST THAT  
14 YOU DO THE---

15 THE COURT: I DON'T WANT TO SAY IN SEVEN YEARS THAT  
16 I'VE ALWAYS CHARGED IT, BUT I GENERALLY CHARGE IT AND INTEND  
17 TO CHARGE IT

18 MS. BRISBIN: OTHER THAN THAT, THE ONLY OTHER  
19 REQUEST THAT THE STATE WOULD MAKE IS THE TESTIMONY OF A  
20 SEXUAL ASSAULT VICTIM NEED NOT BE CORROBORATED---

21 THE COURT: I CERTAINLY INTEND---

22 MS. BRISBIN: ---BY STATUTE

23 THE COURT: I INTEND TO CHARGE THAT

24 MS. BRISBIN: THANK YOU

25 MS. BROWN YOUR HONOR, FOR THE RECORD THE DEFENSE

1 WOULD OPPOSE A CHARGE BEING MADE OF SECTION 16-3-657  
2 INDICATING THAT CORROBORATION IS NOT REQUIRED YOUR HONOR,  
3 THE DEFENDANT'S -- THE DEFENSE POSITION IS THAT THIS STATUTE  
4 GOES -- THAT THE CHARGING OF THIS STATUTE WOULD BE AN  
5 IMPERMISSIBLE COMMENT ON THE FACTS OF THIS CASE TO A JURY  
6 YOUR HONOR, IT'S OUR POSITION THAT THIS STATUTE --  
7 THAT THE WEIGHT OF THIS STATUTE SHOULD GO TO WHETHER OR NOT  
8 THERE IS SUFFICIENT EVIDENCE FOR THE COURT TO SEND -- TO SEND  
9 A CASE TO THE JURY AND THAT A CHARGE OF THIS -- A CHARGE OF  
10 THIS NATURE TO THE JURY COULD BE -- COULD BE CONSTRUED AS A  
11 COMMENT ON THE FACTS OF THE PARTICULAR CASE, AND WE WOULD  
12 OBJECT TO THIS CHARGE BEING GIVEN TO THE JURY

13 THE COURT: ALL RIGHT DO YOU HAVE ANY CASE LAW ON  
14 THAT YOU WANT ME TO LOOK AT?

15 MS. BROWN NOT AT THIS TIME, YOUR HONOR

16 THE COURT: DO YOU THINK YOU MIGHT BETWEEN NOW AND  
17 THE TIME I GIVE THE CHARGE?

18 MS. BROWN: NO, YOUR HONOR

19 THE COURT: ALL RIGHT ALL RIGHT ANYTHING ELSE?  
20 DID Y'ALL HAVE ANY CHARGES THAT YOU WANTED ME TO CONSIDER?

21 MS. BROWN: NO, YOUR HONOR TO CLARIFY THAT THIS  
22 COURT CHARGES HESITATE TO ACT ON REASONABLE DOUBT---

23 THE COURT: THAT'S STATE V MANNING

24 MS. BROWN: AND I DON'T BELIEVE WE WOULD HAVE ANY  
25 SPECIFIC---

1           **THE COURT:** I CHARGE -- I INTEND TO CHARGE THE THREE  
2 BASIC OFFENSES FOR WHICH THE DEFENDANT HAS BEEN CHARGED  
3 C S C , KIDNAPPING, POSSESSION OF A WEAPON I'M GOING TO  
4 CHARGE AN IDENTIFICATION CHARGE YOU KNOW, THERE'S BEEN AN  
5 EXPERT, SO I'LL CHARGE EXPERT I'LL CHARGE -- I INTENDED TO  
6 CHARGE NO CORROBORATION AND PROBABLY STILL WILL, BUT I'LL  
7 THINK ABOUT IT BEFORE I DO THAT, AND THEN EVERYTHING ELSE IS  
8 YOUR BASIC CHARGE IF THERE'S SOMETHING ELSE THAT YOU WANTED  
9 ME TO CHARGE THAT YOU THINK IS UNIQUE TO THIS CASE THAT --  
10 OTHER THAN THE PRESUMPTION OF INNOCENCE AND REASONABLE DOUBT  
11 AND CREDIBILITY AND ALL THAT STUFF, THEN I CERTAINLY WILL  
12 CONSIDER ANYTHING YOU HAVE

13           **MS. BROWN:** THE DEFENSE HAS NO OTHER SPECIFIC  
14 REQUESTS

15           **THE COURT:** ALL RIGHT WHY DON'T YOU -- YOU TAKE A  
16 -- WE'LL TAKE ABOUT 15 MINUTES AND YOU CAN CHAT WITH YOUR  
17 CLIENT AND WE'LL TAKE THAT MATTER UP AS TO WHETHER HE INTENDS  
18 TO TESTIFY OR NOT. WE'LL GET BACK I ALSO INTEND TO CHARGE  
19 ON THE WEAPONS CHARGE IF THEY DON'T FIND HIM GUILTY OF THE  
20 -- ONE OF THE -- THE KIDNAPPING OR THE C S C , THEY CAN'T  
21 FIND HIM GUILTY OF THAT

22           **MS. BROWN:** YES, YOUR HONOR

23           (WHEREUPON, A BREAK WAS TAKEN )

24           **THE COURT:** THANK YOU PLEASE BE SEATED IF YOU  
25 WOULD ALL RIGHT LET'S BRING THE DEFENDANT OUT

1 (MR WALKER IS BROUGHT INTO THE COURTROOM )

2 THE COURT: OH, I'M SORRY I DIDN'T SEE MISTER

3 ALL RIGHT MS BROWN, WHAT IS IT Y'ALL HAVE DECIDED IN THIS?

4 MS. BROWN: HE HAS DECIDED HE WILL NOT TESTIFY---

5 THE COURT ALL RIGHT

6 MS. BROWN: ---AND WE WILL NOT PRESENT EVIDENCE

7 THE COURT: ALL RIGHT MR WALKER, LET ME GET YOU

8 TO STAND IF YOU WOULD AND RAISE YOUR RIGHT HAND

9 JOSEPH WALKER, AFTER BEING DULY SWORN,

10 TESTIFIED AS FOLLOWS IN CAMERA

11 EXAMINATION BY THE COURT

12 Q ALL RIGHT MR WALKER, I'M SURE YOU'VE DISCUSSED  
13 THIS WITH YOUR ATTORNEY, BUT YOU UNDERSTAND THAT YOU HAVE A  
14 RIGHT TO TESTIFY IN THIS TRIAL IF YOU WOULD LIKE TO TESTIFY  
15 DO YOU UNDERSTAND THAT?

16 A YES, SIR

17 Q YOU HAVE A RIGHT TO TELL YOUR SIDE OF THE STORY OR  
18 ANYTHING YOU WANT TO SAY THAT'S RELEVANT OR APPLICABLE IN  
19 THIS CASE DO YOU UNDERSTAND THAT?

20 A YES, SIR

21 Q AND, OF COURSE, IF YOU TESTIFY YOU UNDERSTAND YOU'RE  
22 SUBJECTING YOURSELF TO BEING CROSS-EXAMINED BY THE STATE, AND  
23 ONE OF THE THINGS THE STATE MAY ATTEMPT TO DO IF THEY HAD --  
24 DO IS IMPEACH YOU YOU MAY HAVE SOME PAST CRIMINAL RECORD  
25 THAT WOULD BE APPROPRIATELY BROUGHT OUT DURING THE COURSE OF

1 ANY IMPEACHMENT DO YOU UNDERSTAND THAT?

2 A YES, SIR

3 Q OF COURSE, I KNOW NOTHING ABOUT YOUR PAST RECORD OR  
4 ANYTHING LIKE THAT YOU UNDERSTAND YOU ALSO HAVE A RIGHT NOT  
5 TO TESTIFY

6 A I DO

7 Q YOU HAVE THE RIGHT TO REMAIN SILENT AND IF YOU ELECT  
8 NOT TO TESTIFY, IN FACT, I WILL INSTRUCT THE JURY THEY CAN'T  
9 EVEN CONSIDER THAT DURING THE COURSE OF THEIR DELIBERATIONS  
10 AND THEY'RE NOT TO INFER ANYTHING BY THE FACT THAT YOU  
11 ELECTED NOT TO TESTIFY DO YOU UNDERSTAND THAT?

12 A YES, SIR

13 Q NOW, HAVE YOU HAD AN OPPORTUNITY TO TALK ABOUT THIS  
14 WITH YOUR ATTORNEY?

15 A YES, SIR

16 Q AND HAS SHE EXPLAINED FULLY BASICALLY WHAT I'VE  
17 EXPLAINED TO YOU TODAY?

18 A YES, SIR

19 Q ALL RIGHT SHE'S INDICATED THAT AFTER DISCUSSIONS  
20 WITH THE TWO OF YOU THAT YOU HAVE ELECTED NOT TO TESTIFY IS  
21 THAT CORRECT?

22 A YES, SIR

23 Q ALL RIGHT AND DO YOU HAVE ANY QUESTIONS YOU WANT  
24 TO ASK MS BROWN ABOUT YOUR RIGHT TO TESTIFY OR NOT TO  
25 TESTIFY?

1 A NO, SIR

2 Q DO YOU THINK YOU FULLY UNDERSTAND?

3 A YES, SIR

4 THE COURT: ALL RIGHT MS BROWN, IS THERE ANY  
5 FURTHER INQUIRY YOU WOULD LIKE TO MAKE OF YOUR CLIENT  
6 REGARDING HIS RIGHT TO TESTIFY OR NOT TO TESTIFY?

7 MS. BROWN: NO, YOUR HONOR

8 THE COURT: DO YOU THINK YOUR CLIENT FULLY  
9 UNDERSTANDS HIS CONSTITUTIONAL RIGHTS WITH RESPECT TO HIS  
10 TESTIFYING IN THIS TRIAL?

11 MS. BROWN: YES, YOUR HONOR

12 THE COURT: OKAY THANK YOU, SIR ALL RIGHT  
13 Y'ALL READY TO GO FORWARD?

14 MS BRISBIN. STATE'S READY, YOUR HONOR

15 THE COURT: ALL RIGHT MS BROWN INDICATES SHE WILL  
16 NOT BE PROBABLY MORE THAN A HALF HOUR DO YOU HAVE ANY IDEA  
17 HOW LONG

18 MS. BRISBIN: NO MORE THAN THAT

19 THE COURT: ALL RIGHT

20 MS BROWN: YOUR HONOR, BEFORE THE JURY COMES BACK,  
21 THE DEFENSE WILL REST WHEN THE JURY COMES IN AND I WOULD  
22 RENEW MY -- RENEW MY DIRECTED VERDICT MOTIONS AT THAT TIME,  
23 AND IF THE COURT WOULD LIKE TO RULE ON THAT NOW SO THE JURY  
24 DOESN'T HAVE TO BE SENT BACK OUT---

25 THE COURT: ALL RIGHT WELL, YOU KNOW, AS I SAID,

1 I'M DENYING YOUR DIRECTED VERDICT -- YOUR MOTION FOR DIRECTED  
2 VERDICT ON THE THREE OFFENSES FOR WHICH THE DEFENDANT IS  
3 CHARGED BASED UPON THE RULING THAT I GAVE YOU PRIOR, AND I  
4 UNDERSTAND THAT THAT -- THAT YOU HAD NOT RESTED AT THAT POINT  
5 IN TIME AND THAT YOU ARE MAKING YOUR MOTIONS AGAIN AT THIS  
6 TIME AND WOULD CONSIDER THOSE MOTIONS HAVING BEEN MADE  
7 FOLLOWING YOUR -- RENEWING THOSE MOTIONS FOLLOWING YOUR  
8 ELECTING TO REST AT THAT TIME

9 MS. BROWN: THANK YOU, YOUR HONOR

10 THE COURT: ALL RIGHT AND I DO INTEND TO CHARGE  
11 THE CHARGE ABOUT CORROBORATION

12 MS. BRISBIN: THANK YOU, YOUR HONOR

13 THE COURT: ALL RIGHT LET'S BRING THE JURY IN IF  
14 WE COULD

15 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT  
16 11 40 A M )

17 THE COURT: ALL RIGHT LADIES AND GENTLEMEN, WE  
18 HAVE CONCLUDED, AS YOU KNOW, THE EVIDENCE BEING PRESENTED BY  
19 THE STATE IN ITS CASE IN CHIEF, AND THE DEFENDANT NOW HAS THE  
20 OPPORTUNITY TO OFFER ANY EVIDENCE THAT THE DEFENDANT MAY WISH  
21 TO OFFER MS BROWN?

22 MS. BROWN: THANK YOU, YOUR HONOR THE DEFENSE  
23 RESTS

24 THE COURT: ALL RIGHT THANK YOU, MA'AM THAT  
25 MEANS, LADIES AND GENTLEMEN, THAT WE ARE NOW AT THE POINT IN

1 THE TRIAL WHERE THE PARTIES WILL MAKE THEIR CLOSING  
2 ARGUMENTS ALL THE EVIDENCE HAS BEEN OFFERED THAT BOTH THE  
3 STATE AND THE DEFENDANT WISH TO OFFER IN THIS CASE  
4 FOLLOWING THE CLOSING ARGUMENT, THEN I WILL CHARGE YOU OR  
5 INSTRUCT YOU AS TO THE LAW IN THIS CASE

6 NOW, ONE THING I NOTE THAT I HAVE NOT SELECTED A  
7 FOREPERSON ON THIS JURY AND, MS FIELDS, SINCE YOU'RE SITTING  
8 IN THE FOREPERSON'S SEAT I'LL ASK IF YOU WOULDN'T MIND  
9 SERVING AS FOREPERSON OF THIS JURY NOW, I THINK, LADIES AND  
10 GENTLEMEN, Y'ALL HAVE ORDERED LUNCH BECAUSE I ANTICIPATE THAT  
11 BY THE TIME WE FINISH THE ARGUMENTS AND THE CHARGE IT WILL BE  
12 SOMETIME AROUND LUNCH AND THEN YOU WILL BE ABLE TO -- IF YOU  
13 SO ARE INCLINED, YOU CAN BEGIN YOUR EATING AS WELL AS  
14 DELIBERATIONS OF COURSE, YOU'RE NOT REQUIRED TO -- YOU CAN  
15 WAIT UNTIL YOU FINISH YOUR LUNCH BEFORE YOU BEGIN YOUR  
16 DELIBERATIONS IF YOU WANT AT THAT TIME SO WITH THAT SAID,  
17 I'LL CALL ON THE STATE AND ASK IF THEY WOULD PLEASE PROCEED  
18 WITH THEIR CLOSING ARGUMENT

19 MS. BRISBIN THANK YOU, YOUR HONOR MAY IT PLEASE  
20 THE COURT? MS BROWN? LADIES AND GENTLEMEN OF THE JURY, THE  
21 JUDGE IS GOING TO TELL YOU ABOUT THE LAW THAT APPLIES TO THIS  
22 CASE AND LISTEN TO WHAT HE SAYS, BUT I'M JUST GOING TO  
23 SUMMARIZE IT BRIEFLY SO THAT YOU KNOW WHAT YOU'RE LOOKING  
24 FOR MR WALKER IS CHARGED WITH KIDNAPPING, CRIMINAL SEXUAL  
25 CONDUCT IN THE FIRST DEGREE, AND POSSESSION OF A WEAPON -- A

1 FIREARM AND/OR A WEAPON IN THE COMMISSION OF A VIOLENT CRIME  
2 KIDNAPPING -- MOST OF US THINK OF KIDNAPPING AS  
3 SNATCHING A CHILD WELL, KIDNAPPING UNDER OUR LAW HAS  
4 DIFFERENT MEANINGS KIDNAPPING ALSO INCLUDES CONFINING  
5 SOMEONE AGAINST HER WILL YOU DON'T HAVE TO PROVE THAT SHE  
6 WAS ABDUCTED AND TAKEN SOMEWHERE ELSE ALL YOU HAVE TO PROVE  
7 IS THAT SHE WAS CONFINED AGAINST HER WILL AND, OF COURSE, IN  
8 THIS CASE YOU HAVE BOTH SHE WAS CONFINED SHE WAS ABDUCTED  
9 FROM NORWAY AT HER HOME SHE WAS TAKEN BY FORCE, CONFINED IN  
10 HIS TRUCK, AND TAKEN BY FORCE TO HIS HOME IN SALLEY AND  
11 CONFINED ALL NIGHT AGAINST HER WILL, AND SHE TESTIFIED TO ALL  
12 OF THAT

13 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE IS  
14 ESSENTIALLY WHAT MOST PEOPLE THINK OF AS RAPE IT ALSO  
15 INCLUDES SOME OTHER TYPES OF SEXUAL BATTERIES A SEXUAL  
16 BATTERY MEANS THERE'S PENETRATION OR FELLATIO WHICH IS ORAL  
17 SEX IN THIS CASE THERE WAS BOTH PENETRATION OF THE VAGINA  
18 AND FELLATIO WHICH ARE BOTH TYPES OF CRIMINAL SEXUAL CONDUCT  
19 IN THE FIRST DEGREE WE DON'T HAVE TO PROVE BOTH TYPES  
20 OCCURRED, BUT IN THIS CASE THE VICTIM TESTIFIED THAT BOTH  
21 TYPES OCCURRED AND THAT THERE WAS SOME PENETRATION, HOW EVER  
22 SLIGHT, WHICH IS ALL THAT'S REQUIRED, OF THE PENIS IN THE  
23 VAGINA AS WELL AS THE PENIS IN HER MOUTH

24 FOR IT TO BE FIRST DEGREE THAT MEANS THAT THERE HAS  
25 TO BE SOME TYPE OF PHYSICAL FORCE OR VIOLENCE OR THAT A GUN

1 HAS TO BE INVOLVED IT'S NOT REQUIRED THAT A GUN IS INVOLVED  
2 IF THERE'S OTHER TYPES OF PHYSICAL FORCE OR VIOLENCE, BUT USE  
3 OF A GUN IS ONE TYPE THAT MAKES IT FIRST DEGREE AND, OF  
4 COURSE, THE VICTIM TESTIFIED THAT HE WAVED A GUN AROUND AND  
5 THREATENED TO KILL HER, AND IT DOES NOT REQUIRE POINTING OF  
6 THE GUN AND THAT'S AN IMPORTANT THING TO CONSIDER THERE WAS  
7 NO TESTIMONY THAT HE POINTED THE GUN AT HER SHE SAID HE  
8 WAVED IT AROUND AND THREATENED TO KILL HER THAT IS  
9 SUFFICIENT UNDER THE LAW OF SOUTH CAROLINA FOR THIS CHARGE  
10 SHE TOLD -- THERE WAS TESTIMONY FROM LIEUTENANT BAMBERG THAT  
11 THE VICTIM TOLD HER ON MARCH 4TH THAT HE HAD A GUN, AND MS  
12 SANDERS ALSO TESTIFIED IN COURT YESTERDAY THAT HE HAD THE  
13 GUN

14 NOW YOU'VE HEARD ALREADY ABOUT THE TERM REASONABLE  
15 DOUBT, PROOF BEYOND A REASONABLE DOUBT, AND THAT'S ABSOLUTELY  
16 CORRECT THE STATE HAS THE BURDEN TO PROVE THE CASE BEYOND A  
17 REASONABLE DOUBT SO WHAT DOES BEYOND A REASONABLE DOUBT  
18 MEAN? THE JUDGE WILL GIVE YOU ONE DEFINITION AND YOU LISTEN  
19 TO HIM HE RULES ON THE LAW ESSENTIALLY WHAT BEYOND A  
20 REASONABLE DOUBT MEANS IS THAT YOU MUST BE FIRMLY CONVINCED  
21 THAT THE DEFENDANT IS GUILTY IT DOES NOT MEAN THAT YOU HAVE  
22 TO BE ABSOLUTELY CERTAIN BEYOND ANY DOUBT WHATSOEVER IN YOUR  
23 MIND THERE ARE VERY FEW THINGS IN LIFE THAT ARE THAT  
24 CERTAIN IF YOU WEREN'T THERE, YOU CAN'T BE A HUNDRED  
25 PERCENT SURE, BUT YOU DON'T HAVE TO BE A HUNDRED PERCENT SURE

1 UNDER THE LAW YOU SIMPLY HAVE TO NOT HAVE ANY REASONABLE  
2 DOUBT

3 THE STATE OF SOUTH CAROLINA ALSO HAS A LAW THAT  
4 SPECIFICALLY SAYS THAT NO CORROBORATION IS REQUIRED OF THE  
5 TESTIMONY OF THE VICTIM IN A CRIMINAL SEXUAL CONDUCT CASE  
6 WHAT THAT MEANS IS IF YOU BELIEVE BEYOND A REASONABLE DOUBT  
7 THAT MS SANDERS WAS TELLING THE TRUTH, YOU DON'T NEED ANY  
8 OTHER EVIDENCE, BUT IN THIS CASE THERE'S A LOT OF  
9 CORROBORATING EVIDENCE

10 FIRST OF ALL, LET'S SAY -- LET'S TALK ABOUT WHAT  
11 THERE ISN'T NOW, MOST PEOPLE WATCH "C S I " AND "LAW AND  
12 ORDER" AND WE LIKE TO SEE D N A AND FINGERPRINTS WE EXPECT  
13 THAT BECAUSE YOU SEE THAT ON T V BUT INVESTIGATOR GRAYBEAL  
14 EXPLAINED TO YOU IN REAL LIFE THEY SELDOM HAVE D N A IN  
15 SEXUAL ASSAULT CASES AND IN MANY CASES THEY'RE NOT ABLE TO  
16 GET FINGERPRINTS FOR VARIOUS REASONS, AND HE EXPLAINED TO YOU  
17 WHY HE WAS -- HE TRIED TO GET FINGERPRINTS IN THIS CASE, BUT  
18 HE COULDN'T BECAUSE YOU CAN SEE FOR YOURSELF -- WHERE ARE THE  
19 OTHER PICTURES?

20 YOU CAN SEE FOR YOURSELF THE DIRT ON THE INSIDE OF  
21 THIS TRUCK YOU CAN'T GET FINGERPRINTS OFF OF DIRT, AND  
22 INVESTIGATOR GRAYBEAL EXPLAINED TO YOU THAT'S WHY THERE WERE  
23 NO FINGERPRINTS THAT WERE USABLE FROM THE INSIDE OF THE  
24 TRUCK THE INSIDE OF THE HOUSE WAS VERY SIMILAR IT WAS  
25 ALSO FILTHY THE SURFACES THAT HE HAD TRIED TO OBTAIN

1 FINGERPRINTS FROM DID NOT ENABLE HIM TO GET USABLE  
2 FINGERPRINTS

3 IT ALSO HAD BEEN THREE WEEKS WHEN HE DID THE SEARCH  
4 OF THE HOUSE WHEN HE TOOK OVER THE CASE FROM ORANGEBURG,  
5 THREE WEEKS HAD PASSED YOU WOULDN'T EXPECT TO FIND A  
6 CIGARETTE BUTT IN THE ASHTRAY FROM THREE WEEKS BEFORE TO GET  
7 FINGERPRINTS OFF OF YOU WOULDN'T EXPECT TO FIND THE SAME  
8 BEER CAN IN THE TRASH TO GET FINGERPRINTS OFF OF AND THE  
9 OTHER SURFACES THAT HE TRIED TO GET FINGERPRINTS OFF OF WERE  
10 FILTHY AND IT JUST WOULDN'T WORK THE LAW DOES NOT REQUIRE  
11 FINGERPRINTS OR D N A THE LAW SIMPLY REQUIRES THAT YOU  
12 BELIEVE THE VICTIM'S TESTIMONY BEYOND A REASONABLE DOUBT, AND  
13 THAT'S ALL YOU HAVE TO DO TO FIND JOSEPH WALKER GUILTY

14 THERE IS NO D N A EVIDENCE DR GIBBS EXPLAINED TO  
15 YOU THAT THERE ARE MANY REASONS WHY THERE MIGHT NOT BE D N A  
16 EVIDENCE IN A SEXUAL ASSAULT KIT FIRST OF ALL, THERE WAS NO  
17 TESTIMONY THAT MR WALKER EJACULATED, AND AS DR GIBBS  
18 EXPLAINED, IF THERE'S NO EJACULATION THERE MAY NOT BE ANY  
19 D N A EVIDENCE AND, BESIDES THAT, THE VICTIM WASHED HERSELF  
20 IN THIS CASE BEFORE SHE WENT TO THE EMERGENCY ROOM SOME OF  
21 IT -- IF THERE HAD BEEN D N A EVIDENCE THERE, IT MAY HAVE  
22 BEEN WASHED OFF

23 DR GIBBS EXPLAINED SOME OTHER REASONS WHY THERE  
24 MIGHT NOT BE D N A EVIDENCE, AND INVESTIGATOR GRAYBEAL TOLD  
25 YOU THAT IN TEN YEARS OF EXPERIENCE AS AN INVESTIGATOR OR I

1 THINK HE SAID FROM '97 HE WAS -- HE STARTED BEING AN  
2 INVESTIGATOR IN '97 SO IN SIX YEARS OF EXPERIENCE AS AN  
3 INVESTIGATOR AND TEN YEARS WORKING WITH THE DEPARTMENT HE'S  
4 ONLY BEEN PERSONALLY INVOLVED IN ONE CASE WHERE THEY FOUND  
5 D N A THIS IS NOT "C S I " OR "LAW AND ORDER " THIS IS  
6 REAL LIFE AND IT'S NOT LIKE ON T V IN REAL LIFE IT'S NOT  
7 ALWAYS THAT SIMPLE

8 WHAT OTHER CORROBORATIVE EVIDENCE DID YOU HEAR? YOU  
9 HEARD DR GIBBS TALK ABOUT THE GENITAL TRAUMA. SHE SHOWED  
10 YOU THE -- WELL, SHE SAID THEY WEREN'T ACTUALLY PHOTOS THEY  
11 WERE PRINTS FROM THE COLPOSCOPE WHICH MAGNIFIES THE GENITAL  
12 AREA TO SHOW YOU ALL OF THE MANY INJURIES TO MRS SANDERS'  
13 GENITAL AREA, AND DR SANDERS (SIC) SAID THAT THESE INJURIES  
14 WERE DIAGNOSTIC OF BLUNT-FORCE TRAUMA SHE ALSO SAID THEY  
15 WERE CONSISTENT WITH A PAINFUL SEXUAL ASSAULT

16 NOW, SHE CAN'T TELL YOU IT WAS NOT CONSENSUAL  
17 OBVIOUSLY SHE SAID SHE THINKS IT'S UNLIKELY THAT IT WAS  
18 CONSENSUAL, BUT SHE CAN'T -- SHE DOESN'T KNOW WHAT THE INTENT  
19 OF THE VICTIM WAS NOBODY KNOWS THAT BUT THE VICTIM HERSELF.  
20 BUT YOU CAN SEE THE PICTURES FOR YOURSELF AND I KNOW YOU  
21 ALREADY HAVE PROBABLY MORE THAN YOU WANTED TO, BUT THE -- THE  
22 INJURIES, THE LACERATIONS, THE TRANSECTION, THE ABRASIONS -  
23 SHE DESCRIBED THE OOZING HYMEN - SPEAK FOR THEMSELVES THIS  
24 WAS NOT CONSENSUAL SEX

25 CAN YOU IMAGINE THIS FRAIL LITTLE LADY GOING TO

1 DOLLAR GENERAL STORE TO BUY CURTAIN RODS AND THEN SAYING TO  
2 HERSELF, WELL, I'LL JUST GO TO THE B P AND PICK UP THIS  
3 STRANGE MAN AND HAVE ROUGH, PAINFUL CONSENSUAL SEX? IS THAT  
4 BELIEVABLE? AND IF IT WAS CONSENSUAL, WHY WOULD SHE REPORT  
5 IT TO THE POLICE? IF SHE WANTED TO HAVE CONSENSUAL SEX --  
6 SHE'S A GROWN WOMAN, A SENIOR CITIZEN AT THAT SHE COULD  
7 HAVE SEX WITH ANYBODY SHE WANTED AND NOBODY WOULD HAVE EVER  
8 KNOWN IF SHE HADN'T TOLD

9 DR GIBBS ALSO SAID THAT HER EXAMINATION WAS  
10 CONSISTENT WITH FORCIBLE ORAL SEX SHE DESCRIBED WHAT SHE  
11 CALLED THE PETECHIAE WHICH WERE LITTLE SPOTS OF BLOOD IN THE  
12 ROOF OF THE MOUTH WHICH ARE CONSISTENT WITH FORCIBLE ORAL SEX  
13 WHICH MATCHES UP AGAIN WITH THE HISTORY THAT MS SANDERS GAVE  
14 YOU SHE SAID THAT HE HAD FORCED HER TO PUT HIS PENIS IN HER  
15 MOUTH AS WELL AS SEXUALLY ASSAULTED HER VAGINALLY

16 YOU ALSO SAW THE VIDEO FROM THE -- OR A COPY OF THE  
17 VIDEO FROM THE B P STATION WHICH THE MANAGER OF THE STATION  
18 TESTIFIED THAT WAS THE DAY THAT -- THAT WAS THE VIDEO FROM  
19 MARCH 2ND OF 2002, ALTHOUGH THE DATE ON THE VIDEO IS  
20 INCORRECT BECAUSE THEY DON'T KEEP THAT CURRENT AND THE TIMING  
21 ON IT IS ONE HOUR OFF BECAUSE OF DAYLIGHT SAVINGS TIME YOU  
22 SAW THE VICTIM ON THE TAPE AND 12 MINUTES LATER YOU SAW THE  
23 DEFENDANT ON THE TAPE

24 NOW, IT'S A FUZZY TAPE IT'S NOT REAL OBVIOUS MAYBE  
25 TO YOU WHO THAT PERSON WAS, THAT IT WAS THIS MAN, JOSEPH

1 WALKER, BUT THE MANAGER KNEW HIM AND SHE KNEW IMMEDIATELY  
2 WITHOUT HESITATION THAT THAT WAS JOSEPH WALKER THAT THE  
3 VICTIM HAD POINTED OUT NOBODY TOLD HER WHO TO PICK SHE  
4 DIDN'T SAY, WELL, IT MIGHT BE THAT GUY, IT MIGHT BE THAT GUY  
5 THERE WERE LOTS OF BLACK MALES ON THAT VIDEO AND THAT'S THE  
6 ONE SHE PICKED SHE SAID SHE WASN'T A HUNDRED PERCENT SURE  
7 SHE DIDN'T LIE SHE SAID, I'M NOT A HUNDRED PERCENT SURE  
8 I'M ABOUT 90 PERCENT SURE IT'S KIND OF FUZZY LOOKS LIKE  
9 HIM SHE COULD HAVE SAID, OH, THAT'S HIM I KNOW THAT'S  
10 HIM ABSOLUTELY NO DOUBT SHE DIDN'T DO THAT IF SHE  
11 WANTED TO GET THIS GUY IN TROUBLE, WOULDN'T SHE BE A HUNDRED  
12 PERCENT SURE?

13 AFTER THE VIDEOTAPE THEY DID THE PHOTO LINE-UP  
14 THEY PUT A PICTURE OF JOSEPH WALKER IN A PHOTO LINE-UP WITH  
15 FIVE OTHER PEOPLE WHO LOOKED VERY SIMILAR, AND YOU'LL HAVE  
16 ALL OF THIS IN THE JURY ROOM TO LOOK AT MORE CLOSELY THESE  
17 PHOTOS ARE ALL SIX BLACK MEN WHO LOOK VERY SIMILAR THEY ALL  
18 HAVE FACIAL HAIR SHE PICKED OUT THIS PHOTO AGAIN, SHE  
19 COULDN'T BE A HUNDRED PERCENT SURE WELL, YOU LOOK AT THIS  
20 PHOTO CLOSE UP WOULD YOU BE A HUNDRED PERCENT SURE THIS WAS  
21 THAT MAN?

22 LAW ENFORCEMENT SAYS THIS IS JOSEPH WALKER DOESN'T  
23 LOOK MUCH LIKE HIM IN THIS PICTURE SHE WASN'T A HUNDRED  
24 PERCENT SURE AND SHE SAID THAT SHE SAID SHE WAS ABOUT 90  
25 PERCENT SURE BUT WHEN SHE SAW HIM IN THIS COURTROOM IN

1 PERSON FACE TO FACE -- WELL, NOT FACE TO FACE BUT IN PERSON,  
2 SHE KNEW IMMEDIATELY IT WAS HIM SHE HAD NO HESITATION SHE  
3 TOLD YOU THAT IS THE MAN WHO SEXUALLY ASSAULTED ME SHE  
4 TOLD YOU THERE WAS NO DOUBT IN HER MIND

5 NOW, IF SHE HAD JUST WANTED TO GET JOSEPH WALKER IN  
6 TROUBLE FOR SOME REASON, WOULD SHE HAVE SAID, "I DON'T KNOW  
7 HIS NAME"? IF SHE WAS JUST MAKING ALL OF THIS UP, WOULDN'T  
8 SHE -- TO GET HIM IN TROUBLE, WOULDN'T SHE SAY JOSEPH WALKER  
9 RAPED ME INSTEAD OF LETTING THE POLICE -- HOPING THE POLICE  
10 MIGHT FIGURE IT OUT?

11 WHEN SHE WENT TO THE RAPE CENTER AND THEY SAID HOW  
12 DID YOU -- THEY DIDN'T EVEN ASK HER SHE VOLUNTEERED THIS  
13 BIG BRUISE ON MY FOREHEAD DIDN'T COME FROM THIS INCIDENT, I  
14 HAD THAT BEFORE IF SHE WANTED TO GET HIM IN TROUBLE,  
15 WOULDN'T SHE HAVE SAID, OH, YEAH, I GOT THAT BIG BRUISE WHEN  
16 I FELL, WHEN HE PUSHED ME THAT WOULD HAVE BEEN SO EASY  
17 THAT'S NOT WHAT HAPPENED AND SHE TOLD THE TRUTH

18 WHY WOULD SHE LIE? WHAT WOULD SHE HAVE TO GAIN? DO  
19 YOU THINK IT WAS FUN FOR HER TO GET UP THERE AND TALK ABOUT  
20 ALL OF THESE NASTY DETAILS IN FRONT OF A BUNCH OF STRANGERS?  
21 WHY DO PEOPLE LIE? EITHER TO GET OUT OF TROUBLE - SHE WASN'T  
22 IN ANY TROUBLE - OR TO GET SOMETHING THEY WANT WHAT DID SHE  
23 HAVE TO GAIN BY LYING ABOUT THIS?

24 IF SHE DIDN'T KNOW JOSEPH WALKER BEFORE THAT DAY AND  
25 APPARENTLY SHE DIDN'T BECAUSE SHE DIDN'T GIVE LAW ENFORCEMENT

1 HIS NAME, HOW WOULD SHE KNOW WHAT KIND OF VEHICLE HE DROVE,  
2 THAT IT WAS A STICK SHIFT, THAT IT WAS NASTY AND SMELLY ON  
3 THE INSIDE, THAT IT HAD A STRIPE ON THE SIDE, THAT IT WAS A  
4 SMALL BLACK PICKUP TRUCK? HOW WOULD SHE KNOW THAT HE WAS  
5 APPROXIMATELY SIX FEET TALL, APPROXIMATELY 200 POUNDS, WORE  
6 BLACK WORK BOOTS, HAD SOME FACIAL HAIR, AND WAS APPROXIMATELY  
7 40 TO 50 YEARS OLD?

8 HOW WOULD SHE KNOW HE HAD NO TEETH? HOW WOULD SHE  
9 KNOW WHAT THE INSIDE OF HIS HOUSE LOOKED LIKE? HOW WOULD SHE  
10 KNOW HE HAD A SPACE HEATER IN HIS HOUSE IN THE BEDROOM ON THE  
11 LEFT AS YOU WALK IN THE BEDROOM DOOR? THERE ARE THE BLACK  
12 WORK BOOTS HOW WOULD SHE KNOW THERE WAS NO DOOR ON THE DOOR  
13 FRAME? HOW WOULD SHE KNOW THERE WAS A DOUBLE BED IN HIS  
14 BEDROOM, THE BATHROOM WAS AT THE FOOT OF THE BED, AND IT WAS  
15 A CINDER BLOCK HOUSE? IT WAS NASTY AND SMELLED BAD HOW  
16 WOULD SHE KNOW THERE WAS A SHEET UP OVER THE BEDROOM WINDOW,  
17 AN ASHTRAY ON THE TABLE? HOW WOULD SHE KNOW THAT?

18 THINK ABOUT THE CREDIBILITY OF THE OTHER WITNESSES  
19 DID THE STORE MANAGER HAVE ANY REASON TO LIE ABOUT WHO THAT  
20 WAS IN THE VIDEO? DID THE DOCTOR HAVE ANY REASON TO LIE  
21 ABOUT THE PAINFULNESS OF THE INJURIES THAT SHE HAD FOUND?  
22 THE EVIDENCE IS CLEAR, LADIES AND GENTLEMEN MARGARET  
23 SANDERS HAD NO DOUBT THAT JOSEPH WALKER WAS THE MAN WHO  
24 SEXUALLY ASSAULTED HER SHE KNEW AND YOU KNEW -- KNOW BEYOND  
25 A REASONABLE DOUBT JOSEPH WALKER IS GUILTY THANK YOU

1 THE COURT: MS BROWN?

2 MS. BROWN: HOW DO WE KNOW? WHAT DO WE KNOW? I  
3 TOLD YOU, LADIES AND GENTLEMEN, WHEN I STOOD UP IN FRONT OF  
4 YOU BEFORE THAT A TRIAL IS LIKE PUTTING TOGETHER THE PIECES  
5 OF THE PUZZLE AND THAT IT'S GOING TO BE YOUR JOB TO TAKE  
6 THESE PIECES AND TO SEE IF THEY FIT, IF THEY FIT INTO THE  
7 DESCRIPTION OF WHAT THE STATE WOULD HAVE YOU BELIEVE THERE  
8 ARE HOLES, THERE ARE PIECES MISSING THIS IS YOU ON VACATION  
9 TRYING TO PUT THAT THOUSAND PUZZLE PIECE THING TOGETHER AND  
10 YOU'VE BEEN WORKING ON IT FOR FOUR DAYS AND YOU GET TO THE  
11 END AND YOU CAN'T FIND THE MISSING PIECES AND YOU CAN'T MAKE  
12 THE PICTURE CLEAR AND IF YOU CAN'T MAKE THE PICTURE CLEAR,  
13 THEN HOW CAN YOU BELIEVE BEYOND A REASONABLE DOUBT WHAT  
14 MARGARET SANDERS TOLD YOU? THE JUDGE IS GOING TO INSTRUCT  
15 YOU THAT YOU CAN BELIEVE SOME OF WHAT A WITNESS SAID, ALL OF  
16 WHAT A WITNESS SAID, OR NONE OF WHAT A WITNESS SAYS YOU CAN  
17 PICK AND CHOOSE WHAT TO BELIEVE

18 WHAT SHE SAID YESTERDAY DOESN'T MAKE SENSE THE  
19 DOCTOR TOLD YOU THERE WERE NO BRUISES FOUND ON MARGARET  
20 SANDERS EXCEPT FOR THIS ONE ON HER FOREHEAD THAT SHE HAD  
21 APPARENTLY HAD FOR TWO WEEKS AFTER HITTING HER HEAD ON THE  
22 REFRIGERATOR WELL, WOULDN'T YOU THINK IF SHE BRUISES THAT  
23 EASILY AND KEEPS A BRUISE FOR THAT LONG AFTER HITTING HER  
24 HEAD ON THE REFRIGERATOR THAT AFTER HAVING HER ARMS GRABBED  
25 TO BE WALKED OUT OF THE HOUSE SHE WOULD HAVE SOME MARKS ON

1 HER ARMS? AND IF SHE WERE FORCED TO THE EXTENT TO HAVE THE  
2 INJURIES, WOULDN'T HE HAVE HAD TO HOLD ON TO HER TO FORCE IT?  
3 WOULDN'T YOU EXPECT TO SEE SOME BRUISING, SOME  
4 REDNESS, SOME TENDERNESS HERE OR HOW ABOUT BACK HERE AT THE  
5 BACK OF HER NECK OR ON THE SIDE OF HER FACE? IF SHE WERE  
6 BEING FORCED TO PERFORM ORAL SEX, WOULDN'T THERE BE SOME KIND  
7 OF MARK, ANYTHING? AND THE DOCTOR WHO -- MS BRISBIN IS  
8 RIGHT THE DOCTOR HAS NO REASON TO COME IN HERE AND TO MAKE  
9 STUFF UP SHE VERY CANDIDLY SAID THAT WHILE THESE INJURIES  
10 WERE DIAGNOSTIC OF A -- OF A PENETRATIVE TRAUMA THAT IT WAS  
11 CONSISTENT WITH THE HISTORY GIVEN, BUT WHEN SHE WAS ASKED  
12 WHAT ELSE COULD CAUSE THAT DIAGNOSTIC INJURY -- I DIDN'T ASK  
13 HER SPECIFICALLY I ASKED HER WHAT ELSE COULD CAUSE IT?  
14 SHE SAID CONSENSUAL PAINFUL INTERCOURSE SHE ALSO SAID THAT  
15 GIVEN MS SANDERS' AGE SHE WOULD EXPECT THAT SHE HAD  
16 DIMINISHED ESTROGEN  
17 SHE'D HAD A HYSTERECTOMY AND THAT SHE WOULD EXPECT  
18 AT 59 YEARS OLD THAT SHE WAS LOSING SOME OF THAT HORMONE, AND  
19 SHE TESTIFIED -- EVEN INITIALLY WHEN SHE WAS DRAWING THE  
20 DIAGRAM, SHE TESTIFIED THAT THAT AREA IN BETWEEN THE VAGINAL  
21 OPENING AND THE BOTTOM OF THE GENITAL AREA THAT ALL OF THAT  
22 MUCUS MEMBRANE AREA IS PRONE TO TEARING MORE EASILY WITH  
23 ESTROGEN LOSS SHE JUST STATED THAT WHEN SHE WAS DRAWING THE  
24 DIAGRAM AND GIVING THE DESCRIPTION AND SHE SAID AS A DOCTOR  
25 THAT SHE WOULD EXPECT THAT MARGARET SANDERS WOULD BE OF AN

1 AGE AND PLACE IN LIFE TO WHERE SHE WAS EXPERIENCING SOME OF  
2 THAT LOSS AND THAT IT WOULD CERTAINLY BE POSSIBLE FOR THE  
3 INJURIES THAT SHE DESCRIBED TO HAVE BEEN CAUSED BY CONSENSUAL  
4 INTERCOURSE

5 SHE SAYS THAT HE FOLLOWED HER INTO HER HOUSE SHE  
6 WAS IN THE BEDROOM AND TURNS AROUND AND THERE HE IS SHE  
7 SAID THERE WERE NO OTHER HOUSES AROUND HER HOUSE HER  
8 NEAREST NEIGHBOR WAS A HALF MILE AWAY AND THAT HE WOULD NOT  
9 HAVE BEEN ABLE TO SEE ANY OTHER HOUSES, ANY OTHER VEHICLES,  
10 ANY OTHER SIGN OF A HUMAN BEING PRESENT WITHIN SHOUTING  
11 DISTANCE, NO ONE TO SEE IF HE WANTED TO RAPE HER, WOULDN'T  
12 THAT HAVE BEEN THE TIME TO DO IT, THERE IN HER HOUSE, IN HER  
13 BEDROOM, NO ONE ELSE AROUND?

14 WHY IN THE WORLD WOULD THIS BLACK MAN PUT A  
15 BLINDFOLD AROUND HER, PUT HER IN HIS TRUCK WHEN IT IS STILL  
16 DAYLIGHT OUTSIDE, DRIVE HER ANYWHERE FROM 30 TO 60 MINUTES  
17 WHERE ANY CAR PASSING BY -- IF THEY SEE HIM AND HER WITH A  
18 BLINDFOLD, ISN'T SOMEBODY GOING TO BE SUSPICIOUS? ISN'T  
19 SOMEBODY GOING TO CALL THE POLICE? WHY WOULD HE RISK THAT?  
20 WHEN HE HAD AMPLE OPPORTUNITY RIGHT THEN AND THERE, WHY WOULD  
21 HE RISK THAT? AND THEN HE LET HER BRING HER PURSE? WHILE  
22 SHE WAS THERE LET HER GET CIGARETTES OUT AND SMOKE?

23 I THINK IF I'M HOLDING SOMEONE AGAINST THEIR WILL  
24 I'M NOT GOING TO GIVE THEM A LIT CIGARETTE, LADIES AND  
25 GENTLEMEN I'VE ACCIDENTALLY BURNED MYSELF ON A CIGARETTE

1 BEFORE, IT DOESN'T FEEL GOOD I WOULD BET THAT MOST PEOPLE  
2 WHO HAVE SMOKED HAVE AT SOME POINT IN TIME ACCIDENTALLY  
3 BURNED THEMSELVES THEY KNOW WHAT IT FEELS LIKE THEY KNOW  
4 IT DOESN'T FEEL GOOD IS HE GOING TO ALLOW HER TO BE  
5 SMOKING?

6 HE GOT HER A BEER WHERE DID HE GET THE BEER? IF  
7 AS SHE SAYS HE WAS WITH HER IN THAT ROOM THE ENTIRE TIME AND  
8 SHE WAS IN THAT ROOM OR IN THE BATHROOM BECAUSE APPARENTLY HE  
9 LET HER GO TO THE BATHROOM AT SOME POINT IN TIME, AT WHAT  
10 POINT IN TIME DID HE LEAVE TO GO GET THE BEER? AND WHY IS  
11 SHE SITTING THERE SHARING A BEER, HAVING A DRINK WITH THIS  
12 MAN WHO'S HOLDING HER AGAINST HER WILL AND FORCING HER TO  
13 PERFORM SEXUAL ACTS?

14 THAT PIECE DOES NOT FIT IN MY PUZZLE, AND IF IT  
15 DOESN'T FIT IN THE PUZZLE, THEN YOU CAN'T BELIEVE HER STORY  
16 BEYOND A REASONABLE DOUBT AND THEN APPARENTLY SOMETIME  
17 BETWEEN 4 AND 4 30 IN THE MORNING HE DECIDES TO PUT THE  
18 BLINDFOLD BACK ON, LET HER GET HER PURSE, TAKES HER BACK OUT  
19 INTO THE TRUCK, DRIVES HER HOME, DRIVES HER HOME, REACHES TO  
20 OPEN THE DOOR, SHOVES HER OUT SHE SAYS SHE FELL OUT ON HER  
21 HIP DID THEY BRING IN HER CLOTHES TO SHOW YOU ANY DEBRIS OR  
22 STAINING OR TEARING? DID SHE HAVE A BRUISE ON HER HIP OR ON  
23 HER LEG OR ON HER ELBOW WHERE SHE CAME CRASHING OUT TO THE  
24 GROUND?

25 THAT WOULD BE A FAIRLY VIOLENT FALL, WOULDN'T YOU

1 THINK, TO BE SHOVED OUT OF THAT TRUCK AND YOU SPRAWL ON THE  
2 GROUND? YET THE MEDICAL CENTER FINDS NO ABRASIONS ON YOUR  
3 HANDS, NO MARKS ON YOUR BODY WHATSOEVER EXCEPT FOR THAT  
4 BRUISE THAT SHE HAD TWO WEEKS BEFORE

5 THEN SHE GOES IN HER HOUSE AND SHE WASHES UP SHE'S  
6 HAD 30 YEARS EXPERIENCE AS A NURSING ASSISTANT SHE'S WORKED  
7 IN TWO HOSPITALS SHE WATCHES "LAW AND ORDER" AND DETECTIVE  
8 MOVIES AND THE FIRST THING SHE DOES IS WASH OFF WITH A  
9 WASHCLOTH THAT DOESN'T MAKE SENSE AND THEN SHE FIXES  
10 HERSELF ANOTHER DRINK

11 SHE GOES TO HER COUSIN'S HOUSE SHE'S UPSET QUITE  
12 POSSIBLY IT WAS AN UPSETTING EXPERIENCE ONCE YOU REALIZE  
13 WHAT'S HAPPENED SHE'S GOT HER DRINK WITH HER, DRIVES DOWN  
14 TO HER SISTER'S HOUSE HER SISTER -- EXCUSE ME, HER COUSIN'S  
15 HOUSE HER COUSIN SAID SHE STILL HAD HER CUP WITH HER  
16 WHAT'S WRONG? WHAT'S WRONG? WHY ARE YOU UPSET? WHY DO YOU  
17 LOOK SO BAD? WHAT'S GOING ON? WHAT ARE YOU GOING TO SAY?  
18 WHAT ARE YOU GOING TO SAY TO YOUR COUSIN? AND WHEN YOU START  
19 YOUR STORY, SHE CALLS HER SISTER THE COUSIN CALLS HER  
20 SISTER, LEAVES A MESSAGE ON HER ANSWERING MACHINE COME OVER  
21 HERE CALLS HER SON NOW WHAT IS SHE GOING TO SAY? IS SHE  
22 GOING TO CHANGE IT UP NOW?

23 LADIES AND GENTLEMEN, I HAVE NO WAY OF KNOWING WHAT  
24 THESE PIECES ARE THAT DON'T FIT ALL I KNOW IS THEY DON'T  
25 FIT THEY DON'T FIT IT'S NOT CONSISTENT WITH WHAT YOU

1 WOULD EXPECT YOU KNOW, SHE GIVES A REALLY GOOD DESCRIPTION  
2 OF THE INSIDE OF HIS HOUSE, VERY CLOSE DESCRIPTION SHE  
3 DOESN'T SAY ANYTHING ABOUT THE GUN WHEN SHE INITIALLY TALKS  
4 TO THE REPORTING OFFICER HE DIDN'T HAVE ANYTHING NOTED IN  
5 HIS REPORT ABOUT HER TALKING ABOUT A GUN AND WOULDN'T YOU  
6 HAVE EXPECTED HER TO SAY SOMETHING ABOUT THE GUN WHEN SHE WAS  
7 PRETTY INCLUSIVE OF OTHER THINGS THAT SHE TOLD THE REPORTING  
8 OFFICER?

9 SHE DOESN'T INITIALLY MENTION THE GUN TO LIEUTENANT  
10 BAMBERG ONLY AFTER LIEUTENANT BAMBERG SPECIFICALLY ASKED  
11 HER ABOUT A WEAPON DOES SHE SAY, OH, YEAH, THERE WAS A PISTOL  
12 AND HE WAS JUST KIND OF WAVING IT AROUND SHE CAN'T GET ANY  
13 DESCRIPTION OF THAT GUN? IF YOU'VE GOT A GUN WAVING AROUND,  
14 AREN'T YOU GOING TO PAY ATTENTION TO THAT? AREN'T YOU GOING  
15 TO KNOW WHAT THAT LOOKS LIKE?

16 I MEAN, IF YOU CAN DESCRIBE THE ROOM, YOU CAN  
17 DESCRIBE THE CONTENTS OF THE BEDSIDE TABLE, BUT YOU CAN'T  
18 DESCRIBE THE GUN, NOT EVEN SOMETHING AS BASIC AS COLOR -- I  
19 MEAN, I DON'T KNOW A WHOLE LOT ABOUT GUNS, BUT I KNOW IF IT'S  
20 BLACK OR I KNOW IF IT'S SHINY I KNOW IF IT LOOKS LIKE THE  
21 KIND OF GUN THAT THE COWBOYS USE IN THE SHOOT-EM-UP MOVIES OR  
22 IF IT'S THE KIND OF GUN -- THAT BIG KIND OF GUN OR IF IT  
23 LOOKS LIKE SOMETHING THAT THE POLICE OFFICERS CARRY AND  
24 LIEUTENANT BAMBERG TOLD YOU THAT ONLY WHEN SHE ASKED SPECIFIC  
25 QUESTIONS DID SHE REALLY GET A LOT OF INFORMATION

1           NOW, YESTERDAY WHEN MS SANDERS WAS TESTIFYING,  
2 REMEMBER HER Demeanor SHE WAS FORTHCOMING WHEN SHE WAS  
3 TELLING THE SAME THING THAT SHE'S TOLD BEFORE, BUT WHEN I  
4 STARTED ASKING HER QUESTIONS THAT APPARENTLY HADN'T BEEN  
5 ASKED BEFORE, SHE DIDN'T WANT TO ANSWER THOSE QUESTIONS SHE  
6 DIDN'T WANT TO ANSWER THE QUESTION ABOUT WHAT SHE'D HAD TO  
7 DRINK THAT MORNING SHE DIDN'T WANT TO ANSWER THE QUESTION  
8 ABOUT HER SMOKING CIGARETTES YOU KNOW, SHE TRIED TO DIVERT  
9 OUR ATTENTION FROM THE CIGARETTES IN THE PURSE BY SAYING, OH,  
10 YEAH, AND BY THE WAY HE WAS PAWING THROUGH MY PURSE LOOKING  
11 THROUGH IT WELL, THAT WAS NEVER TOLD TO ANY OFFICER BEFORE,  
12 AND ANY PERSON WHO WATCHES ANY DETECTIVE SHOWS OR ANY OF  
13 THESE T V SHOWS KNOWS THAT THEY'RE GOING TO WANT TO GET  
14 FINGERPRINTS AND IF HE'D BEEN ALL THROUGH HER PURSE,  
15 WOULDN'T YOU THINK THAT YOU WOULD HAVE TOLD THE POLICE,  
16 "HERE'S MY PURSE CHECK IT I DON'T KNOW WHO HE IS, BUT HIS  
17 FINGERPRINTS MAY BE IN THERE"? AS I SAID YESTERDAY, I DON'T  
18 KNOW WHY A LOT OF THINGS HAPPEN OR WHY PEOPLE DO CERTAIN  
19 THINGS OR WHY PEOPLE WOULD SAY THINGS THAT AREN'T TRUE, BUT I  
20 KNOW THAT A LOT GOES ON IN THIS WORLD THAT I CAN'T EXPLAIN  
21 AND I KNOW THAT PEOPLE SAY THINGS THAT AREN'T QUITE TRUE  
22           I ALSO KNOW WHEN MS SANDERS WAS TALKING ABOUT THIS  
23 TAPE YESTERDAY WITH THE SOLICITOR WHEN THEY WERE STANDING IN  
24 FRONT OF YOU WITH THE T V LOOKING AT IT SHE SAID, "THIS IS  
25 THE TAPE THAT I LOOKED AT IN LIEUTENANT BAMBERG'S OFFICE "

1 WELL, WE FOUND OUT TODAY THIS WASN'T THE TAPE THAT SHE LOOKED  
2 AT SHE LOOKED AT A TAPE WITH A LOT OF DIFFERENT CAMERA  
3 ANGLES, ONE THAT HAD NOT BEEN EDITED BY S L E D , AND I THINK  
4 IT WOULD HAVE BEEN FAIRLY OBVIOUS SEEING THE ONE CAMERA  
5 PICTURE YESTERDAY, "NO, THAT'S NOT THE EXACT THING THAT I  
6 LOOKED AT BEFORE "

7 SHE GAVE A DESCRIPTION OF MR WALKER, DID NOT ADD  
8 THAT THIS PERSON WORE GLASSES OR HAD A JACKET THAT'S WHAT  
9 YOU'LL SEE ON THE TAPE IF YOU WATCH THE TAPE, YOU'LL SEE HE  
10 WAS THE FIRST BLACK MAN FITTING THE AGE DESCRIPTION ON THAT  
11 TAPE AFTER THEY SAW HER ON THERE AND THAT'S WHEN THEY  
12 STOPPED THAT'S WHEN LAW ENFORCEMENT STOPPED, JUST LIKE LAW  
13 ENFORCEMENT STOPPED WHEN THEY SAW WHAT THEY EXPECTED TO SEE  
14 WHEN THEY WENT TO HIS HOUSE

15 INVESTIGATOR GRAYBEAL TOLD YOU MR WALKER GAVE THEM  
16 CONSENT TO SEARCH HIS HOUSE HE SAID, GO AHEAD, LOOK THEY  
17 DIDN'T FIND A GUN DIDN'T LOOK FOR A GUN DIDN'T FIND A  
18 GUN DID A SEARCH NOW, I THINK THAT IT WAS PROBABLY  
19 SUGGESTED THAT, YOU KNOW, PERHAPS IN THE THREE WEEKS' TIME HE  
20 COULD HAVE GOTTEN RID OF IT, BUT DOES IT LOOK LIKE HE'S MADE  
21 ANY CLEAN-UP EFFORTS? YOU'LL HAVE THESE BACK THERE DOES IT  
22 LOOK LIKE HE'S MADE ANY ATTEMPT TO HIDE ANYTHING?

23 WOULD HE HAVE HAD ANY WAY OF KNOWING THAT SHE WAS  
24 MAKING THESE ALLEGATIONS AGAINST HIM BEFORE THE POLICE SHOWED  
25 UP AT HIS HOUSE THREE WEEKS LATER SAYING, HEY, WE'D LIKE TO

1 SEARCH YOUR HOUSE? WE THINK THERE'S SOME STUFF HERE THAT  
2 WE WANT TO FIND HE HADN'T THROWN ANYTHING AWAY HE HADN'T  
3 WASHED OFF POTENTIAL FINGERPRINTS HE HASN'T GOTTEN RID OF  
4 THE MATTRESS OR THE BED SHEETS OR ANYTHING LIKE THAT BUT  
5 LAW ENFORCEMENT AND THE STATE WANT YOU TO JUST TAKE ALL OF  
6 THIS AT FACE VALUE AND NOT LOOK DEEPER AND NOT ASK THE REALLY  
7 TOUGH QUESTIONS OF WHAT IS MISSING

8 THE INVESTIGATOR DIDN'T LOOK AT THAT DOCTOR'S REPORT  
9 AND FIND NO BRUISES MISSING AND GO BACK TO MS SANDERS AND,  
10 YOU KNOW, MS SANDERS, COULD YOU CLARIFY THIS FOR ME?  
11 BECAUSE YOU'RE SAYING ONE THING, BUT THE PHYSICAL EVIDENCE  
12 DOESN'T MATCH UP TO THAT THEY WANT TO ASSUME THAT THIS  
13 HAPPENED THEY WANT YOU TO ASSUME THAT THIS HAPPENED AND  
14 THERE ARE TOO MANY PIECES MISSING AND THIS CASE IS TOO  
15 IMPORTANT AND THOSE CONCEPTS WE TALKED ABOUT YESTERDAY OF  
16 PROOF BEYOND A REASONABLE DOUBT IS TOO IMPORTANT FOR YOU TO  
17 ASSUME, FOR YOU TO ASSUME, THAT THIS IS WHAT HAPPENED

18 IT DOESN'T MAKE SENSE NO BRUISES, ADMITTING TO  
19 SMOKING CIGARETTES THAT NIGHT, DRINKING A BEER, DRINKING  
20 AGAIN WHEN SHE GOT HOME, WASHING UP, 30 YEARS EXPERIENCE AS A  
21 NURSING ASSISTANT, KNOWS WHAT EVIDENCE THEY'D BE LOOKING FOR  
22 WHEN DID SHE DECIDE TO SAY THAT THIS WAS A CRIME? I DON'T  
23 KNOW FOR SURE WAS IT WHEN SHE GOT TO THE COUSIN'S HOUSE,  
24 DISHEVELLED AND UPSET? WAS IT WHEN SHE STARTED REALIZING  
25 WHERE SHE'D BEEN AND WHAT SHE HAD DONE? I DON'T KNOW BUT I

1 KNOW THAT MEANS ALL THE PIECES THAT HAVE BEEN GIVEN TO YOU BY  
2 THE STATE DO NOT ADD UP AND IF THEY DO NOT ADD UP, IF YOU  
3 CAN'T FILL IN THOSE HOLES, IF THERE ARE TOO MANY PIECES  
4 MISSING, IF THERE ARE TOO MANY THINGS THAT DON'T MAKE SENSE,  
5 THEN YOU MUST FIND HIM NOT GUILTY

6 WHAT WOULD YOU HAVE EXPECTED TO FIND ON HER? WHAT  
7 MARKS? WHAT BRUISING? WHAT ADDS UP TO MAKE IT CONSISTENT  
8 FOR YOU? DOES IT MAKE SENSE THAT HE WOULD HAVE TAKEN HER TO  
9 HIS HOUSE WHEN HE HAD OPPORTUNITY RIGHT THERE IN HERS? WOULD  
10 HE HAVE RISKED EXPOSURE IN THAT MANNER? WOULD HE RISK BEING  
11 SEEN AGAIN DRIVING HER HOME? IS THAT SOMETHING THAT YOU  
12 WOULD EXPECT AN ASSAILANT TO DO, TO DROP THEM OFF IN THEIR  
13 FRONT YARD? WHY NOT ON THE SIDE OF THE ROAD SOMEWHERE? WHY  
14 NOT TOTALLY CONFUSE HER ABOUT WHERE SHE'D BEEN? WHY NOT MAKE  
15 IT SO THAT IT WAS A POTENTIAL LONGER PERIOD OF TIME BEFORE  
16 SHE COULD REPORT? WHY DOES HE LET HER TAKE HER PURSE? WHY  
17 DOES HE LET HER SMOKE? WHY DOES HE BRING HER A BEER?

18 THOSE ARE THE IMPORTANT QUESTIONS TO ASK THOSE ARE  
19 THE QUESTIONS THAT WILL LEAD YOU TO REALIZING THAT YOU CANNOT  
20 INDEED TAKE WHAT SHE SAID AND BELIEVE IT BEYOND A REASONABLE  
21 DOUBT, AND IF YOU CAN'T DO THAT, YOU MUST FIND HIM  
22 NOT GUILTY THANK YOU

23 (WHEREUPON, THE COURT'S CHARGE ON THE LAW TO THE  
24 JURY BEGAN AS FOLLOWS:)

25 THE COURT: ALL RIGHT MADAM FORELADY AND MEMBERS

1 OF THE JURY, THE INDICTMENTS IN THIS CASE CHARGE THE  
2 DEFENDANT WITH THE OFFENSES OF CRIMINAL SEXUAL CONDUCT IN THE  
3 FIRST DEGREE, KIDNAPPING, AND POSSESSION OF A FIREARM DURING  
4 THE COMMISSION OR ATTEMPTED COMMISSION OF A VIOLENT CRIME I  
5 REMIND YOU THE FACT THAT THE DEFENDANT WAS ARRESTED, CHARGED,  
6 AND INDICTED IN THIS CASE IS NOT EVIDENCE IN THE CASE AND  
7 CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE  
8 NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT  
9 THE DOCUMENTS -- THE INDICTMENTS ARE SIMPLY THE FORMAL  
10 WRITTEN INSTRUMENTS WHICH CONTAIN THE CHARGES MADE AGAINST  
11 THE DEFENDANT IT IS THE FORMAL DOCUMENT IN THIS CASE BY  
12 WHICH THE CASE IS BROUGHT INTO THE COURT

13 NOW, EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT  
14 OFFENSE YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE  
15 EVIDENCE AND THE LAW APPLICABLE TO IT, UNINFLUENCED BY YOUR  
16 DECISION AS TO ANY OTHER INDICTMENT HOWEVER, I TELL YOU AT  
17 THIS TIME, LADIES AND GENTLEMEN, UNLESS YOU FIND THE  
18 DEFENDANT DID, IN FACT, COMMIT A KIDNAPPING OR COMMIT A  
19 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE WITH THE USE OF A  
20 PISTOL, IF YOU DON'T FIND THE UNDERLYING CHARGES YOU CANNOT  
21 FIND THE DEFENDANT GUILTY OF THE USE OF A PISTOL DURING THE  
22 COMMISSION OF A VIOLENT ACT

23 NOW, I HAVE PREPARED THREE VERDICT FORMS IN THIS  
24 CASE, ONE FOR EACH OF THE OFFENSES CHARGED, AND YOU ARE GOING  
25 TO HAVE TO WRITE, MADAM FORELADY, A SEPARATE VERDICT OF

1 GUILTY OR NOT GUILTY FOR EACH OF THE INDICTMENTS NOW, TO  
2 THE INDICTMENTS THE DEFENDANT HAS ENTERED A PLEA OF NOT  
3 GUILTY WHICH PLACES UPON THE STATE THE BURDEN OF PROVING THE  
4 DEFENDANT GUILTY A PERSON CHARGED WITH COMMITTING A  
5 CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE  
6 HIMSELF INNOCENT I CHARGE YOU THAT IT IS A VITAL, IMPORTANT  
7 RULE OF THE LAW OF EVIDENCE THAT THE DEFENDANT IN A CRIMINAL  
8 TRIAL, NO MATTER HOW GREAT OR SERIOUS MAY BE THE OFFENSE FOR  
9 WHICH HE IS CHARGED, MUST ALWAYS BE PRESUMED TO BE INNOCENT  
10 UNTIL HIS GUILT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT

11 THIS PRESUMPTION OF INNOCENCE REMAINS WITH THE  
12 DEFENDANT AT ALL TIMES, FROM THE MOMENT OF HIS APPEARANCE IN  
13 COURT, THROUGHOUT THE TRIAL, AND UNTIL THE JURY HAS, UPON THE  
14 TESTIMONY AND THE EVIDENCE PRESENTED, REACHED A VERDICT OF  
15 GUILTY BEYOND A REASONABLE DOUBT FOR IT IS THE SOLEMN DUTY  
16 OF THE JURY IF NOT CLEARLY CONVINCED OF HIS GUILT BEYOND A  
17 REASONABLE DOUBT TO ACQUIT THE DEFENDANT SO THE BURDEN OF  
18 PROOF IS UPON THE STATE TO ESTABLISH BY EVIDENCE TO YOUR  
19 SATISFACTION THE GUILT BEYOND A REASONABLE DOUBT OF THIS  
20 DEFENDANT HERE ON TRIAL FOR THE CRIMES OF CRIMINAL SEXUAL  
21 CONDUCT IN THE FIRST DEGREE, KIDNAPPING, AND POSSESSION OF A  
22 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

23 NOW, WHAT IS A REASONABLE DOUBT? A REASONABLE DOUBT  
24 IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO  
25 HESITATE TO ACT IF YOU HAVE SUCH A DOUBT AS TO THE GUILT OF

1 THE DEFENDANT, THEN HE WOULD BE ENTITLED TO A VERDICT OF NOT  
2 GUILTY REASONABLE DOUBT MAY ARISE FROM EVIDENCE WHICH IS IN  
3 THE CASE OR FROM THE ABSENCE OR LACK OF EVIDENCE IN THE CASE  
4 YOU ALONE MUST MAKE THE DETERMINATION OF WHETHER OR NOT  
5 REASONABLE DOUBT EXISTS AS TO THE GUILT OF THE DEFENDANT

6 NOW, LADIES AND GENTLEMEN, THERE ARE TWO TYPES OF  
7 EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL  
8 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE DIRECT EVIDENCE  
9 IS THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE  
10 ACTUAL KNOWLEDGE OF A FACT SUCH AS AN EYEWITNESS  
11 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND  
12 CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT THE LAW  
13 MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR THE  
14 VALUE TO BE GIVEN EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE  
15 NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF  
16 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE YOU SHOULD  
17 WEIGH ALL OF THE EVIDENCE IN THIS CASE AFTER WEIGHING ALL  
18 THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE  
19 DEFENDANT BEYOND A REASONABLE DOUBT, THEN YOU MUST FIND THE  
20 DEFENDANT NOT GUILTY

21 NOW, MADAM FORELADY AND MEMBERS OF THE JURY, UNDER  
22 OUR CONSTITUTION AND LAWS OF SOUTH CAROLINA, YOU ARE THE  
23 FINDERS OF FACTS IN THIS CASE I DO NOT HAVE THE RIGHT TO  
24 PASS UPON THE FACTS OR EVEN EXPRESS ANY OPINION I MAY HAVE AS  
25 TO THOSE FACTS NOR MAY I INTIMATE IN ANY WAY WHAT I MAY THINK

1 ABOUT THE GUILT OR THE INNOCENCE OF THE DEFENDANT

2 YOU ARE ALSO THE JUDGES, THE SOLE JUDGES OF THE  
3 CREDIBILITY AND BY THAT I MEAN THE BELIEVABILITY OF THE  
4 WITNESSES WHO HAVE TESTIFIED IN THIS CASE IN PASSING UPON  
5 THEIR CREDIBILITY, YOU MAY TAKE INTO CONSIDERATION MANY  
6 THINGS SUCH AS THE Demeanor OR THE MANNER OF TESTIFYING OF A  
7 WITNESS, WHETHER THE WITNESS HAD REASON TO BE BIASED OR  
8 PREJUDICED YOU CAN CONSIDER WHETHER A WITNESS'S TESTIMONY  
9 WAS CONTRADICTED ON THE ONE HAND OR SUPPORTED AND  
10 CORROBORATED ON THE OTHER HAND

11 NOW, YOU CERTAINLY DO NOT DETERMINE THE CREDIBILITY  
12 OR BELIEVABILITY BY COUNTING THE NUMBER OF WITNESSES FOR  
13 EITHER SIDE. YOU MAY BELIEVE A SMALL PORTION OF A WITNESS'S  
14 TESTIMONY AND DISREGARD THE LARGER OR VICE VERSA YOU MAY  
15 BELIEVE ONE WITNESS AS AGAINST MANY OR MANY AS AGAINST ONE

16 YOU'VE ALSO HEARD THE TESTIMONY OF A WITNESS WHO HAS  
17 SPECIAL KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION  
18 IN A PARTICULAR PROFESSION AND WHO HAS GIVEN HER OPINION AS  
19 AN EXPERT AS TO MATTERS IN WHICH SHE IS SKILLED IN  
20 DETERMINING THE WEIGHT TO BE GIVEN SUCH OPINIONS, YOU SHOULD  
21 CONSIDER THE QUALIFICATIONS AND THE CREDIBILITY OF THE EXPERT  
22 AND THE REASONS GIVEN FOR HER OPINION YOU ARE NOT BOUND BY  
23 SUCH OPINION GIVE IT THE WEIGHT, IF ANY, TO WHICH YOU DEEM  
24 IT IS ENTITLED ALL OF THESE THINGS YOU WILL CONSIDER,  
25 BEARING IN MIND THAT YOU SHOULD GIVE THE DEFENDANT THE

1 BENEFIT OF A REASONABLE DOUBT

2 I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THAT THE  
3 DEFENDANT ELECTED NOT TO TESTIFY IS NOT A FACTOR TO BE  
4 CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN  
5 YOUR CONSIDERATION ON THE QUESTION OF GUILT OR THE INNOCENCE  
6 OF THE DEFENDANT IT MUST NOT BE CONSIDERED BY YOU IN ANY  
7 MANNER WHATSOEVER A DEFENDANT HAS THE CONSTITUTIONAL RIGHT  
8 TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE  
9 CONSIDERED BY YOU IN YOUR DELIBERATIONS

10 I REPEAT UNDER YOUR OATH YOU ARE TO DRAW NO  
11 CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN  
12 THIS CASE DID NOT TESTIFY THE FACT THAT THE DEFENDANT DID  
13 NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED BY YOU IN THE JURY  
14 ROOM THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON  
15 THE STATE THE DEFENDANT IS NOT REQUIRED TO PROVE HIS  
16 INNOCENCE THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE  
17 THE GUILT BEYOND A REASONABLE DOUBT

18 NOW, THE SAME CONSTITUTION AND LAWS WHICH MAKE YOU  
19 THE FINDERS OF THE FACTS AND THE EVIDENCE AS I DISCUSSED WITH  
20 YOU MOMENTS AGO MAKE ME THE SOLE AND ONLY INSTRUCTOR OF THE  
21 LAW YOU MUST ACCEPT AS CORRECT THE LAW WHICH I HAVE CHARGED  
22 AND APPLY IT TO YOU -- APPLY IT TO THE EVIDENCE AS YOU FIND  
23 IT AND REACH YOUR VERDICT NOW, I CHARGE YOU IN THIS REGARD  
24 THAT YOU SHOULD NOT BE CONCERNED ABOUT WHAT YOU THINK THE LAW  
25 SHOULD BE OR WHAT YOU WISH THE LAW WERE YOU SHOULD ONLY BE

1 CONCERNED ABOUT WHAT THE LAW IS AS I CHARGE IT TO YOU  
2 MADAM FORELADY, MEMBERS OF THE JURY, THE DEFENDANT  
3 IS CHARGED WITH CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE  
4 THE FIRST ELEMENT WHICH THE STATE MUST PROVE BEYOND A  
5 REASONABLE DOUBT IS THAT THE DEFENDANT ENGAGED IN A SEXUAL  
6 BATTERY WITH THE VICTIM A SEXUAL BATTERY IS SEXUAL  
7 INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL INTERCOURSE OR ANY  
8 INTRUSION, HOW EVER SLIGHT, OF ANY PART OF A PERSON'S BODY OR  
9 OF ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER  
10 PERSON'S BODY EXCEPT WHEN THE INTRUSION IS ACCOMPLISHED FOR  
11 MEDICALLY-RECOGNIZED TREATMENT OR DIAGNOSTIC PURPOSES  
12 IF YOU HAVE FOUND THAT THE STATE HAS NOT PROVEN  
13 BEYOND A REASONABLE DOUBT THAT A SEXUAL BATTERY OCCURRED, YOU  
14 WOULD STOP DELIBERATING AS TO THIS CHARGE AND YOUR VERDICT  
15 WOULD HAVE TO BE NOT GUILTY IF YOU FIND THAT A SEXUAL  
16 BATTERY DID OCCUR, YOU MUST THEN DECIDE WHETHER THE STATE HAS  
17 PROVEN BEYOND A REASONABLE DOUBT THAT THE STATE -- I MEAN  
18 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT USED AGGRAVATED  
19 FORCE TO ACCOMPLISH THE SEXUAL BATTERY AGGRAVATED FORCE  
20 MEANS THE USE OF PHYSICAL FORCE OR PHYSICAL VIOLENCE OF A  
21 HIGH AND AGGRAVATED NATURE TO OVERCOME THE VICTIM THIS  
22 INCLUDES THE THREAT OF USING A DEADLY WEAPON YOU CAN ALSO  
23 FIND BEYOND A REASONABLE DOUBT THAT THE VICTIM SUBMITTED TO  
24 SEXUAL BATTERY WHILE THE VICTIM WAS ALSO THE VICTIM OF  
25 FORCIBLE CONFINEMENT OR KIDNAPPING NOW, LADIES AND

1 GENTLEMEN, THE TESTIMONY OF A SEXUAL ASSAULT VICTIM NEED NOT  
2 BE CORROBORATED

3 THE DEFENDANT IS ALSO CHARGED WITH KIDNAPPING THE  
4 STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT  
5 KNOWINGLY AND UNLAWFULLY SEIZED, CONFINED, INVEIGLED,  
6 DECOYED, KIDNAPPED, ABDUCTED, OR CARRIED AWAY ANOTHER PERSON  
7 WITHOUT AUTHORITY OF LAW TO DO A THING UNLAWFULLY IS TO DO  
8 IT WILLFULLY AGAINST THE LAW KNOWINGLY MEANS WITH  
9 KNOWLEDGE, CONSCIENTIOUSLY, NOT ACCIDENTALLY SEIZED MEANS  
10 TO TAKE HOLD OF SUDDENLY OR FORCIBLY CONFINED MEANS TO  
11 LIMIT, RESTRICT, OR ENCLOSE WITHIN BOUNDS, IMPRISON, OR SHUT  
12 IN OR KEEP IN INVEIGLE MEANS TO LURE, ENTICE, OR LEAD  
13 ASTRAY BY FALSE REPRESENTATIONS, PROMISES, OR OTHER DECEITFUL  
14 MEANS

15 KIDNAP IS TO REMOVE A PERSON AGAINST HIS OR HER WILL  
16 BY UNLAWFUL FORCE ABDUCT MEANS TO CARRY OFF BY FORCE FOR AN  
17 ILLEGAL PURPOSE CARRY AWAY MEANS TO REMOVE THE STATE DOES  
18 NOT HAVE TO PROVE THE DEFENDANT DID ALL THESE THINGS  
19 INSTEAD, IF YOU FIND BEYOND A REASONABLE DOUBT THAT THE  
20 DEFENDANT DID ANY OF THESE THINGS, YOU MAY FIND THE DEFENDANT  
21 GUILTY OF KIDNAPPING SOMETHING DONE WITHOUT AUTHORITY OF  
22 LAW IS SOMETHING WHICH THE LAW DOES NOT SANCTION, PERMIT,  
23 ALLOW, CONDONE, OR PROVIDE JUSTIFICATION FOR THE KIDNAPPING  
24 DOES NOT HAVE TO BE FOR ANY PERSONAL OR MONETARY GAIN OR ANY  
25 ILLEGAL PURPOSE, BUT IT MAY BE FOR ANY REASON WHATSOEVER

1 THE DEFENDANT IS ALSO CHARGED WITH THE POSSESSION OF  
2 A WEAPON DURING THE COMMISSION OF OR ATTEMPT TO COMMIT A  
3 VIOLENT CRIME THE STATE MUST PROVE BEYOND A REASONABLE  
4 DOUBT THAT THE DEFENDANT WAS IN POSSESSION OF A FIREARM OR  
5 VISIBLY APPEARED TO WHAT -- VISIBLY DISPLAYED WHAT APPEARED  
6 TO BE A FIREARM FIREARM MEANS ANY MACHINE GUN, AUTOMATIC  
7 RIFLE, REVOLVER, PISTOL OR ANY WEAPON WHICH WOULD BE DESIGNED  
8 TO OR MAY BE READILY CONVERTED TO EXPEL A PROJECTILE

9 IN ORDER TO DEFINE -- TO FIND THE DEFENDANT GUILTY  
10 OF POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT  
11 CRIME, YOU MUST FIND THAT THE DEFENDANT -- YOU MUST FIND THE  
12 DEFENDANT GUILTY OF EITHER COMMITTING THE VIOLENT CRIME OR  
13 ATTEMPTING TO COMMIT THE VIOLENT CRIME IN SOUTH CAROLINA  
14 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE AND KIDNAPPING  
15 ARE VIOLENT CRIMES

16 NOW, AN ISSUE IN THIS CASE IS THE IDENTIFICATION OF  
17 THE DEFENDANT AS THE PERSON WHO COMMITTED THE CRIME CHARGED  
18 THE STATE HAS THE BURDEN OF PROVING IDENTITY BEYOND A  
19 REASONABLE DOUBT YOU MUST BE SATISFIED BEYOND A REASONABLE  
20 DOUBT OF THE ACCURACY OF THE IDENTIFICATION OF THE DEFENDANT  
21 BEFORE YOU MAY CONVICT THE DEFENDANT

22 IDENTIFICATION TESTIMONY IS AN EXPRESSION OF BELIEF  
23 OR IMPRESSION BY A WITNESS YOU MUST DETERMINE THE ACCURACY  
24 OF THE IDENTIFICATION OF THE DEFENDANT YOU MUST CONSIDER  
25 THE BELIEVABILITY OF EACH IDENTIFICATION WITNESS IN THE SAME

1 WAY AS ANY OTHER WITNESS YOU MAY CONSIDER WHETHER THE  
2 WITNESS HAD AN ADEQUATE OPPORTUNITY TO OBSERVE THE DEFENDANT  
3 AT THE TIME OF THE OFFENSE THIS WILL BE AFFECTED BY THINGS  
4 LIKE HOW LONG OR SHORT A TIME WAS AVAILABLE? HOW FAR OR  
5 CLOSE WAS THE WITNESS? WHAT WERE THE LIGHTING CONDITIONS?  
6 WHETHER THE WITNESS HAD THE CHANCE TO SEE OR KNOW THE PERSON  
7 IN THE PAST

8 ONCE AGAIN, I INSTRUCT YOU THE BURDEN OF PROOF ON  
9 THE STATE EXTENDS TO EVERY ELEMENT OF THE CRIME CHARGED, AND  
10 THIS SPECIFICALLY INCLUDES THE BURDEN OF PROVING BEYOND A  
11 REASONABLE DOUBT THE IDENTITY OF THE DEFENDANT AS THE PERSON  
12 WHO COMMITTED THE CRIME IF AFTER EXAMINING THE TESTIMONY  
13 YOU HAVE A REASONABLE DOUBT AS TO THE ACCURACY OF THE  
14 IDENTIFICATION, YOU MUST FIND THE DEFENDANT NOT GUILTY

15 NOW, IN ORDER TO ESTABLISH CRIMINAL LIABILITY,  
16 CRIMINAL INTENT IS REQUIRED FOR EXAMPLE, THE MENTAL STATE  
17 REQUIRED TO BE PROVEN BY THE STATE FOR A PARTICULAR CRIME  
18 MIGHT BE PURPOSE, INTENT, KNOWLEDGE CRIMINAL INTENT MUST BE  
19 PROVEN BY THE STATE BEYOND A REASONABLE DOUBT CRIMINAL  
20 INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY  
21 FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION THERE IS  
22 NO WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY THERE IS  
23 NO WAY MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND  
24 DETERMINE WHAT THE PERSON HAD IN MIND

25 SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED

1 FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED THIS IS HOW  
2 YOU MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT  
3 REQUIRING INTENT WAS PRESENT IT IS NOT NECESSARY TO  
4 ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT  
5 MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER  
6 FACT, BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES  
7 AND ALL OF THE FACTS AND CIRCUMSTANCES OF THE CASE CRIMINAL  
8 INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING IT IS UP  
9 TO YOU TO DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED  
10 ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED

11 MADAM FORELADY, MEMBERS OF THE JURY, YOU HAVE BEEN  
12 SELECTED AS FAIR AND IMPARTIAL JURORS, SWORN TO IMPARTIALLY  
13 TRY AND DETERMINE THE FACTS IN THIS CASE, AND WHEN YOU'VE  
14 COMPLIED WITH YOUR OATH TO DO SO, NO ONE WILL HAVE A RIGHT TO  
15 CRITICIZE YOUR VERDICT YOU WILL HAVE FULLY DISCHARGED YOUR  
16 DUTY AS JURORS

17 YOU ARE TO DECIDE THIS CASE ACCORDING TO THE  
18 TESTIMONY THAT YOU HAVE HEARD FROM THE LIPS OF THE SWORN  
19 WITNESSES ALONG WITH ALL OTHER EVIDENCE WHICH HAS BEEN  
20 INTRODUCED I CHARGE YOU THAT AS JURORS YOU MUST DECIDE THE  
21 ISSUES IN THESE PROCEEDINGS WITHOUT ANY BIAS AND WITHOUT ANY  
22 PREJUDICE TO EITHER OF THE PARTIES YOU CANNOT ALLOW  
23 YOURSELF TO BE GOVERNED BY SYMPATHY, BY PREJUDICE, BY  
24 PASSION, BY PUBLIC OPINION, OR ANY OTHER ARBITRARY FACTOR  
25 BOTH THE STATE AND THE DEFENDANT HAVE THE RIGHT TO EXPECT

1 THAT EACH OF YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL  
2 OF THE EVIDENCE IN THIS CASE AND THAT YOU WILL FOLLOW THE LAW  
3 AS I HAVE EXPLAINED IT TO YOU

4 MADAM FORELADY, MEMBERS OF THE JURY, AS I TOLD YOU,  
5 I HAVE PREPARED THREE VERDICT FORMS EACH OF THESE VERDICT  
6 FORMS HAS TWO POSSIBLE VERDICTS YOU ARE NOT TO INFER  
7 ANYTHING BY WHAT GOES FIRST ON THESE VERDICT FORMS OR WHAT  
8 GOES SECOND BECAUSE SOMETHING HAS TO GO FIRST AND SOMETHING  
9 HAS TO GO SECOND

10 WITH THE CHARGE OF CRIMINAL SEXUAL CONDUCT IN THE  
11 FIRST DEGREE, THE TWO POSSIBLE VERDICTS ARE WE, THE JURY,  
12 UNANIMOUSLY FIND THE DEFENDANT GUILTY OR WE, THE JURY,  
13 UNANIMOUSLY FIND THE DEFENDANT NOT GUILTY WITH RESPECT TO  
14 THE CHARGE OF KIDNAPPING, TWO POSSIBLE VERDICT FORMS ARE  
15 AGAIN WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT GUILTY  
16 OR WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT NOT GUILTY  
17 AND WITH THE CHARGE OF POSSESSION OF A FIREARM DURING THE  
18 COMMISSION OF A VIOLENT CRIME, YOU AGAIN HAVE TWO POSSIBLE  
19 VERDICTS WE, THE JURY, FIND THE DEFENDANT GUILTY OR WE, THE  
20 JURY, FIND THE DEFENDANT NOT GUILTY

21 NOW, IF YOU DON'T FIND THE DEFENDANT GUILTY OF  
22 EITHER OF THE KIDNAPPING OR THE CRIMINAL SEXUAL CONDUCT IN  
23 THE FIRST DEGREE, AS I SAID EARLIER YOU CANNOT FIND HIM  
24 GUILTY OF THE USE OF THE FIREARM DURING THE COMMISSION OF A  
25 VIOLENT CRIME BECAUSE IF HE'S NOT GUILTY OF THOSE OFFENSES,

1 THEN HE'S NOT GUILTY OF THE COMMISSION OF A VIOLENT CRIME

2 AS I SAID, THIS VERDICT MUST BE A UNANIMOUS VERDICT

3 IT MUST BE THE UNANIMOUS VERDICT OF ALL TWELVE JURORS IT

4 CANNOT BE TEN/TWO, EIGHT/FOUR, ELEVEN/ONE IT'S GOT TO BE

5 UNANIMOUS OF ALL TWELVE JURORS AS TO ALL CHARGES

6 MADAM FORELADY, WHAT I'M GOING TO ASK YOU TO DO IS

7 WHEN YOU HAVE REACHED A VERDICT ON EACH OF THESE CHARGES THAT

8 YOU CIRCLE THAT VERDICT, WHATEVER IT IS IF IT'S GUILTY,

9 CIRCLE THE WHOLE VERDICT IF IT'S NOT GUILTY, CIRCLE THE

10 WHOLE VERDICT DO THAT ON ALL THREE OF YOUR VERDICT FORMS,

11 IF IT'S APPLICABLE AS TO ALL THREE THEN I'M GOING TO ASK

12 THAT YOU SIGN EACH OF THE VERDICT FORMS AS FOREPERSON OF THE

13 JURY AND TO DATE THE VERDICT FORM

14 I'M GOING TO LET YOU STEP BACK TO THE JURY ROOM AT

15 THIS TIME, ALL BUT THE ALTERNATES I'M GOING TO ASK THAT

16 Y'ALL STAY WITH ME BUT DO NOT BEGIN YOUR DELIBERATIONS I

17 MUST REVIEW WITH THE ATTORNEYS TO DETERMINE WHETHER THEY

18 BELIEVE THAT I HAVE EITHER FAILED TO INSTRUCT YOU SOMETHING

19 THAT SHOULD HAVE BEEN INSTRUCTED OR I INCORRECTLY INSTRUCTED

20 YOU IF ADDITIONAL INSTRUCTIONS ARE NECESSARY, I WILL

21 IMMEDIATELY BRING YOU BACK OUT AND GIVE YOU THOSE

22 INSTRUCTIONS IF THEY ARE NOT NECESSARY, THEN I WILL HAVE A

23 BAILIFF BRING THE VERDICT FORMS ALONG WITH THE EXHIBITS THAT

24 HAVE BEEN INTRODUCED INTO THIS TRIAL SO THAT -- AND YOU WILL

25 THEN BE TOLD THAT YOU CAN BEGIN YOUR DELIBERATIONS

1           NOW, THERE ARE SEVERAL VIDEOS IN THIS CASE   IF YOU  
2 WANT TO BE ABLE TO VIEW THOSE VIDEOS, WE WILL MAKE A MONITOR  
3 AVAILABLE SO THAT THAT CAN BE DONE   WHEN YOU HAVE REACHED A  
4 VERDICT, MADAM FORELADY, IF YOU OR SOMEONE WILL KNOCK ON THE  
5 DOOR THERE WILL BE A BAILIFF SEATED OUTSIDE THE DOOR   ADVISE  
6 THE BAILIFF THAT YOU HAVE REACHED A UNANIMOUS VERDICT   AT  
7 THAT TIME WE WILL BRING YOU BACK IN SO THAT YOUR VERDICT CAN  
8 BE PUBLISHED   NOW, YOUR LUNCH -- I ASKED YOUR LUNCH TO BE  
9 HERE BY 1   IT MAY BE HERE A FEW MINUTES EARLY   IS IT HERE?

10           **BAILIFF:**   LET ME CHECK

11           **THE COURT:**   WELL, IF IT IS, WE'LL -- WE'LL LET YOU  
12 HAVE THAT   I JUST ASK THAT IF ANYBODY IS OUT OF THE JURY  
13 ROOM, IN THE REST ROOM OR WHATEVER THE CASE, DON'T DELIBERATE  
14 THE CASE UNLESS ALL TWELVE PEOPLE ARE IN THE JURY ROOM   YOU  
15 CAN EAT YOUR LUNCH AND DELIBERATE OR IF YOU WANT TO TAKE A  
16 FEW MINUTES AND RELAX BEFORE YOU BEGIN YOUR DELIBERATION  
17 THAT'S UP TO THE TWELVE OF YOU   ALL RIGHT   LET ME GET YOU  
18 TO STEP BACK   DON'T DISCUSS THE CASE AT ALL, AND IF YOU CAN  
19 BEGIN DELIBERATIONS I'LL HAVE THE BAILIFF BRING THE VERDICT  
20 FORMS AND THE EXHIBITS BACK   MS   SMITH, ARE YOU FEELING ALL  
21 RIGHT?

22           **JUROR SMITH.**   OKAY   THANK YOU

23           (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT  
24 12 51 P M )

25           **THE COURT:**   ALL RIGHT   MR   RUSSO AND MS

1 BARTHOLOMEW, APPARENTLY YOUR COLLEAGUES HAVE SURVIVED THE  
2 ORDEAL AT LEAST SOMEWHAT INTACT SO IT APPEARS THAT THE  
3 TWELVE JURORS ARE GOING TO BE ABLE TO GO FORWARD WITH THE  
4 DELIBERATION AS A RESULT, I'M GOING TO LET Y'ALL GO.

5 (THE ALTERNATES WERE EXCUSED FROM THE TRIAL )

6 THE COURT: ALL RIGHT ANYTHING FROM THE STATE WITH  
7 RESPECT TO THE INSTRUCTIONS?

8 MS. BRISBIN: NO, YOUR HONOR

9 THE COURT: ANYTHING FROM THE DEFENDANT?

10 MS. BROWN: YOUR HONOR, WE WOULD RENEW OUR OBJECTION  
11 AT THIS TIME TO THE COURT CHARGING SECTION 16-3-657 AS IT  
12 APPLIED TO NO CORROBORATION NEEDED---

13 THE COURT: ALL RIGHT

14 MS. BROWN: ---IN THIS CASE

15 THE COURT: SO NOTED ALL RIGHT ANYTHING FURTHER?

16 ALL RIGHT WELL, I WILL -- HERE ARE THE VERDICT FORMS  
17 Y'ALL WANT TO LOOK AT THEM BEFORE THEY GO? I'D LIKE FOR YOU  
18 TO DO SO IF YOU WOULD GET WITH DAPHNE AND MAKE SURE WE HAVE  
19 ALL THE EXHIBITS, THEN WE CAN SEND -- SEND THEM IN SEND THE  
20 BAILIFF IN AND LET HIM TELL THAT JURY TO EARN THEIR PAY

21 (WHEREUPON, THE JURY BEGAN DELIBERATING AT 12 56  
22 P M PAUSE IN PROCEEDINGS WHILE THE JURY DELIBERATED )

23 THE COURT: PLEASE BE SEATED THE OTHER THING I CAN  
24 DO IS IF YOU WANT ME JUST TO READ THAT CHARGE AGAIN I CAN DO  
25 THAT WHICH ONE DO YOU WANT?

1 MS. BROWN: YOU READING IT AGAIN IS FINE WITH ME,  
2 YOUR HONOR

3 MS. BRISBIN: THAT'S FINE WITH US, TOO

4 THE COURT: ALL RIGHT Y'ALL HAVE A SEAT IF YOU  
5 WOULD, PLEASE ALL DRESSED UP IN PINK, HUH? ALL RIGHT WE  
6 NEED TO BRING IN MR WALKER YEAH ALL RIGHT I HAVE  
7 RECEIVED A NOTE FROM THE JURY AND I MET WITH THE SOLICITOR  
8 AND THE DEFENSE COUNSEL IN MY CHAMBERS JUST TO ADVISE THEM OF  
9 WHAT THIS NOTE SAYS THE NOTE INDICATES THAT, ACCORDING TO  
10 MS FIELDS WHO IS THE FOREPERSON, "PLEASE HELP US WITH THE  
11 DEFINITION OF KIDNAPPING "

12 WHAT I INTENDED TO DO WAS JUST RECHARGE THEM THE  
13 CHARGE OF KIDNAPPING THAT I'D GIVEN THEM EARLIER AND I  
14 SUGGESTED TO THE ATTORNEYS THAT I WOULD BE HAPPY TO EITHER  
15 PLAY IT AGAIN IF THEY WANT THE COURT REPORTER TO TRY AND FIND  
16 IT OR JUST TO READ -- READ THE CHARGE AGAIN, AND I THINK BOTH  
17 OF THEM HAD INDICATED THAT IT WOULD BE APPROPRIATE JUST TO  
18 READ THE CHARGE AGAIN IS THAT CORRECT, MADAM SOLICITOR?

19 MS. BRISBIN: YES, YOUR HONOR

20 THE COURT: MS BROWN?

21 MS. BROWN YES, YOUR HONOR

22 THE COURT: ALL RIGHT WELL, LET'S BRING THE JURY  
23 IN IF WE COULD, PLEASE

24 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT

25 2 56 P M )

1           THE COURT. MADAM FORELADY, I RECEIVED YOUR NOTE  
2 WHERE YOU ASKED THAT I HELP YOU WITH THE DEFINITION OF  
3 KIDNAPPING WHAT I CAN DO IS TO RECHARGE YOU THE CHARGE OF  
4 KIDNAPPING IF -- IF YOU WOULD LIKE I HAVE ASKED THE  
5 ATTORNEYS WHETHER THEY WOULD HAVE ANY OBJECTION TO MY JUST  
6 REREADING THE CHARGE AS OPPOSED TO HAVING IT -- US FINDING IT  
7 ON THE TRANSCRIPT AND HAVING HER PLAY IT AGAIN THE  
8 ATTORNEYS HAVE CONSENTED TO MY JUST READING IT SO I WILL  
9 READ THE CHARGE OF -- GIVE YOU THE CHARGE THAT I GAVE YOU  
10 EARLIER

11           THE DEFENDANT IS CHARGED WITH KIDNAPPING THE STATE  
12 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT  
13 KNOWINGLY AND UNLAWFULLY SEIZED, CONFINED, INVEIGLED,  
14 DECOYED, KIDNAPPED, ABDUCTED OR CARRIED AWAY ANOTHER PERSON  
15 WITHOUT AUTHORITY OF LAW TO DO A THING UNLAWFULLY IS TO DO  
16 IT WILLFULLY AGAINST THE LAW KNOWINGLY MEANS WITH  
17 KNOWLEDGE, CONSCIOUSLY, NOT ACCIDENTALLY SEIZE MEANS TO  
18 TAKE HOLD OF SUDDENLY OR FORCIBLY CONFINE MEANS TO LIMIT,  
19 RESTRICT OR ENCLOSE WITHIN BOUNDS, IMPRISON, OR SHUT OR KEEP  
20 IN INVEIGLE MEANS TO LURE, ENTICE, OR LEAD ASTRAY BY FALSE  
21 REPRESENTATIONS, PROMISES, OR OTHER DECEITFUL MEANS  
22           DECOY MEANS TO LURE BY OR AS IF BY DECOY A DECOY  
23 IS SOMETHING TO ENTICE A PERSON INTO A TRAP KIDNAP IS TO  
24 REMOVE A PERSON AGAINST HIS OR HER WILL BY UNLAWFUL FORCE OR  
25 BY FRAUD ABDUCT MEANS TO CARRY OFF SECRETLY OR BY FORCE FOR

1 AN ILLEGAL PURPOSE CARRY AWAY MEANS TO REMOVE

2 NOW, THE STATE DOES NOT HAVE TO PROVE THAT THE  
3 DEFENDANT DID ALL OF THESE THINGS INSTEAD, IF YOU FIND  
4 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID ANY OF THESE  
5 THINGS, YOU MAY FIND THE DEFENDANT GUILTY OF KIDNAPPING  
6 SOMETHING DONE WITHOUT AUTHORITY OF LAW IS SOMETHING WHICH  
7 THE LAW DOES NOT SANCTION, PERMIT, ALLOW, CONDONE, OR PROVIDE  
8 JUSTIFICATION FOR THE KIDNAPPING DOES NOT HAVE TO BE FOR  
9 ANY PERSONAL OR MONETARY GAIN -- OR MONETARY GAIN FOR ANY  
10 ILLEGAL PURPOSE BUT MAY BE FOR ANY REASON WHATSOEVER

11 ALL RIGHT? I HOPE THAT'S HELPFUL TO YOU IF Y'ALL  
12 WILL RETURN TO THE JURY ROOM AND RESUME YOUR DELIBERATIONS, I  
13 WOULD APPRECIATE IT

14 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT  
15 3 00 P M AND RESUMED DELIBERATIONS )

16 THE COURT: ALL RIGHT ANYTHING FROM THE STATE WITH  
17 RESPECT TO THE RESPONSE TO THE QUESTION FROM THE JURY?

18 MS. BRISBIN: NO, YOUR HONOR

19 THE COURT: ANYTHING FROM THE DEFENDANT?

20 MS. BROWN: NO, YOUR HONOR

21 THE COURT: ALL RIGHT I WILL MARK THIS QUESTION  
22 COURT'S EXHIBIT NUMBER 1?

23 COURT REPORTER YES, SIR

24 (COURT'S EXHIBIT 1 WAS MARKED FOR IDENTIFICATION  
25 ONLY )

1 THE COURT: WE'VE GOT A VERDICT OH, ARE Y'ALL  
2 READY?

3 MS. BRISBIN: THE STATE'S READY, YOUR HONOR

4 THE COURT: ARE YOU READY?

5 MS. BROWN: YES, YOUR HONOR

6 THE COURT: ALL RIGHT LET'S BRING US A JURY IN  
7 (WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH A  
8 VERDICT AT 3 23 P M )

9 THE COURT: ALL RIGHT MADAM FORELADY, IT'S BEEN  
10 REPORTED YOU'VE REACHED A VERDICT

11 FORELADY. YES, YOUR HONOR

12 THE COURT: OR VERDICTS IS THIS THE UNANIMOUS  
13 VERDICT OF ALL THE JURORS?

14 FORELADY. YES, SIR

15 THE COURT: ALL RIGHT MR BAILIFF? ALL RIGHT  
16 WHO WANTS TO PUBLISH THE VERDICT? YOU?

17 THE CLERK: YES, SIR THAT'S ME

18 THE COURT: YOU DO THE HONOR?

19 THE CLERK: YOUR HONOR, WE HAVE THE STATE OF SOUTH  
20 CAROLINA, COUNTY OF AIKEN, STATE OF SOUTH CAROLINA VERSUS  
21 JOSEPH WALKER INDICTMENT NUMBER 2002-GS-02-1294 FOR  
22 CRIMINAL SEXUAL CONDUCT FIRST DEGREE WE, THE JURY,  
23 UNANIMOUSLY FIND THE DEFENDANT GUILTY OF THE CRIME OF  
24 CRIMINAL SEXUAL CONDUCT FIRST DEGREE, DATED 7/23/2003, SIGNED  
25 BY FOREPERSON ROSEMARY FIELDS

1           YOUR HONOR, WE HAVE THE STATE OF SOUTH CAROLINA  
2 VERSUS JOSEPH WALKER, INDICTMENT NUMBER 2002-GS-02-1296 FOR  
3 KIDNAPPING WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT  
4 GUILTY OF THE CRIME OF KIDNAPPING, DATED 7/23/2003, SIGNED BY  
5 FOREPERSON ROSEMARY FIELDS

6           YOUR HONOR, WE HAVE THE STATE OF SOUTH CAROLINA  
7 VERSUS JOSEPH WALKER, INDICTMENT NUMBER 2002-GS-02-1295,  
8 POSSESSION OF A FIREARM OR A KNIFE DURING THE COMMISSION OR  
9 ATTEMPT TO COMMIT A VIOLENT CRIME WE, THE JURY, UNANIMOUSLY  
10 FIND THE DEFENDANT NOT GUILTY OF THE CRIME OF POSSESSION OF A  
11 FIREARM OR A KNIFE DURING THE COMMISSION OR ATTEMPT TO COMMIT  
12 A VIOLENT CRIME, DATED 7/23/2003, SIGNED BY FOREPERSON  
13 ROSEMARY FIELDS

14           MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, IS  
15 THIS YOUR VERDICT? PLEASE INDICATE BY RAISING YOUR RIGHT  
16 HAND YOUR HONOR, ALL HANDS ARE RAISED

17           **THE COURT:** ALL RIGHT ANYTHING FROM THE STATE WITH  
18 RESPECT TO THE JURY---

19           **MS. BRISBIN:** NO, YOUR HONOR

20           **THE COURT:** ---ON THE VERDICT? ANYTHING FROM THE  
21 DEFENDANT?

22           **MS. BROWN:** NO, YOUR HONOR

23           **THE COURT:** ALL RIGHT ALL RIGHT MADAM FORELADY,  
24 LADIES AND GENTLEMEN OF THE JURY, I THANK YOU VERY MUCH FOR  
25 YOUR SERVICE ON THIS JURY PANEL I KNOW YOU PAID CLOSE

1 ATTENTION AND I APPRECIATE YOU DOING THAT AS WELL AS I KNOW  
2 EVERYBODY ELSE INVOLVED IN THE TRIAL DOES I HOPE YOU FOUND  
3 THE EXPERIENCE NOT TOO DIFFICULT AND MAYBE ONE THAT YOU  
4 REALIZE HOW IMPORTANT IT IS THAT WE HAVE THE PARTICIPATION OF  
5 MEMBERS OF THE COMMUNITY WITHIN OUR CRIMINAL JUSTICE SYSTEM

6 THE GOOD NEWS FOR YOU NOW IS YOU HAVE NOW -- I MEAN  
7 FINISHED YOUR OBLIGATION FOR JURY DUTY THIS WEEK WE'RE  
8 GOING TO BE ABLE TO TURN YOU LOOSE AFTER THIS DOES WENDY  
9 WANT TO MEET WITH THEM?

10 THE CLERK: I HAVE THE CHECKS, YOUR HONOR

11 THE COURT: ALL RIGHT

12 (THE JURY WAS EXCUSED FROM THE TRIAL AT 3 27 P M )

13 THE COURT: ALL RIGHT Y'ALL READY TO GO FORWARD  
14 WITH THE SENTENCING OR DO YOU NEED SOME TIME?

15 MS. BRISBIN: WE NEED A FEW MINUTES, YOUR HONOR

16 THE COURT: ALL RIGHT IF WE COULD WAIT A FEW  
17 MINUTES, WE MIGHT BE ABLE TO DO ANOTHER PLEA IF YOU'VE GOT  
18 ONE

19 MS. BRISBIN: YOUR HONOR, COULD COUNSEL AND I  
20 APPROACH A MOMENT?

21 THE COURT: ALL RIGHT

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD )

23 THE COURT: ALL RIGHT BEFORE WE -- I FAILED TO --  
24 LET ME DO THIS REAL QUICK I FAILED TO ASK EITHER THE STATE  
25 OR THE DEFENSE WHETHER THERE WERE ANY MOTIONS THAT THEY

1 WANTED NOW THAT WE HAVE DISCHARGED THE JURY IN THE CASE IS  
2 THERE ANYTHING FROM THE STATE?

3 MS. BRISBIN: NO, YOUR HONOR

4 THE COURT: ANYTHING FROM THE DEFENDANT?

5 MS. BROWN: YES, YOUR HONOR AT THIS TIME I WOULD  
6 MOVE ON BEHALF OF MR WALKER FOR A NEW TRIAL ON INDICTMENTS  
7 2002-GS-02-1294 AND 1296, THOSE BEING FOR CRIMINAL SEXUAL  
8 CONDUCT IN THE FIRST DEGREE AND THE CHARGE OF KIDNAPPING  
9 YOUR HONOR, WE WOULD MAKE THAT MOTION FOR A NEW TRIAL BASED  
10 ON THE GROUNDS PREVIOUSLY SET FOR DIRECTED VERDICT

11 THE COURT: ANYTHING FROM THE STATE IN RESPONSE TO  
12 THE MOTION? DO YOU WANT TO SAY ANYTHING?

13 MS. BRISBIN YOUR HONOR, I THINK THE TESTIMONY  
14 SPEAKS FOR ITSELF THE EVIDENCE IS CERTAINLY ADEQUATE FOR  
15 THE JURY TO HAVE COME TO THIS CONCLUSION

16 THE COURT: ALL RIGHT I'M GOING TO DENY THE  
17 MOTIONS -- MOTION AGAIN, I BELIEVE THERE WAS SUFFICIENT  
18 EVIDENCE, TAKING EVERYTHING IN THE MOST LIGHT AT THE TIME, TO  
19 RULE AS I DID, TO NOT GRANT THE DIRECTED VERDICT ON THE -- ON  
20 ANY OF THE CHARGES MY NOT DOING SO CERTAINLY DIDN'T SPEAK  
21 TO THE WEIGHT OF THE EVIDENCE, AND CLEARLY THE JURY AT LEAST  
22 ON ONE OF THE CHARGES FOUND THAT THE WEIGHT OF THE EVIDENCE  
23 WAS NOT SUFFICIENT THAT THE DEFENDANT WOULD BE FOUND GUILTY  
24 BEYOND A REASONABLE DOUBT ON TWO THEY FOUND THAT THAT WAS  
25 THE CASE SO I'M GOING TO DENY THE MOTION ALL RIGHT NOW,

1 DID Y'ALL WANT TO CHAT A FEW MINUTES OR DID YOU WANT ME TO  
2 JUST---

3 MS BROWN: YES, YOUR HONOR I NEED A FEW MOMENTS  
4 TO BOTH CHECK WITH LIEUTENANT BAMBERG ABOUT THOSE AND TO  
5 SPEAK WITH MY CLIENT REGARDING THAT MATTER IF I COULD,  
6 PLEASE

7 THE COURT: ALL RIGHT WELL, IF -- DO I NEED TO  
8 BREAK COURT OR CAN Y'ALL DO THAT SOMEWHERE---

9 MS. BROWN: WE CAN -- WE CAN GO IN THE BACK, YOUR  
10 HONOR, AND DISCUSS THAT I CAN ASK LIEUTENANT BAMBERG OUT  
11 HERE AND I CAN SPEAK WITH MR WALKER IN THE BACK

12 THE COURT: ALL RIGHT OKAY YOU'RE FREE TO GO AND  
13 DO THAT AND WE'LL RECESS FOR A FEW MINUTES

14 (PAUSE IN PROCEEDINGS )

15 THE COURT: DOES YOUR CLIENT -- I MEAN, DOES MS  
16 SANDERS WANT TO SAY ANYTHING?

17 MS. BRISBIN: NO, YOUR HONOR MS. SANDERS DOES NOT  
18 WISH TO MAKE ANY STATEMENTS

19 THE COURT: WE'RE GOING TO DEFER THE SENTENCING?

20 MS. BRISBIN. I BELIEVE MS BROWN HAS---

21 MS. BROWN: NO, YOUR HONOR

22 MS. BRISBIN: ---TALKED TO HER CLIENT SUFFICIENTLY

23 THE COURT: ALL RIGHT SO Y'ALL WANT TO GO FORWARD  
24 WITH SENTENCING HERE?

25 MS. BROWN: YES, YOUR HONOR

1           THE COURT: YOU SHOULD HAVE TOLD ME THE JURY  
2 WANTED TO WATCH IT AND I SENT THEM HOME ALL RIGHT HERE  
3 WHAT HAVE WE GOT? MS BRISBIN, DO YOU WANT TO STEP TO THE  
4 HAVE YOU GOT A LAWYER ON THE CHARGES THAT ARE PENDING AGAINST  
5 YOU IN ORANGEBURG COUNTY?

6           MR. WALKER: NO, SIR, YOUR HONOR

7           MS. BROWN. YOUR HONOR, HE INFORMS ME THAT HE DID  
8 SEND THE PAPERWORK TO THE ORANGEBURG COUNTY PUBLIC DEFENDER'S  
9 OFFICE AND THAT HE HAS FILED THE APPLICATIONS AND THAT HE WAS  
10 CONTACTED BY SOMEBODY WHO -- HE DID NOT REMEMBER WHO, BUT HE  
11 WAS CONTACTED BY SOMEONE IN THAT OFFICE WHO INFORMED HIM THAT  
12 AIKEN COUNTY WOULD BE HANDLING ALL OF THE CHARGES AND THAT  
13 THEY DID NOT NEED TO BE IN CONTACT FURTHER WITH HIM AT THAT  
14 POINT I WILL BE---

15           THE COURT: WHAT ARE THE CHARGES THAT ARE PENDING  
16 AGAINST HIM IN ORANGEBURG COUNTY?

17           MS. BROWN: THE INDICTMENTS ARE FOR BURGLARY IN THE  
18 FIRST DEGREE AND FOR KIDNAPPING, YOUR HONOR

19           THE COURT. BURGLARY IN THE FIRST DEGREE AND  
20 KIDNAPPING

21           MS. BROWN: YES, YOUR HONOR

22           THE COURT. YOU KNOW NOTHING ABOUT THOSE CHARGES, DO  
23 YOU?

24           MS BROWN THEY'RE THE CHARGES BASED ON THE  
25 ALLEGATIONS THAT BEGAN---

1 THE COURT: OH, IT'S ARISING---

2 MS. BRISBIN: ---AT THIS SAME INCIDENT

3 THE COURT: IT'S ARISING OUT OF THIS

4 MS. BROWN: YES, YOUR HONOR

5 MS. BRISBIN: YES, SIR

6 THE COURT: OH, OKAY SO WHAT IS THE ALLEGED  
7 BURGLARY?

8 MS. BRISBIN: GOING INTO THE VICTIM'S HOME WITHOUT  
9 PERMISSION

10 THE COURT: OH, OKAY

11 MS. BRISBIN: WITH INTENT TO ABDUCT HER

12 THE COURT: ALL RIGHT TELL ME ABOUT MR WALKER,  
13 HIS RECORD, IF YOU WOULD

14 MS BRISBIN: YES, SIR IN 1975 HE HAD A CONVICTION  
15 FOR USE OF INDECENT LANGUAGE ON THE TELEPHONE AND A FEDERAL  
16 CONVICTION FOR FORGING A TREASURY CHECK IN 1976 HE HAD A  
17 CONVICTION FOR ATTEMPTING TO AVOID TELEPHONE PAYMENT IN  
18 1977 -- IN APRIL OF 1977 A CONVICTION FOR FORGERY IN  
19 NOVEMBER OF 1987 HE HAD A FRAUDULENT CHECK CONVICTION AND AN  
20 OBTAINING PROPERTY BY FALSE PRETENSES CONVICTION IN 1988  
21 ANOTHER FRAUDULENT CHECK CONVICTION AS WELL AS 1989, MULTIPLE  
22 CHARGES, ONE DISPOSITION IN 1989

23 A DRIVING UNDER SUSPENSION IN 1989 FRAUDULENT  
24 CHECK, SEVEN COUNTS, IN 1989 THAT WAS A SEPARATE -- EXCUSE  
25 ME THAT WAS THE SAME CHARGE THAT I ALREADY MENTIONED IN

1 1989 IN 1991 FRAUDULENT CHECK CONVICTION IN 1994  
2 FRAUDULENT CHECK CONVICTION 1997 FRAUDULENT CHECK, SIX  
3 COUNTS, CONVICTED IN AUGUST OF 2000 FRAUDULENT CHECKS,  
4 THREE CONVICTIONS, AND IN NOVEMBER OF 2000 FRAUDULENT CHECKS,  
5 TWO CONVICTIONS AND I MADE ONE MISTAKE THAT FORGED U S  
6 TREASURY CHECK CONVICTION WAS IN 1979, AND I BELIEVE THAT'S  
7 IT

8 THE COURT: OKAY ANYTHING ELSE Y'ALL WANT TO SAY?

9 MS. BRISBIN: NO, YOUR HONOR

10 THE COURT. ALL RIGHT MS BROWN?

11 MS. BROWN. THANK YOU, YOUR HONOR MAY IT PLEASE

12 THE COURT? YOUR HONOR, AS IT'S BEEN SAID BEFORE, MR WALKER

13 IS 44 YEARS OLD YOUR HONOR, HE HAS MAINLY WORKED DOING

14 CONSTRUCTION-TYPE WORK AT THE TIME OF THIS ALLEGED INCIDENT

15 HE WAS WORKING DOING WORK HELPING TO BUILD THE PUBLIC SCHOOL

16 OVER IN WAGENER HE TELLS ME THAT HE WOULD DO THAT WORK

17 DURING THE -- DURING THE WEEK AND THAT HE WOULD DO YARD WORK

18 ON THE WEEKENDS AND HE TRIED TO DO WHAT HE CAN TO STAY BUSY

19 AND STAY PRODUCTIVE HE HAS THREE CHILDREN, ALL DAUGHTERS

20 THEY ALL LIVE IN BEAUFORT THE YOUNGEST IS 12 THE MIDDLE

21 DAUGHTER IS 14 AND THE OLDEST IS 17, AND HE WOULD WORK TO TRY

22 TO SEND MONEY TO HELP WITH THEIR SUPPORT

23 YOUR HONOR, AS YOU'VE HEARD HIS PRIOR RECORD, HE HAS

24 ABSOLUTELY NOTHING OF VIOLENCE ON HIS PRIOR RECORD YOUR

25 HONOR HAS HAD THE OPPORTUNITY TO HEAR THE FACTS OF THIS CASE

1 HE HAS CONSISTENTLY DENIED THE ALLEGATIONS THAT THE STATE  
2 MADE WE UNDERSTAND THAT THE JURY -- THE JURY HAS SPOKEN AND  
3 WE DO UNDERSTAND, AND HE UNDERSTANDS THAT HE WILL HAVE TO BE  
4 SENTENCED TODAY ACCORDINGLY

5 YOUR HONOR, WE WOULD ASK THE COURT TO TAKE THE  
6 ENTIRE CIRCUMSTANCES INTO ACCOUNT, AND WE WOULD ASK THE COURT  
7 TO TAKE INTO ACCOUNT THAT HE'S 44 YEARS OLD AND HAS NO RECORD  
8 OF VIOLENCE AND WE WOULD ASK THE COURT TO -- WE WOULD ASK THE  
9 COURT FOR LENIENCY IN SENTENCING

10 THE COURT: ALL RIGHT MR WALKER, ANYTHING YOU  
11 WANT TO SAY?

12 MR WALKER. NO, SIR

13 THE COURT: ALL RIGHT ON THE CRIMINAL SEXUAL  
14 CONDUCT--FIRST DEGREE, THE SENTENCE OF THIS COURT YOU BE  
15 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A TERM  
16 OF 24 YEARS, PLUS COSTS AND ASSESSMENTS AS APPLICABLE ON  
17 YOUR KIDNAPPING, SENTENCE OF THIS COURT YOU BE COMMITTED TO  
18 THE DEPARTMENT OF CORRECTIONS FOR A TERM OF 24 YEARS THESE  
19 SENTENCES WILL RUN CONCURRENT AND THEY ARE -- YOU'RE GIVEN  
20 CREDIT FOR WHATEVER TIME YOU MAY HAVE SERVED IN THIS MATTER

21 MS. BROWN: THANK YOU, YOUR HONOR

22 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED )

23

24

25

I, THE UNDERSIGNED DAPHNE D HELMS, OFFICIAL COURT REPORTER FOR THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR AIKEN COUNTY, SOUTH CAROLINA, ON THE 22ND AND 23RD DAYS OF JULY, 2003

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO

OCTOBER 16, 2003



DAPHNE D HELMS, COURT REPORTER

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STATE OF SOUTH CAROLINA ) IN THE COURT  
 ) OF GENERAL SESSIONS  
COUNTY OF AIKEN )

INDICTMENT NO. 2002-GS-02-1294  
2002-GS-02-1295  
2002-GS-02-1296

STATE OF SOUTH CAROLINA, )  
 ) Plaintiff )  
 )  
 )  
 ) VS ) TRANSCRIPT OF RECORD  
 )  
 )  
 )  
 )  
 ) JOSEPH WALKER, )  
 ) Defendant )

July 21, 2003  
Aiken, South Carolina

B E F O R E

THE HONORABLE JAMES R BARBER, III, JUDGE

A P P E A R A N C E S

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2nd Judicial Circuit

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THE COURT All right What do we have? A  
Neal vs Biggers?

MS BRISBINE Yes, sir

THE COURT Anything else?

MS BRISBINE That's all for today as far as I  
know

MS BROWN The defense doesn't anticipate any  
other pretrial motions, Your Honor

THE COURT All right You want to call your  
witness

MS BRISBINE Yes, Your Honor This is State  
vs Joseph Walker, Indictment No's 2002-GS-02-1294, 1295  
and 1296 And the State calls Lieutenant Rhonda Bamberg

THEREUPON,

LIEUTENANT RHONDA BAMBERG,  
after being duly sworn, testified as follows

THE CLERK Take a seat in the witness box  
State your full name for the court, spelling your last

MS BAMBERG My name the Rhonda Ray Bamberg,  
B-a-m-b-e-r-g

**DIRECT EXAMINATION**

By Ms Brisbane

Q Where are you employed?

A I'm employed with the Orangeburg County Sheriff's

1 Office

2 Q And what's your position there?

3 A I'm a lieutenant over the criminal investigation  
4 division

5 Q Were you the initial investigator in this case?

6 A I was

7 Q And how did it happen to get into -- transferred to  
8 Aiken County?

9 A It originated in Orangeburg County and the  
10 investigation led into Aiken County with the  
11 identification of Mr Walker

12 Q And did the incident occur -- some of the incidents  
13 occur in Aiken County?

14 A Yes, they did

15 Q Did you do a photo lineup in the course of this  
16 investigation?

17 A Yes, I did

18 Q And how did you get the defendant's name?

19 A I got the defendant's name through the video from the  
20 BP out of Denmark The manager, the day manager that  
21 was on duty there identified Mr. Walker from that  
22 video.

23 Q Okay. How did you -- I think we need a little  
24 background How did you get the video from that store?

25 A The incident originated in Denmark, where the victim

1 had gone and her car broke down She had met  
2 Mr Walker at that BP in Denmark, so it was on video  
3 I went to Denmark and I got that video and had the  
4 manager identify the person that the victim had told me  
5 was her -- the person that raped her

6 Q Okay. And was that the video from the day of the rape?

7 A Yes, it is

8 Q And did you show that video to the victim?

9 A I did

10 Q And did she recognize anyone in the video?

11 A Yes, she did

12 Q And how did you determine who that person was?

13 A I took that video tape back to the manager of Denmark  
14 and she identified him as Mr Walker She had  
15 previously had an encounter with him in an incident  
16 that she had filed with the city of Denmark

17 Q Okay. She knew him by name?

18 A She did

19 Q Was there any doubt in her mind, or did she indicate  
20 there was any doubt as to who that person was?

21 A No Within seconds of looking at the video, she said  
22 that's Joseph Walker and told me where -- the last  
23 place she knew of him to live at

24 Q Okay.

25 THE COURT Wait a minute. Who was it that

1 told you this?

2 MS BAMBERG The manager of the BP in Denmark,  
3 Diane Waring

4 THE COURT. All right So she viewed the video  
5 and told you who the person was after her viewing of the  
6 video?

7 MS BAMBERG Correct After Ms Sanders  
8 viewed the video and pointed the subject out, I took it  
9 back to Denmark

10 By Ms Brisbane

11 Q When Ms Sanders picked out the person in the video  
12 that she thought had assaulted her, did anyone tell her  
13 who to pick?

14 A No

15 Q Did anyone give her any hints?

16 A No

17 Q About how long was she watching the video?

18 A Probably 30 minutes

19 Q Was this video from a 24 hour period?

20 A Yes, this is a time lapse video and inside the BP or  
21 the gas station, it has different cameras pointing to  
22 different areas of the store So this particular tape  
23 hits every, I think it's 6 different areas, so you have  
24 to watch it frame by frame on our time lapse machine at  
25 our office

1 Q Did she ever pick out anyone other than that particular  
2 person in the video?

3 A No, she did not

4 Q And was she 100 percent sure that that was the person  
5 who assaulted her?

6 A No, she was not 100 percent sure. She was pretty sure  
7 She stated to me that because the quality of the tape  
8 was not great, it had some fuzziness to it -- she said  
9 if I could clear it up, she would know for sure whether  
10 it was him or not

11 Q Okay Did the victim also appear in that video?

12 A Yes, she did

13 Q Do you know about how much time elapsed between when  
14 the victim appeared in the video and when the defendant  
15 appeared?

16 A Approximately 12 minutes

17 Q And how do you know that?

18 A It's got the time on it

19 Q Okay. And you said you determined the person's name by  
20 going back to the manager of the store and then is that  
21 when you did the photo lineup?

22 A No After that -- after she gave me the name of the  
23 person, Joseph Walker, after she gave me that name, I  
24 tracked down his residence, which led me into Aiken  
25 County I saw some things that the victim had said in

1 reference to his residence, at which time I did the  
2 photographic lineup with Mr Walker  
3 Q Okay. Did you go inside his residence?  
4 A No, I did not  
5 Q Okay. And how many photos were in this lineup?  
6 A Including Mr. Walker, there were five other  
7 photographs  
8 Q Okay. Do you recognize what's been marked State's  
9 Exhibit No 1 for identification purposes?  
10 A I do.  
11 Q Did she pick out one of those photos as someone she  
12 recognized?  
13 A She did  
14 Q Which one did she pick out?  
15 A She picked out this right here  
16 Q Okay And did she pick out anyone else?  
17 A No, she did not  
18 Q Did anyone tell her who to pick or give her any hints?  
19 A No  
20 Q Okay Was she 100 percent sure on that?  
21 A No, she was not 100 percent sure  
22 Q Did she say how sure ---  
23 A She was ---  
24 Q --- how sure she was ---  
25 A She was 90 percent sure, but she was not 100 percent

1 sure

2 Q Okay And let's see, I'm not sure if I asked you this,  
3 did she ever pick out anyone else other than that one  
4 person?

5 A No

6 Q Okay And who was that person she picked out?

7 A Mr Walker

8 Q Joseph Walker?

9 A Yes, ma'am

10 Q Thank you I don't have any further questions?

11 THE COURT Ms Brown?

12 **CROSS-EXAMINATION**

13 By Ms Brown

14 Q Is it Investigator?

15 A Lieutenant Bamberg

16 Q Lieutenant Bamberg Thank you Lieutenant, when she  
17 originally watched this video in your office, she was  
18 not 100 percent sure that this person was the person  
19 that she alleges raped her, isn't that correct?

20 A That is correct

21 Q And how much of the video did she watch?

22 A She watched the video -- I couldn't say how much of it  
23 she watched -- until she recognized who she thought her  
24 perpetrator was

25 Q Well you said she watched the video for about 30

1 minutes?

2 A Uh-huh

3 Q Until she pointed out who she said looked like the  
4 person?

5 A Correct

6 Q This is a time lapse video?

7 A It is

8 Q Correct?

9 A Correct

10 Q So what portion of the day was she viewing?

11 A As far -- what do you mean by that? What part of the  
12 day?

13 Q What portion of the -- you said that this video was 24  
14 hours worth of video?

15 A Right From the point that she came into the store and  
16 the point that she left, up to the point that  
17 Mr Walker -- and she identified Mr Walker

18 Q So she started watching this video from the time -- the  
19 time stamp on there that she walked into the store?

20 A Correct From when she came into the store ---

21 Q And ---

22 A --- and left

23 Q --- do you recall at what time on the video that was?

24 A I think her time that she came was in was like 1 26  
25 p m or something like that, 1 28 p m off the top of

1 my head, maybe a little later

2 Q Okay And approximately how long was she in the store?

3 A She was in the store probably 2 or 3 minutes.

4 Q And then she left the store?

5 A And then she leaves the store

6 Q And then 12 minutes on the tape a man comes in store  
7 that she says looks like the man she says ---

8 A Correct

9 Q --- raped her?

10 A Correct

11 Q Okay Did she watch any further?

12 A I don't recall if she did or if she didn't

13 Q Now, she never -- shes never stated that she saw this  
14 man in the store, isn't that correct?

15 A That's correct She never said she saw him, but she  
16 said that he told her when she was outside to let him  
17 run in and pay for his gas and he would come assist her  
18 with her car that had broken down So she knew he went  
19 in the store to pay for the gas

20 Q But she did not continue watching the tape after she  
21 identified the person that she said looked like the man  
22 she had had the encounter with?

23 A I believe she did, but I'm not 100 percent sure because  
24 I was not in the room the whole entire time She was  
25 watching the tape and I was coming in and out of the

1 room

2 Q Would you have had any notes on that in your case file?

3 A No, no

4 Q So you have -- so you have no idea how long after she  
5 saw who she thought looked like this man, how much  
6 longer she watched this tape?

7 A If she did at all, I don't recall.

8 Q Were ya'll ever able the clean up the tape any to help  
9 her in her identification?

10 A No, we were not

11 Q And how certain was she at that time of the  
12 identification?

13 A She was 90 percent sure It was just that the tape was  
14 fuzzy She was pretty sure but she was not 100 percent  
15 sure

16 Q Did she actually use these percentages?

17 A No, she said pretty sure

18 Q So she never said 90 percent?

19 A She did for the photographic lineup, she did, but not  
20 for the tape She said she was pretty sure for the  
21 tape

22 Q Did she say 90 percent sure on the photographic lineup  
23 after you asked her for the percentage or did she come  
24 right out and offer 90 percent sure?

25 A No, I asked her, I said how sure are you and she was

1 pretty sure, 90 percent sure, but she could not swear  
2 to it

3 Q What precisely was her wording when you asked her how  
4 sure she was? Did she just say pretty sure?

5 A She said she was pretty sure but she could not swear to  
6 it.

7 Q Both times?

8 A Both times

9 Q So she never actually used the phrase 90 percent sure?

10 A 90 percent sure, no

11 MS BROWN. Beg the court's indulgence one  
12 moment.

13 By Ms Brown

14 Q Were there any other black males on that video during  
15 that time frame that she was watching?

16 A Yes, there was

17 Q How many?

18 A I don't recall I know there was quite a few people  
19 that came in and out of the store in that time frame

20 MS BROWN Thank you, Your Honor I have no  
21 further questions.

22 THE COURT Anything further?

23 MS BRISBINE Yes, Your Honor If I could get  
24 these marked for identification

25 (WHEREUPON the court reporter marked State's

1 Exhibit No's 2 and 3 )

2 **REDIRECT EXAMINATION**

3 By Ms Brisbane

4 Q Do you recognize these photos?

5 A I do.

6 Q What are they?

7 A These are still photos from the video tape. And this

8 here is Ms. Sanders when she was in the store And

9 this here is Mr. Walker when he was in the store

10 Q Okay. Just for clarification ---

11 MS BRISBINE. And that's, for the record,

12 State's Exhibit 2 and 3 for identification purposes only

13 By Ms Brisbane

14 Q Referring to the pictures from the video, can you tell

15 the time that they were in the store -- that the victim

16 and the defendant were in the store?

17 A From here?

18 Q Yes?

19 A These times are wrong

20 Q Okay

21 A And the dates are wrong in here

22 Q Do you know how much they're off?

23 A A couple of hours

24 Q Okay So about what time of day -- approximately what

25 time of day would it have been according to this?

1 A According to this it was 16 43 and 16 45, but again ---

2 Q Which is what time?

3 A That's 4 33 and quarter to 5 00

4 Q Okay

5 A Which, these times are wrong

6 Q Okay By just an hour or 2?

7 A Correct

8 Q Okay And is the date correct on these?

9 A No The date is also wrong

10 Q And do you know why that is? Did you ---

11 A I did talk to ---

12 Q --- check that out?

13 A Yes, I did I talked to the store manager about that  
14 On their machine they don't -- servicemen are supposed  
15 to come in and change them for daylight savings time  
16 and everything, and they don't do it on their machines  
17 They just leave them -- so through the process of time,  
18 it just never got changed

19 Q Okay Is this the actual photo lineup that you showed  
20 the victim?

21 A That is

22 MS BRISBINE I'd like to admit that into  
23 evidence at this time, for the purposes of this hearing

24 MS BROWN No objection.

25 THE COURT So admitted

1 By Ms Brisbane

2 Q And are these photos a true and accurate representation  
3 of what was seen on the video?

4 A They are

5 MS BRISBINE I'd like the admit these into  
6 evidence for the purposes of this hearing at this time.  
7 That's State's Exhibits 1, 2 and 3

8 THE COURT So admitted

9 MS. BRISBINE Thank you Nothing further  
10 for this witness.

11 **RE-CROSS-EXAMINATION**

12 By Ms Brown.

13 Q I just need brief clarification on this time being off  
14 Now, are these -- you spoke with the store manager  
15 about the times on these -- on the ---

16 A Correct

17 Q --- video?

18 A Correct

19 Q And the store manager said what exactly about how off  
20 the time was?

21 A I want to say she said it was like an hour off The  
22 best way she told me was to watch when they ring up  
23 things, the cash register time and -- which in the  
24 video you would see when they ring up from the cash  
25 register, that time is actually the correct time

1 These times here on the bottom are not the correct time  
2 because of daylight savings time and having a  
3 serviceman come in and change them or something like  
4 that And that would not be correct, she said.

5 Q Does your report reflect what the cash register times  
6 were at or about the time listed on the video tape?

7 A I want to say in the report it says 15:28 or something  
8 like that, 15:29 which is 3 00, 3 30, something like  
9 that And this is off the top of my head. I'm just  
10 trying to remember exactly what it says

11 Q Do you have your report with you?

12 A I do.

13 Q Would referring to your report help refresh your  
14 recollection?

15 A It would It was 15, 15 30 something when she came  
16 into the store according to the cash register, because  
17 she was at Family Dollar at 15 28

18 Q And for a lay person like myself ---

19 A I'm sorry, that's, yeah ---

20 Q --- could you translate?

21 A That's 3 28 at Family Dollar and at 3 33 or something  
22 she came in the store.

23 Q So she was about 3:28 p m at the Family Dollar and  
24 about 3.30 at the ---

25 A 3 30, 3:33 at the BP

1 Q So the correct times were actually earlier, about an  
2 hour earlier?

3 A Correct

4 Q Than those?

5 A Correct

6 Q Okay Thank you

7 MS BROWN No further questions

8 THE COURT All right

9 MS BRISBINE The State calls Margaret  
10 Sanders.

11 THE COURT You may step down, thank you  
12 THEREUPON,

13 MARGARET SANDERS,  
14 after being duly sworn, testified as follows

15 THE CLERK Have a seat in the witness box  
16 State your full name for the court, spelling your last

17 THE WITNESS Margaret Sanders, S-a-n-d-e-r-s

18 **DIRECT EXAMINATION**

19 By Ms Brisbane

20 Q Ms. Sanders, did Lieutenant Bamberg show you a video of  
21 the BP store?

22 A Yes

23 Q And were you in that video?

24 A Yes.

25 Q And did you recognize anyone else in that video?

1 A Yes

2 Q Who did you recognize?

3 A The defendant.

4 Q Do you -- did anyone tell you who to pick or give you  
5 any hints?

6 A No.

7 Q About how long had you been watching the video when you  
8 saw him?

9 A I'd been watching it a little bit, you know, when he  
10 came in the store

11 Q Can you estimate about how long you'd been watching it  
12 before you picked him out?

13 A No I can't give a definite.

14 Q You can't remember?

15 A Huh-huh

16 Q Okay Was it hours?

17 A Oh, no

18 Q Minutes?

1 A Minutes

20 Q Okay Would you say it was more than 30 minutes or  
21 less?

22 A Less

23 Q Okay Did you know Mr Walker's name at that time?

24 A I sure didn't

25 Q And when you picked him out, were you sure that this

1 was the person who had assaulted you? Were you 100  
2 percent sure?  
3 A Not 100 percent, no  
4 Q Can you say about what percent sure you were?  
5 A About 90 percent  
6 Q Did you pick anyone else out as possibly being the  
7 person who assaulted you?  
8 A No.  
9 Q Okay Did Lieutenant Bamberg show a photo lineup ---  
10 A Yes.  
11 Q --- after that?  
12 A Uh-huh  
13 Q And did you know the name of the person who assaulted  
14 you at that time?  
15 A No  
16 Q And do you recognize what's been marked State's Exhibit  
17 No 1?  
18 A Yes.  
19 Q And is that the photo lineup that you were shown?  
20 A Right  
21 Q Which person did you pick out of that photo lineup?  
22 A This one  
23 Q If you could show the judge.  
24 (WHEREUPON the witness did as instructed )  
25 ///

1 By Ms Brisbane

2 Q Okay Did anyone tell you who to pick out ---

3 A No.

4 Q --- of the photo lineup?

5 A No

6 Q Did they give you any hints about who it was?

7 A No

8 Q Okay Did you pick out any of the other people in the  
9 photo lineup as well?

10 A No.

11 Q Were you 100 percent sure that that was the person who  
12 assaulted you in the photo lineup?

13 A I was pretty sure, yes, about 90 percent

14 Q Okay. Did you see the defendant on the afternoon of  
15 March 2, 2002?

16 A Yes

17 Q Did you see his face?

18 A Yeah, when I was standing by the car I saw him when he  
19 came out

20 Q Okay. Was it daylight or dark?

21 A It was light enough to tell

22 Q About how far were you standing from him?

23 A About as far as from me to you, from the side of the  
24 car to the hood of the car.

25 Q Okay So that's what? About how many feet would you

1 say?

2 A About 2 or 3

3 Q Okay

4 THE COURT I'm sorry, I didn't hear what the  
5 answer was

6 MS SANDERS 2 or 3 feet

7 THE COURT All right.

8 By Ms Brisbane

9 Q And did you talk with him at the BP station?

10 A Well, I drove -- got in my car and it cranked up and  
11 then I drove around to the side and it cut off and it  
12 wouldn't crank back up So there was these two men at  
13 the gas station and I hollered and asked one of them if  
14 they knew anything about cars and the white guy said  
15 no, he didn't So he got in and drove off

16 And the black guy said yes, that he would come  
17 over as soon as he finished filling up with gas and  
18 paid for it

19 Q Okay So when did you see him again after the gas  
20 station? Or, I'm jumping ahead After he paid for his  
21 gas, what did he do?

22 A He got in his truck and he drove over and he looked at  
23 the car and he saw what it was. It looked like  
24 somebody had cut the wire or something on it

25 Q Okay And did he help you fix it?

1 A Yes, he went to get a part to put on it

2 Q Okay So you were with him, talking with him while he  
3 was looking under your trunk -- excuse me the hood of  
4 your car?

5 A Right

6 Q And then he went to get a part and then what happened  
7 after that?

8 A He came back and put it on

9 Q Okay

10 A And he had told me that it wouldn't be but about \$9 and  
11 I didn't have -- I mean, yeah, \$9 and then when he came  
12 back he said it was \$30 and I didn't have that much  
13 money with me

14 Q Okay So ---

15 A I trusted him

16 Q Then what happened after that?

17 A I told him, well just -- he said he was -- I said,  
18 well, I'm from Norway and he said he would just follow  
19 me because he was going to Norway. And I told him to  
20 just cut by a house and I would get the money and give  
21 it to him.

22 Q Okay So did he go by the house?

23 A Yes

24 Q And just to summarize the amount of time that you  
25 were -- you spent with him, when you got to the house,

1 was there any length of time -- what time period did  
2 you spend with him when you got to the house? Did he  
3 come -- did you invite him in?  
4 A No  
5 Q Did he come in?  
6 A Oh, yeah  
7 Q And what happened then?  
8 A I was getting my money out of the box where I always  
9 kept it and when I turned around there he was.  
10 Q Okay Did you get a good view of his face at that  
11 point?  
12 A No, not then  
13 Q Well, what happened then?  
14 A He carried me out of the house  
15 Q He carried you out? How did he carry you?  
16 A Well holding me, pushed me out and blindfolded me  
17 Q Okay. At what point did he blindfold you?  
18 A Going out of the house  
19 Q Okay Before you got in the vehicle?  
20 A Uh-huh  
21 Q Okay And then how long were you blindfolded,  
22 approximately?  
23 A I don't know Until after we got inside his place or  
24 wherever he took me  
25 Q Was it hours, minutes?

1 A I can't answer that, because I don't remember

2 Q Okay This was in the drive from your house to his  
3 house?

4 A Yes

5 Q And at what point did he take the blindfold -- at some  
6 point did he take the blindfold off?

7 A At his house

8 Q And how long was the blindfold off? Approximately?

9 A Well the whole time I was in that room Night, all  
10 night

11 Q All night? Okay And when was the blindfold put back  
1 on?

13 A About 5:00 the next morning when he took me back.

14 THE COURT Ma'am, I'm having a hard time  
15 hearing you

16 MS. SANDERS Oh, when he took me back home the  
17 next morning, he put it back on, when he pushed me out

18 By Ms Brisbane

19 Q He took it off or he put it on when he pushed you out?

20 A He pulled it off

21 Q He pulled it off when he pushed you out?

22 A Uh-huh

23 Q Okay Was he in the same room with you throughout the  
24 night?

25 A Yeah.

1 Q Was he in the same -- where were the two of you during  
2 that night?

3 A In that room

4 Q Where in that room?

5 A In that bedroom or that room that had the sheets or  
6 blankets or whatever

7 Q All right Were you on the floor, the bed or where  
8 were you in the room?

9 A The bed

10 Q Okay And was he there the whole time during the  
11 night?

12 A Yes

13 Q With you?

14 A Yes

15 Q Thank you

16 MS BRISBINE No further questions.

17 MS BROWN. No questions for the purposes of  
18 this hearing, Your Honor

19 **EXAMINATION**

20 By the Court

21 Q Ma'am, I know this is uncomfortable, hold on just a  
22 minute Over what period of time did you have  
23 opportunity to observe this individual?

24 A You mean to see him? It was dark in the room

25 Q It was dark the whole time you were in the room?

1 A Yes, except ---

2 Q You could not observe him inside the room?

3 A Not a good view, no

4 Q So from the time you were at the gas station or the  
5 store or wherever it was until he took you at your  
6 house, attacked you at your house, how long a period of  
7 time was that? That the two of you were together. I  
8 don't mean in different cars driving to your house,  
9 but -- 15 minutes? 20 minutes? 30 minutes?

10 A That we were together.

11 Q Yeah You said you saw him in the parking lot, he went  
12 in the store?

13 A Right

14 Q He came back out he came to your car?

15 A Uh-huh

16 Q He looked in your car, you had conversation about his  
17 getting a part He went to get the part, he came back,  
18 he repaired the car?

19 A Yes

20 Q Then went to your house. He came in your house Over  
21 how long a time did you actually were you looking at  
22 him? 15 minutes?

23 A 15, 20, 30 minutes

24 Q Did you have an opportunity to view him closely? Were  
25 you paying close attention to what he looked like?

1 A Enough that I could identify that picture

2 Q All right Now, when you looked at the video, when did

3 that occur? How much after the alleged incident did it

4 occur?

5 A How long after I ---

6 Q The next day?

7 A -- looked at the video

8 Q Yeah. From the time of the assault until you looked at

9 the video, how long was that? One day? Two days? Two

10 hours? How long before you got to see the video?

11 A I think it was about a week

12 Q All right And then how long after that did you get to

13 see the photo lineup?

14 A A few days

15 Q All right Are you able to make an in court

16 identification here today?

17 A Yes, sir

18 Q Pardon me?

19 A Yes, sir

20 Q Can you identify the person that did this in this

21 courtroom?

22 A Sitting over there

23 Q At the defense table?

24 A Right

25 Q All right

1 THE COURT Anything from what I've asked?

2 MS BRISBINE Nothing further from the  
3 State

4 MS BROWN Not from this witness, Your Honor

5 THE COURT All right Thank you, ma'am, you  
6 may step down

7 Anything further from the State?

8 MS. BRISBINE No, Your Honor

9 THE COURT Anything from the defense?

10 MS. BROWN No witnesses, Your Honor, we'd like  
11 to be heard on the motion.

12 THE COURT All right

13 MS BROWN Thank you, Your Honor, may it  
14 please the court Your Honor, at this time I would move on  
15 behalf of Mr Walker that these identifications be  
16 suppressed Your Honor, in Ms. Walker -- excuse me  
17 Ms Sanders speaking of her opportunity to identify, to  
18 observe Mr Walker and then the identifications that led to  
19 the photo lineup, Your Honor, she states that she had  
20 opportunity to observe him and to see -- she said that she  
21 didn't -- when she was asked did she pay close attention to  
22 what he looked like, her response was enough to make  
23 identification

24 Your Honor, none of her identifications have  
25 been with 100 percent certainty. She had opportunity to

1 view the video, she testified a week after this happened  
2 She watched this video They showed it to her from the  
3 time that she went into the store until the time that she  
4 made an identification There's no testimony that she had  
5 opportunity to view after this person that she was not 100  
6 percent sure of but looked like this person And then the  
7 photographic lineup was prepared on the basis of that  
8 video

9 Your Honor, our argument would be that it does  
10 not rise to the standards set forth in Neal vs Biggers to  
11 show certainty of identification We would move that it be  
12 suppressed

13 THE COURT Anything from the State?

14 MS BRISBINE Yes, Your Honor The State's  
15 position is that although she was not 100 percent sure, the  
16 percentage goes to weight and not admissibility and there  
17 was nothing suggestive about the video or the photo lineup  
18 and Biggers actually is a burden that comes in after  
19 there's been suggestive identification methods and ---

20 THE COURT Wait a minute Tell me that again?  
21 Biggers only comes in after there's been suggestive ---

22 MS BRISBINE If there's been a suggestive  
23 photo lineup, that's what's in the case, the Biggers case  
24 And there's no evidence that anything was suggested ---

25 THE COURT I don't know that that's the case.

1 I think Biggers is to determine the reliability of the  
2 identification and whether it's suggestive or not may be  
3 one of the factors to consider in determining whether the  
4 reliability is -- I don't think unless -- the burden is on  
5 the defendant to now show that there is a suggestive  
6 identification before Biggers comes in I think they're  
7 entitled to a hearing under Neal vs Biggers to determine  
8 it's reliability Was it suggestive or -- but it doesn't  
9 have to just be suggestive There are other factors that  
10 could come in that Biggers would be applicable to.

11 MS BRISBINE . Even if that's the case ---

12 THE COURT. All right

13 MS. BRISBINE. --- there were plenty of  
14 opportunities for her to see the defendant's face through  
15 the afternoon in broad daylight and she was also with him  
16 the entire night and he let her out the next morning And  
17 again she had another opportunity after he took the  
18 blindfold off to see him And she spoke with him and he  
19 helped her fix her car.

20 THE COURT: Okay Anything further?

21 MS BRISBINE No, Your Honor

22 THE COURT All right Well, I don't know  
23 after she was released the next day -- I didn't hear her  
24 say anything about, "I got to see him again." Or "I didn't  
25 see him "

1 She just said he took the blindfold off and,  
2 "Let me out "

3 So I don't know about that But clearly under  
4 the criteria that I consider in determining the -- in  
5 reviewing the totality of the circumstances involved to  
6 determine whether the identifications are reliable, the  
7 opportunity of the witness to observe the accused is one of  
8 the factors. And in this instance, apparently the lady had  
9 an opportunity to observe the accused for 15 minutes to 30  
10 minutes, couldn't get a real good, but she did observe him  
11 when she got there or when he said he was going to pay

12 She observed him when he came back out, she  
13 observed him when he was repairing the car, she observed  
14 him before he went to get the parts While it may not have  
15 been a heightened observation because there was no actual  
16 incident occurring at this time, she had a considerable  
17 length of time to observe him She observed him when he  
18 got to the house

19 While the degree of the ascension I would think  
20 would be fairly -- which is another factor involved here,  
21 because she was trying to get her car fixed and trying to  
22 pay attention to what the man was doing There's been no  
23 testimony as to any identification that -- or description  
24 that she gave to the police to see whether it was accurate  
25 or not accurate or anything like that

1           The level of certainty -- I don't think Neal  
2 vs Biggers requires an absolute level of certainty because  
3 that truly comes into, really a jury question    But she  
4 indicated, she felt pretty sure that she was 90 percent  
5 sure that that's the individual and the length of time  
6 between the confrontation was basically threefold, one  
7 about a week after the incident before she had had an  
8 opportunity to look at the tape, which I don't find an  
9 unduly great amount of time, several days after she saw the  
10 mug shot, and then she made an in court identification  
11 today.

12           And I'm not sure of the date of the incident,  
13 but she seemed fairly certain as to the identification here  
14 today    So I'm going to find, considering all of the  
15 totality of the circumstances, that the identification  
16 would be admissible and I will tell you that I will give a  
17 charge to the jury that the ultimate decision is for them  
18 to make as to whether the identification is sufficient and  
19 that, you know, I think defense counsel has some things to  
20 point out in terms of the questioning and the argument

21           Do ya'll intend to introduce the -- attempt to  
22 introduce the mug shots?

23           MS. BRISBINE.   Yes, Your Honor

24           THE COURT    What is the need to do that?

25           MS BRISBINE    I think it just makes it clear

1 to the jury that she picked this photo out of six photos  
2 that were very similar

3 THE COURT Well, it's -- ya'll object to her  
4 introducing the mug shots

5 MS BROWN Your Honor, I have not -- at this  
6 point I've not seen a sufficient chain of evidence or seen  
7 sufficient foundation laid at this point to not object

8 THE COURT So if they show a sufficient chain,  
9 you don't have any problem with the mugs coming in.

10 MS BROWN If there were proper foundation  
11 laid, I would not anticipate objecting, Your Honor

12 THE COURT All right Well, if they don't  
13 care, I don't All right

14 Anything further?

15 MS BRISBINE Nothing on this case, Your  
16 Honor

17 THE COURT How about, is there any statement  
18 from the defendant?

19 MS BRISBINE There's no statement that would  
20 be used in the case in chief

21 THE COURT So there's no Jackson vs Denno  
22 that we need to do

23 Any Blair matters?

24 MS BROWN No, Your Honor

25 MS BRISBINE No, Your Honor

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THE COURT All right Anything else that  
needs to be addressed with respect to this defendant prior  
to the beginning of the trial?

MS BRISBINE No, Your Honor, none from the  
State

THE COURT All right Ya'll intend to call  
this case right after qualification of the jury tomorrow?

MS BRISBINE Yes, sir

THE COURT All right

MS BRISBINE : Thank you

\* \* \* \* \* END OF TRANSCRIPT \* \* \* \* \*

1 STATE OF SOUTH CAROLINA )

) CERTIFICATE OF REPORTER

2 COUNTY OF AIKEN )

3

4

5

6 I, THE UNDERSIGNED, Brenda W Sigwald, Official  
 7 Court Reporter for the Second Judicial Circuit of the State  
 8 of South Carolina, do hereby certify that I reported the  
 9 proceedings in the captioned case in the Court of General  
 10 Sessions in and for the State of South Carolina on the 21st  
 11 day of July, 2003

12 I FURTHER CERTIFY that the foregoing pages,  
 13 numbered 3 through 35, constitute a true, accurate and  
 14 complete transcript of said hearing

15 I FURTHER CERTIFY that I am neither kin,  
 16 counsel, nor of interest to any party hereto

17 IN WITNESS WHEREOF, I have hereunto set my hand  
 18 and seal at Aiken County, this 12th day of August, 2003

19

20

21

*Brenda W Sigwald*

\_\_\_\_\_  
 Brenda W Sigwald,  
 Court Reporter and Notary Public  
 For the State of South Carolina  
 My commission expires  
 February 25, 2010

22

23

24

25



WITNESSES  
Graybeal, A C S O

**FILED**

NOV 05 2002

*[Signature]*  
C.C.C.P. & G.S.  
*[Signature]*  
Deputy Clerk

**ARREST WARRANT NUMBER**

G842917

303

**ACTION OF GRAND JURY**

*Travis Bill*

*[Signature]*  
Foreperson of Grand Jury  
Date August 22, 2002

**VERDICT**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Foreperson of Petit Jury  
Date

DOCKET NO. 2002-GS 02- 1244

**The State of South Carolina**  
**County of Alken**

**COURT OF GENERAL SESSIONS**

**AUGUST 26, TERM 2002**

**THE STATE**

**vs**

**JOSEPH WALKER**

**Indictment for**  
**CRIMINAL SEXUAL CONDUCT**  
**FIRST DEGREE**

SC Code 16-3-652  
CDR Code 160  
Class FEL-A(V)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken 310 )  
STATE VS Joseph Walker )  
AKA. )  
Race Black Sex Male Age 45 )  
DOB 12/2/57 SS# [REDACTED] )  
Address 228 Poplar Street )  
City, State, Zip Salley SC 29137 )  
DL# [REDACTED] SID# SC00081180 )

INDICTMENT/CASE#  
2002 -GS- 02 - 1294  
AW# 6842917  
Date of Offense 3.2.02  
S C Code § 16.3.652  
CDR Code # 0111610  
 CASE RESTORED  
SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO Criminal Sexual Conduct - 1st Degree in violation of § 16.3.652 of the S C Code of Laws, bearing CDR Code # 0111610  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is  As Indicted,  Lesser Included Offense  Defendant Waives Presentment to Grand Jury  
The plea is  Without Negotiations or Recommendation  Negotiated Sentence,  Recommendation by the State  
ATTEST

[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 24 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_, plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference  
 CONCURRENT or  CONSECUTIVE to sentence on \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S C Code §24-13-40 to be calculated and applied by the State Department of Corrections

SPECIAL CONDITIONS

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

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

Recipient \_\_\_\_\_  
\*Fine \$ \_\_\_\_\_  
§14-1-206 (Assessments 107 5%) \$ \_\_\_\_\_  
§14-1-211(A)(1) (Conv. Sur ) \$100 \$ 100.00  
§14-1-211(A)(2) (DUI Sur ) \$100 \$ \_\_\_\_\_  
§56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
§ 35 13 (Public Def/Prob) - \$500 \$ 500.00  
§73 3, 1B TP (Law Enforce ) \$25 \$ 25.00  
§33 7 1B TP (Drug Ct Sur ) \$100 \$ \_\_\_\_\_  
§50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
§56-5-2942(J) (Veh. Assmt.) \$40/ea \$ \_\_\_\_\_  
3% to County (if pd in instl ) \$ 78.75  
TOTAL \$ 643.75

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

[Signature] Clerk of Court/ Deputy Clerk  
Court Reporter [Signature]

PRESIDING JUDGE [Signature]  
Judge Code 01111110  
Sentence Date 7/23/03

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

INDICTMENT

At a Court of General Sessions, convened on August 26, 2002, the Grand Jurors of Aiken County present upon their oath

**KIDNAPPING**

That JOSEPH WALKER did in Aiken County on or about March 2, 2002, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Margaret Ann Sanders without authority of law, all in violation of §16-3-910 of the Code of Laws of South Carolina (1976), as amended

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

  
BARBARA R. MORGAN, SOLICITOR

**WITNESSES**

S C Graybeal, A C S O

**FILED**

NOV 0 5 2002

*Liz Godard*

CLCP & GS

*Shannon Thompson*  
Deputy Clerk

**ARREST WARRANT NUMBER**

Direct Indictment

**ACTION OF GRAND JURY**

12  
11  
3  
True Bill

*Alan Schultz*

Foreperson of Grand Jury

Date August 22, 2002

**VERDICT**

Foreperson of Petit Jury  
Date

DOCKET NO 2002-GS-02- 1296

**The State of South Carolina**  
County of Aiken

**COURT OF GENERAL SESSIONS**

**AUGUST 26, TERM 2002**

**THE STATE**

**vs**

**JOSEPH WALKER**

**Indictment for**

**KIDNAPPING**

SC Code 16-3-910

CDR Code 0095

Class FEL-A

STATE OF SOUTH CAROLINA

313

IN THE COURT OF GENERAL SESSIONS

COUNTY OF A. Kan  
 STATE VS  
Joseph Walker  
 AKA \_\_\_\_\_  
 Race B Sex M Age 45  
 DOB 12/2/57 SS# \_\_\_\_\_  
 Address 225 Poplar Street  
 City, State, Zip Sally SC 29137  
 DL# \_\_\_\_\_ SID# SC 00081180

INDICTMENT/CASE#  
2002 -GS- 22 - 1296  
 AWW# Direct Ind. Arrest  
 Date of Offense 3/2/02  
 SC Code § 16-3-910  
 CDR Code # 0101915  
 CASE RESTORED  
 SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO Kidnapping in violation of § 16-3-910 of the S C Code of Laws, bearing CDR Code # 0101915  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury  
 The plea is  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State  
 ATTEST

Branda Roubin \_\_\_\_\_  
 Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 24 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_, plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference  
 CONCURRENT or  CONSECUTIVE to sentence on \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S C Code §24-13-40 to be calculated and applied by the State Department of Corrections

**SPECIAL CONDITIONS**  
 RESTITUTION  Heard,  Waived,  Ordered  
 Total \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_  
 Payment Terms \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_  
 Recipient \_\_\_\_\_  
 \*Fine \$ \_\_\_\_\_  
 §14-1-206 (Assessments 107 5%) \$ \_\_\_\_\_  
 §14-1-211(A)(1) (Conv Sur.) \$100 \$ 100.00  
 §14-1-211(A)(2) (DUI Sur ) \$100 \$ \_\_\_\_\_  
 §56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
 §35.13 (Public Def/Prob) \$500 \$ \_\_\_\_\_  
 §73 3, 1B TP (Law Enforce ) \$25 \$ 25.00  
 §33 7 1B TP (Drug Ct. Sur ) \$100 \$ \_\_\_\_\_  
 §50-21-114(BUI Breath Test Fee)\$50 \$ \_\_\_\_\_  
 §56-5-2942(J) (Veh. Assmt) \$40/ea \$ \_\_\_\_\_  
 3% to County (if pd in instl ) \$ 3.75  
 TOTAL \$ 128.75

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

Appointed PD or appointed other counsel, §35 13 TP Requires \$500 be paid to Clerk, during probation  
 PRESIDING JUDGE James K. Darby  
 Judge Code 011110  
 Sentence Date 7/23/03

Ann Sanders  
 Clerk of Court/ Deputy Clerk  
 Court Reporter Daphne Helms

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material

June 1st, 2004



Wanda P Hagler  
Acting Deputy Chief Attorney

South Carolina Office of Appellate Defense  
1205 Pendleton Street, Room 306  
Columbia, S C 29201  
(803) 734-1330

ATTORNEY FOR APPELLANT

CLASSIFICATION SUMMARY REPORT DATED 01/24/05

C023981

SCDC# 162475 WALKER, JOSEPH - FBI# 492243N4  
 OFFENDER TYPE ADULT-STRAIGHT SENTENCE  
 INSTITUTION LIEBER CORRECTIONAL INST DORM SB0032B  
 SECURITY/CUST 3 MINIMUM IN  
 TOT INCARC SENT 24 YRS 0 MOS 0 DYS PROJ MAXOUT DATE 11/28/2024  
 CENTRAL MONITORING NO PROJ PAROLE DATE 00/00/0000  
 MED CLASS 3 MED PROB/WORK RESTRICT EWC JOB NO CURRENT JOB  
 MENTAL CLASS NMH (NO MENTAL HEALTH TRE EDUC PGM ADULT ED I  
 CURRENT PROGRAM NO CURRENT PROGRAM EWC LEVEL 0 EEC LEVEL 3F  
 AGE 47 ASSIGNMENT EDUC DEPT ACADEMI

PREVIOUS NUMBERS

00084039  
00086831  
00147030

CURRENT OFFENSES	SENTENCE	SENTENCE
	YRS MOS DYS COUNTY	START V/NV CAT INDICT
CRIMINAL SEX CNDCT 1ST DE	24 0 0 AIKEN	03/22/2003 V 5 026S021294
KIDNAPPING	24 0 0 AIKEN	03/22/2003 V 5 026S021294

PRIOR SCDC OFFENSES (COMP)	SENTENCE	SENTENCE
	YRS MOS DYS COUNTY	START V/NV CAT INDICT
FRAUD INSUFF FUNDS CHECK	0 0 30 AIKEN	12/01/1989 N 1 00001
FRAUD INSUFF FUNDS CHECK	0 0 210 AIKEN	08/23/1989 N 1 00001

PRIOR COMMITMENTS OVER 90 DAYS

09/21/78	*FORGERY	0 YRS 30 MOS 0 DYS
03/16/77	FORGERY	0 YRS 18 MOS 0 DYS
03/16/77	*FORGERY	0 YRS 18 MOS 0 DYS
06/08/76	NON-PAYMENT/TELECOMM SERV	1 YRS 0 MOS 0 DYS
05/05/75	*OBSC COMMUNICATION	1 YRS 0 MOS 0 DYS

DETAINEES (HOLD, WANTED, NOTIFY)

FRAUD INSUFF FUNDS CHECK	WANTED	PRESIDING JUDGE	CATEG 1
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ESCAPES

\*NO ESCAPE HISTORY\*

CRIMINAL CHARGES

\*NO CRIMINAL CHARGES HISTORY\*

ASSAULTIVE DISCIPLINARIES

\*NO ASSAULTIVE DISCIPLINARY HISTORY\*

NON-ASSAULTIVE DISCIPLINARIES

\*NO NON-ASSAULTIVE DISCIPLINARY HISTORY\*

HISTORY OF MOVEMENTS

01/13/05	LIEBER	INCARCERATED	ADMINISTRATIVE
01/12/05	KIRKLAND	INCARCERATED	MEDICAL
11/04/04	LIEBER	INCARCERATED	ADMINISTRATIVE
11/03/04	KIRKLAND	INCARCERATED	MEDICAL
08/20/04	LIEBER	INCARCERATED	MEDICAL
08/01/04	KIRKLAND INFRM	INCARCERATED	MEDICAL
07/23/04	TUDMEY REGIONAL	ABSENT WITH LEAVE (A	MEDICAL
07/23/04	LIEBER	INCARCERATED	MEDICAL
07/23/04	TUDMEY REGIONAL	ABSENT WITH LEAVE (A	MEDICAL
07/22/04	LIEBER	INCARCERATED	ADMINISTRATIVE
07/22/04	RICHLAND CO	ABSENT WITH LEAVE (A	MEDICAL
07/09/04	LIEBER	INCARCERATED	ADMINISTRATIVE
06/30/04	KIRKLAND INFRM	INCARCERATED	MEDICAL
06/25/04	TUDMEY REGIONAL	ABSENT WITH LEAVE (A	MEDICAL
06/23/04	KIRKLAND INFRM	INCARCERATED	MEDICAL
06/08/04	LIEBER	INCARCERATED	ADMINISTRATIVE
06/08/04	KIRKLAND	INCARCERATED	MEDICAL
06/08/04	LIEBER	INCARCERATED	ADMINISTRATIVE

SCDC# 162475'                    WALKER, JOSEPH -                    (CONTINUED)

02/09/04	LIEBER	INCARCERATED	ADMINISTRATIVE
02/09/04	KIRKLAND	INCARCERATED	MEDICAL
12/18/03	LIEBER	INCARCERATED	ADMINISTRATIVE
12/18/03	KIRKLAND	INCARCERATED	MEDICAL
08/19/03	LIEBER	INCARCERATED	ADMINISTRATIVE
07/30/03	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
MECHANIC HELPER	03/12/04	06/10/04	MEDICAL	3F5
WARDKEEPER ASSISTANT	08/29/03	03/11/04	INMATE REQUEST	3F5

HISTORY OF EARNED EDUCATION CREDITS

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 3 - FULL TIME(ND EWC)	01/10/05	00/00/00	
BONUS 8-11 HRS/WK	02/20/04	06/15/04	MEDICAL

\*\*\*\*\* END OF REPORT \*\*\*\*\*

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 01/24/05  
 OMCOMITA RELEASE DATE SCREEN C023981  
 SCDC# > 162475 LOC LIEBER  
 WALKER, JOSEPH - SCDC CLASSIFICATION VIOLENT

OFFENDER TYPE ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY Y  
 SEXUAL PREDATOR PENDING  
 DNA STATUS COMPLETED

TOTAL SENTENCE 024-00-000 CONSECUTIVE SENTENCE N  
 CURRENT SENTENCE 024-00-000 CURRENT SENT START DATE 03/22/2003  
 PROJECTED COMPLETION DATES  
 MAXOUT DATE 11/28/2024 CURRENT EWC NOT CURRENTLY EARNING EWC  
 YOA SIX YEAR DATE / / CURRENT EEC 3F  
 INITIAL PAROLE DATE 00/00/0000 NEXT PAROLE HEARING DATE 00/00/0000

TOTAL GT DAYS EARNED 000063 LABOR CREW/WORK PROG DATE 99/99/9999  
 TOTAL EARNED WORK CREDITS 000057 LABOR CREW DISQ REASON  
 TOTAL EDUCATION CREDITS 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT  
 TOTAL EXTRA EARNED CREDITS 000  
 TOTAL SERVICE TIME EARNED 000670

PFKEYS 5 HISTORY OF DATE CHANGES

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4-© 2 Sess-1 167 7 50 33 TNET1500 3/11

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Aiken County

James R. Barber, III, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V

JOSEPH WALKER,

APPELLANT

---

FINAL ~~ANDERS~~ BRIEF OF APPELLANT

---

WANDA P HAGLER  
Acting Deputy Chief Attorney

South Carolina Office  
of Appellate Defense  
1205 Pendleton Street, Room 306  
Columbia, S C 29201  
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in allowing the state to exercise two peremptory challenges in a discriminatory manner

STATEMENT OF THE CASE

Appellant Joseph Walker was convicted of first degree criminal sexual conduct and kidnapping during the July 2003 term of the Lexington County General Sessions Court before the Honorable James R Barber, III, Judge Appellant received an aggregate twenty-four-year prison sentence

Appellate appealed. This brief follows

ARGUMENT

The lower court erred in allowing the state to exercise two peremptory challenges in a discriminatory manner

At trial, Margaret Ann Sanders testified that she drove to her house on Herbert Road on March 2, 2002, to get money to pay the man who fixed her vehicle on that day. The man followed Sanders to her house to get the money. Sanders parked her vehicle and went inside her house to get the money. Sanders stated that when she turned to exit her bedroom, the man was already standing inside her bedroom. He put a blindfold on her eyes, put her in his trunk and drove to a house. Sanders stated that the man took her inside and raped her and put his penis in her mouth. Then he drove her back home. Sanders later identified appellant as the perpetrator. ROA p 45, line 3 – p 66, line 20

During the jury selection, the state exercised the use of two peremptory challenges to exclude two women from the petit jury.

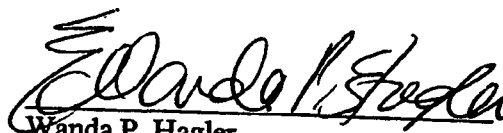
Our Supreme Court has held that any person (black, white, state or defendant) regardless of race or gender may set forth a valid claim under Batson v. Kentucky, 476 U S 79 (1986). See also Powers v. Ohio, 499 U S 400, 111 S Ct 1364 (1991), Georgia v. McCullum, 505 U S 42, 112 S Ct 2348 (1992), and J.E.B. ex rel. T.B., 511 U S 127, 114 S Ct 1419. South Carolina is cognizant of this rule. See State v. Chapman, 317 S C 302, 454 S E.2d 317 (1995). Also, any juror, regardless of race or gender, may raise a claim of race/gender based discrimination inasmuch as jurors have a right under the equal protection clause to participate in jury service. State v. Chapman, supra, State v. Govan, 312 S C 71, 439 S E 2d 263 (1993).

Thus, the lower court erred in failing to hold a hearing after the jury was selected in order to discern whether the state's reason for exercising the peremptory challenges in question were discriminatory in nature. The court's neglect in this regard violated the equal protection clause under the fourteenth amendment to the United States Constitution and article 1, §3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant's convictions and sentences should be reversed and his case remanded to the Lexington County General Sessions Court for a new trial

Respectfully submitted,



Wanda P Hagler  
Acting Deputy Chief Attorney

ATTORNEY FOR APPELLANT

June 21, 2004

IN THE COURT OF APPEALS

---

Appeal from Aiken County

James R. Barber, III, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V

JOSEPH WALKER,

APPELLANT

---

PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Joseph Walker states

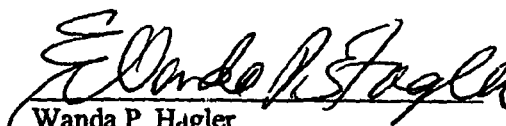
1 She is Acting Deputy Chief Attorney for the South Carolina Office of Appellate Defense, and was appointed to represent appellant

2 She has reviewed the record of appellant's trial before Judge James R. Barber, III, which was held on July 23, 2003, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial

3 She has, pursuant to Anders v. California, 386 U S 738, 87 S Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial

WHEREFORE, she asks the Court to relieve her as counsel for Joseph Walker

Respectfully submitted,



Wanda P Hagler  
Acting Deputy Chief Attorney

ATTORNEY FOR APPELLANT



*Case*  
**RECEIVED**

JAN 12 2005

**The South Carolina Court of Appeals** ATTORNEY GENERALS  
OFFICE

KENNETH A RICHSTAD  
CLERK

V CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE (803) 734-1890  
FAX (803) 734-1839  
www.sccourts.org

January 11, 2005

**REMITTITUR**

The Honorable Liz Godard  
109 Park Ave  
PO Box 583  
Aiken, SC 29802-0583

Re The State v Walker, Joseph  
2002-GS-02-01294  
2002-GS-02-01296

Dear Mrs Godard

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

*V. Claire Allen, Deputy*

Kenneth A Richstad  
Clerk of Court

KAR/mo

cc Acting Deputy Chief Attorney Wanda P Hagler  
Mr Joseph Walker, #162475  
Assistant Deputy Attorney General Salley W Elliot/  
Barbara R Morgan, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State of South Carolina,                      Respondent,

v

Joseph Walker,                                      Appellant

---

Appeal From Aiken County  
James R. Barber, Circuit Court Judge

---

Unpublished Opinion No 2004-UP-618  
Submitted December 1, 2004 – Filed December 9, 2004

---

**APPEAL DISMISSED**

---

Acting Deputy Chief Attorney Wanda P. Hagler, of  
Columbia, for Appellant

~~CP-02-37~~  
~~2002-GS-02-1294-1295~~  
 Filed 1-17-2005  
Shelton  
 36 CP & GS - Aiken County  
 Deputy Clerk Shelton  
 Trial Judge James E. Darden  
 Trial Atty Kelly Brown  
 Court Reporter Japhne Heims  
 Sec. PCR Petitioner  
 General Sessions Appointed Atty  
 Solicitor Atty Gen.

FORM 5

STATE OF SOUTH CAROLINA )  
 County of Aiken )  
Joseph Walker 162475 )  
 Full name and prison number (if any) of Applicant )  
 v )  
 State of South Carolina )

IN THE COURT OF COMMON PLEAS  
 APPLICATION FOR  
 POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

- 1 Place of detention Lieber Correctional Institution  
PO Box 205 Ridgelyville, S.C. 29472
- 2 Name and location of Court which imposed sentence Aiken County  
Court House
- 3 Name(s) of co-defendant(s) (if any) N/A
- 4 The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed
  - (a) 02-GS-02-1294
  - (b) 02-GS-02-1295

(c) N/A 02-GS-02-1296

5 The date upon which sentence was imposed and the terms of the sentence

(a) July 2003

(b) Twenty-four years

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

6 Check whether a finding of guilty was made

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty

(c) after a plea of nolo contendere \_\_\_\_\_

7 Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8 If you answered "yes" to (7), list

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

i S-C Court of Appeals

ii N/A

iii N/A

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

i Affirmed Conviction Appeal Dismissed

ii N/A

iii N/A

(c) the date of each such result

i December 2, 2004

ii N/A

iii N/A

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

i unpublished Opinion No. 2004-UP-618

ii N/A

iii N/A

9 If you answered "no" to (7), state your reasons for not so appealing

(a) N/A

(b) N/A

(c) N/A  
10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

- (a) Ineffective Assistance of Counsel
- (b) Lack of Subject Matter Jurisdiction
- (c) N/A

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

- (a) Counsel Not Investigating case properly and not using strong de
- (b) Officer of State being Sole witness before grand Jury *fact. Rule 3(c) Violation*
- (c) N/A

12 Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law (S.C. Court of Appeals (Direct Appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof

- i S.C. Court of Appeals lower Court, erred in allowing state to exercise two peremptory challenges
- ii N/A
- iii N/A
- iv N/A

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

- i S.C. Court of Appeals 1205 Pendleton Street Room 306 Columbia S.C. 2920
- ii N/A
- iii N/A
- iv N/A

(c) the disposition thereof

- i Appeal Dismissed
- ii N/A
- iii N/A
- iv N/A

(d) the date of each such disposition

- i December 1, 2004
- ii N/A
- iii N/A
- iv N/A

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

- i Unpublished Opinion No 2004-UP-618
- ii N/A
- iii N/A
- iv N/A

14 Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal in any petition, motion or application which you have filed?

NO

15 If you answered "yes" to (14) identify

(a) which grounds have been presented

- i N/A
- ii N/A
- iii N/A

(b) the proceedings in which each ground was raised

- i N/A
- ii N/A
- iii N/A

16 If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented

- (a) First I went through with a direct Appeal
- (b) First I went through with a direct Appeal
- (c) N/A

17 Were you represented by an attorney at any time during the course of

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
N/A

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

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

- i Kelley P. Brown Esquire  
Aiken County Public Defenders Office P.O. Drawer 2247  
Aiken, S.C. 2980
- ii Kelley P. Brown Esquire  
Aiken County Public Defenders Office P.O. Drawer 2247 Aiken,  
S.C. 2980
- iii Wanda P. Hagler (Acting Deputy Chief Attorney)  
S.C. Office of Appellate Defense 1205 Pendleton St. Room 306 Columbia  
S.C. 2920

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

- i Arraignment
- ii Trial and Sentencing
- iii Direct Appeal

19 State clearly the relief you seek in filing this application

vacating my sentence

sentence reduction

New Trial

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

N/A

N/A

STATE OF SOUTH CAROLINA )  
 County of Dorchester )

VERIFICATION

I, Joseph Walker 162475, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application, that I know the contents thereof, that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application, and that the matters and allegations therein set forth are true

Joseph Walker 162475  
 4th Joseph Walker

SWORN to and subscribed before me this 4th day of Jan

Michelle R. Blower (S)  
 Notary Public

My Commission Expires 8/20/06

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Joseph Walker 162475, hereby apply for leave to  
proceed in this action without prepayment of fees or costs or security therefor. In support of my  
application I declare under penalty of perjury that the following facts are true

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

Joseph Walker 162475  
Applicant  
JOSEPH WALKER

SWORN or affirmed to and subscribed before me this  
4 day of Jan

M. R. Blome  
Notary Public

My Commission Expires 12/16

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS

05-CP-02-37

Joseph Walker, #162475 )  
 )  
 Applicant, )  
 )  
 v )  
 )  
 State of South Carolina, )  
 )  
 Respondent )

RETURN

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed January 7, 2005, would respectfully show this Court

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted at the August 2002 term of the Aiken County Grand Jury for first degree criminal sexual conduct (02-GS-02-1294) and kidnapping (02-GS-1296). He was represented by Kelley P. Brown, Esquire. On July 22 - 23, 2003, the Applicant proceeded to trial after which he was found guilty of first degree criminal sexual conduct and kidnapping. He was sentenced by the Honorable James R. Barber, III, to confinement for a concurrent period of twenty-four(24) years for each charge.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Walker, Op No 2004-UP-618 (S C Ct App filed December 9, 2004)

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript and the Applicant's appellate records

## II

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of counsel
- 2 Court lacked subject matter jurisdiction

## III

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

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

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

judgment Strickland, 466 U S at 668 The Applicant must overcome this presumption in order to receive relief Cherry v State, 300 S C 115, 386 S E 2d 624 (1989)

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel First, the Applicant must prove that counsel's performance was deficient Under this prong, attorney performance is measured by its "reasonableness under professional norms" Cherry, 300 S C at 117, 386 S E 2d at 625, *citing* Strickland, 466 U S at 668 Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" Cherry, 300 S C at 117-18, 386 S E 2d at 625

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

#### IV

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment Defects in the indictment do not affect subject matter jurisdiction See State v. Gentry, 363 S C 93, 610 S E 2d 494 (2005), U S v Cotton, 535 U S 625, 122 S Ct 1781 (2002) The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S C Code Ann § 17-19-90 (2003) See also S C Code § 17-19-20 (2003) Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do

with the indictment document *See Gentry, supra, Dove v Gold Kist, Inc.*, 314 S C 235, 442 S E 2d 598 (1994)

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S C Code Ann § 17-19-90 (2003) A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness *See S C Code §§ 17-27-45 and -90* (2003)

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time *See Brown v State*, 343 S C 342, 540 S E 2d 846 (2001), *overruled in part by Gentry, supra* However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters” *Gentry, supra*, 610 S E 2d at 499, *See also S C Const Art V, § 7* Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction

V

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

VI

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

VII

WHEREFORE, having made its Return, the State requests that a hearing be held

HENRY D McMASTER  
Attorney General

JOHN W McINTOSH  
Chief Deputy Attorney General

SALLEY W ELLIOTT  
Assistant Deputy Attorney General

PAULA S MAGARGLE  
Assistant Attorney General

By   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P O Box 11549  
Columbia, SC 29211  
Telephone (803) 734-3737

10/3, 2005

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

COURT OF COMMON PLEAS  
05-CP-02-39

JOSEPH WALKER )  
PLAINTIFF )  
VS )  
THE STATE OF SOUTH CAROLINA )  
DEFENDANT )

POST CONVICTION RELIEF  
TRANSCRIPT OF RECORD

MARCH 9, 2007  
BAMBERG, SOUTH CAROLINA

B E F O R E

THE HONORABLE DOYET A EARLY, III, JUDGE

A P P E A R A N C E S

JOAN E SMITH, ESQ  
TIMOTHY S MIRSHAK, ESQ  
ATTORNEYS FOR THE PLAINTIFF

LANCE S BOOZER, ESQ  
ATTORNEY FOR THE DEFENDANT

LISA H HICKLIN  
OFFICIAL COURT REPORTER

## 1 INDEX OF WITNESSES

2 KELLEY P BROWN

3 CROSS BY MS SMITH 6

4 CROSS BY MR BOOZER 37

5 REDIRECT BY MS SMITH 43

6 ROBINA REED

7 DIRECT BY MR MIRSHAK 47

8 CROSS BY MR BOOZER 63

9 REDIRECT BY MR MIRSHAK 66

10 JOSEPH WALKER

11 DIRECT BY MS SMITH 66

12 BRENDA BRISBIN

13 DIRECT BY MR BOOZER 74

14 CROSS BY MR MIRSHAK 78

15

## 16 PLAINTIFF EXHIBITS

17 NO DESCRIPTION ID EV

18 1 S L E D D N A ANALYSIS 30 30

19 2 INTERVIEW WITH GRETCHEN OVERSTOLZ 30 30

20 3 COPY OF NAME/ADDRESS RECEIPT 31 31

21 4 NOTES 36 36

22 5 U S NAVAL OBSERVATORY INFO 93

23

24

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**COURT EXHIBITS**

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	C D	94	

1 (WHEREUPON, ON MARCH 9, 2007 THE FOLLOWING  
2 PROCEEDINGS WERE HELD )

3 THE COURT ALL RIGHT MR BOOZER, CALL YOUR FIRST  
4 CASE

5 MR BOOZER JOSEPH WALKER, YOUR HONOR

6 THE COURT ALL RIGHT WHERE IS THE APPLICANT?

7 MR MIRSHAK MR WALKER IS IN THE BACK

8 THE COURT HAVE WE GOT AN OFFICER WITH HIM?

9 MR MIRSHAK YES, SIR

10 THE COURT YOU WANT TO GO BACK THERE AND TELL HIM  
11 WE'RE READY?

12 MR MIRSHAK YOU WANT HIM IN CUFFS OR OUT OF CUFFS?

13 THE COURT WHATEVER THE OFFICER WANTS

14 (WHEREUPON, THE APPLICANT IS PRESENT )

15 THE COURT MR S C D C IF I OKAY HIS HANDCUFFS  
16 COMING OFF, IS THAT OKAY WITH YOU?

17 THE POLICE OFFICER YOU HAVE TO TELL ME

18 THE COURT I AM TELLING YOU I AM ASKING YOU,  
19 REQUESTING YOU HOW ARE YOU DOING THIS MORNING?

20 THE POLICE OFFICER FINE HOW ARE YOU DOING, SIR?

21 THE COURT YOU'RE GETTING USED TO COMING DOWN HERE,  
22 AREN'T YOU?

23 THE POLICE OFFICER I GO SOME OF EVERYWHERE

24 THE COURT I APPRECIATE ALL YOU DO FOR US

25 MR BOOZER YOUR HONOR, MAY I APPROACH WITH THE

1 PACKET?

2 THE COURT YES

3 MS SMITH YOUR HONOR, I'D LIKE TO START BY GIVING  
4 YOU A LITTLE BIT OF BACKGROUND ABOUT THIS CASE

5 THE COURT WELL, THAT'S FINE

6 MS SMITH THIS TRIAL WAS JULY 22 AND 23 IN 2003

7 MR WALKER WAS CONVICTED OF CRIMINAL SEXUAL CONDUCT IN THE  
8 FIRST DEGREE AND KIDNAPPING THE COMPLAINANT WAS MARGARET

9 SANDERS SHE WAS A 60-YEAR-OLD WHITE WOMAN WHO LIVED IN

10 NORWAY ON MARCH 2, 2002 MS SANDERS SAID SHE WENT TO

11 DENMARK TO THE DOLLAR STORE THEN SHE WHEN TO B P SHE

12 WENT IN THE B P , CAME OUT, AND HER CAR WOULDN'T START

13 SHE ASKED ONE MAN FOR HELP HE REFUSED SHE ASKED A

14 SECOND MAN FOR HELP HE LOOKED AT THE ENGINE AND SAID SHE

15 NEEDED A COIL WIRE HE LEFT TO GO BUY ONE HE RETURNED

16 AND REPAIRED THE CAR HE TOLD HER THE COIL WIRE COST \$30

17 SO, SHE ASKED HIM TO FOLLOW HER TO HER HOUSE IN NORWAY

18 HE DID SHE WENT INSIDE HER BEDROOM TO GET HER PURSE,

19 LOOKED UP, AND SAID HE WAS STANDING IN HER DOORWAY

20 SHE THEN SAYS HE BLINDFOLDED HER, DROVE HER TO HIS

21 HOUSE, AND MADE HER SPEND THE NIGHT SHE SAID HE RAPED

22 HER HE DID NOT USE A PROPHYLACTIC AND HE DID EJACULATE

23 HE GAVE HER A BEER DURING THIS TIME AND ALSO LET HER SMOKE

24 CIGARETTES THE NEXT DAY HE BLINDFOLDED HER AND DROVE HER

25 HOME IN THE EARLY MORNING HOURS



1 A YES, I HAVE

2 Q HAVE YOU REVIEWED YOUR FILE PRIOR TO TODAY?

3 A YES

4 Q DID YOU HEAR THE SUMMARY I JUST GAVE THE COURT?

5 A YES

6 Q DID YOU HAVE ANYTHING THAT YOU DISAGREED WITH ABOUT  
7 THAT SUMMARY?

8 A THERE WOULD BE ADDITIONS TO THE FACTS AS THE STATE  
9 PRESENTED THEM, BUT NO DISAGREEMENT AS TO WHAT WAS LAID  
10 OUT

11 Q HOW MANY TIMES DID YOU MEET WITH JOSEPH WALKER DURING  
12 YOUR ENTIRE REPRESENTATION OF HIM PRIOR -- WELL, NOT YOUR  
13 ENTIRE REPRESENTATION, BUT PRIOR TO THE TRIAL?

14 A I COULDN'T GIVE YOU AN EXACT NUMBER

15 Q WELL, DO YOU HAVE NOTATIONS IN YOUR FILE OF THE TIMES  
16 WHEN YOU MET WITH HIM?

17 A I HAVE NOTATIONS IN MY FILE OF SOME TIMES THAT I MET  
18 WITH HIM I ALSO KNOW THAT I MET WITH HIM ON A FEW  
19 OCCASIONS OR SPOKE WITH HIM ON THE TELEPHONE THAT I  
20 PROBABLY DID NOT NOTATE

21 THE COURT HOW MANY NOTATIONS IN THE FILE?

22 THE WITNESS I HAVE NOTATIONS IN MY FILE OF FOUR  
23 OCCASIONS ON WHEN EITHER I OR MY INVESTIGATOR -- I THINK  
24 SOME OF THOSE TIMES WERE BOTH OF US -- MET WITH HIM

25 Q CAN YOU TELL ME HOW MANY TIMES WERE JUST YOU?

1 A FROM MY NOTES I COULDN'T TELL YOU

2 Q CAN YOU TELL ME HOW MANY TIMES WERE JUST YOUR  
3 INVESTIGATOR?

4 A I COULDN'T TELL YOU FROM MY NOTES

5 THE COURT WHAT WAS THAT APPOINTMENT DATE ON OR  
6 ABOUT WHEN?

7 THE WITNESS IT WAS --

8 MS SMITH APRIL 9

9 THE WITNESS APRIL 9 OF 2002, YOUR HONOR

10 THE COURT THANK YOU

11 THE WITNESS AND THEN I FIRST MET WITH MR WALKER ON  
12 MAY 1 WHEN WE HAD HIS PRELIMINARY HEARING

13 Q WOULD IT BE FAIR TO SAY THAT'S THE FIRST TIME YOU MET  
14 HIM?

15 A PROBABLY, YES I MAY HAVE SPOKEN WITH HIM ON THE  
16 PHONE PRIOR TO THAT DATE, BUT THE FIRST TIME I HAD A  
17 FACE-TO-FACE I THINK WAS THE PRELIMINARY HEARING

18 Q AND YOU CARRY A HEAVY CASE LOAD, IS THAT RIGHT?

19 A THAT'S CORRECT

20 Q DO YOU KNOW HOW MANY CASES YOU HAD ON THE TRIAL  
21 CALENDAR AT THAT TIME?

22 A I DON'T KNOW ABOUT THE TRIAL CALENDAR I KNOW THAT I  
23 CARRY BETWEEN 175 AND 200 TOTAL CASES AT THAT TIME IT'S  
24 DIFFICULT TO SAY -- I GUESS I DON'T KNOW EXACTLY WHAT YOU  
25 MEAN BY TRIAL CALENDAR I PROBABLY HAD ANYWHERE FROM 65

1 TO 70 INDICTED CASES AT THAT TIME, ANY OF WHICH  
2 THEORETICALLY COULD BE CALLED BY THE STATE FOR TRIAL HOW  
3 MANY I HAD ON THE ACTUAL TRIAL LIST FOR THAT TERM OF COURT  
4 I COULD NOT TELL YOU -- PROBABLY JUST THREE OR FOUR

5 Q OKAY NOW YOU RECEIVED INFORMATION FROM THE STATE  
6 WITH REGARD TO THIS CASE, IS THAT RIGHT?

7 A YES I RECEIVED INFORMATION PURSUANT TO MY REQUEST  
8 FOR DISCOVERY UNDER RULE FIVE AND BRADY

9 Q OKAY AND THAT INFORMATION IS TYPICALLY CALLED RULE  
10 FIVE'S, IS THAT RIGHT?

11 A YES

12 Q OKAY I DON'T PRACTICE IN CRIMINAL COURT SO,  
13 YOU'LL HAVE TO BEAR WITH ME CAN YOU TELL ME WHAT THAT  
14 INFORMATION CONSISTED OF?

15 A PRIMARILY CONSISTED OF THE POLICE REPORTS I CAN  
16 TELL YOU THAT GENERALLY IT CONSISTS OF THE POLICE REPORTS,  
17 THE INVESTIGATIVE SUMMARY FROM THE INVESTIGATING OFFICER,  
18 ANY LAB ANALYSIS THAT ARE DONE THOSE TEND TO TRICKLE IN  
19 AS THINGS COME IN IN THIS CASE -- AND YOU'LL HAVE TO  
20 FORGIVE ME BECAUSE THIS CASE WENT TO TRIAL THINGS GOT OUT  
21 OF ORDER AND PUT IN THE TRIAL NOTEBOOK AND WHEN THE FILE  
22 WAS CLOSED THINGS GOT OUT AND GOT OUT OF ORDER, BUT IN  
23 THIS CASE IT LOOKS LIKE I'VE GOT THE AIKEN COUNTY  
24 SHERIFF'S OFFICE ORIGINAL REPORTS AND SUPPLEMENTAL  
25 REPORTS, INCIDENT REPORT FROM THE ORANGEBURG COUNTY

1 SHERIFF'S OFFICE SINCE THIS INCIDENT ORIGINATED IN  
2 ORANGEBURG COUNTY AND ORANGEBURG COUNTY HAD CHARGES  
3 PURSUANT TO THIS AS WELL I BELIEVE THEY HAD A BURGLARY  
4 CHARGE PURSUANT TO THESE SET OF FACTS I HAD THAT -- AN  
5 INTERVIEW WITH MS SANDERS, MEDICAL REPORTS INCLUDING THE  
6 SEXUAL ASSAULT PROTOCOL, A REPORT HERE FROM A FORENSIC  
7 HEALTHCARE CENTER I BELIEVE THAT'S ALSO MEDICALS ON  
8 MS SANDERS

9 Q DID YOU RECEIVE PHOTOS?

10 A THINGS OF THAT NATURE YES, I HAVE A DISK OF CRIME  
11 SCENE PHOTOS

12 Q ALL RIGHT AND YOU HAVE ANOTHER C D OF AN INTERVIEW  
13 AS WELL, ISN'T THAT RIGHT, AN INTERVIEW WITH MR WALKER?

14 A THAT'S CORRECT

15 Q HOW MANY TIMES DID YOU REVIEW THOSE C D 'S WITH  
16 MR WALKER?

17 A I DON'T KNOW HOW MANY TIMES THOSE C D 'S WERE  
18 REVIEWED WITH MR WALKER I KNOW THAT I REVIEWED THOSE  
19 C D 'S AND DEFINITELY WOULD HAVE GIVEN A SUMMARY TO  
20 MR WALKER I DON'T KNOW THAT WE HAD THE EQUIPMENT OR  
21 CAPABILITIES AT THAT TIME AS WE DO NOW TO TAKE THE C D TO  
22 HAVE EASILY TO BEEN ABLE TO PLAY IT FOR HIM AT THAT TIME  
23 AS WE DO NOW SO, I DON'T IMAGINE THAT I DID HAVE HIM  
24 ACTUALLY REVIEW IT I THINK THAT WE SUMMARIZED IT FOR  
25 HIM

1 Q DO YOU BELIEVE THAT YOUR INVESTIGATOR REVIEWED IT  
2 WITH HIM?

3 A IT'S POSSIBLE

4 Q WELL, YOU AGREE IT WOULD BE IMPORTANT TO GO OVER THE  
5 INTERVIEW THAT HE HAD WITH THE POLICE OFFICER, DON'T YOU?

6 A YES IT WOULD BE IMPORTANT TO DO THAT

7 Q AND IT WOULD BE IMPORTANT TO REVIEW THE PHOTOGRAPHS  
8 WITH HIM?

9 A YES

10 Q BUT YOU DID NOT DO THAT?

11 A I AM NOT SAYING THAT I DID NOT DO THAT I AM SAYING  
12 THAT I AM NOT SURE IF I DID OR NOT

13 Q DO YOU NEED MORE TIME TO LOOK THROUGH YOUR FILE?

14 A I CAN TELL YOU THAT THE FILE DOES NOT NOTE THAT I  
15 DID

16 Q OKAY AND IT DOESN'T NOTE THAT YOUR INVESTIGATOR  
17 DID?

18 A NO

19 Q OKAY MR WALKER DENIED THAT THESE EVENTS EVER TOOK  
20 PLACE, DIDN'T HE?

21 A THAT'S CORRECT

22 Q THIS IS A COMPLETELY CIRCUMSTANTIAL CASE, ISN'T IT?  
23 THERE IS NOT ONE LAB REPORT IN YOUR FILE, IS THERE?

24 A NO

25 Q THERE IS NO D N A EVIDENCE WHATSOEVER?

1 A NO

2 Q EVEN THOUGH THE LADY TESTIFIED THAT THE MAN DIDN'T  
3 USE A PROPHYLACTIC AND EJACULATED THERE IS NO D N A  
4 EVIDENCE OF ANY KIND RECOVERED FROM HER OR HIS HOUSE, IS  
5 THERE?

6 A THAT'S CORRECT AND I BELIEVE THAT'S THE POINT THAT  
7 WAS EMPHASIZED IN THE TRIAL

8 Q SHE SAID SHE SMOKED A CIGARETTE AT HIS HOUSE, BUT  
9 THERE'S NO -- NOTHING WAS RECOVERED ABOUT THAT, WAS THERE?

10 A AGAIN, A POINT STRONGLY EMPHASIZED AT THE TRIAL

11 Q HE WAS SUPPOSED TO BE IN HER HOUSE SUPPOSELY, BUT  
12 THERE WAS NO EVIDENCE FOUND IN HER HOUSE EITHER, WAS  
13 THERE?

14 A THAT'S CORRECT

15 Q YOU DID NOT INTERVIEW MARGARET SANDERS BEFORE YOU  
16 CROSS EXAMINED HER AT TRIAL, DID YOU?

17 A NO

18 Q NOW, IT'S EVIDENT FROM THE FILE THAT MARGARET SANDERS  
19 WAS AN ALCOHOLIC, WASN'T IT?

20 A IT IS EVIDENT FROM THE FILE THAT MS SANDERS DRANK  
21 ALCOHOL I DON'T KNOW THAT IT'S EVIDENT FROM THE FILE  
22 THAT SHE SUFFERED FROM THE DISEASE OF ALCOHOLISM

23 Q ALL RIGHT DO YOU KNOW WHAT THE NOTATION E T O H  
24 MEANS?

25 A YES WELL, I WOULD IMAGINE IT STANDS FOR ETHANOL

- 1 Q ALL RIGHT IF IN THAT FORENSIC NURSE INTERVIEW THAT  
2 YOU HAVE --
- 3 A UH-HUH
- 4 Q -- IT SAYS THAT SHE SAID SHE WAS REPORTING FOR  
5 E T O H TREATMENT, WHAT WAS DOES THAT MEAN?
- 6 A SHE WAS REPORTING FOR ALCOHOL TREATMENT
- 7 Q AND DID YOU ASK HER ANY QUESTIONS IN CROSS  
8 EXAMINATION ABOUT HER USE OF ALCOHOL?
- 9 A I DON'T RECALL
- 10 Q WELL, IN FACT, YOU DID NOT, DID YOU?
- 11 A EXCUSE ME?
- 12 Q IN FACT, YOU DID NOT, DID YOU?
- 13 THE COURT SHE SAID SHE DIDN'T RECALL, MA'AM
- 14 MS SMITH THANK YOU, SIR
- 15 THE COURT DO YOU RECALL IF YOU DID OR DIDN'T?
- 16 THE WITNESS I DON'T RECALL YOUR HONOR I COULD  
17 CERTAINLY REVIEW THE TRANSCRIPT --
- 18 THE COURT IT SPEAKS FOR ITSELF
- 19 THE WITNESS -- TO ANSWER DEFINITELY
- 20 THE COURT MOVE ALONG
- 21 Q WHEN SHE WAS INTERVIEWED WHEN SHE INITIALLY REPORTED  
22 THE CRIME BOTH ORANGEBURG POLICE OFFICERS SAID SHE SMELLED  
23 OF ALCOHOL, DIDN'T THEY?
- 24 A THAT'S CORRECT
- 25 Q AND THEY POINTED THAT OUT IN THEIR POLICE REPORTS?

1 A THAT'S CORRECT

2 Q IT WOULD HAVE BEEN IMPORTANT TO CROSS EXAMINE HER  
3 ABOUT THAT, WOULD IT NOT?

4 A YES

5 Q WOULD IT BE VERY SIGNIFICANT FOR THE JURY TO KNOW IF  
6 HER JUDGMENT WAS IMPAIRED EITHER IN THE IDENTIFICATION OF  
7 THIS MAN OR IN HER PERCEPTION OF WHO IT WAS, WOULDN'T IT?

8 A YES

9 Q YOU DIDN'T CALL THAT NURSE TO TESTIFY AT TRIAL, DID  
10 YOU?

11 A NO, I DID NOT

12 Q YOU DID NOT CALL THOSE ORANGEBURG POLICE OFFICERS TO  
13 TESTIFY AT TRIAL, DID YOU?

14 A NO, I DID NOT

15 Q MARGARET SANDERS' IDENTIFICATION OF JOSEPH WALKER IS  
16 THE ONLY THING THAT LINKS HIM TO THIS CASE, ISN'T IT?

17 A NO THAT'S INCORRECT

18 Q DO YOU RECALL THE DISCREPANCIES IN MS SANDERS'  
19 TESTIMONY ABOUT WHAT TIME SHE WENT TO B P ?

20 A I THINK SO YES

21 Q BUT YOU DIDN'T CROSS EXAMINE HER ABOUT THAT, DID YOU?

22 A I DON'T RECALL I WOULD HAVE TO REVIEW THE  
23 TRANSCRIPT, BUT I DON'T RECALL

24 Q DO YOU RECALL THAT THAT INITIAL ORANGEBURG POLICE  
25 REPORT YOU HAVE SAID SHE WENT TO B P AT 7 P M ?

1 THE COURT DO YOU HAVE A COPY OF IT RIGHT HANDILY,  
2 MA'AM? ANYBODY FIND IT? MA'AM, DID YOU FIND IT?

3 MS SMITH IF I CAN HAVE A FEW MINUTES I CAN

4 THE COURT WELL, MOVE ALONG TO ANOTHER QUESTION IF  
5 Y'ALL CAN'T FIND WHAT YOU'RE LOOKING FOR NEXT QUESTION,  
6 PLEASE

7 Q DO YOU RECALL THAT SHE TESTIFIED -- MS SANDERS  
8 TESTIFIED LATER THAT IT WAS LIGHT OUTSIDE WHEN SHE AND THE  
9 ASSAILANT LEFT HER HOME?

10 A I BELIEVE THAT'S CORRECT

11 Q IN FACT, WAS IT ONE OF YOUR THEORIES WHY WOULD -- WHY  
12 WOULD A MAN IN BROAD DAYLIGHT DRAG THIS LADY FROM HER  
13 HOUSE BLINDFOLDED IN FRONT OF EVERYONE?

14 A SURE

15 Q BUT YOU DIDN'T POINT OUT THAT -- WELL, LET ME  
16 WITHDRAW THAT DO YOU RECALL THAT THE SOLICITOR BELIEVED  
17 THAT THE CRIME HAPPENED IN THE AFTERNOON?

18 A I THINK THAT'S CORRECT YES

19 Q DO YOU RECALL THE PROBLEMS WITH THE B P SURVEILLANCE  
20 TAPE WITH REGARD TO WHAT TIME IT WAS?

21 A YES

22 Q DO YOU REMEMBER THAT THE TIME RECORDED ON THE  
23 SURVEILLANCE TAPE WAS NOT -- WHAT DO YOU RECALL ABOUT  
24 THAT?

25 A MY RECOLLECTION OF THAT IS THAT THE TIME ON THE

1 SURVEILLANCE TAPE WAS NOT THE TIME THAT -- THE ACTUAL  
2 TIME I BELIEVE THAT IT WAS -- I BELIEVE THAT IT WAS  
3 TESTIFIED TO THAT THERE WAS A PROBLEM WITH THE TIMESTAMP  
4 ON THAT I DON'T RECALL THAT AND I MAY BE MIXING UP  
5 CASES, BUT I DO RECALL THERE WAS A PROBLEM WITH THE  
6 TIMESTAMP

7 Q IN FACT, IT WAS OFF BY AT LEAST AN HOUR DO YOU  
8 RECALL THAT?

9 A I DO RECALL THAT YES

10 Q WOULDN'T THAT HAVE BEEN IMPORTANT TO EXPLORE WITH  
11 REGARD TO THE OTHER QUESTIONS WITH REGARD TO WHAT TIME IT  
12 WAS AND IF IT WAS DARK OR LIGHT?

13 A AS FAR AS IT WENT TO MS SANDERS' CREDIBILITY, YES

14 Q BUT YOU DIDN'T GO THROUGH THAT, DID YOU?

15 A I DON'T THINK SO NO

16 Q I COPIED YOUR FILE, IS THAT RIGHT?

17 A THAT'S CORRECT

18 Q I HAVE A -- JUDGE, MAY I APPROACH? CAN YOU IDENTIFY  
19 THAT FOR ME?

20 A YES, IT IS THE ORANGEBURG COUNTY SHERIFF'S OFFICE  
21 INCIDENT REPORT

22 Q ALL RIGHT DO YOU BELIEVE THAT YOU HAVE A COPY OF  
23 THAT IN YOUR FILE AS WELL?

24 A I DO

25 Q DO YOU SEE WHERE IT SAYS WHAT TIME SHE SAYS IT

1 HAPPENED?

2 A YES, RIGHT AFTER YOU STARTED ASKING QUESTIONS AGAIN  
3 IT SAID AT APPROXIMATELY 8 P M THAT SHE HAD STOPPED AT  
4 THE B P STATION

5 Q 8 P M IS NOT IN THE AFTERNOON, IS IT?

6 A IT IS NOT

7 Q THAT WOULD BE AN IMPORTANT DISCREPANCY TO EXPLORE,  
8 ISN'T IT?

9 A YES

10 THE COURT DID YOU EXPLORE IT?

11 THE WITNESS I DON'T THINK SO, YOUR HONOR

12 Q DID YOU REVIEW THE TRANSCRIPT FOR TODAY?

13 A I HAVE I DIDN'T REVIEW IT LAST NIGHT, BUT I HAVE  
14 REVIEWED IT I REVIEWED IT IN PREPARATION FOR THE LAST  
15 HEARING THAT WAS SCHEDULED

16 Q YOU DIDN'T CHALLENGE MARGARET SANDERS ON HOW HER  
17 STORY HAD CHANGED, DID YOU?

18 THE COURT HOW DID IT CHANGE?

19 Q WELL, DID IT NOT -- DID SHE NOT BEGIN BY TELLING  
20 ORANGEBURG OFFICERS THAT IT HAPPENED AT NIGHT AND THEN HER  
21 STORY CHANGED WHEN SHE WAS PRESENTED WITH A B P TAPE?

22 THE COURT AND SHOWED WHAT TIME? WHAT DID THE B P  
23 TAPE SHOW?

24 MS SMITH IT SHOWED EARLIER IN THE AFTERNOON --

25 2 20

1 Q DO YOU REMEMBER IF IT APPEARED TO BE DAYLIGHT OR  
2 NIGHT TIME ON THAT VIDEO AT B P ?

3 A I DON'T RECALL THAT VIDEOTAPE WAS SO SNOWY AND THE  
4 QUALITY WAS SO POOR I DON'T THINK THAT I COULD HAVE TOLD  
5 YOU

6 Q BUT YOU AGREE THAT THIS WOMAN'S MEMORY SEEMED TO  
7 IMPROVE OVER TIME, DIDN'T IT?

8 A YES, IT DID

9 Q AND THAT WAS ONE OF THE THINGS THAT YOU COMPLAINED  
10 ABOUT, ISN'T IT?

11 A YES

12 Q BUT YOU DIDN'T CHALLENGE HER ON IT, DID YOU, IN  
13 CROSS?

14 A IF YOU'LL GIVE ME A MOMENT I AM TRYING TO REVIEW THE  
15 CROSS EXAMINATION SO I CAN BETTER ANSWER THESE QUESTIONS  
16 (WHEREUPON, THE ATTORNEYS CONFERRED )

17 THE COURT MA'AM, DO YOU HAVE A SPECIFIC PAGE OR  
18 NUMBER YOU CAN REFER HER TO SO WE CAN MOVE ALONG?

19 MS SMITH I'LL JUST GO TO THE NEXT QUESTION, YOUR  
20 HONOR

21 MRS BROWN?

22 THE WITNESS YES?

23 Q DO YOU KNOW IF IT WAS LIGHT OR DARK AT 7 O'CLOCK ON  
24 MARCH 2, 2003?

25 THE COURT 7 O'CLOCK A M OR P M ?

1 MS SMITH P M

2 THE WITNESS WELL, I DON'T KNOW HOW IT WAS ON THAT  
3 DAY I KNOW THAT IF IT IS LIKE IT WAS ON MARCH 2 OF THIS  
4 YEAR I WOULD CLASSIFY IT AS NOT QUITE DARK BUT --

5 Q WELL, YOU DON'T HAVE TO CLASSIFY IT, DO YOU? THERE  
6 IS A WAY TO FIND OUT WHAT TIME THE SUNSET WAS ON THAT DAY,  
7 ISN'T THERE?

8 A YES, THERE IS A WAY TO FIND OUT WHAT TIME SUNSET WAS  
9 ON THAT DAY IF YOU'RE ASKING ME MY OPINION AND MY  
10 RECOLLECTIONS, WHAT I CAN TELL YOU IS THAT MY HUSBAND AND  
11 I HAVE BEEN OUT WALKING COMING IN, YOU KNOW, BETWEEN 6 30  
12 AND 6 45 IN THIS LAST WEEK, AND THAT'S WHY I WAS TRYING TO  
13 CLASSIFY TO YOU THAT IT'S THAT TIME OF DAY THAT'S NOT  
14 QUITE DARK AND NOT QUITE LIGHT SO, I THINK IT THAT'S  
15 BEST QUALIFIED AS DUSK

16 Q SO, IT WOULD BE IMPORTANT TO KNOW WHEN SUNSET WAS, IS  
17 THAT RIGHT?

18 A IT WOULD BE HELPFUL TO KNOW WHEN SUNSET WAS, YES

19 Q ALL RIGHT AND THERE IS A WAY TO OBTAIN THAT  
20 EVIDENCE AND PRESENT IT TO THE JURY, ISN'T THERE?

21 A YES

22 Q BUT YOU DIDN'T DO THAT, DID YOU?

23 A NO, I DID NOT

24 Q OKAY WHAT DAY OF THE WEEK DID THIS HAPPEN? DO YOU  
25 RECALL?

1 A I DON'T RECALL

2 Q ALL RIGHT WELL, IF I TELL YOU THAT MARCH 2 WAS A  
3 SATURDAY IN 2002, WILL YOU AGREE WITH THAT? I'VE GOT A  
4 CALENDAR

5 THE COURT WE BELIEVE YOU

6 THE WITNESS I DON'T HAVE ANY REASON TO DISAGREE  
7 WITH YOU ON THAT

8 Q OKAY AND YOU REMEMBER THAT SHE TESTIFIED THAT THERE  
9 WAS SOMETHING WRONG WITH HER CAR?

10 A UH-HUH

11 Q AND THE MAN WENT AND BOUGHT A COIL WIRE?

12 A THAT'S CORRECT

13 Q I DON'T EXPECT YOU TO KNOW WHAT A COIL WIRE IS I  
14 DON'T KNOW WHAT A COIL WIRE IS

15 THE COURT ASK THE QUESTION, MA'AM PLEASE MOVE  
16 ALONG

17 Q HOW DO YOU THINK HE COULD HAVE PURCHASED A COIL WIRE  
18 ON A SATURDAY NIGHT?

19 A I THINK IT DEPENDS ON WHERE HE WOULD GO

20 Q WELL, DID YOU EXPLORE THAT?

21 A NO, I DID NOT

22 Q DID YOU TRY TO FIND OUT IF IT WAS EVEN POSSIBLE TO DO  
23 THAT?

24 A NO, I DID NOT

25 THE COURT WHERE DID IT HAPPEN, ALLEGEDLY HAPPEN?

1 MS SMITH IN DENMARK

2 THE COURT THERE ARE ALL KINDS OF PLACES IN DENMARK  
3 TO BUY A COIL WIRE ON SATURDAY NIGHT -- ADVANCED AUTO,  
4 BROOKER'S GO AHEAD

5 MS SMITH WOULDN'T IT BE IMPORTANT TO DETERMINE  
6 THAT, SIR?

7 THE COURT I AM TELLING YOU WHERE YOU CAN BUY THEM  
8 MOVE ALONG

9 Q DO YOU HAVE YOUR TRANSCRIPT WITH YOU?

10 A YES, I DO

11 Q CAN YOU LOOK ON PAGE 280, 281?

12 A YES

13 Q THIS IS YOUR CROSS EXAMINATION OF LIEUTENANT BAMBERG,  
14 IS THAT RIGHT?

15 A THAT'S CORRECT

16 Q THIS IS AT THE PRELIMINARY HEARING? DID YOU HAVE A  
17 NEIL V BIGGERS HEARING?

18 THE COURT LET THE RECORD REFLECT THAT THIS IS AT  
19 THE NEIL V BIGGERS HEARING AS SHOWN ON PAGE 274 OF THE  
20 TRANSCRIPT MOVE ALONG

21 Q IF YOU'LL LOOK ON PAGE 281, LINE 24

22 A UH-HUH

23 Q IF YOU'LL START A LITTLE EARLIER THAN THAT, THIS IS  
24 WHERE HE'S TALKING ABOUT THE TIMESTAMP ON THE B P VIDEO,  
25 IS THAT RIGHT?

1 A YOU WANT ME TO START LIKE AT LINE 18?

2 Q YES

3 A "QUESTION SO, SHE STARTED WATCHING THIS VIDEO FROM  
4 THE TIME THE TIMESTAMP ON THERE THAT SHE WALKED INTO THE  
5 STORE? ANSWER CORRECT, FROM WHEN SHE CAME INTO THE  
6 STORE QUESTION AND -- ANSWER AND LEFT QUESTION  
7 DO YOU RECALL AT WHAT TIME VIDEO THAT WAS? ANSWER I  
8 THINK HER HER TIME THAT SHE CAME IN WAS LIKE 1 26 P M OR  
9 SOMETHING LIKE THAT, 1 28 P M OFF THE TOP OF MY HEAD,  
10 MAYBE A LITTLE LATER "

11 Q ALL RIGHT AND THAT'S A BIG DISCREPANCY FROM HER  
12 INITIAL TESTIMONY THAT SHE WAS THERE AT 8, ISN'T THAT  
13 RIGHT?

14 A YES

15 Q BUT YOU DIDN'T EXPLORE THAT TO IMPEACH HIM?

16 A FROM WHAT I HAVE BEEN ABLE TO REVIEW, NO, I DID NOT  
17 THE COURT MRS BAMBERG TESTIFIED AT THE TRIAL?  
18 MS SMITH I BELIEVE JUST AT THE BIGGERS HEARING  
19 THE COURT I KNOW BUT DID SHE TESTIFY AT TRIAL?  
20 MR MIRSHAK PAGE 149, YOUR HONOR, SHE DID  
21 THE COURT WAS SHE CROSS EXAMINED ON THAT TIME  
22 DISCREPANCY AT THE TRIAL? DO YOU RECALL?

23 MS SMITH NO, SIR, IF YOU'RE ASKING ME

24 THE COURT I AM ASKING KELLEY PERKINS BROWN DO YOU  
25 RECALL THAT, MA'AM?

1 THE WITNESS I DON'T RECALL THAT I WAS JUST  
2 GLANCING AT THE TRANSCRIPT RIGHT QUICK, YOUR HONOR  
3 THE COURT GO AHEAD, MA'AM.

4 Q ALL RIGHT YOU STATED EARLIER THAT YOU RECALL THERE  
5 WAS NO PHYSICAL EVIDENCE WHATSOEVER, IS THAT RIGHT?

6 A THAT'S CORRECT

7 Q NO FINGERPRINTS WERE THERE ANY FINGERPRINTS OF  
8 JOSEPH WALKER RECOVERED IN HER HOME?

9 A NO, NOT THAT I RECALL

10 Q IN FACT, DO YOU RECALL THE MEDICAL -- THE FORENSIC  
11 MEDICAL EXAM OF MS SANDERS?

12 A I HAVE THE FORENSIC MEDICAL EXAM OF MS SANDERS

13 Q DO YOU RECALL THAT IT SHOWS -- IT DOES NOT SHOW  
14 CONCLUSIVELY WHETHER SHE WAS SEXUALLY ASSAULTED? DO YOU  
15 RECALL THAT?

16 A I DON'T THINK THAT'S THE ASSESSMENT THAT I WOULD USE,  
17 NO I MEAN, WHAT ARE YOU ASKING ME SPECIFICALLY?

18 Q WELL, DO YOU RECALL IF THERE WERE OTHER EXPLANATIONS  
19 FOR HER PHYSICAL EXAM FOR THE APPEARANCE OF HER?

20 A THERE WERE OTHER EXPLANATIONS THAT I EXPLORED ON  
21 CROSS EXAMINATION, BUT THERE WERE NOT OTHER EXPLANATIONS  
22 THAT WERE LISTED IN THE MEDICAL RECORDS I DON'T BELIEVE  
23 IN THE MEDICAL RECORDS THAT THEY CAME TO A CONCLUSION ONE  
24 WAY OR ANOTHER, ONLY DISCUSSED THEIR FINDINGS AND WHAT HER  
25 PHYSICAL STATUS WAS THE SUMMARY OF THE PHYSICAL FINDING

1 WAS POSITIVE FOR THE WORD I CAN'T READ -- GENITAL TRAUMA,  
2 BUT THEY CAME TO NO CONCLUSIONS IN THE MEDICAL REPORT AS  
3 TO HOW THAT TRAUMA OCCURRED

4 Q SO, IT WOULD HAVE BEEN IMPORTANT TO EXPLORE WITH HER  
5 WHETHER A TRAUMA -- WHETHER THIS EVEN HAPPENED, ISN'T THAT  
6 RIGHT?

7 A WITH WHO?

8 Q WITH THE VICTIM, THE ALLEGED VICTIM

9 A I DON'T THINK I QUITE UNDERSTAND YOUR QUESTION  
10 MS SMITH I'LL WITHDRAW THAT, YOUR HONOR  
11 LET ME SHOW YOU THIS LAB REPORT  
12 MAY I APPROACH, YOUR HONOR?  
13 CAN YOU IDENTIFY THAT?

14 THE WITNESS YES THIS IS THE FORENSIC SERVICES LAB  
15 REPORT, DEPARTMENT OF FORENSIC D N A ANALYSIS FROM THE  
16 INCIDENT DATE OF 3/3/02 IT IS DATED AUGUST 27 OF 2003  
17 IT IS THE SEROLOGY ANALYSIS --

18 Q ALL RIGHT AND --

19 A -- AND D N A ANALYSIS

20 Q AND WHAT DOES IT SHOW?

21 A DO YOU WANT ME TO GO LINE BY LINE WHAT IT SHOWS?

22 Q NO OVERALL IT SHOWS THEY FOUND NO D N A EVIDENCE,  
23 ISN'T THAT RIGHT?

24 A IT SHOWS THAT NO D N A PROFILE UNLIKE THE VICTIM WAS  
25 DEVELOPED FROM ITEM 1 12 WHICH WAS A BITE MARK THEY'RE

1 SHOWING D N A -- THEY'RE NOT SHOWING THAT THERE WAS -- I  
2 GUESS THE SHORT ANSWER TO YOUR QUESTION IS THEY'RE NOT  
3 SHOWING THAT D N A LINKING MR WALKER TO THIS WAS  
4 IDENTIFIED ALSO, NO SPERMATOZOA WAS DETECTED IN SMEARS  
5 NO SEMEN WAS IDENTIFIED IN EITHER VAGINAL SWABS, ORAL  
6 SWABS, OR RECTAL SWABS OR IN HER PANTIES NO ANALYSIS WAS  
7 PERFORMED ON HAIR FROM A KNIT CAP

8 Q AND WHAT'S -- YOU SAID THE DATE OF THE REPORT WAS  
9 AUGUST OF 2003?

10 A AUGUST 27, 2003

11 Q THAT'S ABOUT A MONTH AFTER THE TRIAL, IS THAT RIGHT?

12 A THAT'S CORRECT

13 Q COULD YOU HAVE GOTTEN A CONTINUANCE TO WAIT TO  
14 RECEIVE THAT REPORT?

15 THE COURT LET ME SEE THE REPORT SO, THE CASE WAS  
16 TRIED WITHOUT THIS?

17 MS SMITH YES, SIR IT WAS JULY --

18 THE COURT DID ANYBODY FROM S L E D --

19 MS SMITH -- 22

20 THE COURT -- TESTIFY TO THE RESULTS WITHOUT THE  
21 REPORT? MA'AM?

22 THE WITNESS NO WELL, I AM SAYING NO I DON'T  
23 BELIEVE SO, YOUR HONOR

24 THE COURT WHY WAS THIS LAB REPORT SUBMITTED AFTER  
25 THE TRIAL? ANYBODY KNOW THAT? WHY WAS IT TRIED WITHOUT

1 THE LAB REPORT? DOES ANYBODY KNOW THAT? HOW DID YOU GET  
2 THE LAB REPORT?

3 MR BOOZER YOUR HONOR, I BELIEVE THAT THEY JUST  
4 DIDN'T HAVE THAT WRITTEN REPORT AT THAT TIME AND BECAUSE  
5 IT DIDN'T SHOW ANYTHING I DON'T THINK THAT IT WAS  
6 IMPORTANT AT THAT TIME

7 THE COURT WELL, IT IS IMPORTANT IT MIGHT NOT BE  
8 IMPORTANT TO YOU

9 MS SMITH I GOT THAT FROM --

10 THE COURT ALL RIGHT HOLD ON A SECOND DID  
11 ANYBODY FROM S L E D TESTIFY ABOUT THE FORENSIC  
12 EXAMINATION AND RESULTS AT THE TRIAL? SIMPLE QUESTION  
13 ANYBODY KNOW THE ANSWER?

14 MS SMITH DR ELIZABETH --

15 MR BOOZER YOUR HONOR, I BELIEVE DR GIBBS MAY HAVE  
16 TESTIFIED TO --

17 THE COURT MAY HAVE OR DID?

18 MS SMITH DR ELIZABETH GIBBS DID TESTIFY, SIR

19 THE COURT WHO IS DR ELIZABETH GIBBS?

20 MS SMITH I BELIEVE SHE TESTIFIED WITH REGARD TO  
21 WHAT THE FORENSIC NURSE DID

22 THE COURT WELL, DID SHE TESTIFY ABOUT THESE --

23 MR MIRSHAK SHE IS NOT WITH S L E D , YOUR HONOR

24 MS SMITH Nu, SIR

25 THE COURT DID SHE TESTIFY ABOUT THE RESULTS OF THE

1 EXAMINATION THAT THE CHIEF LAW ENFORCEMENT DIVISION OF  
2 SOUTH CAROLINA CONDUCTED? ANYBODY KNOW THAT?

3 THE WITNESS NO, SHE DID NOT, YOUR HONOR

4 THE COURT WELL, OBVIOUSLY, YOU DIDN'T KNOW ABOUT  
5 THIS LAB REPORT IF IT WASN'T IN EXISTENCE, DID YOU?

6 MS BRISBIN ACTUALLY, YOUR HONOR, THAT'S NOT TRUE

7 THE COURT ALL RIGHT HOLD ON WE'LL TESTIFY ABOUT  
8 IT IN A MINUTE GO AHEAD WITH YOUR QUESTIONS

9 Q IT WOULD BE IMPORTANT FOR THE JURY TO KNOW ABOUT THIS  
10 LAB REPORT, WOULDN'T IT?

11 A YES

12 Q ESPECIALLY IN A CIRCUMSTANTIAL CASE, ISN'T THAT  
13 RIGHT?

14 A YES

15 Q WHEN THERE ARE NO FINGERPRINTS, IS THAT RIGHT?

16 A YES

17 Q NOTHING LINKING THIS MAN EXCEPT A SNOWY VIDEO THAT  
18 THE VICTIM HERSELF SAID WAS SNOWY AND SHE WASN'T 100  
19 PERCENT SURE ABOUT, ISN'T THAT RIGHT?

20 A I AM NOT PREPARED TO CLASSIFY THAT THAT WAS THE ONLY  
21 EVIDENCE LINKING, BUT, YES, IT WOULD BE IMPORTANT

22 Q ESPECIALLY IF SHE HAD SOME TYPE OF ALCOHOL PROBLEM,  
23 ISN'T THAT RIGHT?

24 A YES

25 Q AND MAY HAVE BEEN DRINKING DURING THAT TIME?

1 A YES

2 Q RIGHT? SUCH THAT THE POLICE OFFICER EVEN SMELLED THE  
3 ALCOHOL ON HER?

4 A YES

5 Q THAT'S ANOTHER PAGE FROM YOUR FILE THAT'S FROM THE  
6 FORENSIC NURSE INTERVIEW CAN YOU FIND THAT PAGE?

7 A YOU WANT ME TO FIND IT IN MY FILE AS WELL AS THIS?

8 Q YES, PLEASE

9 THE COURT WELL, IS IT THE SAME THING?

10 MS SMITH NO, SIR

11 MR MIRSHAK IT CAME OUT -- THEY HAVE A COPY IN  
12 THEIR FILE

13 THE COURT THAT'S WHAT I'M SAYING

14 MR MIRSHAK MRS BROWN HAS A COPY AND IT'S PART OF  
15 THE RULE FIVE

16 THE COURT WHY DOES SHE HAVE TO GO FIND IT WHEN WE  
17 GOT A COPY OF IT? CAN'T SHE LOOK AT YOUR COPY AND TELL  
18 YOU THE ANSWER? I AM JUST TRYING TO SPEED THINGS UP

19 Q WELL, I THOUGHT IT WOULD BE FASTER FOR HER TO FIND IT  
20 IF I GAVE HER A COPY OF IT

21 THE COURT WELL, IT'S NOT, OBVIOUSLY

22 MS SMITH OKAY

23 THE COURT I AM NOT BEING DIFFICULT IT IS JUST IF  
24 YOU GOT IT, SHOW IT TO HER

25 THE WITNESS THIS APPEARS TO BE A COPY OF --

1 THE COURT IT CAME OUT OF YOUR FILE  
2 THE WITNESS -- A PAPER THAT'S IN MY FILE THAT I  
3 BELIEVE YOU COPIED FROM MY FILE  
4 Q DOES IT HAVE A NOTATION ABOUT THE E T O H TREATMENT?  
5 A YES  
6 Q CAN YOU READ THAT, PLEASE?  
7 A SHE HAS BEEN PLANNING ON ATTENDING E T O H TREATMENT  
8 THIS WEEK AND IS STILL PLANNING TO BEGIN THIS WEEK  
9 Q AND THAT IS FROM WHOSE REPORT?  
10 A GRETCHEN OVERSTOLTZ (PHONETIC)  
11 THE COURT WHO IS THAT?  
12 Q IS THAT THE NURSE WHO DID THE FORENSIC INTERVIEW IN  
13 ORANGEBURG HOSPITAL?  
14 A I BELIEVE THAT'S CORRECT  
15 Q SO, YOU HAD THIS INFORMATION IN YOUR FILE?  
16 A YES  
17 Q AND WHAT WAS THE DATE ON THIS WHEN THE FORENSIC  
18 INTERVIEW WAS DONE?  
19 A MARCH 3 OF 2002  
20 Q THAT'S THE DAY AFTER SHE SAID THE INCIDENT OCCURRED?  
21 A THAT'S CORRECT  
22 MS SMITH I'D LIKE TO MARK THIS, YOUR HONOR  
23 THE COURT MARK THE S L E D REPORT AS WELL  
24 MR BOOZER MAY I TAKE A LOOK AT IT?  
25 MR MIRSHAK THE S L E D REPORT WOULD BE NO 1 AND

1 THE MARCH 3, 2002 INTERVIEW NOTES BY THE NURSE AND MS  
2 SANDERS WOULD BE NO 2, YOUR HONOR

3 THE COURT THANK YOU

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NOS 1 & 2 WERE  
5 MARKED FOR IDENTIFICATION AND RECEIVED INTO  
6 EVIDENCE )

7 MR MIRSHAK ARE THEY IN EVIDENCE, YOUR HONOR?

8 MR BOOZER YOUR HONOR, I THOUGHT I WAS UNDER THE  
9 UNDERSTANDING THAT THEY WERE BEING MARKED JUST FOR  
10 IDENTIFICATION

11 THE COURT WELL, THEY JUST OFFERED THEM INTO  
12 EVIDENCE DO YOU HAVE ANY OBJECTION?

13 MR BOOZER I DO, YOUR HONOR, FOR THE NURSE'S REPORT  
14 UNLESS SHE'S HERE TO IDENTIFY IT

15 THE COURT OVERRULED THESE ARE A PART OF HER  
16 RECORDS THAT HAVE BEEN INTRODUCED FOR THAT PURPOSE THEY  
17 ARE ALSO MEDICAL RECORDS WHICH ARE AN EXCEPTION TO THE  
18 HEARSAY RULE GO AHEAD

19 Q WOULD YOU LOOK AT THE PHOTOGRAPHS FROM YOUR RULE  
20 FIVE'S OR ARE ON ARE THOSE ON THE C D ?

21 A THEY ARE ON THE C D I DON'T BELIEVE THAT I HAVE  
22 THEM --

23 Q BUT YOU --

24 A -- PRINTED OUT IN HARD COPY IN THE FILE I DON'T  
25 BELIEVE THEY'RE PRINTED IN HARD COPY

1 MS SMITH WILL YOU MARK THAT?  
2 (WHEREUPON, PLAINTIFF'S EXHIBIT NO 3 WAS MARKED FOR  
3 IDENTIFICATION ONLY )

4 Q CAN YOU TELL ME WHAT THAT SAYS?

5 A CUSTOMER NAME ROBINA REED, 515 FREDERICK STREET,  
6 DENMARK, SOUTH CAROLINA, 29042

7 MS SMITH AND I'D LIKE TO OFFER THIS INTO EVIDENCE,  
8 YOUR HONOR

9 THE COURT ANY OBJECTION?

10 MR BOOZER NO OBJECTION, YOUR HONOR

11 MR MIRSHAK FOR THE RECORD, YOUR HONOR, THAT'S FROM  
12 THE STATE'S RULE FIVE

13 THE COURT THANK YOU MOVE ALONG

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NO 3 WAS ADMITTED  
15 INTO EVIDENCE )

16 Q WHO IS ROBINA REED?

17 THE COURT IF YOU KNOW WHO SHE IS, ASK HER WHO SHE  
18 IS WITHOUT HER HAVING TO GO THROUGH THAT FILE

19 Q WELL --

20 THE COURT DO YOU KNOW WHO SHE IS WITHOUT LOOKING  
21 THROUGH YOUR FILE?

22 A I THINK SHE IS A PERSON WHO KNOWS MR WALKER THE  
23 NOTE IN MY FILE IS THAT I'VE GOT A NOTE IN MY FILE OF A  
24 ROBINA WHO IS A MANAGER OF HARDEES

25 Q DID YOU SPEAK TO ROBINA REED?

1 A I DID NOT MY INVESTIGATOR EITHER DID SPEAK WITH HER  
2 OR MADE ATTEMPTS TO SPEAK WITH HER

3 Q DO YOU HAVE NOTES TO THAT EFFECT?

4 A I HAVE THE NOTES THAT -- DO I HAVE NOTES SPECIFICALLY  
5 TO THAT EFFECT?

6 Q IN FACT, THE ONLY NOTE YOU HAVE SAYS ROBINA, MANAGER  
7 OF HARDEES THERE AREN'T ANY OTHER NOTES, ARE THERE?

8 A THAT'S CORRECT

9 Q SO, YOU DON'T KNOW IF HE TRIED TO CONTACT HER OR NOT,  
10 DO YOU?

11 A MY RECOLLECTION IS THAT THOSE NAMES WERE IN THERE  
12 BECAUSE THOSE WERE PEOPLE THAT HE -- NAMES THAT HE HAD  
13 BEEN GIVEN OF PEOPLE THAT HE EITHER HAD TALKED TO OR HAD  
14 ATTEMPTED TO TALK TO

15 Q DID YOU SUBPOENA HER TO TRIAL?

16 A NO, I DID NOT  
17 THE COURT IS SHE HERE TODAY?

18 MR MIRSHAK YES, SIR

19 Q MR WALKER TOLD YOU THAT HE WAS WITH HER THAT NIGHT,  
20 DID HE NOT?

21 A NO, HE DID NOT TELL ME THAT NO, MA'AM

22 THE COURT WHO DID HE TELL?

23 MS SMITH HE TOLD THE --

24 THE COURT I AM ASKING HER DO YOU KNOW WHO HE

25 TOLD?

1 THE WITNESS I DO NOT KNOW THAT HE TOLD ANYONE, YOUR  
2 HONOR HE DID NOT TELL ME I WAS NOT AWARE OF ANY CLAIM  
3 THAT HE WAS WITH ANYONE ON THAT NIGHT

4 Q BUT YOU DIDN'T MAKE ANY REAL EFFORTS TO FIND HER, DID  
5 YOU?

6 A I PERSONALLY DID NOT NO, MA'AM

7 Q YOU COULD HAVE SENT HER A SUBPOENA, COULDN'T YOU?

8 A I COULD HAVE

9 THE COURT WHAT WAS HER NAME DOING IN YOUR FILE?

10 THE WITNESS HER NAME WAS IN MY FILE BECAUSE SHE WAS  
11 A NAME THAT MR WALKER HAD GIVEN TO MY INVESTIGATOR

12 THE COURT WHO WAS YOUR INVESTIGATOR?

13 THE WITNESS MR BENNIE WILLIAMS AND THAT NOTE IS  
14 ACTUALLY IN HIS HANDWRITING

15 THE COURT DO YOU KNOW WHAT HE DID AS A RESULT OF  
16 OBTAINING THAT NAME BY WAY OF INVESTIGATION, IF ANYTHING,  
17 OF YOUR OWN PERSONAL KNOWLEDGE?

18 THE WITNESS I DO NOT HAVE PERSONAL KNOWLEDGE OF  
19 THAT, NO

20 THE COURT DID YOU EVER DISCUSS WITH HIM THE  
21 SIGNIFICANCE OF THAT NAME?

22 THE WITNESS NO

23 THE COURT AND YOUR CLIENT NEVER TOLD YOU THAT HE  
24 WAS WITH HER ON THAT NIGHT?

25 THE WITNESS THAT'S CORRECT

1 THE COURT NOWHERE IN YOUR FILE REFLECTS THAT?

2 THE WITNESS NO, SIR

3 THE COURT AND, OBVIOUSLY, IF IT HAD'VE BEEN IN YOUR  
4 FILE YOU WOULD WOULD HAVE EXPLORED THAT VERY VIGOROUSLY?

5 THE WITNESS YES, SIR

6 THE COURT MOVE ALONG

7 Q WELL, WHEN HE WAS INTERVIEWED BY THE POLICE ON THAT  
8 THAT C D YOU HAVE HE TOLD THEM, DIDN'T HE?

9 A IT'S BEEN A LONG TIME SINCE I'VE WATCHED THAT C D I  
10 COULDN'T TELL YOU

11 Q BUT YOU REVIEWED IT PRIOR TO THE TRIAL, RIGHT?

12 A YES

13 Q SO, IT WOULD HAVE BEEN IMPORTANT TO EXPLORE ANY ALIBI  
14 DEFENSE THIS MAN HAD?

15 A AND I BELIEVE THAT MY INVESTIGATOR WAS DOING SO

16 THE COURT DID HE? YOU BELIEVE IT DID HE?

17 THE WITNESS HE TOLD ME THAT HE WAS EXPLORING YES,  
18 YOUR HONOR

19 THE COURT SO, THERE IS AN INTERVIEW TAPE OF THE  
20 DEFENDANT THAT SAYS THAT HE WAS WITH -- WHAT'S HER NAME?

21 MS SMITH ROBINA REED

22 THE COURT MS REED ON THE NIGHT OF THE INCIDENT  
23 THAT NAME APPEARS IN THE FILE, BUT WE DON'T KNOW WHAT WAS  
24 DONE AS FAR AS FINDING OUT WHAT MS REED WOULD OR WOULD  
25 NOT HAVE SAID, IS THAT CORRECT?

1 THE WITNESS YES, YOUR HONOR

2 Q AND YOU DIDN'T NOTIFY THE STATE OF ANY ALIBI DEFENSE,  
3 DID YOU?

4 A NO

5 Q YOU AGREE THAT WOULD HAVE A TERRIBLE PREJUDICE ON  
6 MR WALKER NOT TO EXPLORE THAT, DON'T YOU?

7 A WITHOUT HAVING SPOKEN WITH HER I CAN'T AGREE OR  
8 DISAGREE WITH THAT

9 THE COURT WELL, WHAT IF SHE SAID SHE WAS WITH HIM?  
10 WOULDN'T THAT BE PREJUDICIAL?

11 THE WITNESS YES, SIR

12 THE COURT IF SHE SAID SHE WASN'T WITH HIM IT WOULD  
13 NOT BE PREJUDICIAL

14 THE WITNESS THAT'S CORRECT

15 MS SMITH YOUR HONOR, CAN WE MARK THAT NOTE SHE WAS  
16 REFERRING TO IN HER FILE?

17 THE COURT YOU CAN MARK WHATEVER YOU WANT TO

18 MR MIRSHAK MAY I HELP, YOUR HONOR, SINCE I KNOW  
19 WHERE IT IS?

20 THE COURT IF YOU KNOW WHERE IT IS

21 MR MIRSHAK TO MOVE THIS ALONG

22 THE COURT ARE YOU GOING TO MOVE IT INTO EVIDENCE?

23 MR MIRSHAK YES, SIR WE MOVE PLAINTIFF'S

24 EXHIBIT 4 INTO EVIDENCE SHOW IT TO THE STATE, PLEASE

25 THE COURT MR BOOZER?

1 MR BOOZER NO OBJECTION, YOUR HONOR

2 THE COURT WITHOUT OBJECTION

3 (WHEREUPON, PLAINTIFF'S EXHIBIT NO 4 WAS MARKED FOR  
4 IDENTIFICATION AND RECEIVED INTO EVIDENCE )

5 Q DIDN'T YOU TELL US THAT NOBODY KNEW WHERE ROBINA REED  
6 WAS AND THAT'S WHY YOU HADN'T TALKED TO HER?

7 A I DON'T RECALL THAT

8 Q WHOSE HANDWRITING IS THAT ON THE NOTES WE HAVE?

9 A THAT'S BENNIE WILLIAMS

10 Q AND HE'S THE INVESTIGATOR?

11 A THAT'S CORRECT

12 MS SMITH THAT'S ALL I HAVE OF THIS WITNESS, YOUR  
13 HONOR

14 THE COURT CROSS?

15 MR BOOZER THANK YOU, YOUR HONOR

16 MR MIRSHAK MAY I, YOUR HONOR, BEFORE THEY CROSS?  
17 CAN WE STIPULATE THAT THE C D CONFESSION INTERVIEW WITH  
18 THE POLICE OFFICER WHERE MR WALKER IS BEING, IN EFFECT,  
19 CROSS EXAMINED BY THE POLICE OFFICER THAT THAT, IN FACT,  
20 SHOWED MR WALKER TELLS THAT OFFICER THAT SHE WAS WITH  
21 ROBINA THAT NIGHT --

22 THE COURT THAT HE WAS

23 MR MIRSHAK AND THAT WAS ON OR ABOUT MARCH 23, I  
24 BELIEVE, 2005 WE'VE GOT THE C D

25 THE COURT WELL, ARE YOU GOING TO STIPULATE TO THAT?

1 MR BOOZER NO, SIR, YOUR HONOR  
2 THE COURT LET THE C'D COME INTO EVIDENCE I CAN  
3 LOOK AT IT

4 MR MIRSHAK THANK YOU, YOUR HONOR

5 MR BOOZER THANK YOU, YOUR HONOR

6 CROSS-EXAMINATION

7 BY MR BOOZER

8 Q MRS BROWN, NOW IN YOUR MEETINGS WITH THE APPLICANT  
9 WHAT SPECIFIC ITEMS DID YOU DISCUSS WITH HIM IN PREPARING  
10 FOR THE CASE?

11 A WELL --

12 Q AS FAR AS DEFENSES, FACTS OF THE CASE, ELEMENTS THAT  
13 THEY WERE REQUIRED TO PROVE?

14 A WELL, I MEAN, OBVIOUSLY, WE DISCUSSED WHAT HE WAS  
15 CHARGED WITH I DISCUSSED WITH HIM THE EVIDENCE THAT THE  
16 STATE HAD WAS ESSENTIALLY HER IDENTIFICATION OF HIM AS  
17 BEING THE PERSON WHO TOOK HIM -- I MEAN, TOOK HER FROM HER  
18 HOME AND WHO SEXUALLY ASSAULTED HER I DISCUSSED WITH HIM  
19 THE FACT THAT SHE GAVE VERY SPECIFIC DETAILS OF THE INSIDE  
20 OF HIS HOME

21 MS SMITH YOUR HONOR, I ASKED HER TO -- I WOULD  
22 OBJECT AND ASK THAT SHE GAVE SPECIFIC DATES OF WHEN THESE  
23 CONVERSATIONS TOOK PLACE

24 THE COURT OVERRULED GO AHEAD

25 THE WITNESS THANK YOU WE DISCUSSED THE FACT THAT

1 SHE HAD MADE SPECIFIC DESCRIPTIONS OF THE INSIDE OF HIS  
2 HOME WE DISCUSSED WHAT THE ELEMENTS THE STATE HAD TO  
3 PROVE AND THE FACTS THAT THEY WERE SEEKING TO USE TO PROVE  
4 MY CASE

5 Q MRS BROWN, DID HE EVER TELL YOU THAT SHE WAS NEVER  
6 AT HIS HOUSE?

7 A YES

8 Q OKAY BUT SHE WAS ABLE TO TESTIFY TO ALL OF THESE  
9 SPECIFICS OF THE HOME, IS THAT CORRECT?

10 A THAT'S CORRECT

11 Q NOW, YOU HIRED A PRIVATE INVESTIGATOR?

12 A NO I HAVE -- WE -- OUR OFFICE HAS TWO  
13 INVESTIGATORS ON STAFF

14 Q OKAY AND DURING YOUR INVESTIGATION DID THE  
15 APPLICANT EVER TELL YOU OR INDICATE THAT HE HAD AN ALIBI  
16 WITNESS?

17 A HE DID NOT TELL ME, NO

18 Q DID THE APPLICANT DISCUSS WITH YOU THIS ROBINA REED?

19 A NO

20 Q IF HE HAD TOLD YOU ABOUT ROBINA REED AND SAID THIS IS  
21 AN ALIBI WITNESS, THIS IS SOMEONE I WANT YOU TO  
22 INVESTIGATE, WOULD YOU HAVE HAD INVESTIGATED THAT PERSON  
23 OR HAD YOUR INVESTIGATOR INVESTIGATE THAT PERSON?

24 A YES

25 Q WAS THERE ANY REASON TO SUBPOENA ROBINA REED?

1 A NOT THAT I KNEW OF AT THE TIME

2 Q OKAY NOW, WERE YOU PROVIDED WITH AND GIVEN ACCESS  
3 TO ALL OF THE STATE'S EVIDENCE THAT THEY HAD?

4 A YES

5 Q DID YOU GO OVER ALL OF THAT EVIDENCE WITH YOUR  
6 CLIENT?

7 A AS I TESTIFIED BEFORE I WENT OVER WITH HIM WHAT WAS  
8 THERE I DON'T SPECIFICALLY RECALL IF I PLAYED A TAPE FOR  
9 HIM OR IF I SHOWED HIM PHOTOGRAPHS I WOULD HAVE  
10 SUMMARIZED FOR HIM WHAT THE STATE HAD AND, CERTAINLY, WHAT  
11 THEY INTENDED TO USE AGAINST HIM AT TRIAL

12 Q NOW, I BELIEVE DR GIBBS TESTIFIED AT THE TRIAL, AND  
13 DID SHE TESTIFY THAT THERE WAS MEDICAL EVIDENCE CONSISTENT  
14 WITH A SEXUAL ASSAULT?

15 A I BELIEVE THAT HER TESTIMONY AT TRIAL WAS THAT IT WAS  
16 CONSISTENT SHE DESCRIBED THE TRAUMA THAT SHE DISCOVERED,  
17 AND I BELIEVE THAT SHE DID TESTIFY THAT IT WAS CONSISTENT  
18 WITH A SEXUAL ASSAULT

19 Q AND SHE EVEN TESTIFIED TO THE FACT THAT THERE WERE  
20 INJURIES IN THE VICTIM'S MOUTH CONSISTENT WITH A SEXUAL  
21 ASSAULT, IS THAT CORRECT?

22 A I BELIEVE THAT'S CORRECT

23 Q GOING TO THE VIDEOTAPE OR THE SURVEILLANCE TAPE FROM  
24 THE B P STATION, WAS THE CLERK -- THE STORE CLERK -- ABLE  
25 TO MATCH UP THE TIME ON THE VIDEOTAPE EVEN THOUGH IT WAS

1 ALLEGEDLY OFF WITH THE ACTUAL TIME? DO YOU RECALL?

2 A I RECALL THAT THERE WAS TESTIMONY TO THAT NATURE I  
3 DON'T SPECIFICALLY RECALL WHAT THE TESTIMONY WAS WITHOUT  
4 LOOKING AT IT IN THE TRANSCRIPT

5 Q I BELIEVE SOME OF THAT TESTIMONY IS ON PAGE 143, YOUR  
6 HONOR, WITH MS WARREN?

7 A YES

8 Q ARE YOU ON PAGE 143?

9 A YES

10 Q IF YOU COULD READ LINE 7 THROUGH 16

11 A "ANSWER THE DATE MIGHT BE OFF, TOO, BECAUSE WE'VE  
12 HAD -- WE'VE HAD SOME PROBLEMS EVERY NOW AND THEN WITH THE  
13 V C R NOT PUTTING THE RIGHT DATE ON, BUT IF WE HAVE WHAT  
14 WE CALL INTERFACINGS IN OUR CAMERAS AND IN OUR REGISTERS,  
15 AND WHAT AN INTERFACING IS WHEN A CUSTOMER PURCHASES AND I  
16 CAN ALWAYS -- IF THE DATE IS NOT RIGHT, THEN I CAN ALWAYS  
17 DO THIS I CAN PULL THE VIDEO UP, GO TO THE INTERFACING,  
18 AND ON THE INTERFACING IT WILL GIVE ME THE NAME OF MY  
19 LOCATION, WHAT THE PERSON, WHAT THEY BOUGHT, THE DATE AND  
20 THE TIME, AND THAT'S HOW I KNEW I HAD THE PROPER TAPE WAS  
21 BECAUSE -- QUESTION YOU COMPARED THE INTERFACING IS  
22 THAT INTERFACING ON THE CASH REGISTER? ANSWER YES,  
23 MA'AM "

24 AND THIS --

25 THE COURT WHAT PAGE IS THAT?

1 THE WITNESS IT IS 143 THIS WAS DIRECT EXAM BY  
2 MS BRISBIN QUESTION AT LINE 20 "SO, YOU COMPARED THE  
3 TAPE WITH THE INTERFACING ON THE CASH REGISTER TO COME UP  
4 WITH THE DATE? ANSWER YES, MA'AM QUESTION OKAY  
5 SO, WHAT DID YOU DO WITH THE TAPE FROM THAT DATE? ANSWER  
6 WELL, I TOOK IT -- QUESTION AFTER DETERMINING WHICH TAPE  
7 WENT WITH THAT DATE? ANSWER WELL, I PUT IT -- I PUT  
8 IT --

9 Q I'M SORRY I THINK THAT THAT IS GOOD THANK YOU  
10 GOING BACK TO THE FINGERPRINTS, I THINK, THAT WERE  
11 DISCUSSED --

12 THE COURT WELL, DID YOU CROSS EXAMINE THAT  
13 PERSON -- MS WARREN? THE TRANSCRIPT SAYS YOU DIDN'T

14 THE WITNESS NO, I DID NOT

15 THE COURT ANY PARTICULAR REASON WHY? WERE YOU  
16 SATISFIED WITH WHAT HER EXPLANATION WAS?

17 THE WITNESS YES, SIR

18 Q MRS BROWN, GOING BACK TO THE FINGERPRINTS THAT WERE  
19 RAISED EARLIER, DO YOU RECALL IF THERE WAS A PROBLEM WITH  
20 OBTAINING FINGERPRINTS FROM THE HOME OR THE CAR?

21 A MY RECOLLECTION IS THAT THEY MADE ATTEMPTS TO DO SO,  
22 BUT THEY DID NOT FIND ANYTHING OF VALUE TO MAKE  
23 IDENTIFICATIONS WITH

24 Q NOW, AT THE TRIAL DID YOU RAISE THE ISSUE THAT THERE  
25 WAS NO D N A FOUND?

1 A I BELIEVE SO

2 Q AND JUST BECAUSE NO D N A IS FOUND DOES THAT MEAN  
3 THAT IT IS CONCLUSIVE THAT THERE WAS NOT A RAPE OR A  
4 SEXUAL ASSAULT?

5 A IN MY EXPERIENCE TRYING THESE KIND OF CASES, NO  
6 I'VE HAD CASES BEFORE WHERE THERE'S NOT BEEN D N A  
7 EVIDENCE TO BE FOUND, AND THAT'S ALWAYS SOMETHING THAT'S  
8 USED, BUT IT'S NOT CONCLUSIVE

9 Q NOW, DID THE VICTIM ALSO IDENTIFY THE APPLICANT IN A  
10 PHOTO LINE-UP?

11 A I BELIEVE SO

12 MR BOOZER THE COURT'S INDULGENCE, YOUR HONOR  
13 THE WITNESS I WOULD HAVE TO CHECK MY NOTES TO BE  
14 ABSOLUTELY SURE ON THAT

15 THE COURT REFER HER TO WHERE YOU WANT TO ASK HER

16 MR BOOZER, I'M SORRY, YOUR HONOR?

17 THE COURT IF YOU KNOW THE ANSWER TO THAT, WHERE IS  
18 IT IN THE TRANSCRIPT? THERE WAS A NEIL VERSUS BIGGERS  
19 LINE-UP HEARING

20 MR BOOZER YOUR HONOR, I BELIEVE IT IS 283, YOUR  
21 HONOR

22 THE COURT AND 276 SHE WAS 90 PERCENT SURE

23 Q MRS BROWN, DID THE CLERK ALSO IDENTIFY MR WALKER IN  
24 THE VIDEOTAPE?

25 A YES

1 MR BOOZER THANK YOU, YOUR HONOR  
2 THE COURT REDIRECT, IF ANY

3 REXCROSS-EXAMINATION

4 BY MS SMITH

5 Q WELL, JUST BECAUSE THE MAN MAY HAVE BEEN AT THE B P  
6 ON THAT DAY AND THE CLERK MIGHT HAVE IDENTIFIED HIM  
7 DOESN'T MEAN THAT HE DID THE ACTS THAT FOLLOWED, DID IT?

8 A NO

9 Q IN FACT, HE WAS A REGULAR CUSTOMER, WASN'T HE?

10 A THAT'S WHAT THE TESTIMONY WAS, YES, MA'AM

11 Q NOW, YOU BEGAN BY ANSWERING MR BOOZER'S QUESTION  
12 ABOUT WHAT YOU TALKED TO MR WALKER ABOUT?

13 A YES

14 Q NOW, DO YOU SPECIFICALLY RECALL THIS, OR DID YOU TELL  
15 US WHAT YOU GENERALLY -- HOW YOU GENERALLY INTERVIEW YOUR  
16 CLIENTS?

17 A BOTH

18 Q BUT YOU DON'T KNOW HOW MANY TIMES YOU MET WITH HIM?

19 A NO

20 Q YOU THINK IT WAS ONE TIME?

21 A I NEVER SAID THAT I THOUGHT IT WAS ONE TIME

22 Q I BELIEVE YOU SAID YOU THINK IT WAS THE TIME -- THE  
23 ONE TIME BEFORE THE HEARING STARTED?

24 A NO I TOLD YOU THAT THAT WAS ONE OF THE TIMES THAT I  
25 MET WITH HIM I SPOKE WITH MR WALKER AND MET WITH HIM ON

1 SEVERAL OCCASIONS I CANNOT TELL YOU SPECIFICALLY HOW  
2 MANY

3 Q DO YOU RECALL THAT MR WALKER HAD A ROOMMATE?

4 A IN HIS HOUSE?

5 Q YES

6 A I DON'T RECALL THAT I THINK THAT HE MENTIONED THAT

7 Q WELL, YOU HAVE NOTES ABOUT A MAN NAMED DOUG, DON'T  
8 YOU?

9 MR BOOZER I AM GOING TO HAVE TO OBJECT TO THE  
10 RELEVANCE

11 THE COURT SURE THAT'S NOT IN RESPONSE TO THE  
12 CROSS

13 MS SMITH WELL, SIR --

14 THE COURT SUSTAINED

15 MS SMITH MAY I EXPLAIN?

16 THE COURT YOU MAY YOUR REDIRECT HAS TO BE IN  
17 RESPONSE TO THE CROSS EXAMINATION THAT DID NOT COME UP

18 MS SMITH WELL, JUST BECAUSE THE WOMAN CAN IDENTIFY  
19 THE INSIDE OF THE HOUSE DOESN'T MEAN THAT THAT SPECIFIC  
20 ACT OCCURRED WITH HIM HE SAID HE HAD NEVER HAD HER IN  
21 THE HOUSE THAT DOESN'T MEAN THAT DOUG DIDN'T HAVE HER IN  
22 THE HOUSE EVER

23 THE COURT ALL RIGHT I'LL LET YOU ASK IT

24 Q DID YOU TALK TO DOUG?

25 A I DID NOT TALK TO DOUG, NO

1 Q DID YOU TRY TO LOCATE DOUG?

2 A I DID NOT, NO

3 Q AND YOUR INVESTIGATOR DIDN'T EITHER, DID HE?

4 A I DON'T KNOW

5 Q DID YOU SEND DOUG A SUBPOENA?

6 A NO?

7 THE COURT IS DOUG HERE TODAY?

8 MS SMITH NO AND IT WOULD HAVE BEEN A LOT EASIER  
9 TO FIND DOUG SEVERAL YEARS AGO THAN IT WOULD BE FOR ME  
10 TODAY, RIGHT?

11 THE COURT WELL, WHO KNOWS THAT, MA'AM? MOVE ALONG

12 Q NOW, DIDN'T DR GIBBS ALSO TESTIFY THAT THE TRAUMA OR  
13 HOWEVER SHE DESCRIBED THE APPEARANCE OF MS -- OF THE  
14 VICTIM MS SANDERS -- WAS ALSO CONSISTENT WITH A WOMAN WHO  
15 HAD GONE THROUGH MENOPAUSE? DO YOU RECALL THAT?

16 A I BELIEVE I EXPLORED THAT POSSIBILITY WITH HER ON  
17 CROSS EXAMINATION

18 Q SO, THERE WAS NO EVIDENCE OF -- THIS WAS A PURELY  
19 CIRCUMSTANTIAL CASE, WASN'T IT?

20 A I DON'T KNOW THAT I WOULD CLASSIFY IT AS A PURELY  
21 CIRCUMSTANTIAL CASE I DON'T THINK THAT WHEN YOU HAVE  
22 SOMEONE DIRECTLY IDENTIFYING SOMEONE AS THE PERSON WHO  
23 COMMITTED A SEXUAL ASSAULT ON THEM THAT THAT WOULD -- I  
24 BELIEVE THAT THAT WOULD BE CONSIDERED DIRECT EVIDENCE

25 Q SOMEONE WHO SMELLED OF ALCOHOL WHEN THEY SPOKE TO THE

1 POLICE A FEW HOURS AFTER IT HAPPENED?

2 A I AM NOT CLASSIFYING HOW CREDIBLE IT IS I AM JUST  
3 JUST SAYING I BELIEVE THAT WOULD BE CONSIDERED DIRECT  
4 EVIDENCE

5 Q BUT YOU SHOULD HAVE CHALLENGED HER CREDIBILITY AT  
6 TRIAL, SHOULDN'T YOU?

7 A I COULD HAVE AND I BELIEVE I DID IN OTHER WAYS

8 Q WELL, YOU DIDN'T CHALLENGE HER ON THE ALCOHOL FACTS,  
9 DID YOU?

10 A I DID NOT CHALLENGE HER ON HER GOING INTO TREATMENT  
11 FOR ALCOHOL, BUT I DID CHALLENGE HER WITH HER TESTIMONY OF  
12 HIM PROVIDING HER ALCOHOL DURING THE COURSE OF THAT NIGHT  
13 I CHALLENGED HER ON HER TESTIMONY THAT HE ALLOWED HER TO  
14 SMOKE CIGARETTES I CHALLENGED HER ON HER CREDIBILITY BY  
15 HER TESTIMONY THAT HE ALLOWED HER TO GRAB HER PURSE AS SHE  
16 WAS HEADING OUT THE DOOR

17 THE COURT BUT NOT ON THE ALCOHOL TREATMENT?

18 THE WITNESS NOT ON THE ALCOHOL TREATMENT THAT I  
19 RECALL

20 Q BUT WHETHER SHE WAS IMPAIRED AND COULD MAKE A GOOD  
21 IDENTIFICATION?

22 MR BOOZER YOUR HONOR, I WOULD OBJECT I THINK  
23 SHE'S ANSWER ALL OF THESE QUESTIONS

24 THE COURT SHE HAS SUSTAINED MOVE ALONG YOU  
25 COVERED THAT POINT VERY THOROUGHLY

1 MS SMITH THAT'S ALL I HAVE, YOUR HONOR

2 MR MIRSHAK YOUR HONOR, ONE, PLEASE

3 MS SMITH THAT'S ALL I HAVE, YOUR HONOR

4 THE COURT YOU MAY STEP DOWN

5 MR BOOZER ONE QUESTION, YOUR HONOR, VERY BRIEFLY

6 THE COURT NEXT WITNESS YOU MAY STEP DOWN

7 MR MIRSHAK ROBINA REED, PLEASE

8 THE COURT COME AROUND, PLEASE GOOD MORNING PUT

9 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT

10 ROBINA REED, AFTER BEING DULY SWORN, TESTIFIED

11 AS FOLLOWS

12 THE COURT R-E-E-D?

13 THE COURT ARE YOU KIN TO IZZY AND CLYDE

14 THE WITNESS NO

15 THE COURT FROM ELKO?

16 THE WITNESS NO

17 THE COURT DO YOU KNOW THEM?

18 THE WITNESS NO

19 THE COURT WHERE ARE YOU FROM?

20 THE WITNESS NEW YORK

21 THE COURT NO WONDER

22 MR MIRSHAK SHE'S GOT DENMARK ROOTS, THOUGH, JUDGE

23 DIRECT EXAMINATION

24 BY MR MIRSHAK

25 Q STATE YOUR NAME FOR THE RECORD, PLEASE

1 A ROBINA MAE REED

2 Q AND, MS REED, WHERE DO YOU LIVE?

3 A IN DENMARK

4 Q DENMARK, SOUTH CAROLINA?

5 A YES

6 Q AND DO YOU KNOW WHERE THE RAINBOW B P GAS STATION

7 IS?

8 A YES

9 Q AND HOW LONG HAVE YOU LIVED IN DENMARK?

10 A SINCE 1988

11 Q OKAY SO, YOU'VE LIVED IN DENMARK ALMOST 19 YEARS AS

12 WE SIT HERE TODAY?

13 A YES

14 Q WERE YOU LIVING IN DENMARK, SOUTH CAROLINA IN MARCH

15 OF 2002?

16 A YES

17 Q NOW, DO YOU KNOW JOSEPH WALKER?

18 A YES

19 Q HOW LONG DID YOU KNOW MR WALKER PRIOR TO MARCH OF

20 2002?

21 A I KNOW HIM FOR ABOUT TWO YEARS

22 Q OKAY NOW, FROM MARCH -- WHERE DO YOU WORK?

23 A I WORK AT HARDEES

24 Q AND IS THAT THE HARDEES ON US 78 AS YOU'RE COMING

25 DOWN HERE FROM WILLISTON, BLACKVILLE?

- 1 A YES
- 2 Q AND YOU GO RIGHT BY IT ON THE RIGHT?
- 3 A YES
- 4 Q COMING ON DOWN HERE TO BAMBERG?
- 5 A RIGHT
- 6 Q IS THAT CORRECT?
- 7 A THAT'S CORRECT
- 8 Q HOW LONG HAVE YOU WORKED AT THAT HARDEES?
- 9 A SINCE 1988
- 10 Q OKAY SO, YOU'VE WORKED THERE AS WE SIT HERE TODAY
- 11 ALMOST 19 YEARS?
- 12 A UH-HUH
- 13 Q HAVE YOU ALWAYS WORKED THERE?
- 14 A YES
- 15 Q HAVE YOU HAD ANY OTHER JOB IN DENMARK OR IN
- 16 ORANGEBURG OR AIKEN COUNTY SINCE THAT TIME?
- 17 A I JUST HAD MY LITTLE CLEANING BUSINESS, BUT THAT'S
- 18 IT
- 19 Q A LITTLE SIDE BUSINESS?
- 20 A YEA
- 21 Q AND WHAT WAS YOUR POSITION AT THE HARDEES IN DENMARK
- 22 IN MARCH OF 2002? WHAT POSITION DID YOU HOLD AS AN
- 23 EMPLOYEE?
- 24 A MANAGER
- 25 Q OKAY DID YOU RUN A CERTAIN SHIFT?

1 A I RUN THEM ALL

2 Q OKAY SOMETIMES DID YOU WORK DAYSHIFT AND SOMETIMES  
3 YOU WORKED NIGHTSHIFT?

4 A MOSTLY NIGHTSHIFT

5 Q OKAY BUT YOU'RE NOT THE OVERALL MANAGER FOR THE  
6 WHOLE HARDEES, IS THAT CORRECT?

7 A THAT'S CORRECT

8 Q NOW, PRIOR TO SOMETIME IN JANUARY OR FEBRUARY OF 2007  
9 HAD YOU EVER MET MYSELF OR MS SMITH BEFORE?

10 A NO

11 Q HAD YOU EVER TALKED TO US?

12 A NO

13 Q SINCE MARCH OF 2002 UNTIL MS SMITH -- LET ME BACK  
14 UP MS SMITH AND I MET WITH YOU AT THE HARDEES -- I  
15 MEAN, EXCUSE ME WE CALLED YOU ON THE TELEPHONE AT THE  
16 HARDEES, DID WE NOT?

17 A YES, YOU DID

18 Q IN FACT, DID I COME BY AND LEAVE MY BUSINESS CARD FOR  
19 YOU AT THAT HARDEES SOMETIME IN JANUARY OF 2007?

20 A YES, MY BOSS GAVE IT TO ME I DON'T KNOW WHAT IT  
21 WAS I THREW IT IN THE TRASH

22 Q YOU DIDN'T CALL ME BACK, DID YOU?

23 A NO

24 Q YOU THOUGHT IT WAS SOME OLD AUGUSTA LAWYER COMING  
25 DOWN THERE TO HARRASS YOU, DIDN'T YOU?

- 1 A YES
- 2 THE COURT ALL RIGHT ONE AT A TIME PLEASE
- 3 MR MIRSHAK THANK YOU, YOUR HONOR
- 4 NOW, HOW LONG HAVE YOU LIVED -- WHAT IS YOUR STREET
- 5 ADDRESS AGAIN?
- 6 THE WITNESS IT WAS 515 FREDERICK, BUT IT IS 296
- 7 Q OKAY ON FREDERICK STREET, CORRECT?
- 8 A YES
- 9 Q HOW LONG HAVE YOU LIVED ON FREDERICK STREET?
- 10 A '88, 1988
- 11 Q OKAY WERE YOU LIVING AT 515 FREDERICK STREET IN
- 12 MARCH OF 2002?
- 13 A YES
- 14 Q NOW, FROM MARCH OF 2002 UNTIL MS SMITH AND I
- 15 CONTACTED YOU HAD ANYONE FROM EITHER -- WELL, FIRST OF
- 16 ALL, HAD ANYONE EVER CONTACTED YOU ABOUT ANY ALLEGED CRIME
- 17 INVOLVING JOSEPH WALKER?
- 18 A NO
- 19 Q OKAY DID -- YOU HEARD THAT LADY WHO JUST TESTIFIED
- 20 I THINK SHE'S LEFT NOW -- KELLEY BROWN?
- 21 A I DON'T KNOW HER
- 22 Q DID YOU EVER HAVE ANY CONTACT FROM KELLEY BROWN?
- 23 A NO
- 24 Q DID YOU EVER HAVE ANY CONTACT FROM AN INVESTIGATOR
- 25 NAMED BENNIE WILLIAMS?

1 A NO

2 Q NOW, DID YOU EVER HAVE ANY CONTACT FROM THE AIKEN  
3 COUNTY OR THE ORANGEBURG COUNTY SHERIFF'S DEPARTMENT ABOUT  
4 ANY CRIME INVOLVING MR WALKER?

5 A NOPE

6 Q DID YOU EVER HAVE ANY CONTACT FROM THE AIKEN COUNTY  
7 SOLICITOR'S OFFICE, MS BRENDA BRISBIN, OR ANYBODY WORKING  
8 IN HER OFFICE?

9 A NO

10 Q ARE YOU HERE TO TELL THE TRUTH TODAY, MA'AM?

11 A YES

12 Q NOW, I AM GOING TO SHOW YOU WHAT'S BEEN MARKED AS  
13 PLAINTIFF'S EXHIBIT 3, AND I AM GOING TO ASK YOU TO ASSUME  
14 THAT THIS WAS FOUND IN MR WALKER'S TRASHCAN ON THE --  
15 THAT WAS PROVIDED TO US IS THAT YOUR NAME AND ADDRESS?

16 A YES

17 Q NOW, DO YOU KNOW WHAT THIS PARTICULAR RECEIPT WAS  
18 FROM?

19 A THAT'S AN OLD BILL I PAID YEA, THAT'S IT

20 Q BUT YOU DON'T KNOW WHAT SPECIFIC BILL IT WAS?

21 A NO

22 Q OKAY AND IF I TELL YOU THAT WE BELIEVE THAT THE  
23 STATE'S EVIDENCE IS THAT THIS WAS FOUND IN MR WALKER'S  
24 TRASHCAN AND WHEN THE POLICE OFFICERS SEARCHED HIS HOUSE,  
25 DO YOU HAVE ANY REASON TO BELIEVE THAT THIS CAME FROM YOUR

- 1 HOUSE?
- 2 A YES, THAT CAME FROM MY HOUSE
- 3 Q BUT, ORIGINALLY, IT WAS IN YOUR HOUSE?
- 4 A YES
- 5 Q DO YOU KNOW IF YOU CARRIED IT TO MR WALKER'S HOUSE  
6 OR DID HE CARRY IT THERE?
- 7 A HE CARRIED IT THERE HE BURNED MY TRASH
- 8 Q HE BURNED YOUR TRASH?
- 9 A YES
- 10 Q OKAY DID HE ALSO BURN YOUR YARD OFF AT TIMES?
- 11 A YES
- 12 Q WHAT IS THE PURPOSE OF BURNING OFF YOUR YARD?
- 13 A SO MY GRASS WOULD COME BACK PRETTY
- 14 Q NOW, DID HE DO THAT ON MORE THAN ONE OCCASION?
- 15 A YEA, MORE THAN ONE TIME
- 16 Q TELL JUDGE EARLY, IF YOU WILL, WHAT WAS YOUR  
17 RELATIONSHIP -- WHAT -- WITH MR WALKER IN MARCH OF 2002?
- 18 A WE WAS LOVERS
- 19 Q OKAY WERE Y'ALL BOYFRIEND AND GIRLFRIEND?
- 20 A YES
- 21 Q WOULD HE SPEND THE NIGHT AT YOUR HOUSE?
- 22 A YES
- 23 Q HOW OFTEN WOULD HE STAY AT YOUR HOUSE?
- 24 A HE HAD A KEY HE COULD COME ANYTIME, BUT HE COME ON  
25 THE WEEKENDS AND WAIT ON ME ON THE WEEKDAYS WHEN I GET OFF

- 1 OF WORK AND TAKE ME HOME
- 2 Q YOU ACTUALLY GAVE HIM A KEY?
- 3 A UH-HUH
- 4 Q DID YOU HAVE A CAR?
- 5 A IT BROKE
- 6 Q BACK IN MARCH OF 2002 DID YOU HAVE A CAR?
- 7 A YES
- 8 Q OKAY BUT IT WAS BROKEN?
- 9 A YEA
- 10 Q WOULD MR WALKER COME TO THE HARDEES AND WAIT ON YOU
- 11 TO TAKE YOU HOME?
- 12 A YES
- 13 Q OKAY NOW, DID YOU HAVE ANYBODY ELSE LIVING WITH YOU
- 14 AT YOUR HOUSE?
- 15 A I HAD MY SON
- 16 Q WHAT IS HIS NAME?
- 17 A AUBRY
- 18 Q AND HOW OLD IS HE NOW?
- 19 A HE JUST MADE 21
- 20 Q OKAY SO, IN MARCH OF 2002 HE WAS ABOUT 15 YEARS
- 21 OLD, IS THAT RIGHT?
- 22 A YES
- 23 Q FIFTEEN OR SIXTEEN?
- 24 A YES
- 25 Q WOULD MR WALKER SPEND THE NIGHT AT YOUR HOUSE WITH

1 YOUR SON AND YOU THERE?

2 A YES

3 Q WHERE DID MR WALKER -- LET ME BACK UP FROM -- DID  
4 YOU LOSE CONTACT WITH MR WALKER?

5 A YES

6 Q NOW, DO YOU NOW KNOW THAT HE WAS ARRESTED AND CHARGED  
7 WITH THESE CRIMES SOMETIME IN LATE MARCH OF 2002, IS THAT  
8 RIGHT?

9 A YES

10 Q SINCE MARCH OF 2002 UNTIL MS SMITH AND I CONTACTED  
11 YOU DID YOU EVER HAVE ANY CONTACT BY TELEPHONE OR IN  
12 PERSON WITH MR WALKER?

13 A NO I THOUGHT HE GOT TIRED OF MY MOUTH SO I --

14 Q YOU JUST THOUGHT HE TOOK OFF?

15 A YEA

16 Q OKAY

17 THE COURT YOU DIDN'T KNOW HE WAS ARRESTED?

18 THE WITNESS NO

19 Q OKAY NOW --

20 THE COURT YOU KNOW HE WENT TO JAIL?

21 THE WITNESS I AIN'T KNOWED NOTHING

22 THE COURT WHEN DID YOU FIND OUT HE WENT TO JAIL?

23 THE WITNESS WHEN THEY GOT A THING IN THE MAIL -- A

24 CHECK I THOUGHT IT WAS A CHILD SUPPORT I DIDN'T KNOW

25 WHAT IT WAS THEN THEY LEFT A CARD AT THE JOB -- AT MY

1 JOB MY BOSS TOLD ME AND I AIN'T KNOW WHAT IT WAS SO, I  
2 SAID IT MUST BE A CASE ON MY JOB I SAID I AIN'T GOING TO  
3 BE NO WITNESS I THREW IT IN THE GARBAGE

4 THE COURT YOU'RE TALKING ABOUT WITH MR MIRSHAK?  
5 THE WITNESS YEA

6 Q YOU'RE TALKING ABOUT FIVE YEARS LATER, IS THAT  
7 CORRECT?

8 A YEA

9 Q WE SENT YOU A SUBPOENA AND A SUBPOENA CHECK FOR, I  
10 DON'T KNOW, 30 OR \$35, IS THAT RIGHT?

11 THE COURT THE QUESTION IS ONCE HE QUIT COMING  
12 AROUND IN MARCH YOU DIDN'T MAKE ANY INQUIRIES AS TO WHERE  
13 HE WAS, WHY HE DIDN'T COME AROUND?

14 THE WITNESS NO, BECAUSE I GOT TIRED HE GOT TIRED  
15 OF MY MOUTH WE GOT IN AN ARGUMENT I TOLD HIM HE NEEDED  
16 TO GET LOST SO, I THOUGHT HE JUST GOT LOST AT THE TIME  
17 I THOUGHT HE TOOK ME SERIOUS, AND THE WAY I WORK A LOT I  
18 DIDN'T REALLY HAVE THE TIME

19 Q OKAY DID ANYBODY TALK -- WELL, LET ME BACK UP IN  
20 MARCH OF 2002 PRIOR TO, IF YOU NOW KNOW HE WAS ARRESTED DO  
21 YOU KNOW WHERE MR WALKER WAS WORKING?

22 A HE WORKED AT A CONSTRUCTION LIKE BUILDING  
23 SCHOOLHOUSES -- WAGENER

24 Q WAGENER, SOUTH CAROLINA?

25 A I THINK SO, YEA, WAGENER I WENT OUT THERE A COUPLE

- 1 OF TIMES
- 2 Q YOU HAD BEEN TO THERE?
- 3 A UH-HUH
- 4 Q HAD YOU ALSO BEEN TO HIS HOUSE?
- 5 A YES
- 6 Q HAD YOU SPENT THE NIGHT AT HIS HOUSE?
- 7 A OF COURSE
- 8 Q OKAY HOW LONG DID THIS RELATIONSHIP WITH MR WALKER
- 9 GO ON?
- 10 A A GOOD WHILE
- 11 THE COURT HOW LONG IS A GOOD WHILE?
- 12 THE WITNESS WE WAS TOGETHER OVER A YEAR
- 13 Q OKAY
- 14 A AND THEN AFTER THAT, THAT WAS IT I AIN'T SEEN HIM
- 15 Q NOW, AT THE FIRST OF MARCH -- THE FIRST WEEKEND OF
- 16 MARCH OF 2002 WERE YOU AND MR WALKER STILL INVOLVED IN A
- 17 SEXUAL RELATIONSHIP?
- 18 A OF COURSE
- 19 Q AND WE'RE NOW FIVE YEARS LATER, IS THAT CORRECT?
- 20 A YEA
- 21 Q OKAY AT THE TIME BEFORE HE DISAPPEARED HAD
- 22 MR WALKER BEEN SPENDING WITH NIGHT WITH YOU ON THE
- 23 WEEKENDS AND ON SATURDAY NIGHT?
- 24 A YES, HE HAS
- 25 Q OKAY HAD THAT BEEN GOING ON EVERY WEEKEND FOR SIX

1 MONTHS TO A YEAR?

2 A YEA

3 Q AND WOULD HE STAY THERE DURING THE WEEK?

4 A UH-HUH

5 Q OKAY NOW, IF YOU WERE WORKING -- IF -- YOU WERE

6 GENERALLY WORKING ON SATURDAY NIGHTS WHAT SHIFT?

7 A SECOND

8 Q WHAT IS THE SECOND SHIFT HOURS?

9 A IT STARTED OUT AT 2 O'CLOCK 'TIL 11

10 Q OKAY AND WOULD MR WALKER COME TO YOUR PLACE OF

11 BUSINESS WHILE YOU WERE ON SHIFT?

12 A YES

13 Q AND WHAT WOULD HE DO?

14 A SIT DOWN AND DRINK COFFEE, MAYBE MAKE HIM A SALAD,

15 AND THEN SOMETIMES IF I AM RUNNING LATE I'LL PUT HIM TO

16 WORK SO I CAN GET OUT

17 Q WHAT DOES PUT HIM TO WORK MEAN?

18 A I MAKE HIM CLEAN UP, HELP ME GET OUT OF THERE, TAKE

19 THE TRASH OUT SO I CAN GET OUT THE JOB FASTER

20 Q DID YOU PAY HIM TO DO THAT AT HARDEES?

21 A I AIN'T GOT TO PAY HIM

22 Q PARDON ME?

23 A NO, I AIN'T PAID HIM

24 Q THEY WOULDN'T LET YOU WRITE HIM A CHECK?

25 A NO

1 THE COURT ALL RIGHT MR MIRSHAK, GET TO THE  
2 \$64,000 QUESTION

3 Q MS REED, WERE YOU SPENDING THE NIGHT WITH MR WALKER  
4 IN THE FIRST WEEKEND OF MARCH OF 2002 ON THE WEEKEND OF  
5 MARCH 2?

6 A I GUESS I DID

7 THE COURT DO YOU KNOW --

8 THE WITNESS THAT'S BEEN A LONG TIME

9 THE COURT -- MA'AM?

10 THE WITNESS YES

11 Q OKAY WHEN IS THE LAST TIME THAT YOU SPENT THE NIGHT  
12 WITH HIM AFTER THAT?

13 A THAT'S A SUNDAY IN MARCH, I DON'T KNOW

14 Q OKAY DID YOU EVER AFTER -- OKAY AT SOME POINT  
15 THEN HE JUST DIDN'T SHOW UP ANYMORE?

16 A RIGHT

17 THE COURT DID HE SHOW UP ANYMORE AFTER THAT  
18 PARTICULAR WEEKEND, THE FIRST WEEKEND IN MARCH?

19 THE WITNESS YEA, HE SHOW BACK UP

20 THE COURT WHEN WAS HE ARRESTED?

21 MR MIRSHAK MARCH 22, YOUR HONOR I THINK THAT'S  
22 CORRECT THE STATE WILL CORRECT ME IF I AM WRONG

23 THE COURT GO AHEAD

24 Q OKAY DO YOU -- ON THAT WEEKEND -- THAT WAS SPRING  
25 WAS COMING UP, IS THAT RIGHT? IS THAT WHEN YOU WOULD BURN

1 OFF YOUR YARD?

2 A YEA

3 Q DID MR WALKER -- DO YOU RECALL MR WALKER BURNING  
4 OFF YOUR YARD?

5 A YES

6 Q OKAY DID YOU LEAVE HIM THERE WITH THE YARD BURNING?

7 A YES

8 Q WHAT DID YOU TELL HIM ABOUT WHAT KIND OF JOB HE OUGHT  
9 TO DO?

10 A I SAID HE BETTER DO A NEAT JOB I DON'T LIKE NOTHING  
11 SLOPPY

12 Q DID Y'ALL KID AROUND ABOUT THAT?

13 A YEA, I BE SERIOUS THOUGH

14 Q DID YOU LEAVE HIM -- ON THE FRIDAY NIGHT HAD HE BEEN  
15 THERE AFTER WORK?

16 A YEA, I LEAVE HIM THERE

17 Q YOU NEVER GOT YOUR KEY BACK, DID YOU, BECAUSE HE WAS  
18 ARRESTED?

19 A NOPE

20 Q DID YOU TRUST HIM WITH THAT KEY?

21 A YES

22 Q DID HE EVER TAKE ANYTHING OUT OF YOUR HOUSE THAT HE  
23 WASN'T SUPPOSED TO?

24 A NO

25 Q WHERE WOULD HE TAKE YOUR TRASH WHEN HE WAS GOING TO

1 GO BURN IT?

2 A I GUESS HE TAKE IT TO HIS HOUSE I DIDN'T CARE AS  
3 LONG AS HE BURNED IT

4 Q DO Y'ALL HAVE TRASH PICKUP ON FREDERICK STREET?

5 A YES, BUT I USUALLY BURN MY PAPERS BUT WE GET TRASH  
6 MR MIRSHAK OKAY ONE MINUTE, PLEASE, YOUR HONOR  
7 LET ME ASK YOU A QUESTION DO YOU HAVE DOGS?  
8 THE WITNESS YES

9 Q DID YOU HAVE DOGS IN MARCH OF 2002?

10 A YES

11 Q WHAT KIND OF SIGN DID YOU HAVE ON YOUR DOOR, ON YOUR  
12 GATE?

13 A IT SAYS IF YOU CAN RUN 3 2 SECONDS OR SOMETHING LIKE  
14 THAT IT'S ON THERE

15 Q IF YOU CAN'T RUN IN 3 2 SECONDS, DON'T COME THROUGH  
16 THIS GATE?

17 A YEA

18 Q WHAT KIND OF DOGS DID YOU HAVE?

19 A I HAD A ROTTWEILER

20 Q OKAY IS THAT SOMETIMES, ALSO -- IS THAT LIKE A PIT  
21 BULL? IT WASN'T A PIT BULL IT WAS A ROTTWEILER?

22 A IT WASN'T A PIT BULL IT IS A BIG BLACK DOG  
23 THE COURT I KNOW WHAT A ROTTWEILER IS MOVE ALONG

24 Q OKAY WOULD YOU LEAVE MR WALKER THERE WITH THE DOG?

25 A YES

1 Q OKAY ANY PROBLEMS WITH THAT?

2 A NO

3 Q ONE MINUTE, PLEASE MR WALKER HADN'T TALKED TO YOU  
4 ABOUT THIS CASE SINCE YOU LAST HAD CONTACT WITH HIM IN  
5 MARCH OF 2002?

6 A I HADN'T SEEN HIM AT ALL

7 Q HE HADN'T CALLED YOU UP AND TOLD YOU WHAT TO SAY HERE  
8 TODAY?

9 A NO

10 MR BOOZER YOUR HONOR, I THINK SHE'S ALREADY  
11 ANSWERED THIS

12 MR MIRSHAK I'LL WITHDRAW THE QUESTION WELL, I'M  
13 NOT --

14 THE COURT NO THAT'S A GOOD QUESTION

15 Q HAS HE CONTACTED YOU IN ANY WAY --

16 THE COURT SHE'S ANSWERED THAT

17 MR MIRSHAK THANK YOU, YOUR HONOR ONE MINUTE,  
18 PLEASE DURING -- I'LL WITHDRAW IT THANK YOU, YOUR  
19 HONOR

20 THE COURT MS REED, DO YOU KNOW THAT UNDER SOUTH  
21 CAROLINA LAW THAT IF YOU GIVE FALSE TESTIMONY UNDER OATH I  
22 CAN PUT YOU IN JAIL FOR FIVE YEARS AND FINE YOU \$10,000?

23 THE WITNESS YEP

24 THE COURT KNOWING THAT IS WHAT YOU TOLD US THE  
25 ABSOLUTE TRUTH TODAY?

1 THE WITNESS YES, SIR

2 THE COURT AND YOU'RE TELLING ME THAT YOU SPENT --  
3 MR REED (SIC) WAS STAYING WITH YOU THAT FIRST WEEKEND IN  
4 MARCH OF 2002?

5 THE WITNESS YES

6 THE COURT ANSWER ANY QUESTIONS THE A G HAS

7 MR BOOZER THANK YOU, YOUR HONOR

8 CROSS-EXAMINATION

9 BY MR BOOZER

10 Q MS REED --

11 A YES, SIR?

12 Q DID YOU MARK A CALENDAR EVERYTIME MR WALKER CAME  
13 OVER TO YOUR HOUSE?

14 A NO

15 Q SO, Y'ALL SPENT EVERY WEEKEND EVERY NIGHT TOGETHER?

16 A IT AIN'T EVERY WEEKEND, BUT HE WE STAY THE NIGHT  
17 THEN I GO TO HIS HOUSE AND THEN HE COMES TO STAY AT MY  
18 HOUSE

19 Q Y'ALL ARE SPENDING EVERY NIGHT AND EVERY WEEKEND  
20 TOGETHER THIS IS YOUR LOVER, BUT YOU DIDN'T KNOW HE WAS  
21 ARRESTED?

22 A NO, BECAUSE WE HAD AN ARGUMENT I DIDN'T KNOW

23 Q OKAY DID HE --

24 A THEN -- EXCUSE ME

25 Q I'M SORRY GO AHEAD?

1 A I WAS JUST SAYING BECAUSE I JUST HAD LOST MY DAUGHTER  
2 IN A CAR WRECK AT THE TIME HE WASN'T SUPPORTIVE FOR ME  
3 SO, I JUST DIDN'T HAVE THE TIME I PUT MOST OF MY TIME AT  
4 THE JOB

5 Q WHEN DID Y'ALL BREAK UP?

6 A WE BROKE UP LATE -- IN LATE MARCH  
7 THE COURT WHAT YEAR?

8 THE WITNESS THAT WAS LIKE 2000 -- MY DAUGHTER DIED  
9 IN 2000, 2002

10 THE COURT YOU BROKE UP WHEN?

11 THE WITNESS I AM TRYING TO CALCULATE MY DAUGHTER  
12 DIED IN 2000 ABOUT 2002

13 Q 2002 IS WHEN Y'ALL BROKE UP?

14 A YEA

15 Q YOU KNOW THE EXACT DATE?

16 A NO, SIR

17 Q BUT YOU KNEW HE WAS WITH YOU THAT NIGHT?

18 A HUH?

19 Q YOU KNEW HE WAS WITH YOU ON MARCH 2?

20 A WELL, I KNOW HE WAS WITH ME, BUT I CAN'T SAY A  
21 PARTICULAR DATE NO, I DON'T KNOW WHAT DATE Y'ALL WANT

22 Q BUT YOU CAN'T REMEMBER THE DATE Y'ALL BROKE UP?

23 A RIGHT

24 Q DO YOU KNOW WHAT YOU WERE DOING THE NIGHT OF MARCH 1,  
25 2002?

1 A NO, I CAN'T GO BACK THAT FAR

2 Q WELL, THAT'S JUST THE DAY BEFORE WHEN YOU SAID

3 MR WALKER WAS WITH YOU?

4 A YOU SAID HE WAS WITH ME, BUT THAT'S ALL I CAN SAY

5 Q SO, YOU DON'T KNOW WHAT YOU WERE DOING MARCH 1, 2002?

6 A WE COULD HAVE BEEN TOGETHER IN 2002 I DON'T EVEN  
7 KNOW WHAT DAY THAT WAS

8 Q BUT YOU DON'T KNOW SPECIFICALLY?

9 A RIGHT, THAT'S WHAT I'M SAYING

10 Q BUT YOU KNOW SPECIFICALLY RIGHT NOW WHAT YOU WERE  
11 DOING MARCH 2, 2002?

12 A NO, I AIN'T SAID THAT

13 Q SO, YOU DON'T KNOW WHAT YOU WERE DOING MARCH 2, 2002  
14 THAT NIGHT?

15 THE COURT MA'AM, DO YOU KNOW WHETHER OR NOT YOU  
16 WERE WITH THIS MAN OVER HERE MR WALKER?

17 THE WITNESS I KNOW WE SPENT A LOT OF DAYS TOGETHER  
18 I CAN'T TELL YOU NO PARTICULAR DAY

19 Q SO YOU CAN'T TELL --

20 A A PARTICULAR DAY, RIGHT

21 Q YOU CAN'T TELL US YOU WERE WITH HIM MARCH 2, 2002?

22 A RIGHT

23 MR BOOZER THANK YOU, YOUR HONOR NO FURTHER  
24 QUESTIONS

25 MR MIRSHAK MAY I YOUR, HONOR?

1 THE COURT SURE

2 REDIRECT EXAMINATION

3 BY MR MIRSHAK

4 Q PRIOR TO THE LAST TIME THAT SAW MR WALKER DID Y'ALL  
5 SPEND EVERY WEEKEND TOGETHER?

6 A YEA, WE SPEND EVERY WEEKEND TOGETHER

7 Q AT EITHER HIS HOUSE OR YOUR HOUSE?

8 A RIGHT

9 MR MIRSHAK OKAY THANK YOU

10 THE COURT YOU MAY STEP DOWN NEXT WITNESS

11 MS SMITH JOSEPH WALKER

12 THE COURT THANK YOU, MA'AM YOU STILL WORKING AT  
13 HARDEES?

14 THE WITNESS YES, I'M OFF TODAY I JUST GOT OFF  
15 LAST NIGHT

16 JOSEPH WALKER, AFTER BEING DULY SWORN, TESTIFIED  
17 AS FOLLOWS

18 DIRECT EXAMINATION

19 BY MS SMITH

20 Q MR WALKER, DO YOU KNOW WHAT YOU'RE ASKING THE COURT  
21 TO DO TODAY?

22 A I AM HERE FOR SOME THINGS THAT MRS KELLEY BROWN DID  
23 NOT OBJECT TO

24 THE COURT YEA, BUT YOU UNDERSTAND WHAT HAPPENS IF I  
25 RULE FOR YOU? YOU GET A NEW TRIAL

1 THE WITNESS YES, SIR

2 THE COURT AND AT THE NEW TRIAL YOU MIGHT BE FOUND  
3 GUILTY OR YOU MIGHT BE FOUND NOT GUILTY IF YOU'RE FOUND  
4 GUILTY YOU MAY POSSIBLY GET MORE TIME THAN YOU'VE ALREADY  
5 GOTTEN DO YOU UNDERSTAND THAT?

6 THE APPLICANT YES, SIR

7 THE COURT YOU'RE CHARGED WITH KIDNAPPING, CRIMINAL  
8 SEXUAL CONDUCT FIRST DEGREE, POSSESSION OF A WEAPON DURING  
9 THE COMMISSION OF A VIOLENT CRIME SO, IF A C S C IN THE  
10 FIRST DEGREE IS 30 YEARS, IS THAT CORRECT? KIDNAPPING IS  
11 UP TO LIFE SO, YOU COULD POSSIBLY GET IF YOU WERE  
12 CONVICTED -- I AM NOT SAYING YOU WOULD BE, BUT IF YOU WERE  
13 A JUDGE COULD GIVE YOU UP TO LIFE IN JAIL IN PRISON AND  
14 NOT GIVE YOU 25 YEARS HE MAY GIVE YOU MORE OR SHE MAY  
15 GIVE YOU MORE, MAY GIVE YOU LESS OR MAY GIVE YOU THE SAME  
16 THING SO, YOU UNDERSTAND THAT RISK?

17 THE APPLICANT YES, SIR

18 THE COURT ALL RIGHT MOVE ALONG

19 Q BUT YOU TOLD THE POLICE OFFICERS THAT INTERVIEWED YOU  
20 THAT YOU DIDN'T DO THIS, DIDN'T YOU?

21 A RIGHT I TOLD THEM I DIDN'T DO IT

22 Q HOW MANY TIMES DID YOU MEET WITH KELLEY BROWN?

23 A I AIN'T SEEN HER BUT ONE TIME

24 Q DO YOU REMEMBER WHEN THAT WAS?

25 A THAT WAS AT THE PRELIMINARY HEARING

1 THE COURT WERE YOU JAIL? DID YOU GET OUT ON BOND  
2 ONCE YOU WERE ARRESTED?

3 THE APPLICANT I WAS IN JAIL, YOUR HONOR

4 THE COURT NEVER GOT OUT ON BOND?

5 THE APPLICANT NO, SIR

6 THE COURT SO, SHE CAME OVER AT THE PRELIMINARY  
7 HEARING BUT NO OTHER TIME THAT YOU CAN RECALL?

8 THE APPLICANT NO OTHER TIME

9 Q DID YOU EVER TALK TO ANY OF HER INVESTIGATORS?

10 A I HAD TALKED TO BENNIE, AND BENNIE ASKED ME IF I HAD  
11 ANY WITNESSES I TOLD HIM YEA, AND I TOLD HIM WHERE  
12 ROBINA WAS WORKING AT

13 THE COURT THAT'S MS REED?

14 THE APPLICANT YES, SIR YOUR HONOR HIS WORDS TO  
15 ME HE SAID THAT HE WAS GOING TO CHECK INTO IT I AIN'T  
16 SEEN HIM NO MORE EITHER

17 THE COURT MS SMITH, HAND ME THAT EXHIBIT RIGHT  
18 THERE THE TOP ONE

19 WELL, WHEN THEY DIDN'T CALL MS REED TO THE TRIAL OR  
20 MRS BROWN DIDN'T DISCUSS MS REED WITH YOU, DID YOU NOT  
21 SAY, HEY, THAT LADY KNOWS I WAS WITH HER THAT NIGHT? YOU  
22 DIDN'T TELL MRS BROWN THAT?

23 THE APPLICANT NO, SIR, YOUR HONOR

24 THE COURT WHY?

25 THE APPLICANT I HAD TOLD BENNIE WHERE I WERE

1 THE COURT I KNOW THAT

2 THE APPLICANT BENNIE SAID THAT HE WOULD, YOU KNOW,

3 GIVE HER THE INFORMATION

4 Q DID YOU TALK TO ANY OTHER INVESTIGATOR?

5 A NO THE INVESTIGATOR THAT WOULD COME TO TALK TO ME

6 IT WOULD BE BENNIE

7 Q AND HOW MANY TIMES DID YOU TALK TO BENNIE?

8 A ABOUT TWICE THAT WAS IT

9 Q SO, YOU THINK YOU TALKED TO KELLEY BROWN ONCE AND

10 BENNIE TWICE?

11 A RIGHT

12 Q ANYBODY ELSE?

13 A NOT TO MY KNOWLEDGE

14 Q DID YOU TALK TO KELLEY ON THE PHONE?

15 A I TALKED TO HER ONE TIME, AND SHE TOLD ME I WAS

16 GETTING READY TO GO TO TRIAL

17 Q DID YOU TALK TO BENNIE ON THE PHONE?

18 A NO

19 THE COURT WHAT KIND OF EDUCATION DO YOU GOT,

20 MR WALKER?

21 THE APPLICANT MY EDUCATION AIN'T GOOD

22 THE COURT HOW FAR DID YOU GO IN SCHOOL?

23 THE APPLICANT I HAD -- WELL, I CAN'T REMEMBER RIGHT

24 NOW, YOUR HONOR, BUT I DIDN'T FINISH SCHOOL

25 THE COURT ALL RIGHT BUT YOU KNEW -- YOU KNEW WHAT

1 WAS GOING ON THAT YOU WERE GOING ON TRIAL FOR ALLEGING  
2 DOING ALL OF THIS STUFF AND THEY DIDN'T HAVE MS REED  
3 THERE YOU DIDN'T TELL MRS. BROWN, HEY, WE GOT TO GET MS  
4 REED HERE BECAUSE SHE CAN VOUCH FOR WHERE I WAS THAT  
5 NIGHT?

6 THE APPLICANT YOUR HONOR --

7 THE COURT HOW COME YOU DIDN'T TO DO THAT?

8 THE APPLICANT WAIT A MINUTE BENNIE, HER  
9 INVESTIGATOR, SAID HE WOULD HANDLE EVERYTHING, AND I TOLD  
10 HIM

11 THE COURT I KNOW THAT, BUT ONCE YOU GOT IN THE  
12 COURTROOM LIKE WE ARE HERE TODAY AND MS REED WASN'T THERE  
13 YOU DIDN'T SAY, WHOA, WHOA, WE NEED TO GET MS REED HERE?

14 THE APPLICANT OKAY I ASKED MRS -- I HAD ASKED HER  
15 -- IT WAS SOMEBODY ELSE IN THE COURTROOM WITH HER THEY  
16 KEPT BRINGING ME IN AND OUT OF THE HOLDING CELL I DIDN'T  
17 HARDLY GOT A CHANCE TO TALK TO MRS BROWN WHEN MY TRIAL  
18 WAS GOING ON

19 THE COURT HOW LONG DID YA YOUR TRIAL LAST?

20 THE WITNESS I WOULD SAY ABOUT THREE OR FOUR DAYS

21 THE COURT SURELY YOU HAD TIME DURING THE TRIAL TO  
22 SAY, LISTEN, WE NEED MS REED HERE

23 THE APPLICANT SHE WOULDN'T -- THEY WAS ON SO  
24 MANY -- I AIN'T REALLY HAD A CHANCE TO SAY NOTHING TO HER

25 THE COURT ALL RIGHT I'M SORRY, MS SMITH

1 Q CAN YOU READ, MR WALKER?

2 A NO

3 Q CAN YOU WRITE?

4 A NO, JUST ONLY MY NAME

5 Q AND WHEN YOU HAVE COMMUNICATED WITH ME BY LETTER HOW  
6 DID YOU DO THAT?

7 A I HAD MY ROOMMATE TO WRITE IT

8 THE COURT WHAT IS YOUR PHYSICAL CONDITION? WHY ARE  
9 YOU IN A WHEELCHAIR?

10 THE APPLICANT I LOST MY -- I LOST TWO OF MY TOES

11 THE COURT YOU GOT HIGH SUGAR, DIABETES?

12 THE WITNESS THIS ONE CAME FROM -- ONE OF THEM CAME  
13 FROM A BROWN RECLUSE A SPIDER BIT ME THEY SAID THIS  
14 ONE CAME FROM A BROWN RECLUSE A SPIDER HAD BIT ME, THE  
15 SAME ONE

16 THE COURT IT BIT YOU IN THE ARM AND YOU LOST YOUR  
17 TOE?

18 THE WITNESS SIR?

19 THE COURT WHERE DID HE BITE YOU?

20 THE WITNESS BITE ME ON MY TOE

21 THE COURT OH, OKAY

22 MR MIRSHAK IN PRISON, YOUR HONOR

23 Q WAS THERE A DELAY IN BEING TREATED?

24 THE COURT WELL, THAT'S NOT

25 MS SMITH WELL -- DO YOU REMEMBER BEING INTERVIEWED

1 BY THE POLICE OFFICER OR THE DETECTIVE?

2 THE WITNESS DETECTIVE REDD

3 Q REDD, R-E-D-D?

4 A UH-HUH

5 Q DO YOU REMEMBER TALKING TO HIM ABOUT DOGS?

6 A I DIDN'T TALK TO HIM ABOUT NO DOGS

7 Q DO YOU REMEMBER -- DO YOU REMEMBER THAT -- DO YOU  
8 REMEMBER --

9 THE COURT MS SMITH, I AM GOING TO LOOK AT THAT  
10 VIDEO, I PROMISE YOU, OR EITHER LOOK AT THE TRANSCRIPT OF  
11 IT

12 MR MIRSHAK YOUR HONOR, FOR THE RECORD THE ONLY  
13 COPY OF THAT DISK, AS I UNDERSTAND IT, WAS THE COPY THAT  
14 WAS IN MRS BROWN'S FILE WE HAVE DUPLICATED THAT AND  
15 PROVIDED IT TO THE SOLICITOR'S FILE BECAUSE THEY DID NOT  
16 HAVE IT ANY LONGER

17 THE COURT WE'LL GET INTO THAT IN JUST A FEW  
18 MINUTES

19 MR MIRSHAK THANK YOU

20 Q DO YOU REMEMBER TALKING TO THE POLICE ABOUT WHERE YOU  
21 WERE AT THE TIME THEY SAID THIS CRIME HAPPENED?

22 A I TOLD THEM I WAS AT MY GIRLFRIEND'S HOUSE --  
23 ROBINA'S HOUSE

24 Q WHAT WERE YOU DOING? DO YOU REMEMBER?

25 A I WAS BURNING HER YARD, CLEARING HER YARD, DOING

1 DIFFERENT THINGS

2 Q DID YOU ASK THEM TO TALK TO ROBINA?

3 A YEA

4 Q DO YOU REMEMBER HOW LONG YOU HAD BEEN THERE?

5 THE COURT BEEN WHERE?

6 Q AT ROBINA'S?

7 A I HAD -- I SPENT THE NIGHT THERE THAT MORNING -- AS

8 A MATTER OF FACT, I STAYED THERE I DIDN'T -- BECAUSE I

9 CLEANED UP THE FRONT AND BACKYARD AND PUT UP A FENCE I

10 STAYED THERE

11 Q WELL, HOW OFTEN DID YOU STAY AT ROBINA'S?

12 A I BE THERE LIKE SOMETIME DURING THE WEEK AND ON THE

13 WEEKENDS

14 Q DID YOU ASK KELLEY BROWN TO TALK TO ROBINA?

15 A I DID

16 Q WAS ROBINA CALLED AS A WITNESS AT TRIAL?

17 A EXCUSE ME?

18 Q WAS ROBINA CALLED AS A WITNESS AT YOUR TRIAL?

19 A NO, SHE DIDN'T NOTIFY HER

20 Q WAS IT IMPORTANT FOR HER TO BE CALLED AS A WITNESS?

21 A YEA

22 MS SMITH THAT'S ALL I HAVE, YOUR HONOR

23 THE COURT CROSS

24 MR BOOZER NOTHING FROM THE STATE, YOUR HONOR

25 THE COURT THANK YOU YOU MAY STEP DOWN OR MAY

1 WHEEL BACK

2 MS SMITH THAT'S ALL I HAVE, YOUR HONOR, EXCEPT FOR  
3 SOME ARGUMENT

4 THE COURT ALL RIGHT THE STATE CAN CALL THE FIRST  
5 WITNESS

6 MR BOOZER THANK YOU, YOUR HONOR THE STATE WOULD  
7 CALL --

8 THE COURT HOLD ON ONE SECOND

9 MR MIRSHAK YOUR HONOR, WE NEED TO MARK THE C D AS  
10 PART OF OUR CASE IN CHIEF

11 THE COURT I AM GOING TO MARK IT AS A COURT'S  
12 EXHIBIT

13 MR MIRSHAK THANK YOU, YOUR HONOR

14 THE COURT ALL RIGHT LET'S GO, MR BOOZER

15 MR BOOZER MS BRENDA BRISBIN

16 BRENDA BRISBIN, AFTER BEING DULY SWORN,  
17 TESTIFIED AS FOLLOWS

18 DIRECT EXAMINATION

19 BY MR BOOZER

20 Q MS BRISBIN, COULD YOU BRIEFLY DESCRIBE FOR THE COURT  
21 YOUR INVOLVEMENT IN THIS CASE?

22 A I WAS THE PROSECUTOR

23 THE COURT THAT'S A PRETTY BRIEF DESCRIPTION I  
24 LIKE THAT

25 Q MS BRISBIN, WAS THERE MEDICAL EVIDENCE IN THIS CASE

1 CONSISTENT WITH A SEXUAL ASSAULT?

2 A YES, THERE WAS DR GIBBS TESTIFIED THAT THE MEDICAL  
3 EVIDENCE WHICH WAS INJURIES TO THE GENITAL AREA WHICH SHE  
4 SHOWED ACTUAL MICROSCOPIC PHOTOS TO EXPLAIN IN GREAT  
5 DETAIL AND SHE SAID THAT THEY WERE CONSISTENT WITH SEXUAL  
6 ASSAULT

7 MR MIRSHAK YOUR HONOR, FOR THE RECORD, THE  
8 TRANSCRIPT WILL BE THE HIGHEST AND BEST EVIDENCE OF --

9 THE COURT I UNDERSTAND THAT

10 MR MIRSHAK -- HER TESTIMONY

11 THE COURT YOU HAVE ASKED EVERYBODY WHAT THEY  
12 RECAL --

13 MR MIRSHAK YES, SIR

14 THE COURT -- AND I'LL READ THE TESTIMONY

15 Q WERE THERE, ALSO, EVIDENCE OF INJURIES TO HER MOUTH  
16 CONSISTENT WITH A SEXUAL ASSAULT?

17 A TO BE HONEST, I DON'T REMEMBER THAT

18 MR BOOZER FOR THE RECORD, YOUR HONOR, I BELIEVE  
19 THE TRANSCRIPT REFLECTS THAT

20 THE COURT IT EITHER DOES OR IT DOESN'T

21 Q NOW, MS BRISBIN, DID YOU KNOW ANYTHING ABOUT A  
22 ROOMMATE NAMED DOUG?

23 A NEVER HEARD OF HIM

24 Q DID THAT EVER COME UP AT ALL?

25 A NO

1 Q MS BRISBIN, IS TESTIMONY IN A TRIAL DIRECT EVIDENCE  
2 IN A CASE?

3 THE COURT IS TESTIMONY DIRECT EVIDENCE?

4 THE WITNESS TESTIMONY IS EVIDENCE I DON'T THINK I  
5 WOULD CLASSIFY IT AS DIRECT EVIDENCE IT DEPENDS ON WHAT  
6 PHYSICAL OR OTHER TYPES OF EVIDENCE

7 Q IT MAY HAVE BEEN A BAD QUESTION I APOLOGIZE

8 THE COURT I AGREE

9 Q MOVING ON IS A POLICE REPORT ADMISSIBLE AT TRIAL?

10 A NO

11 THE COURT MS SMITH, HAND ME THAT LAB REPORT,  
12 S L E D REPORT

13 MR BOOZER NO FURTHER QUESTIONS

14 THE COURT NO HOLD ON A SECOND MS BRISBIN, I AM  
15 GOING TO SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFF'S  
16 EXHIBIT 1 IN YOUR OWN WORDS TELL ME WAS THIS IN  
17 EXISTENCE AT THE TIME OF THE TRIAL?

18 THE WITNESS IT WAS -- I AM NOT SURE THAT THE  
19 WRITTEN REPORT WAS IN EXISTENCE A LOT OF TIMES WE GET  
20 THOSE LATER, BUT I GET A VERBAL REPORT WHICH MRS BROWN  
21 WAS AWARE OF THAT THERE WAS NO D N A EVIDENCE AND, IN  
22 FACT, MS SANDERS HAD --

23 THE COURT MS WHO?

24 THE WITNESS THE VICTIM HAD TESTIFIED THAT SHE HAD  
25 WASHED PRIOR TO BEING EXAMINED AND THERE WAS -- I'M

1 A IF THERE'S NO D N A EVIDENCE AND SHE'S AWARE OF  
2 THAT, THEN SHE CAN CROSS EXAMINE WITHOUT A WRITTEN REPORT  
3 MR MIRSHAK MAY I, YOUR HONOR?  
4 THE COURT HOW DO YOU KNOW THAT SHE WAS AWARE OF IT?  
5 THE WITNESS I RECALL THAT SHE WAS AWARE OF IT, AND  
6 I WOULD NOT GO TO TRIAL WITHOUT MAKING HER AWARE OF THE  
7 LACK OF EVIDENCE  
8 THE COURT I UNDERSTAND THAT I AM NOT SUGGESTING  
9 THAT YOU WOULD I AM JUST -- IS THERE ANYTHING IN THE  
10 RULE FIVE MATERIAL, THE BRADY MATERIAL, JUST SAYING WHAT  
11 THE REPORT WOULD HAVE SAID OR DID Y'ALL JUST HAVE A  
12 CONVERSATION ABOUT IT OR DO YOU RECALL?  
13 THE WITNESS I WOULD HAVE JUST TOLD HER THAT PRIOR  
14 TO TRIAL  
15 MR MIRSHAK OKAY  
16 THE COURT AND CERTAINLY I'M NOT --  
17 THE WITNESS AS SOON AS I GOT THE REPORT I GET IT  
18 VERBALLY AND I TELL HER  
19 THE COURT I AM NOT SUGGESTING IN ANY WAY THAT YOU  
20 WITHHELD ANYTHING I KNOW YOU BETTER THAN THAT  
21 Q MS BRISBIN, BUT IN FAIRNESS YOU DON'T HAVE A  
22 SPECIFIC RECOLLECTION OF YOUR CONVERSATIONS WITH KELLEY  
23 BROWN ABOUT ABOUT THIS CASE, DO YOU?  
24 A I DO RECALL INFORMING HER THAT THERE WAS NO D N A  
25 EVIDENCE

- 1 Q WELL --
- 2 A I CAN'T TELL YOU THE EXACT DATE
- 3 Q OKAY SIX YEARS -- WE'RE FIVE YEARS POST-TRIAL
- 4 A UH-HUH
- 5 Q HOW WOULD YOU RECALL THAT SPECIFICALLY OTHER THAN
- 6 JUST GENERALLY THAT'S YOUR PRACTICE? I MEAN, ISN'T THAT
- 7 FAIR --
- 8 A I AM NOT SURE I CAN ANSWER THAT QUESTION
- 9 Q WOULDN'T YOU AGREE THAT YOU DON'T HAVE A SPECIFIC
- 10 RECOLLECTION, BUT IT'S, BASICALLY, YOUR MODUS OPERANDI
- 11 WHICH WE WOULD RESPECT TO SHARE INFORMATION LIKE THAT WITH
- 12 THE DEFENSE? YOU DON'T HAVE A SPECIFIC RECOLLECTION
- 13 A I BELIEVE I DO I AM NOT SURE I COULD SWEAR UNDER
- 14 OATH THAT I --
- 15 THE COURT I UNDERSTAND
- 16 Q THANK YOU AND, MS BRISBIN, THE STATE'S FILE DOES
- 17 NOT EXIST, ISN'T THAT CORRECT?
- 18 A THE STATE'S FILE HAS BEEN RECONSTRUCTED THE
- 19 ORIGINAL FILE WAS LOST SOMEWHERE IN THE FILE PROCESS
- 20 Q BUT YOU DON'T HAVE ANY OF YOUR TRIAL NOTES OR
- 21 INTERVIEW NOTES OR PREPARATORY NOTES?
- 22 A UNFORTUNATELY, I DO NOT
- 23 Q SO, YOU HAVEN'T HAD THE BENEFIT FIVE YEARS POST-TRIAL
- 24 OF REVIEWING YOUR FILE, ISN'T THAT CORRECT?
- 25 A THAT'S CORRECT

1 Q AND, SO, YOUR FILE THAT WAS RECONSTRUCTED CAME FROM  
2 GOING TO EITHER THE SHERIFF'S DEPARTMENT AND GETTING THE  
3 POLICE REPORTS OR EVEN FROM OUR FILE --

4 A EXACTLY

5 Q -- WITH REGARD TO THE C D AND VIDEOTAPE, IS THAT  
6 CORRECT?

7 A YES, SIR

8 Q NOW, WOULD YOU ALSO AGREE THAT AS AN EXPERIENCED  
9 PROSECUTOR THAT IF THERE WAS AN ALIBI DEFENSE IT WOULD BE  
10 ESSENTIAL FOR THE DEFENDANT'S ATTORNEY TO INVESTIGATE THAT  
11 ALIBI DEFENSE?

12 A IF SHE WAS MADE AWARE OF IT --

13 Q OKAY

14 A -- BY THE DEFENDANT

15 Q OKAY WELL, YOUR OFFICE PROVIDED MRS BROWN WITH THE  
16 RULE FIVE THAT HAS THE ROBINA REED FREDERICK DRIVE ADDRESS  
17 ON THE C D , ISN'T THAT CORRECT? YOU HAVE REVIEWED THAT  
18 -- WELL, LET ME BACK UP

19 A ACTUALLY, I HAVEN'T SORRY

20 Q I AM A LITTLE CONFUSED NOW, WE CAME IN FEBRUARY TO  
21 TRY THIS CASE AND Y'ALL ASKED TO BE ABLE TO REVIEW THE  
22 EVIDENCE AND WE COPIED THE C D AND YOU HAVEN'T REVIEWED  
23 IT?

24 A NO, I HAVEN'T

25 Q HAS THE ATTORNEY GENERAL'S OFFICE, TO YOUR KNOWLEDGE,

1 REVIEWED THAT C D ?

2 A NOT TO MY KNOWLEDGE

3 Q YOU ONLY HAD THE COPY YOU DIDN'T PROVIDE A COPY TO  
4 MR BOOZER, DID YOU?

5 A THAT'S CORRECT

6 THE COURT I RECALL WE WERE BACK IN TRIAL IN -- OR  
7 THIS CASE WAS CALLED IN FEBRUARY AND YOU INFORMED THE  
8 A G 'S OFFICE THAT YOU HAD LOCATED AS MS REED AND WHAT  
9 SHE WAS GOING TO SAY

10 MR MIRSHAK THAT'S CORRECT

11 THE COURT AND THEY WANTED IT CONTINUED SO THEY  
12 COULD LOOK INTO THAT

13 MR MIRSHAK AND LOOK INTO THE C D

14 THE COURT AND THE C D HAS BEEN COPIED AND PROVIDED  
15 TO WHOM?

16 THE WITNESS TO ME AND I GUESS THAT'S MY MISTAKE I  
17 DIDN'T UNDERSTAND THAT I WAS SUPPOSED TO PROVIDE IT TO  
18 MR BOOZER

19 MR MIRSHAK OKAY

20 MR BOOZER YOUR HONOR, I NEVER REQUESTED THE C D

21 THE COURT THAT'S FINE

22 MR MIRSHAK THAT'S ALL RIGHT

23 THE COURT NOBODY IS FUSSING

24 Q WELL, LET ME ASK WOULD IT ALSO BE TRUE THAT YOU HAVE  
25 NOT ACTUALLY REVIEWED THE CONFESSIONS -- I MEAN, IT

1 WASN'T A CONFESSION -- THE INTERVIEW TAPE BY LIEUTENANT  
2 REDD OR SERGEANT REDD WITH MR WALKER?

3 A NO, I HAVE NOT

4 THE COURT SO, YOU CAN'T TELL ME IF IT SAYS ON THERE  
5 THAT HE CLAIMED TO HAVE BEEN WITH MS REED ON THE NIGHT IN  
6 QUESTION?

7 THE WITNESS NO, SIR

8 THE COURT I NEED TO LOOK AT IT MYSELF

9 Q DO YOU HAVE A SPECIFIC RECOLLECTION WHETHER YOU  
10 ACTUALLY REVIEWED THAT RULE FIVE TAPE -- I MEAN, INTERVIEW  
11 STATEMENT THAT WAS PRODUCED TO MRS BROWN PRIOR TO TRIAL?

12 A THE C D ?

13 Q YES, MA'AM

14 A I DID, YES, BUT I CAN'T RECALL SPECIFICALLY WHAT'S ON  
15 IT AT THIS POINT

16 Q OKAY NOW, IT WOULD BE FAIR TO SAY TODAY THAT AS AN  
17 EXPERIENCED PROSECUTOR YOU ARE DISTURBED BY MS REED'S  
18 TESTIMONY ABOUT WHETHER OR NOT MR WALKER GOT A FAIR  
19 TRIAL? YES OR NO, MA'AM?

20 A I DON'T KNOW WHAT YOU MEAN BY DISTURBED I DON'T  
21 THINK SHE EVER SAID SHE COULD SAY THAT EXACT DATE SHE  
22 SPENT THE NIGHT WITH HIM

23 Q OKAY DO YOU AGREE THAT KELLEY BROWN'S OFFICE WAS  
24 INEFFECTIVE IN FAILING TO INTERVIEW MS REED PRIOR TO  
25 TRIAL OR MAKING ANY EFFORT TO LOCATE HER?

1 A NO, BECAUSE HE SAID HE NEVER TOLD MRS BROWN

2 Q WELL, YOU --

3 THE COURT ASK HER A HYPOTHETICAL

4 Q OKAY IF MRS BROWN KNEW OF THE EXISTENCE OF ROBINA  
5 REED AS A WITNESS TO THE WHEREABOUTS OF JOSEPH WALKER ON  
6 MARCH 2 WOULD YOU AGREE THAT IT WOULD BE INEFFECTIVE  
7 ASSISTANCE OF COUNSEL IF HER OFFICE FAILED TO INTERVIEW OR  
8 MAKE A GOOD FAITH EFFORT TO FIND MS REED? YES OR NO,  
9 MA'AM?

10 A IF -- WELL, I AM NOT SURE I CAN ANSWER THAT YES OR  
11 NO

12 Q YOU'RE AN EXPERIENCED PROSECUTOR

13 THE COURT HOLD ON WHAT'S YOUR ANSWER?

14 THE WITNESS IF MR REED (SIC) HAD TOLD MRS BROWN  
15 DIRECTLY I HAVE AN ALIBI WITNESS, I WAS WITH THIS LADY, H-  
16 THIS IS HOW YOU CAN FIND HER, SHE WILL TELL YOU DEFINITELY  
17 I SPENT THE NIGHT WITH HER THAT NIGHT THAT THIS INCIDENT  
18 OCCURRED, THEN PERHAPS THAT WOULD BE INEFFECTIVE  
19 ASSISTANCE OF COUNSEL ALTHOUGH I DON'T THINK IT'S MY  
20 POSITION TO MAKE THAT DETERMINATION

21 MR MIRSHAK I UNDERSTAND

22 THE COURT NOBODY IS ASKING YOU TO MAKE THAT  
23 DETERMINATION WHAT IF IT WAS REVEALED ON AN INTERVIEW  
24 TAPE THAT THE GUY ALLEGED TO HAVE BEEN WITH SOMEONE ON THE  
25 NIGHT IN QUESTION? DO YOU HAVE AN OPINION AS TO WHETHER

1 OR NOT THE LAWYER HAS A DUTY TO NOTWITHSTANDING WHAT THE  
2 CLIENT SAYS TO INVESTIGATE THAT STATEMENT ON THE INTERVIEW  
3 TAPE TO DETERMINE WHETHER OR NOT IT WAS TRUE?

4 THE WITNESS I'M NOT --

5 THE COURT IF YOU HAVE AN OPINION

6 THE WITNESS I DON'T HAVE AN OPINION

7 THE COURT THANK YOU, MA'AM MOVE ALONG

8 Q WELL, THE RESOURCES OF THE AIKEN COUNTY SHERIFF'S  
9 DEPARTMENT WERE AVAILABLE TO FIND MS REED, WEREN'T THEY?  
10 SHE HAS BEEN WORKING IN HARDEES IN DENMARK FOR 18 YEARS  
11 Y'ALL COULD HAVE EASILY HAVE FOUND HER, COULDN'T YOU, AND  
12 INTERVIEW HER?

13 A I DON'T KNOW

14 Q OKAY WELL, YOU AGREE THAT A TRIAL IS A SEARCH FOR  
15 THE TRUTH AND JUSTICE, RIGHT?

16 A WELL, I DON'T REMEMBER ASKING THAT QUESTION MYSELF  
17 SO, IF -- I DON'T KNOW I DON'T KNOW THE ANSWER TO THAT  
18 I DON'T REMEMBER HER NAME EVEN COMING UP TO BE HONEST WITH  
19 YOU

20 Q WELL, IF YOU WOULD AGREE THAT IF MR WALKER HAD A  
21 ROOMMATE NAMED DOUG -- WELL, LET ME BACK UP ONCE  
22 MR WALKER WAS IN JAIL AND NEVER GOT OUT HE DIDN'T -- AND  
23 HE WAS RELYING ON THE PUBLIC DEFENDER'S OFFICE, HE WAS AT  
24 THEIR MERCY AS TO ANY INVESTIGATION OF THIS CASE, WASN'T  
25 HE?

1 A I WOULD THINK SO

2 Q OKAY AND IF THERE WAS A ROOMMATE NAME DOUG WHO  
3 LIVED IN THAT HOUSE WHERE MR WALKER STAYED SOME OF THE  
4 TIME -- THE HOUSE THAT WAS SEARCHED -- THAT WOULD BE  
5 IMPORTANT TO KNOW WHETHER HE HAD HAD MS SANDERS TO THAT  
6 HOUSE OR NOT IF, IN FACT, SHE EVER WENT THERE?

7 A I WAS NOT AWARE THAT THERE WAS ANY ROOMMATE

8 Q OKAY WELL, MS BRISBIN, YOU AGREE NOW HAVING LOOKED  
9 AT WHAT'S BEEN PRODUCED AND YOU RECREATED THAT THERE IS A  
10 MAJOR DISCREPANCY IN THE TIME THAT THIS ORIGINALLY WAS  
11 REPORTED TO HAVE OCCURRED IN EARLY AFTERNOON OF MARCH 2  
12 AND THE TIME MS WALKER REPORTED IT HAVING OCCURRED AT  
13 8 O'CLOCK THAT EVENING?

14 A NO MY UNDERSTANDING IS THAT -- AND I REMEMBER THIS  
15 FROM THE TRIAL THE VIDEOTAPE FROM THE STORE -- THE  
16 MANAGER EXPLAINED THAT THE TIMING THAT WAS DISPLAYED ON  
17 THE VIDEOTAPE WAS NOT ACCURATE AND SHE MATCHED IT UP WITH  
18 THE REGISTRY, THE TYPE -- THE CASH REGISTER SHE WAS ABLE  
19 TO CLARIFY THE CORRECT TIME

20 Q BUT THAT'S NOT THE TIME MS WALKER REPORTED THE RAPE  
21 -- I MEAN, THE KIDNAPPING PART OF THIS CASE -- I MEAN  
22 MS SANDERS -- TO HAVE OCCURRED SHE REPORTED IT  
23 INITIALLY AT 8 O'CLOCK YOU SAW THIS WHAT WAS MARKED INTO  
24 EVIDENCE, DIDN'T YOU?

25 A NO

1 Q SHE SAID THAT 8 O'CLOCK THAT NIGHT THAT THIS  
2 OCCURRED?

3 A WELL, IT TOOK PLACE -- SHE REPORTED THAT SHE WAS  
4 RAPED AT GUNPOINT THROUGHOUT THE NIGHT AND I DON'T RECALL  
5 THE TIMES THAT IT STARTED

6 Q THE INTERVIEW NOTES -- DID YOU EVER INTERVIEW THE  
7 NURSE, MS GRETCHEN -- I'M SORRY MAY I LOOK OVER YOUR  
8 SHOULDER?

9 A YES SHE TESTIFIED, I BELIEVE

10 Q NO SHE DID NOT TESTIFY

11 A SHE DID NOT TESTIFY? I DON'T REMEMBER

12 Q OKAY AND SHE TESTIFIED THAT SHE TOLD HER THAT IT  
13 WAS AT 7 O'CLOCK AND THERE IS ANOTHER POLICE REPORT THAT  
14 SAID IT HAPPENED AT 8 O'CLOCK THAT'S NOT ADJUSTING ONE  
15 HOUR ON A TAPE AT ONE IN THE AFTERNOON, IS IT? THAT'S A  
16 MAJOR DISCREPANCY IN TIME?

17 A HONESTLY, I CAN'T ANSWER YOUR QUESTION BECAUSE I'M  
18 NOT -- I DON'T REMEMBER ANYTHING ABOUT THE TIME THAT  
19 ANYBODY TESTIFIED TO

20 Q OKAY AND IF WE -- WOULD YOU AGREE -- AND, YOUR  
21 HONOR, I'D STATE THIS IS A PRINTOUT FROM THE U S NAVAL  
22 OBSERVATORY THAT KEEPS TRACK OF SUNSETTING -- THAT ON  
23 MARCH 2, 2002 THAT THE SUNSET AT 6 22?

24 THE COURT THAT DOESN'T MEAN IT'S DARK, DOES IT?

25 MR MIRSHAK NO MAY I, YOUR HONOR?

1 THE COURT YEA, GO AHEAD

2 Q IF IT WAS 8 O'CLOCK AND THE SUN SET AT 6 22 WHEN SHE  
3 REPORTED IT OCCURRED, THAT WOULD BE A MAJOR DISCREPANCY IN  
4 WHETHER IT WAS DAYLIGHT OR ONSET OF DUSK OR EVEN DARK AT  
5 8 O'CLOCK AT NIGHT, WOULDN'T IT, AND NOBODY LOOKED INTO  
6 THAT, DID THEY?

7 A I DON'T RECALL

8 Q ALL THE STATE TRIED TO DO AND THE INVESTIGATORS TRIED  
9 TO DO WAS GO BACK AND GET A TAPE THAT WAS ON A 24-HOUR  
10 CYCLE AND TRY TO GO BACK AND MATCH IT UP BECAUSE  
11 MR WALKER SHOWED UP IN THE TAPE --

12 A WELL, MS SANDERS ALSO SHOWED UP IN THE TAPE

13 THE COURT HOLD ON WHOA FINISH YOUR QUESTION

14 Q BUT SHE SHOWS UP ON THE TAPE AT 1 22 P M , DOESN'T  
15 SHE, AND THEY ADJUSTED IT TO 2 22 P M ?

16 A SHE SHOWED UP ON THE TAPE ON THE SAME TIME MR WALKER  
17 SHOWED UP ON THE TAPE WHICH IS THE WHOLE POINT BECAUSE HER  
18 STORY WAS THAT HE FIXED HER CAR WHEN THEY WERE THERE AT  
19 THE B P AT THE SAME TIME AND THEN LATER ON HE SAID SHE  
20 WANTED HIS \$30 AND SHE TOLD HIM HE COULD FOLLOW HER TO HER  
21 HOME FOR PAYMENT AND THAT'S WHEN HE ABDUCTED HER

22 A WELL, THERE IS A POLICE OFFICER ALSO IN THAT TAPE,  
23 ISN'T THERE?

24 A YES

25 Q OKAY YOU DON'T THINK MR WALKER TOOK THAT WOMAN IN

1 FRONT OF THE POLICE OFFICER, DO YOU?

2 A HE DIDN'T TAKE HER FROM THE B P STATION HE TOOK  
3 HER FROM HIS HOME -- HER HOME

4 MR MIRSHAK OKAY YOUR HONOR, I WOULD JUST  
5 REFERENCE THE TRANSCRIPT ABOUT THE DISCREPANCIES IN --

6 THE COURT I AM GOING TO READ THE TRANSCRIPT

7 MR MIRSHAK -- THE TIME ON THE TAPE

8 SO, KELLEY BROWN DID NOT HAVE ANY WRITTEN REPORT  
9 ABOUT THE D N A EVIDENCE IN THIS CASE, IS THAT CORRECT,  
10 AT THE TIME OF TRIAL?

11 THE COURT WE'VE ALREADY ESTABLISHED THAT

12 Q LET ME ASK YOU THIS THERE WAS SOME THEORY THAT  
13 MR WALKER HAD USED A CAP TO BLINDFOLD MS WALKER, WASN'T  
14 THERE? THE POLICE OFFICER TOLD YOU THAT, DIDN'T THEY?

15 A THERE WAS SOME QUESTION -- MS WALKER -- MS SANDERS  
16 SAID THAT SHE WAS BLINDFOLDED SHE WASN'T SURE WHAT HE  
17 USED TO BLINDFOLD HER AND THAT WAS KIND OF CONJECTURE ON  
18 THE POLICE OFFICER'S PART THAT PERHAPS THIS CAP THAT THEY  
19 FOUND IN HIS CAR WITH A BLONDE HAIR IN IT COULD HAVE BEEN  
20 WHAT SHE WAS BLINDFOLDED WITH

21 Q AND A CAP FROM MR WALKER'S CAR --

22 A TRUCK, RATHER

23 Q -- WAS SENT OFF PARDON ME?

24 A TRUCK, RATHER

25 Q TRUCK -- EXCUSE ME -- WAS SENT OFF TO THE CRIME LAB?

1 A IT WAS SENT BUT IT WAS NOT TESTED

2 Q THAT WOULD HAVE BEEN IMPORTANT TO KNOW THAT THIS --

3 A IT COULD ONLY HAVE HELPED --

4 Q -- THE POLICE SEIZED --

5 THE COURT HOLD ON

6 Q -- THAT THE POLICE SEIZED A CAP THAT THEY SAID TO

7 MR WALKER WE GOT YOU WHEN THEY TOOK THAT CAP BECAUSE THEY

8 FOUND A WHITE -- SOME KIND OF HAIR IN IT?

9 A THEY DIDN'T SAY THAT

10 Q PARDON ME?

11 A THEY DIDN'T SAY WE GOT YOU BECAUSE WE FOUND A CAP

12 Q OKAY THEY SENT THAT CAP OFF TO THE CRIME LAB, AND

13 MRS BROWN DIDN'T HAVE THE RESULTS SHOWING THAT THE CAP

14 WAS NEGATIVE?

15 A THE CAP WAS NOT TESTED

16 Q OKAY

17 A AND IT COULD ONLY HAVE HELPED THE STATE IF THEY FOUND

18 MS SANDERS' HAIR IN THE CAP

19 Q THE FACT OF THE MATTER IS THAT'S THE IMPORTANCE OF

20 THE LAB TEST RESULTS YOU DIDN'T TELL MRS BROWN THAT THE

21 CAP HADN'T BEEN TESTED, DID YOU?

22 A SHE WOULD HAVE KNOWN IT IF IT HAD BEEN TESTED

23 Q WELL, HOW DO YOU KNOW THAT SITTING HERE TODAY, MS

24 BRISBIN?

25 A BECAUSE I WOULD HAVE TOLD HER IF IT WAS TESTED

1 Q OKAY

2 A BECAUSE I AM HONEST

3 Q I KNOW YOU ARE

4 THE COURT NOBODY IS QUESTIONING THAT

5 Q THAT'S NOT A QUESTION I MEAN, THIS IS NOT AN ATTACK  
6 ON YOU, MS BRISBIN YOU KNOW THAT THAT CAP SHOWS UP IN  
7 THE RULE FIVE, DOESN'T IT?

8 A YES

9 Q OKAY AND THAT -- OKAY AND THAT'S WHY THE CAP WAS  
10 PRODUCED -- THE PHOTOGRAPH OF THE CAP WAS PRODUCED BECAUSE  
11 THE STATE THOUGHT IT WAS RELEVANT TO TRIAL OF THIS CASE?

12 A ACTUALLY, THE STATE DIDN'T THINK THAT WHICH IS WHY I  
13 DIDN'T HAVE ASK THEM TO TEST THE CAP

14 Q ARE YOU SAYING NOW YOU TOLD THE STATE CRIME LAB WHAT  
15 TO TEST?

16 A YES THAT'S THE WAY IT WORKS

17 Q OKAY AND DO YOU HAVE A SPECIFIC RECOLLECTION FROM  
18 WHEN THOSE RESULTS WERE SENT TO -- I MEAN, WHEN THE  
19 EVIDENCE WAS SENT TO THE STATE?

20 A I'M SORRY I DON'T --

21 Q YOU DIDN'T ORCHESTRATE -- EXCUSE ME THAT'S NOT THE  
22 RIGHT WORD YOU DIDN'T INSTRUCT WHAT THE SHERIFF'S  
23 DEPARTMENT WAS TO SEND TO THE STATE, DID YOU?

24 A NO THEY SEND EVERYTHING --

25 Q OKAY

1 A -- THEY CAN GET THEIR HANDS ON

2 Q AND YOU DON'T HAVE A RECOLLECTION THAT THE STATE --  
3 S L E D CALLED YOU AND SAID WHAT DO YOU WANT US TO TEST?

4 A NO THAT'S NOT THE WAY IT WORKS I CALL THEM AND  
5 TELL THEM, AND I DID NOT TELL THEM TO TEST THE CAP THEY  
6 DON'T DO ANYTHING UNLESS WE TELL THEM TO

7 THE COURT WHAT WERE Y'ALL TRYING TO FIND FROM THE  
8 CAP?

9 THE WITNESS THE POLICE OFFICER'S THOUGHT PROCESS  
10 WAS PERHAPS THIS IS WHAT HE USED TO BLINDFOLD HER BECAUSE  
11 THERE WAS A BLONDE HAIR IN THE CAP

12 THE COURT ALL RIGHT

13 THE WITNESS AND THAT PERHAPS THAT WOULD BE  
14 MS SANDERS' HAIR

15 THE COURT SO, IF IT HAD BEEN TESTED IT COULD  
16 HAVE --

17 THE COURT IT COULD HAVE HELPED US

18 THE COURT BUT IT COULD HAVE SHOWN THAT IT WASN'T  
19 HER HAIR

20 THE WITNESS BUT WHAT DOES THAT PROVE? I MEAN --

21 THE COURT WELL, I DON'T KNOW

22 MR MIRSHAK THAT'S ALL I HAVE, YOUR HONOR

23 THE COURT THANK YOU ANYTHING ELSE?

24 MR MIRSHAK YOUR HONOR, I WOULD LIKE TO MARK FOR  
25 WHATEVER WEIGHT THE COURT GIVES IT THE OBSERVATORY FOR

1 WHAT TIME THE SUN SETS

2 THE COURT YOU CAN MARK IT, BUT I AIN'T GOING TO  
3 GIVE IT MUCH WEIGHT

4 MR MIRSHAK THAT'S FINE THANK YOU, YOUR HONOR  
5 (WHEREUPON, PLAINTIFF'S EXHIBIT NO 5 WAS MARKED FOR  
6 IDENTIFICATION ONLY )

7 THE COURT I WILL CERTAINLY CONSIDER IT ANY  
8 QUESTIONS?

9 MR BOOZER NOTHING FURTHER, YOUR HONOR

10 THE COURT YOU CAN STEP DOWN NEXT WITNESS

11 MR BOOZER NOTHING FROM THE STATE, YOUR HONOR

12 THE COURT ANYTHING IN REPLY? ALL RIGHT I WANT

13 THE C D HOW DO YOU WATCH IT?

14 MR MIRSHAK STICK IT IN YOUR LAPTOP

15 MS SMITH AN MP3 PLAYER, I THINK, WOULD PROBABLY DO

16 IT

17 THE COURT CAN YOU DO IT?

18 THE LAW CLERK YES, SIR

19 THE COURT ALL RIGHT WE KNOW HOW TO DO IT

20 MR MIRSHAK I DON'T KNOW WHAT AN MP3 PLAYER IS,

21 JUDGE

22 THE COURT I CERTAINLY DO KNOW WHAT IT IS

23 MR MIRSHAK OKAY YOUR HONOR, I THINK THIS IS THE  
24 ONLY COPY OF THIS TAPE DO YOU STILL -- EXCUSE ME MAY I  
25 INQUIRE OF MS BRISBIN --

1 MS BRISBIN I HAVE A COPY

2 THE COURT HOW MANY COPIES DO WE HAVE?

3 MS BRISBIN I HAVE ONE THAT YOU GAVE ME

4 MR MIRSHAK DO YOU THINK YOUR COPY IS A GOOD COPY?

5 MS BRISBIN I HAVEN'T LOOKED AT IT

6 THE COURT I WANT ONE PUT INTO THE RECORD

7 MR. MIRSHAK THAT'S WHAT I'M CONCERNED ABOUT THEY

8 WERE HAVING A HARD TIME BURNING IT AND IF THEY HAVEN'T

9 LOOKED AT IT --

10 THE COURT IS THAT A GOOD COPY?

11 MR MIRSHAK YES, SIR, IT IS

12 THE COURT PUT IT IN THE RECORD

13 (WHEREUPON, COURT'S EXHIBIT NO 1 WAS MARKED FOR  
14 IDENTIFICATION ONLY )

15 THE COURT MS COURT REPORTER, LET THE RECORD

16 REFLECT THAT I AM GOING TO TAKE THAT C D WITH ME TODAY

17 AND I WILL RETURN IT TO YOU ONCE WE'VE HAD AN OPPORTUNITY

18 TO REVIEW IT? FAIR WITH EVERYBODY?

19 MS SMITH YES, SIR

20 THE COURT ALL RIGHT I DON'T NEED ARGUMENTS I

21 HAVE HEARD THE CASE I WOULD LIKE PROPOSED ORDERS FROM

22 BOTH SIDES WITHIN A REASONABLE PERIOD OF TIME

23 MR MIRSHAK WOULD IT BE APPROPRIATE FOR THE COURT

24 TO LET US KNOW WHAT YOUR VIEW OF THE TAPE IS BEFORE WE

25 SUBMIT A PROPOSED ORDER SO WE KNOW WHAT WE'RE DEALING

CERTIFICATE OF REPORTER

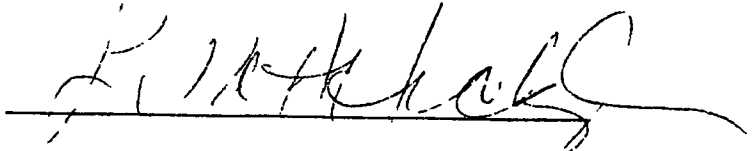
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STATE OF SOUTH CAROLINA        )  
  )  
COUNTY OF AIKEN

I, LISA H HICKLIN, OFFICIAL COURT REPORTER FOR THE  
SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO  
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND  
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND  
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,  
RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR AIKEN  
COUNTY, SOUTH CAROLINA, ON THE 9TH DAY OF MARCH, 2007

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL NOR INTEREST TO ANY PARTY HERETO

AUGUST 3, 2007

  
\_\_\_\_\_  
LISA H HICKLIN, COURT REPORTER

MP # 25,329 438

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT  
CASE NO 05-CP-02-39

JOSEPH WALKER, # 162475 )

Applicant, )

vs )

STATE OF SOUTH CAROLINA, )

Respondent )

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I Liz Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the  
original documents which have been filed in my office this

MAY 23 2007

*Liz Godard*  
\_\_\_\_\_  
CCCP & G.A., Aiken County, SC  
*Miranda Brown*  
\_\_\_\_\_  
Deputy Clerk

**ORDER FOR POST-CONVICTION RELIEF**

DATE OF HEARING MARCH 9, 2007  
PRESIDING JUDGE HON DOYET A EARLY, III  
COURT REPORTER LISA H HICKLIN  
ATTORNEYS FOR APPLICANT JOANE SMITH,  
TIMOTHY S MIRSHAK  
ATTORNEY FOR STATE LANCE S BOOZER

This matter comes before this Court on the application of Joseph Walker hereinafter known as 'Applicant,' for post-conviction relief on the ground of the alleged ineffective assistance of trial counsel, Kelley Perkins Brown, Esq , hereinafter known as "Trial Counsel" The hearing in this matter was set for February 6, 2007, in Aiken County, and was continued at the request of the State By agreement of counsel, the final hearing was held in Bamberg County<sup>1</sup> Present at the hearing in this matter was the Applicant and Trial Counsel, the witnesses of the parties, as well as Applicant's present counsel and Counsel for the State, as set out above

*WPK*

FILED 5/23/07  
*Liz Godard*  
\_\_\_\_\_  
CCCP & G.A.  
*Miranda Brown*  
\_\_\_\_\_  
Deputy Clerk

<sup>1</sup> The hearing in this matter was continued in order for the State to interview the Applicant's witness Robina Reed

## I Procedural History

This action was commenced by the Applicant's request for post-conviction relief. The applicant was charged with Criminal Sexual Conduct – 1<sup>st</sup> Degree, Kidnapping, and Possession of a firearm or a knife during the commission or attempt to commit a violent crime. The Applicant was found to be not guilty of the crime of possession of a firearm or a knife during the commission or attempt to commit a violent crime, and was convicted of Criminal Sexual Conduct – 1<sup>st</sup> Degree, and Kidnapping at a trial held before the Hon James R. Barber, III, in the Aiken County Court of General Sessions on July 21-23, 2003. A timely notice of appeal was filed on Applicant's behalf, and the appeal was perfected. The Applicant's appeal was dismissed by order entered Dec 9, 2004, in State v Walker, Op No 2004-UP-618 (SC Ct App), the Remittitur was filed on Jan 11, 2005. The Applicant filed his petition for Post-Conviction Relief on Jan 7, 2005.

Applicant seeks relief on the following grounds

- 1 ineffective assistance of trial counsel, including
  - a the failure to investigate and interview a potential alibi witness, Robina Reed, and
  - b the cumulative error of the failure to investigate, combined with her
    - (i) failure to cross examine the state's witnesses and victim at trial as to the victim's history of alcohol use
    - (ii) failure to cross examine the state's witnesses and victim at trial as to the conflicts in the evidence as to the time of the alleged incident, and
    - (iii) failure to ask for a continuance to await the results of the forensic testing, which results were received one month after trial,

*ME*  
*#2*

2 lack of subject matter jurisdiction, which argument was abandoned by the Applicant at the PCR hearing

## II Applicable Law

The Sixth Amendment provides that an "accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair" Strickland v. Washington, 466 U.S. 668, 685, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Ineffective assistance of counsel may be claimed by an applicant after conviction. A presumption arises that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant bears the burden to prove his entitlement to relief by a preponderance of the evidence. Rule 71 1(e), SCRPC. In order to overcome the presumption, a two-pronged test is applied to the applicant's claim, and he must show that trial counsel's error amounted to the ineffective assistance of counsel in that (1) trial counsel's performance fell below an objective standard of reasonableness and, (2) but for trial counsel's error, there is a reasonable probability the result at trial would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome of the trial. Strickland, supra. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

To support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, an applicant may not merely speculate as to what the witness's testimony would have been had the witness been called at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807, (1998). A PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with

the name and address of the witness appears in the photographic evidence provided by the State to Trial Counsel as part of the State's Rule 5 materials

The testimony at the PCR hearing substantiates that Trial Counsel utterly failed to make any effort to locate or interview Reed prior to the trial, or to subpoena her to the trial. Reed testified that she had been employed at the same Hardee's restaurant in Denmark for at least two years prior to the alleged incident in March 2002 through the time of trial in July 2003, and through the present date. Additionally, she has continuously resided on Frederick Street in Denmark, which address was disclosed in the Rule 5 materials.

**THE COURT FURTHER FINDS AND CONCLUDES** that the Applicant was entitled to rely upon his Trial Counsel to locate, or attempt to locate, and interview his witness, particularly since Applicant remained incarcerated from the time of his arrest through the time of trial. With the same information that was available to Trial Counsel, Applicant's PCR counsel was able to locate Reed, interview her, and subpoena her to the PCR hearings in February and March 2007. Reed further testified that no one had ever contacted her until she was contacted by present PCR counsel. The Applicant and Reed had an intimate relationship that was ongoing at the time of the alleged incident, and the Applicant had a key to her home. She further testified that the Applicant was usually with her during the time frame of incident. The Applicant testified that he had been spending many nights, and most, if not all, weekends with Reed prior to, and including, the date of the alleged incident, which occurred on a Saturday and Sunday. While Reed's memory of specific dates is not perfect since it has been approximately five years since the incident and approximately four years since the trial, her testimony corroborated that of the

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Applicant She further testified that she had not been in contact with the Applicant since March 2002, and, in fact, had not known what had happened to him until she was contacted by PCR counsel

Trial Counsel offered no explanation as to her failure, or the failure of her investigators, to attempt to locate Reed The Court finds that this failure severely prejudiced the Applicant's right to a fair trial While it is the role of the jury to gauge the credibility of the witnesses at trial, the Court finds that the testimony of Reed at the PCR hearing was credible

The jury would have weighed the credibility of the testimony of the witness and it is reasonable to assume that the outcome of the deliberations may have been different had this witness testified in light of the facts of this case Trial Counsel articulated no trial strategy for the failure to investigate the Applicant's claims that he was with the witness at the time of the incident **THE COURT THEREFORE FINDS AND CONCLUDES** that the Applicant has met his burden to establish both that his Trial Counsel was ineffective, and that prejudice resulted Strickland, supra, Rule 71 1(e), SCRPC

2 Cumulative Error

**THE COURT FURTHER FINDS AND CONCLUDES** that the Applicant has independently established a second ground for prejudice with the cumulative effect of Trial Counsel's error in her failure to investigate Sanders alcohol use, her failure to move to continue the hearing to await the written results of the forensic testing, her failure to cross-examine the witnesses as to the discrepancy of the conflicting times of the incident, and her failure to investigate or interview Reed, the combination of which prejudiced the Applicant Further, the Applicant has shown what benefit would have

accrued from the additional preparation. These failures cumulatively prejudiced the Applicant and adversely affected his right to a fair trial under the facts of this case. Green v. State, 351 S.C. 184, 569 S.E.2d 318 (2002). Had Trial Counsel moved for a continuance to await the completion of the forensic testing to show the jury the results received one month after trial, had Trial Counsel called Reed as a witness, cross-examined the state's witnesses and victim as to the conflicting time of the incident, and cross-examined the victim as to her alcohol use and her credibility in identifying the Applicant as her assailant, it is reasonable to assume that the outcome of the trial would have been different.

Alcohol use by victim

*me*  
**THE COURT FURTHER FINDS AND CONCLUDES** that no trial strategy was articulated by Trial Counsel for her failure to investigate the credibility of Sanders with regard to her alcohol use. Trial Counsel did not investigate the reference to "ETOH treatment" set out in the history notes of the nurse who conducted the sexual assault examination of Sanders either by interviewing the nurse prior to trial, calling the nurse as a witness, cross-examining the State's physician witness, or by cross-examination of Sanders. Trial Counsel did not investigate the references to the odor of alcohol on Sanders noted by police at the time of the initial report either by interviewing the police officers, calling the officers as witnesses, or by cross-examination of Sanders. Trial Counsel merely made reference that alcohol had been consumed by Sanders during and after the incident as part of a confirmation of events Sanders claimed had transpired. The only evidence linking the Applicant to Sanders was Sander's identification of the Applicant. Trial Counsel's failure to investigate the impact of alcohol use prevented the

jury from considering Sanders' credibility in her identification of the Applicant as her assailant

**THE COURT FURTHER FINDS AND CONCLUDES** that, while standing alone, the failure by Trial Counsel to investigate Sanders' use of alcohol does not establish prejudice, it is further evidence of the cumulative effect of trial counsel's ineffectiveness

Failure to cross examine witnesses and victim

**THE COURT FURTHER FINDS AND CONCLUDES** that Trial Counsel articulated no trial strategy for her failure to adequately prepare for trial through her failure to call witnesses with regard to the conflicts in the timeline as to when the incident occurred Trial Counsel did not call the officers who prepared the initial incident reports, or the nurse who performed the forensic interview and examination in reference to statements the victim made about the time the incident occurred The victim then gave a differing account at trial after viewing the Applicant on the in-store video at the store where the victim said she initially met her assailant It was reasonable for Trial Counsel to explore this issue in order to place reasonable doubt in the minds of the jury as to whether Sanders had accurately identified the Applicant as her assailant in light of her initial hesitancy to tell police she was completely sure that he was the same man While the scope of a reasonable investigation depends on several issues, 'at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case' Troedel v Wainwright, 667 F Supp 1456, 1461 (S D Fla 1986), aff'd, 828 F 2d 670 (11<sup>th</sup> Cir 1987)

Failure to ask for a continuance to await completion of forensic testing

**THE COURT FURTHER FINDS AND CONCLUDES** that Trial Counsel articulated no trial strategy for her failure to investigate the results of forensic testing being performed by South Carolina Law Enforcement Division on items submitted by police as the result of the sexual assault exam performed on Sanders and on items collected by police from the Applicant's home. In fact, Trial Counsel testified that she was not aware that the SLED forensic report was outstanding at the time of trial in July 2003. The report, dated August 2003, does not indicate any evidence linking the Applicant to Sanders. Trial Counsel testified that had she known the report was not completed at the time of the trial, she could have requested a continuance. Trial Counsel gave no explanation as to why she did not know that the testing had not been completed. It is reasonable to assume that the outcome of the trial might have been different had Trial Counsel known whether all forensic testing was completed prior to trial. Had she requested a continuance to await the results, the resulting report, rendered one month later, could have been shown to the jury in order to stress that the only evidence linking the Applicant to the incident was Sanders' identification. Skeen, supra, Strickland, supra, Troedel v. Wainwright, supra.

**THE COURT FURTHER FINDS AND CONCLUDES** that while Trial Counsel's failure to ask for a continuance to await the completion of forensic testing does not, standing alone, establish prejudice, it is further evidence of the cumulative effect of trial counsel's ineffectiveness.

**THE COURT FURTHER FINDS AND CONCLUDES** that all other grounds raised by the Applicant are without merit and are denied.

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ORDER

IT IS THEREFORE ORDERED AND ADJUDGED that the application of Joseph Walker for post-conviction relief is hereby GRANTED His convictions on the charges of Criminal Sexual Conduct – 1<sup>st</sup> Degree, and Kidnapping, are hereby REVERSED, and he shall be entitled to a new trial on those two charges

SO ORDERED



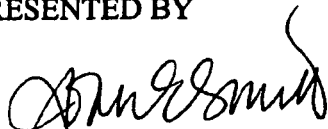
\_\_\_\_\_  
The Hon Doyet A. Early, II  
Presiding Judge, Second Circuit



\_\_\_\_\_, South Carolina

This the 24<sup>th</sup> day of May, 2007

PRESENTED BY



\_\_\_\_\_  
JOAN E. SMITH  
SC Bar No 66097  
Attorney for Applicant

LAW OFFICES OF MIRSHAK & SMITH  
1210 Wachovia Building  
699 Broad Street  
Augusta GA 30901  
(706) 722 1551

STATE OF SOUTH CAROLINA/  
COUNTY OF AIKEN

FORM 4

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 05-CP-01939

Joseph Walker #162475

MC \_\_\_\_\_ JR \_\_\_\_\_  
State of S.C.

PLAINTIFF(S)

DEFENDANT(S)

**CHECK ONE**

**JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

**DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

**ACTION DISMISSED (CHECK REASON)**  Rule 12(b), SCRPC,  Rule 41(a), SCRPC (Vol Nonsuit),  Rule 43(k), SCRPC (Settled),  Other \_\_\_\_\_

**ACTION STRICKEN (CHECK REASON)**  Rule 40(j), SCRPC,  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award,  Other \_\_\_\_\_

**IT IS ORDERED AND ADJUDGED.**  See attached order;  Statement of Judgment by the Court:

Dated at \_\_\_\_\_, South Carolina, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRESIDING JUDGE

This judgment/order was entered/filed on the 23 day of May, 2007, and a copy mailed/hand-delivered/boxed this 23 day of May, 2007 to attorneys of record or to parties (when appearing pro se) as follows

Jean Smith

Atty Gen  
G.S.  
Solicitor

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard  
CLERK OF COURT

By Manda Leper  
DEPUTY CLERK

## **INDEX**

<b>SLED LAB REPORT (PLAINTIFF'S EXHIBIT #1)</b>	<b>1</b>
<b>INTERVIEW (PLAINTIFF'S EXHIBIT #2)</b>	<b>4</b>
<b>RECEIPT (PLAINTIFF'S EXHIBIT #3)</b>	<b>5</b>
<b>NOTES (PLAINTIFF'S EXHIBIT #4)</b>	<b>6</b>
<b>SUNRISE/SUNSET TABLE (PLAINTIFF'S EXHIBIT #5)</b>	<b>7</b>

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

## FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD  
Governor

ROBERT M STEWART  
Chief



Department of Forensic  
DNA Analysis

August 27 2003

SLED Lab No L02-05491

Your Case No 02010908

Incident Date 3 3 '02

(S) Walker, Joseph

(V) Sanders Margaret Ann

INV M D POWELL  
AIKEN COUNTY SHERIFF'S OFFICE  
420 HAMPTON AVENUE  
AIKEN, SC 29801

8/8  
2003  
L. J. Sanders  
KCC CP & GS  
Deputy Clerk  
11:00  
05-CP-02-39  
MCH# 25,329

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M Stewart, Chief  
South Carolina Law Enforcement Division

### SEROLOGY ANALYSIS

<u>ITEMS SUBMITTED</u>		<u>RESULTS OF EXAMINATIONS</u>	
1	Sexual Assault Evidence Collection Kit from Margaret Ann Sanders		
1 4	Blood standard	1 4	See DNA results
1 5	Saliva standard	1 5	No analysis performed
1 6	Crears	1 6	No spermatozoa detected
1 7	Vaginal swabs	1 7	No semen identified
1 8	Oral swabs	1 8	No semen identified
1 9	Rectal swabs	1 9	No semen identified
1 12	Bite mark	1 12	See DNA results
1 14	Panties	1 14	No semen identified
1	Hair from knit cap	2 1	No analysis performed



DNA ANALYSIS

ITEMS ANALYZED

- 1 4 Blood standard from Margaret Ann Sanders
- 1 12 Bite mark

EXAMINATIONS

DNA profiles were developed from all items above using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Table 1 and Table 2.

RESULTS

No DNA profile unlike the victim was developed from item 1 12.

Table 1 - Profiler Plus

Items	D3S1358	vWA	FGA	D8S1179	D21S11	D18S51	D5S818	D13S317	D7S820	Amelogenin
Margaret Ann Sanders (item 1 4)	15 19	16	22	13 14	30 33 2	12 16	10 11	9 12	8 10	X
1 12	15 19	16	22	13 14	30 33 2	12 16	10 11	9 12	8 10	X

Table 2 - Cofiler

Items	D3S1358	D16S539	TH01	TPOX	CYFPO	D7S820	Amelogenin
Margaret Ann Sanders (item 1 4)	15 19	11	6 9 3	9 11	1 2	8 10	X
1 12	15 19	11	6 9 3	9 11	1 2	8 10	X

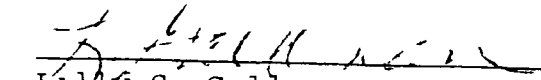


Page 3 of 3

**SLED LAB NO.** L02-05491

August 27, 2003

These examinations were conducted by S/A Lilly S Gallman, Forensic Analyst, South Carolina Law Enforcement Division

  
Lilly S Gallman  
Senior Agent

05-27-03  
Date

JMJ

cc Aiken County Solicitor s Office

**Note** Any remaining evidence and/or packaging will be returned to the requesting agency

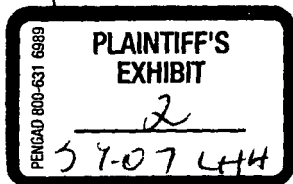


Interview with Margaret Sanders 3/3/02

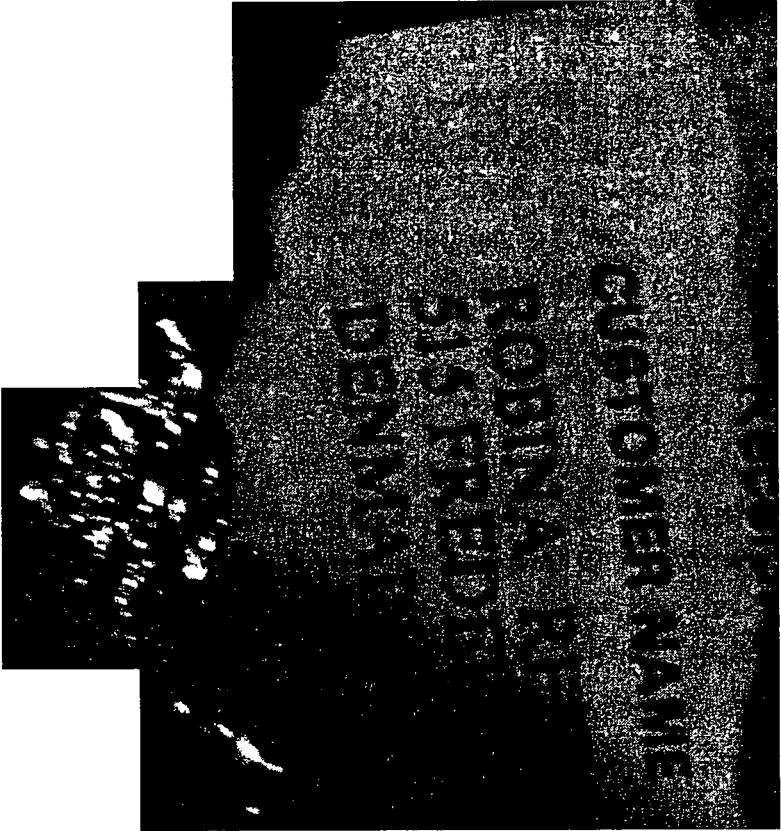
Margaret verbalized an understanding of my role as a forensic NP She states that on 3/2/02 at approx 7PM she was at a gas station and her car wouldn't start back up She asked a white guy if he knew anything about cars, and he wouldn't help her A large (approx 6 ft, around 200#) black male, bearded, short black hair, offered to help her, stating that he was a mechanic He was driving a small, black, older model truck She told him that she had no money with her, and offered to allow him to follow her home so that she could pay him When she went home, driving her car, she left him outside while she went into the house to get some money He came into her house and to her bedroom door At that point he grabbed her and blindfolded her with a bandana She does not know what color it was He took her somewhere, it seems like they drove for a while She states that it was a "block house" He removed the bandana from her eyes and she was on a bed in a dark room She could tell there there was a bathroom nearby and a gas heater was on There were no sheets on the bed He then forced sexual intercourse on her at least four times He forced her to suck his nipple He forced oral sex on her, (fellatio) He also licked the inside of her L ear, and kissed her on her mouth She states that she was not injured anywhere on her body, but she is sore because he was pulling on her legs and she has arthritis She states that he called her a bitch many times, asked her repeatedly if she had ever "had a black man" and told her she was the "lady with the pit bulls" She has had pit bull dogs all of her life until recently She states that his penis was very large and that she was physically in pain when he put it into her vagina, and that she asked him to stop because he was hurting her She states that he said "suck my tit" "suck my dick" and "I'm gonna be your daddy" She states that she was wearing a jogging outfit, that the police now have There was nobody else there She states that at one point she thought he was asleep and she began to get up, he threw his arm over her and said "stay there, bitch" No condom, no anal penetration, and no bleeding noticed Very painful vaginal area presently She states that early this a m , around five, she told him that she couldn't take anymore He told her that he was going to take her home She states that he then put her into his car, again blindfolded, and drove her home He removed the blindfold and shoved her out of the car She landed on her feet and was not injured She presently has a bruise on her head from when she was moving, where the refrigerator hit her in the head She states that this morning she felt like killing herself, but denies current thoughts of self-harm or suicidal ideation She has been planning on attending ETOH treatment this week, and is still planning to begin this week Will follow up with primary care provider w/in 5 days for injuries and PTSD evaluation PTSD info given to both patient and her son and his wife I will call her primary MD tomorrow regarding STD prophylaxis

Gretchen Overstolz, RN, MSN, FNP

*Gretchen Overstolz*



05-CP-02-39  
MC# 25,329  
8/8  
200  
*[Signature]*  
CP & GS  
11.00  
Der.ry Clerk



Joes cell phone # 300-8884

v selling drugs for - 247-5824 William Bloom

Doug SHORT Beard glasses B/M 40

ROVENA MANAGER NARCOTICS

ORANGEBURG Co S O. NARCOTICS (803) 531-2474

John Copley SUPERVISOR

LYNN BRYERS AGENT

(Todd Williams)

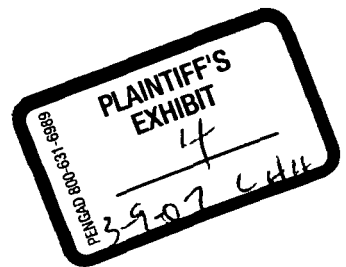
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M Kc Jones

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John Copley  
SUPERVISOR

11:00

Den...

05CP-02-39 MC#25,329

DENMARK SOUTH CAROLINA  
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Astronomical Applications Dept  
Rise and Set for the Sun for 2002

U S Naval Observatory  
Washington, DC 20392 5420

Eastern Standard Time

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08	0729	1734	0715	1803	0644	1827	0603	1850	0530	1912	0515	1933	0522	1937	0542	1918	0603	1841	0624	1800	0649	1727	0716	1717	
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11	0729	1736	0712	1806	0640	1829	0559	1852	0528	1915	0515	1934	0524	1936	0544	1915	0605	1836	0626	1756	0652	1725	0718	1718	
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13	0729	1738	0710	1808	0638	1831	0557	1854	0526	1916	0515	1935	0525	1936	0546	1913	0607	1834	0628	1754	0654	1724	0719	1718	
14	0729	1739	0709	1808	0636	1832	0556	1854	0525	1917	0515	1935	0525	1935	0546	1912	0607	1832	0628	1752	0655	1723	0720	1718	
15	0728	1740	0708	1809	0635	1832	0555	1855	0525	1918	0515	1936	0526	1935	0547	1910	0608	1831	0629	1751	0656	1722	0721	1719	
16	0728	1741	0707	1810	0634	1833	0553	1856	0524	1918	0515	1936	0527	1934	0548	1909	0609	1830	0630	1750	0657	1722	0721	1719	
17	0728	1742	0706	1811	0632	1834	0552	1857	0523	1919	0515	1936	0527	1934	0549	1908	0609	1828	0631	1749	0658	1721	0722	1719	
18	0728	1743	0705	1812	0631	1835	0551	1857	0523	1920	0515	1936	0528	1933	0549	1907	0610	1827	0631	1748	0658	1721	0723	1720	
19	0727	1744	0704	1813	0630	1835	0550	1858	0522	1920	0515	1937	0528	1933	0550	1906	0611	1826	0632	1746	0659	1720	0723	1720	
20	0727	1745	0703	1814	0628	1836	0549	1859	0521	1921	0515	1937	0529	1932	0551	1905	0611	1824	0633	1745	0700	1720	0724	1721	
21	0726	1746	0702	1815	0627	1837	0547	1900	0521	1922	0516	1937	0530	1932	0551	1904	0612	1823	0634	1744	0701	1719	0724	1721	
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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Aiken County

Doyet A Early, III, Circuit Court Judge

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JOSEPH WALKER,

RESPONDENT,

V

STATE OF SOUTH CAROLINA,

PETITIONER

Appellate Case No 2012-211267

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SECOND SUPPLEMENTAL APPENDIX

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**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

Joseph Walker, Respondent,

v

State of South Carolina, Petitioner

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Appeal From Aiken County  
Doyet A Early, III, Circuit Court Judge

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Opinion No 4946  
Heard October 5, 2011 – Filed February 22, 2012

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**REVERSED**

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Attorney General Alan M Wilson, Chief Deputy  
Attorney General John W McIntosh, Senior  
Assistant Deputy Attorney General Salley W Elliott,  
and Assistant Attorney General Mary S Williams,  
Assistant Attorney General Robert D Corney, all of  
Columbia, for Petitioner

Appellate Defender Kathrine H Hudgins, of  
Columbia, for Respondent

**FEW, C J** This is a post-conviction relief (PCR) action arising out of Joseph Walker's convictions for kidnapping and first-degree criminal sexual conduct. The circuit court granted Walker's PCR application based on trial counsel's failure to investigate a potential alibi witness and the cumulative prejudicial effect of three other alleged instances of deficient performance. We agree with the PCR court that trial counsel's performance regarding the alibi witness was deficient under the Sixth Amendment. However, we find the witness's testimony presented at the PCR hearing did not meet the legal definition of an alibi, and thus Walker failed to prove prejudice. We also find the PCR court erred in granting relief based on the cumulative effect of counsel's deficient performance. We reverse.

## **I Facts and Procedural History**

The victim testified that on March 2, 2002, she sought a man's help in fixing her broken-down car at a BP gas station in Denmark, South Carolina. The man fixed her car with a wire he purchased nearby for \$30. The victim did not have enough money with her, so she told the man to follow her home so she could pay him. She said the man came into her house uninvited, blindfolded her, drove her to his house, and raped her throughout the night. Early the next morning the man blindfolded her again, drove her home, and threatened to kill her if she told anyone. The victim testified that a few hours after she got home, she drank a rum and coke to calm her nerves.

The victim identified a man in the surveillance videotape from the BP station as her assailant. The BP store manager then identified the man as Joseph Walker. Prior to this incident, the victim had never met Walker or been to his house. However, the police were able to match precisely the detailed descriptions the victim gave of her assailant's truck and house with Walker's truck and house. Walker was arrested on March 22, 2002, twenty days after the alleged crime. He submitted to a video interview with the police in which he claimed he was with his girlfriend, Robina Reed, on the night of the crime. Walker was convicted of first-degree criminal sexual conduct and kidnapping. The trial court sentenced him to concurrent terms of twenty-four years in prison. This court affirmed the convictions and sentences. State v Walker, Op No 2004-UP-618 (S C Ct App filed Dec 9, 2004)

In January 2005, Walker filed a PCR application alleging ineffective assistance of counsel. Walker argued trial counsel was ineffective because she did not (1) investigate Reed as an alibi witness, (2) ask for a continuance to await the written results of a DNA test, (3) cross-examine the victim about her alcohol use, and (4) cross-examine the victim and call other witnesses about the victim's conflicting statements as to the time of the incident.

Trial counsel testified at the PCR hearing that she watched the DVD of Walker's interview. In the interview, Walker referred to Reed numerous times and claimed he could not have committed the crimes because he spent the night with her on March 2, 2002. Specifically, Walker admitted he was at the BP station on March 2, but denied helping the victim fix her car. He said he left the BP station and went to see Reed at Hardee's, where she worked as a manager. Walker said he then stayed at a friend's house until about 10:00 p.m., when he drove to Reed's house to spend the night.

Despite watching the DVD of the interview, trial counsel did not investigate Reed as a potential witness. At the PCR hearing, she claimed she thought her investigator was following up on Reed. Walker testified he told the investigator about Reed, and the investigator wrote Reed's name in the case file. Trial counsel said she did not know what, if anything, her investigator did to investigate Reed. She also testified she "was not aware of any claim that [Walker] was with anyone on" the night of the crime. The PCR court summed up trial counsel's knowledge of Reed as a potential alibi witness in the following question:

The court: So, there is an interview tape of the defendant that says he was with Ms. Reed on the night of the incident. That name appears in the file, but we don't know what was done as far as finding out what Ms. Reed would or would not have said, is that correct?

[Trial counsel]: Yes, your honor.

Reed testified at the PCR hearing that Walker was her boyfriend on March 2, 2002. She said Walker had a key to her house and spent most weekend nights with her. When asked if she and Walker spent the night together on March 2, 2002, Reed answered "I guess I did." The judge asked

Reed "You're telling me that you spent – [Walker] was staying with you that first weekend in March of 2002 " Reed answered "Yes " On cross-examination, however, she changed her answer as follows

Q 2002 is when y'all broke up?

A Yea

Q You know the exact date?

A No, sir

Q But you knew he was with you that night?

A Huh?

Q You knew he was with you on March 2?

A Well, I know he was with me, but I can't say a particular date No, I don't know what date y'all want

Q But you can't remember the date y'all broke up?

A Right

Q Do you know what you were doing the night of March 1, 2002?

A No, I can't go back that far

Q Well, that's just the day before when you said Mr Walker was with you?

A You said he was with me, but that's all I can say

Q So, you don't know what you were doing March 1, 2002?

A We could have been together in 2002 I don't even know what day that was

Q But you don't know specifically?

A Right, that's what I'm saying

Q But you know specifically right now what you were doing March 2, 2002?

A No, I ain't said that

Q So, you don't know what you were doing March 2, 2002 that night?

The Court Ma'am, do you know whether or not you were with this man over here Mr Walker?

The Witness I know we spent a lot of days together I can't tell you no particular day

Q So you can't tell –

A A particular day, right

Q You can't tell us you were with him March 2, 2002?

A Right

As to Reed's testimony, the PCR court found

[Walker] and Reed had an intimate relationship that was ongoing at the time of the alleged incident

[Reed] further testified that [Walker] was usually with her during the time frame of [the] incident [Walker] testified that he had been spending many nights, and most, if not all, weekends with Reed prior to, and including, the date of the alleged incident

While Reed's memory of specific dates is not perfect since it has been approximately five years since the incident, and approximately four years since the trial, her testimony corroborated that of [Walker]

[T]he Court finds that the testimony of Reed at the PCR hearing was credible

The jury would have weighed the credibility of the testimony of the witness, and it is reasonable to assume that the outcome of the deliberations may have been different had this witness testified in light of the facts of this case

The PCR court granted Walker's application on two grounds First, the court found the failure to investigate the alibi witness was deficient and prejudiced the defense Second, the court found Walker

independently established a second ground for prejudice with the cumulative effect of Trial Counsel's error in her failure to investigate [the victim's] alcohol use, her failure to move to continue the hearing to await the written results of the forensic testing, her failure to cross-examine the witnesses as to the discrepancy of the conflicting times of the

incident, and her failure to investigate or interview Reed, the combination of which prejudiced [Walker]

The judge explained that, standing alone, none of the first three instances of deficient performance established prejudice, but when they were added together with the failure to investigate Reed as an alibi witness, "[these] failures cumulatively prejudiced" Walker. The State appeals both grounds upon which the PCR judge granted the application.<sup>1</sup>

## II Applicable Law and Standard of Review

To obtain post-conviction relief based on the alleged denial of effective assistance of counsel under the Sixth Amendment, the applicant must satisfy the two-prong test set out in Strickland v Washington, 466 U S 668, 687 (1984). First, the applicant must show that trial counsel's performance was deficient based on a standard of "reasonableness under prevailing professional norms." Edwards v State, 392 S C 449, 456, 710 S E 2d 60, 64 (2011) (quoting Strickland, 466 U S at 688). Second, the applicant "must demonstrate that this deficiency prejudiced him to the point that he was deprived of a fair trial whose result is reliable." Id. To satisfy this second prong, the applicant "must demonstrate that his attorney's errors had an effect on the judgment against him." 392 S C at 458-59, 710 S E 2d at 65. An error will be found to affect the judgment if the applicant proves "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 392 S C at 459, 710 S E 2d at 66 (quoting Strickland, 466 U S at 694). "In other words, [the applicant] must show that 'the factfinder would have had a reasonable doubt respecting guilt.'" Id. (quoting Strickland, 466 U S at 695).

An appellate court must affirm the factual findings of the PCR court if they are supported by any probative evidence in the record. Cherry v State, 300 S C 115, 119, 386 S E 2d 624, 626 (1989). This court "will reverse the

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<sup>1</sup> The State also contends the PCR court applied an incorrect standard by requiring counsel to articulate a trial strategy for each alleged instance of deficient performance. However, we do not read the PCR court's order to include such a requirement. We read the order as merely noting that trial counsel did not articulate a strategy in defense of her performance.

PCR court only where there is either no probative evidence to support the decision or the decision was controlled by an error of law " Edwards, 392 S C at 455, 710 S E 2d at 64

### III Ineffective Assistance of Counsel—Alibi Witness

#### A. First Prong of Strickland

We agree with the PCR court's finding that trial counsel's failure to investigate Reed as an alibi witness was deficient performance. Counsel admitted she watched the DVD of Walker's interview. Therefore, she was aware of Walker's claim that he was with Reed on the night of the crime.<sup>2</sup> "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case" Edwards, 392 S C at 456, 710 S E 2d at 64. The duty to investigate a potential witness is even more critical when the witness might provide an alibi. Accordingly, the Sixth Amendment requires that criminal defense attorneys thoroughly investigate potential alibi witnesses.

Trial counsel did nothing personally to investigate Reed as a witness. Her claim that her investigator was exploring Reed's role in the case also does not satisfy her obligations under the Sixth Amendment. The duty to represent the client belongs to the lawyer. While it may be reasonable to allow investigators and paralegals to do some or all of the investigatory work, trial counsel has a duty to supervise the investigation, make sure it is completed, and familiarize herself with the results. Trial counsel's failure to adequately investigate Reed as an alibi witness under the circumstances presented in this case was unreasonable under prevailing professional norms, and therefore deficient performance under the Sixth Amendment.

The State points out, however, that the defense presented a theory that Walker and the victim had consensual intercourse and there was no rape. The State argues this was "a far better theory" than an alibi defense because

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<sup>2</sup> Walker never personally told trial counsel about Reed. However, trial counsel could not have watched the interview without knowing Reed was a potential alibi witness.

an alibi would not have explained the victim's detailed and accurate description of Walker's house and truck. The State thus argues that trial counsel's failure to investigate Reed as an alibi witness is justified as a valid strategic decision. This argument mischaracterizes the role of strategy in the analysis of trial counsel's performance. If counsel had properly investigated the alibi defense, and then made an informed strategic decision not to pursue it, the State's argument would be persuasive. However, because trial counsel did not conduct an adequate investigation of the alibi defense, she could not have made an informed strategic choice.

In Strickland, the Supreme Court stated that

strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable, and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. [C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.

466 U.S. at 690-91, see Council v. State, 380 S.C. 159, 175, 670 S.E.2d 356, 364 (2008). Here, trial counsel articulated no reasonable basis for her decision not to investigate Reed as an alibi witness. Therefore, reasonable professional judgment does not support the limitation on the investigation. Moreover, such a decision could not have been reasonable professional judgment. Because an alibi is a complete defense to a criminal charge,<sup>3</sup> there is no conception of sound judgment that will permit trial counsel to choose not to investigate the testimony of a witness whom counsel has reason to believe could provide an alibi.

We find, therefore, that there is evidence to support the PCR court's ruling that Walker met the first prong of the Strickland test. We agree with the court's conclusion that trial counsel's performance was deficient because we find "counsel made errors so serious that counsel was not functioning as

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<sup>3</sup> See State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980).

the "counsel" guaranteed the defendant by the Sixth Amendment " Edwards, 392 S C at 456, 710 S E 2d at 64 (quoting Strickland, 466 U S at 687)

## B Second Prong of Strickland

As to the second prong of Strickland, however, we find the PCR court's ruling that trial counsel's deficient performance prejudiced Walker was controlled by an error of law. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Glover v State, 318 S C 496, 498, 458 S E 2d 538, 540 (1995). Reed's testimony at the PCR hearing did not meet the definition of alibi. Therefore, trial counsel's failure to present the testimony cannot form the basis of a finding of prejudice under Strickland. Glover, 318 S C at 498, 458 S E 2d at 539-40.

This case is similar to Glover. There, the PCR applicant "argued trial counsel was ineffective for failing to contact several witnesses who could have testified [the applicant] was in Florida when the crimes were committed." 318 S C at 497, 458 S E 2d at 539. One witness initially said he "believed" the applicant was in Florida, but then said he could not remember and "knew 'nothing'." Id. The second witness testified the applicant was in Florida eleven hours before the crime was committed at a location only approximately six-and-a-half hours away. 318 S C at 497-98, 498 n 1, 458 S E 2d at 539-40, 540 n 1. The testimony of either witness would have made it less likely the applicant committed the crime. Nevertheless, the supreme court found "no evidence to support the PCR judge's finding of prejudice" because "neither witness's PCR testimony established an alibi defense." 318 S C at 498, 458 S E 2d at 539-40. In support of its finding, the supreme court cited State v Robbins, 275 S C 373, 271 S E 2d 319 (1980) for the following proposition "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." Glover, 318 S C at 498, 458 S E 2d at 540.

We interpret Glover to establish a framework for analyzing an alleged failure to investigate an alibi witness. When a PCR applicant alleges trial counsel failed to investigate or present an alibi witness, the PCR court must make two findings to determine if counsel's deficient performance constitutes prejudice under Strickland. First, the court must find as a matter of law whether the witness's testimony meets the legal definition of an alibi. Second, the court must assess the witness's credibility. In making the first finding, the court must consider the entire record to determine what the testimony would have been if it had been presented at trial. The PCR court must consider the testimony as a whole, take it as true and credible, and view it in the light most favorable to the PCR applicant.

Analyzing Reed's testimony under the Glover framework, we conclude her testimony does not qualify as an alibi. Reed's testimony makes it less likely Walker is guilty. Taken as a whole, however, her testimony does not account for Walker's whereabouts on March 2, 2002, such that it was physically impossible that he committed the crimes. Although Reed began by saying Walker spent the weekend with her, she eventually said she could not specifically remember whether Walker spent the night with her on March 2. Even her specific testimony that Walker "was staying with [her] that weekend" does not foreclose the possibility that he arrived at her house on Saturday morning after committing the crimes on Friday night. Therefore, like the testimony of the two witnesses in Glover, Reed's testimony does not establish an alibi because it leaves open the possibility that Walker is guilty.<sup>4</sup>

Because Reed's testimony does not meet the legal definition of an alibi, Walker failed to show a reasonable probability the result of the trial would have been different if trial counsel investigated and presented Reed's testimony. Therefore, the PCR court committed an error of law in finding that Walker satisfied the second prong of the Strickland test.

#### **IV Ineffective Assistance of Counsel—Cumulative Prejudice**

The PCR court found that trial counsel's performance was deficient in three additional instances. The PCR court determined that Walker had not

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<sup>4</sup> Because Reed's testimony does not meet the legal definition of an alibi, it is not necessary to make the second finding.

independently met the prejudice prong of the Strickland test as to any one of these deficiencies. However, the court found that the cumulative effect of the three, combined with the failure to investigate the alibi, did satisfy the prejudice prong. We disagree. We find no evidence to support the PCR court's ruling that two of the instances were deficient performance. The other instance, which was deficient performance, and the failure to investigate Reed as an alibi witness have no cumulative prejudicial effect.<sup>5</sup> Therefore, the PCR court erred in granting relief.

#### **A Continuance to Await the Written Results of a DNA Test**

The PCR court found trial counsel's performance was deficient because she did not ask for a continuance to wait for the written report from the South Carolina Law Enforcement Division showing that no DNA evidence linked Walker to the crime. We do not find evidence in the record to support this finding.

SLED tested a "bite mark" with the victim's blood and found "no DNA profile unlike the victim." SLED did not release the written results of this analysis until a month after Walker's trial. However, both the assistant solicitor and trial counsel were aware of the test results before trial. The assistant solicitor testified at the PCR hearing that the verbal SLED report generally becomes available "much earlier" than the written report. The PCR court found counsel should have sought a continuance to wait for the written SLED report because she "could have shown [the report] to the jury in order to stress that the only evidence linking the Applicant to the incident was [the victim's] identification."

First, the victim's identification of Walker is not the only evidence linking him to the crime. The victim's descriptions of Walker's truck and

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<sup>5</sup> "[W]hether the cumulation of several errors, 'which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina.'" Lorenzen v State, 376 S C 521, 535 n 3, 657 S E 2d 771, 779 n 3 (2008) (quoting Green v State, 351 S C 184, 197, 569 S E 2d 318, 325 (2002)). As discussed below, we find it unnecessary to answer this question because Walker has failed to prove prejudice under any interpretation of the law.

house were detailed and accurate. Based on these descriptions, the State was able to argue persuasively that the victim was in Walker's house.

Moreover, the trial transcript shows that counsel did stress to the jury the results of the DNA test—that no DNA evidence was found linking Walker to the crime. On direct examination of the police officer assigned to the case, the officer admitted that no DNA evidence was found in Walker's house or truck. On cross-examination, the officer admitted that the rape kit was never sent to SLED for DNA testing, he was unable to collect any samples for DNA testing from Walker's house, and hairs collected from Walker's car were not sent to SLED. Accordingly, the SLED report would have been only marginally helpful to Walker because the contents of the report were made known to the jury through the testimony of the officer. Moreover, the report would have been offered to prove the truth of what is asserted in the report. Thus, the report would likely have been inadmissible hearsay. See *State v. Jennings*, 394 S.C. 473, 479, 716 S.E.2d 91, 94 (2011) (finding portions of a written report constituted inadmissible hearsay). Trial counsel's decision not to seek a continuance so that a marginally helpful and probably inadmissible report containing the same information counsel could present to the jury in other forms is not deficient performance.

### **B Cross-Examination of the Victim on Alcohol Use**

The nurse who performed the victim's rape kit noted that the victim told her she planned to attend "ETOH treatment"<sup>6</sup> that week. The PCR court found trial counsel's performance deficient because she did not investigate the reference to "ETOH treatment" in the nurse's notes or the smell of alcohol noted by the police. The court found trial counsel's lack of an investigation was deficient because the "only evidence linking [Walker] to [the victim] was [her] identification of [Walker]" and counsel's failure "prevented the jury from considering [the victim]'s credibility in her identification of [Walker]." We do not find any evidence in the record to support this finding.

As explained above, there is more evidence linking Walker to the crime than the victim's identification. Additionally, the jury was not prevented

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<sup>6</sup> ETOH is an abbreviation for ethanol and refers to alcohol and alcohol abuse. Trial counsel knew this.

from considering the victim's alcohol use on the day of the crime in assessing her credibility. The record contains several instances of trial counsel bringing the victim's alcohol use to the jury's attention. Counsel asked the victim about beer she drank while at the assailant's house. Counsel cross-examined the victim about the rum and coke she drank when she got home on the morning of March 3, 2002. Counsel cross-examined the victim's cousin about the victim bringing an alcoholic drink with her to the cousin's house on March 3. Finally, counsel mentioned the victim's alcohol use in her closing argument. Thus, the trial transcript reflects that trial counsel investigated and brought to the jury's attention, through cross-examination and in closing argument, the victim's use of alcohol during and after the incident, allowing the jury to consider how the alcohol could have affected her credibility in identifying Walker.

We recognize that the nurse's note shows more than merely that the victim drank alcohol during and after the crime. Rather, the reference to alcohol treatment paints the victim as an alcoholic. However, evidence that the victim is an alcoholic is not admissible to prove she was intoxicated at a particular time. See Rule 404(a), SCRE ("Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion"). While "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused" is admissible under Rule 404(a)(2) in some circumstances, the victim's alcoholism is not a pertinent trait of character in this case. See State v. Mizell, 332 S C 273, 278, 504 S E 2d 338, 341 (Ct App 1998) ("[T]he 'prevailing view is that only pertinent traits—those involved in the offense charged—are provable'" (quoting John W. Strong, McCormick on Evidence § 191 (4th ed 1992)))

Moreover, evidence of the victim's alcoholism is not admissible under Rule 608(a), SCRE, because it is not evidence of her character for truthfulness or untruthfulness. See Rule 608(a), SCRE ("The credibility of a witness may be attacked—subject to these limitations (1) the evidence may refer only to character for truthfulness or untruthfulness"), see also State v. Aleksey, 343 S C 20, 34, 538 S E 2d 248, 255 (2000) ("Narcotics offenses are generally not considered probative of truthfulness"). While evidence of a person's intoxication at a specific point in time may be admissible to show credibility, evidence that a person is an alcoholic is not

### **C Cross-Examination on Conflicting Evidence as to the Time of the Incident**

The PCR court found trial counsel's performance was deficient because she did not "adequately prepare for trial through her failure to call witnesses" whose testimony would have shown the victim initially stated she was at the BP station at night and then later stated she was there in the afternoon. The nurse's report states that the victim said "on 3/2/02 at approx 7PM, she was at a gas station and her car wouldn't start back up." The PCR transcript refers to a police incident report that says the victim recounted she stopped at the BP station "at approximately 8 P M." The videotape from the BP station shows the victim was there at approximately 3:30 in the afternoon. At trial, she testified she was at the BP station in the afternoon while it was still light outside. Counsel had both reports in her case file, but did not ask the victim about the conflicting times. The PCR court found counsel should have explored the discrepancy to place doubt in the minds of the jury as to whether the victim accurately identified Walker. We uphold the PCR court's finding of deficient performance in this respect because there is evidence in the record to support the finding.

### **D The Cumulative Effect of Counsel's Deficient Performance**

We find two instances of trial counsel's deficient performance—her failure to investigate Reed as a potential alibi witness and her failure to cross-examine the victim or call witnesses to testify about conflicting evidence as to the time of the incident. To the extent the failure to investigate Reed as a potential alibi witness caused some prejudice, we have determined the prejudice did not rise to a level warranting relief under Strickland. As to the failure to bring out the victim's conflicting statements on the time of the incident, the PCR court found any prejudice resulting from that deficiency did not independently warrant relief under Strickland. Even if South Carolina did allow PCR based on the cumulative prejudicial effect of two or more instances of deficient performance,<sup>7</sup> Walker would still have to demonstrate "a reasonable probability that, but for [the cumulation of] counsel's unprofessional errors, the result of the proceeding would have been

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<sup>7</sup> See footnote 5

different " Edwards, 392 S C at 459, 710 S E 2d at 66 (quoting Strickland, 466 U S at 694) We find he has not These instances of deficient performance are unrelated to each other and neither one makes the other more prejudicial Therefore, even if we could evaluate them together, there is no cumulative prejudicial effect that would warrant relief under Strickland

**V Conclusion**

The judgment of the PCR court granting a new trial is

**REVERSED**

**THOMAS and KONDUROS, JJ , concur**

THE STATE OF SOUTH CAROLINA  
 IN THE COURT OF APPEALS

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JOSEPH WALKER,

RESPONDENT,

V

STATE OF SOUTH CAROLINA,

PETITIONER

---

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

---

Opinion No. 4946

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PETITION FOR REHEARING

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Pursuant to Rule 221(a), SCACR, counsel for Joseph Walker petitions the Court for rehearing of this Court's decision to reverse the granting of a new trial and finding of ineffective assistance of counsel by the PCR judge. Counsel respectfully submits that this Court overlooked portions of Robina Reed, the alibi witness's testimony indicating that the respondent, Joseph Walker, spent the night at her house on Saturday, March 2, 2002, the evening the complaining witness testified she was kidnapped and sexually assaulted. Counsel submits that Reed's testimony meets the definition of alibi and the credibility of that testimony is an issue for the jury.

Additionally, counsel respectfully submits that this Court misinterpreted Glover v State, 318 S C 496, 458 S E 2d 538 (1995), as establishing a framework for analyzing ineffective assistance of counsel claims involving the failure to investigate an alibi witness in conflict with the standard of proof established by Strickland v Washington, 466 U S 668, 104 S Ct 2052, 80 L Ed 2d 674 (1984). Lastly, counsel submits that this Court overlooked the fact the PCR judge found counsel deficient in three additional instances, and each instance related to a failure to challenge the credibility of the complaining witness. The instances of deficient performance were related to counsel's overall failure to challenge the credibility of the complaining witness and the cumulative effect of these errors combined with counsel's failure to investigate and introduce the testimony of the alibi witness demonstrates prejudice warranting relief in the form of a new trial, as found by the PCR judge.

This Court found that trial counsel's failure to investigate Reed as an alibi witness was deficient performance. This court wrote, "We agree with the court's conclusion that trial counsel's performance was deficient because we find 'counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment' (Citing Edwards, 392 S C at 456, 710 S E 2d at 64, quoting Strickland, 466 U S at 687). This Court found however, under this Court's newly created Glover framework Reed's testimony does not qualify as an alibi and therefore Walker was unable to demonstrate prejudice. This Court wrote

Reed's testimony makes it less likely Walker is guilty. Taken as a whole, however, her testimony does not account for Walker's whereabouts on March 2, 2002, such that it was physically impossible that he committed the crimes. Although Reed began by saying Walker spent the weekend with her, she eventually said she could not specifically remember whether Walker spent the night with her on March 2. Even her specific testimony that Walker "was staying with [her] that weekend" does not foreclose the possibility that he arrived at her house on Saturday morning after committing the crimes on Friday night. Therefore, like the

testimony of the two witnesses in Glover, Reed's testimony does not establish an alibi because it leaves open the possibility that Walker is guilty (emphasis added)

First, there is no question that the complaining witness testified that the incident took place on Saturday, March 2, 2002, not on Friday the day before. Second, Reed testified at the PCR hearing that Walker had been spending weekends and Saturday nights with her every weekend for six months to a year. PCR counsel questioned Reed

Q Now, at the first of March – The first weekend of March of 2002 were you and Mr Walker still involved in a sexual relationship?

A Of course

Q And we're now five years later, is that correct?

A Yea

Q Okay. At the time before he disappeared had Mr Walker been spending [sic]with night with you on the weekends and on Saturday night?

A Yes, he has

Q Okay. Had that been going on every weekend for six months to a year?

A Yea

(App p 397, lines 15 – p 398, lines 1-2)

Robina Reed testified at the PCR hearing that in March of 2002, she and Walker were lovers. (App p 393, lines 16-20) While Ms Reed could not remember the specific date, she testified that she and Walker spent every weekend together for six months to a year before Walker "disappeared" in late March. (App p 397 lines 21 – p 398, lines 1-2) Ms Sanders' incident took place on Saturday, March 2, 2002. (App p 360, lines 2-7) Ms Reed testified that her relationship with Walker ended in late March of 2002, and she was unaware of Walker's arrest on

March 22, 2002 (App p 404, lines 5-9, p 395, lines 3-21, p 399, lines 20-21) Ms Reed testified that she believed that Walker “got tired of my mouth” and took off (App p 395, lines 10-14)

Ms Reed testified that she had worked at Hardees since 1988, and worked as the manager of Hardees in March 2002 (App p 388, lines 22 – p 389, lines 1-24) She testified that Walker would spend the night at her house during that time (App p 393, lines 21-22) Ms Reed testified that in March of 2002, her car was broken and Walker would come to the Hardees and wait on her to take her home (App p 394, lines 4-12) The PCR judge asked Ms Reed, “And you’re telling me that you spent - - Mr Reed (SIC) was staying with you that first weekend in March of 2002?” Ms Reed responded, “Yes” (App p 403, lines 2-5) Upon further questioning, Ms Reed testified, “I know we spent a lot of days together I can’t tell you no particular day” (App p 405, lines 17-18) She was able to testify, however, that prior to the last time she saw Walker, they spent every weekend together at either her house or his (App p 406, lines 4-8) PCR counsel asked Ms Reed, “Prior to the last time that saw Mr Walker did y’all spend every weekend together?” (App p 406, lines 4-5) Ms Reed responded, “Yea, we spend every weekend together” (App p 406, line 6)

While on cross examination, Reed admitted that she could not remember specifically being with Walker on March 2, 2002, the jury should have heard her testimony that she and Walker’s usual practice during the time frame including March 2, 2002, was to spend the night together The jury could then make a determination as to the credibility of the alibi testimony and the judge would instruct the jury about assessing the credibility of the alibi testimony

This Court’s reliance on Glover v State, 318 S C 496 458 S E 2d 538 (1995), is misplaced In Glover the witness testified that the defendant was in Florida eleven hours before the crime was committed at a location approximately six and a half hours away The South Carolina Supreme

Court found that the testimony of the witness did not establish an alibi because the defendant could have left Florida and traveled to the location within six and half hours and committed the crime. In the present case, if the jury believes the alibi witness, Robina Reed, who testified that she was with Walker on Saturday night March 2, 2002, it would have been impossible for Walker to have committed the crimes.

Reed's testimony establishes an alibi and a jury, not an appellate court, should determine the credibility of the testimony. It is important to note that the PCR judge found Reed's testimony credible. In the order of dismissal the PCR judge wrote, "The Court finds that this failure [trial counsel's failure to locate and call Reed as an alibi witness] severely prejudiced the Applicant's right to a fair trial. While it is the role of the jury to gauge the credibility of the witnesses at trial, the Court finds that the testimony of Reed at the PCR hearing was credible. The jury would have weighed the credibility of the testimony of the witnesses, and it is reasonable to assume that the outcome of the deliberations may have been different had this witness testified in light of the facts of this case." Walker was prejudiced by trial counsel's deficient performance. The PCR judge's order granting relief and ordering a new trial is supported by the record and is not controlled by an error of law. Under the any evidence standard this Court erred in reversing the finding of the PCR judge.

This Court's determination that Reed's testimony did not establish an alibi is in conflict with the reasonable probability standard established by Strickland. In order to establish prejudice there must be "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Reed testified that she believed she and Walker spent the night together on Saturday March 2, 2002.

The State's case against Walker was based entirely on the testimony of the one complaining witness, Ms Sanders. There were questions about this witness's credibility. As discussed below, this Court found counsel ineffective for failing to adequately cross examine the witness about conflicting evidence as to the time the incident is alleged to have happened. There was no forensic evidence linking Walker to an assault of Ms Sanders and no witnesses who could corroborate Ms Sanders' testimony. Ms Sanders' identification of Walker was made only after she had viewed a video tape of Walker entering the BP station. There is a reasonable probability that Ms Reed's testimony would have made the difference in obtaining an acquittal. See Martinez v. State, 304 S C 39, 403 S E 2d 113 (1991).

The PCR judge found three additional instances of ineffective assistance of counsel. The PCR judge found counsel ineffective in failing to move for a continuance to await completion of forensic testing that revealed that no semen was identified from the sexual assault evidence kit collected from the complainant, failing to investigate the complainant's alcohol use, failing to cross examine the complainant in regard to discrepancies as to the time of the alleged incident. The PCR judge wrote, "THE COURT FURTHER FINDS AND CONCLUDES that the Applicant has independently established a second ground for prejudice with the cumulative effect of Trial Counsel's error in her failure to investigate Sanders' alcohol use, her failure to move to continue the hearing to await the written results of the forensic testing, her failure to cross-examine the witness as to the discrepancy of the conflicting times of the incident, and her failure to investigate or interview Reed, the combination of which prejudiced the Applicant." (App p 444)

This Court found that counsel was deficient in failing to cross examine the complainant in regard to discrepancies as to the time of the alleged incident. This court wrote, "We find two instances of trial counsel's deficient performance – her failure to investigate Reed as a potential alibi

witness and her failure to cross-examine the victim or call witnesses to testify about conflicting evidence as to the time of the incident” This Court, however, found that Walker failed to prove prejudice “These instances of deficient performance are unrelated to each other and neither one makes the other more prejudicial Therefore, even if we could evaluate them together, there is no cumulative prejudicial effect that would warrant relief under Strickland

First, as discussed above, counsel’s failure to investigate and call Robina Reed as an alibi witness constitutes prejudicial deficient performance requiring a new trial, as found by the PCR judge Second, the testimony of the alibi witness and cross examination of the complainant in regard to discrepancies as to the time of the alleged incident are related as both go to the credibility of the complaining witness Third, the PCR judge correctly found that counsel was additionally deficient in failing to move for a continuance to await completion of forensic testing that revealed that no semen was identified from the sexual assault evidence kit collected from the complainant and failing to investigate the complainant’s alcohol use

The PCR judge citing Green v State, 351 S C 184, 569 S E 2d 318 (2002) wrote, “These failures cumulatively prejudiced the Applicant and adversely affected his right to a fair trial under the fact of this case” (App p 445) In Green the South Carolina Supreme Court wrote, “Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina Compare State v Peterson, 287 S C 244, 335 S E 2d 800 (1985) (accumulation of errors warranted reversal, but Court also found each individual error caused prejudice), overruled on other grounds by State v Torrence, 305 S C 45, 406 S E 2d 315 (1991), with State v Freeman, 319 S C 110, 459 S E 2d 867 (Ct App 1995) (finding multiple errors, which were not prejudicial separately, could be prejudicial to deny an individual a right to a fair trial when they were viewed together)” 351 S C at 197, 569 S E 2d at 324

While the individual error in failing to call the alibi witness warrants reversal, the cumulative effect of the other errors also warrants reversal.

Based on Ms. Sanders' report of a sexual assault, several items were submitted to the South Carolina Law Enforcement Division [SLED] for serology and DNA analysis. At the time of Walker's trial, however, SLED had not completed the written report in regard to the forensic testing. Consequently, at the time of trial, counsel did not have a written copy of the results of forensic testing performed by SLED. The SLED report is dated August 27, 2003, and was admitted in evidence at the PCR hearing as plaintiff's exhibit No. 1 (Supp. App. pp. 1-2). Walker's trial was held on July 22 and 23, 2003. Testing of smears, swabs and panties collected in the sexual assault evidence collection kit from Ms. Sanders on March 3, 2002, (Ms. Sanders alleged that the incident started on March 2, 2002, and continued into the early morning hours of March 3, 2002), revealed no spermatozoa and no semen (Supp. App. pp. 1-2). Ms. Sanders testified that the assailant penetrated her more than three times (App. p. 51, lines 14 – p. 52, lines 1 – 3). The nurse's notes indicate that the assailant did not wear a condom (Supp. App. p. 4).

The State's contention that respondent was not prejudiced by trial counsel's failure to await completion of the written report because trial counsel was told by the solicitor, prior to trial, that no semen was found is without merit. Trial counsel admitted at the PCR hearing that it would have been important for the jury to have known about the results of the SLED forensic testing (App. p. 367, lines 9-11). While there was limited testimony about the lack of DNA evidence, the written SLED report could certainly have called into question the credibility of the complainant, a critical issue in this case as her testimony was the only evidence against respondent.

In an interview with Ms. Sanders following the incident, a nurse noted the following, "She [Ms. Sanders] has been planning on attending ETOH treatment this week and is still planning to

begin this week” ((App p 369, lines 1 8, Supp App p 4) The interview was admitted as evidence at the PCR hearing as plaintiff’s exhibit No 2 Trial counsel admitted that she did not cross examine Ms Sanders in reference to the alcohol treatment referenced in the note (App p 386, lines 10-19) Additionally, trial counsel admitted that when Ms Sanders initially reported the incident to law enforcement, the officers noted that she smelled of alcohol (App p 353, lines 21 – 24) Trial counsel admitted it would have been important to cross examine Ms Sanders about her smelling of alcohol at the time of reporting the incident to police (App p 354, lines 1-8) Trial counsel further admitted that she failed to call the nurse or the officers to testify about the alcohol treatment and her smelling of alcohol (App p 354 lines 9-14) In the order of dismissal the PCR judge wrote, “Trial counsel merely made reference that alcohol had been consumed by Sanders during and after the incident as part of a confirmation of events Sanders claimed had transpired The only evidence linking the Applicant to Sanders was Sander s identification of the Applicant Trial counsel’s failure to investigate the impact of alcohol use prevented the jury from considering Sanders’ credibility in her identification of the Applicant as her assailant” (App pp 445-446)


Counsel admitted failing to cross examine Ms Sanders in regard to discrepancies about the time of day she alleged the incident began (App p 356, lines 18 – p 357, lines 1-25) Ms Sanders initially told the police she stopped at the BP station at 8 00 PM (App p 357, lines 2-4) Ms Sanders told the nurse that she was at a gas station at 7 00 PM (Supp App p 4) The video surveillance from the BP station, however, reflects that Ms Sanders entered the store at 2 20 PM (App p 357, lines 19-25) Trial counsel admitted it would have been important to explore this significant discrepancy in the time (App p 357, lines 7-9)

The PCR judge correctly found that the cumulative effective of trial counsel's errors independently established prejudice and deprived Walker of the right to a fair trial. Trial counsel's multiple errors of failing to move for a continuance to await completion of a written forensic report revealing that no semen or spermatozoa was identified from the sexual assault evidence kit collected from Ms Sanders, failing to investigate and cross examine Ms Sanders about her alcohol use, failing to cross examine Ms Sanders in regard to serious discrepancies as to the time of the alleged incident and failing to interview the alibi witness, Ms Reed, constitutes ineffective assistance of counsel requiring a new trial. The PCR judge's finding that Walker was prejudiced by the cumulative effect of multiple errors committed by trial counsel is supported by the record. The finding of the PCR judge should be affirmed.

PCR findings must be upheld where supported by any evidence of probative value in the record. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). The PCR judge's findings that trial counsel was deficient in failing to interview and call Robina Reed as an alibi witness and that respondent was prejudiced by the deficient performance are supported by evidence in the record. Additionally, the PCR judge's finding that Walker was prejudiced by the cumulative effect of multiple errors committed by trial counsel is supported by the record. The findings of the PCR judge granting Walker a new trial should be affirmed.

Based on the above arguments, counsel seeks rehearing.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender

This 8th day of March, 2012

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Aiken County  
Doyet A. Early, III, Circuit Court Judge  
\_\_\_\_\_

JOSEPH WALKER,

RESPONDENT,

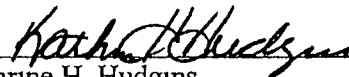
V

STATE OF SOUTH CAROLINA,

PETITIONER

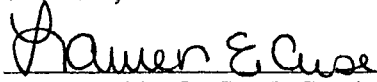
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mary S. Williams, Esquire, this 8th day of March, 2012

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 8th day  
of March, 2012

 (L.S.)  
Notary Public for South Carolina

My Commission Expires August 23, 2014

# The South Carolina Court of Appeals

Joseph Walker, Respondent,

v

State of South Carolina, Petitioner

The Honorable Doyet A Early, III  
Aiken County  
Trial Court Case No 2005-CP-02-00039

ORDER DENYING PETITION FOR REHEARING

PER CURIAM After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing

It is, therefore, ordered that the Petition for Rehearing be denied

*John Cannon* C J  
*Paul E. ...* J  
*[Signature]* J

Columbia, South Carolina

cc Assistant Attorney General Mary S Williams  
Assistant Attorney General Robert D Corney  
Appellate Defender Kathrine H Hudgins

FILED

March 15, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Certiorari to Aiken County  
The Honorable Doyet A. Early, III, Circuit Court Judge  
C A No 2005-CP-02-0039

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JOSEPH WALKER,

RESPONDENT,

V

STATE OF SOUTH CAROLINA,

PETITIONER

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BRIEF OF PETITIONER

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## TABLE OF AUTHORITIES

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<u>Strickland v Washington</u> , 466 U S 668, 104 S Ct 2052, 80 L Ed 2d 674, (1984)	<i>passim</i>
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## ISSUES PRESENTED

- 1 Did the PCR court err in finding ineffective assistance of counsel for failing to interview an alibi witness where Respondent failed to notify Counsel about the alibi witness and the witness' testimony failed to establish an alibi?
- 2 Did the PCR court err in finding the cumulative error where no individual constitutional error was found?

## STATEMENT OF THE CASE

Joseph Walker (“Respondent”) was indicted in August 2002 for Criminal Sexual Conduct (“CSC”) First Degree, Kidnapping, and Possession of a Weapon During a Violent Crime<sup>1</sup> (App p 7, line 4 – p 8, line 8, pp 310-311, 313-314 ) He was represented by Kelley P Brown, Esquire (“Counsel”) Respondent proceeded to a jury trial on July 22 - 23, 2003, before the Honorable James R Barber, III Respondent was found guilty of CSC First Degree and Kidnapping and was sentenced to concurrent terms of twenty-four (24) years each (App p 310, 313 ) Respondent was acquitted of Possession of a Weapon During a Violent Crime (App p 263, lines 6-13 )

A timely Notice of Appeal was filed on Respondent’s behalf, and an appeal was perfected The South Carolina Court of Appeals affirmed Respondent’s conviction and sentence State v Walker, Op No 2004-UP-618 (S C Ct App filed December 9, 2004) The remittitur was sent on January 11, 2005 (App pp 318-328 )

Respondent subsequently filed his post conviction relief (“PCR”) application on January 7, 2005 (App pp 329-335 ) An evidentiary hearing was convened at the Bamberg County Courthouse on March 9, 2007 (App pp 341-437 ) The Petitioner was represented by Lance S Boozer of the South Carolina Attorney General’s Office The Respondent was represented by Joan E Smith, Esquire, and Timothy S Mirshak, Esquire By Order dated May 24, 2007, the Honorable Doyet A Early, III, granted Applicant’s PCR application (App pp 438-449 )

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<sup>1</sup> The trial transcript also reflects that Respondent was indicted for Burglary – First Degree and Kidnapping in Orangeburg County as a result of this series of events (App p 267 line 7 – p 268, line 13 ) The incident began in Orangeburg County and progressed to Aiken County There is nothing in the record reflecting the disposition of the Orangeburg charges

This petition for writ of certiorari follows

### SUMMARY OF FACTS ADDUCED AT TRIAL

On the afternoon of March 2, 2002, 59-year-old Margaret Ann Sanders (“Sanders”), a former nurse who had retired after thirty (30) years of work, stopped at a B P gas station on her way home from a trip to Dollar General<sup>2</sup> (App p 45, lines 10-24, p 93, lines 6-21, p 120, line 4) She purchased a cup of ice, but she experienced car trouble when trying to leave the store (App p 45, lines 21-24) Sanders solicited assistance from a customer at one of the pumps, a man wearing what looked like a mechanic’s uniform (App p 46, lines 1-5, p 50, lines 22-25) The man offered to purchase a wire for \$9 and complete the repair for her (App p 46, lines 9-20) Sanders recalled that it was daylight when he was fixing her car, and she had a good look at the man (App p 60, lines 5-20) After repairing the vehicle, the man told Sanders that she would have to pay him \$30 (App p 46, lines 19-21) Because she did not have the money, she offered to let him follow her home so that she could retrieve the money (App p 46, lines 19-23)

Sanders went into her home, leaving the man outside and without invitation in (App p 47, lines 4-5) She retrieved money from her bedroom and turned around to see him standing in the room (App p 46, line 24 – p 47, line 12) Sanders testified that the man blindfolded her and placed her in his truck, a small, black truck with a manual

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<sup>2</sup> The times on the store video were off. However, Sanders was at the dollar store at 3:28 p.m. so it was estimated that Sanders came to the BP station at 3:33 p.m. (App p 288 lines 5-25) The B P clerk testified that they would compare the register tape to the videotape to determine an accurate date and time. Sanders stated that she left for Dollar General in the mid afternoon, and later stated she probably got to the BP station between 3:00 p.m. and 5:00 p.m. (App p 76 lines 4 – 20)

transmission, red interior, and an unpleasant odor (App p 47, line 14 – p 48, line 14, p 67, lines 17– 24, p 156, line 10 – p 157, line 2 )

Sanders recalled that she was taken, still blindfolded, into a house, and the blindfold was removed in the bedroom (App p 49, line 22 – p 50, line 8 ) She claimed the man was armed with a small pistol (App p 49, line 22 – p 50, line 8 ) The room had an unpleasant smell Sanders reported that there were blankets hanging from windows and doorways in the bedroom and that a heater was on in the room (App p 69, lines 9 – 16, p 70, lines 11-23, p 155, lines 21-25 ) Sanders recalled that there was a small bathroom off of the bedroom and a double bed (App p 69, lines 20-25, p 156, lines 5-7 ) Sanders also described a chair and ashtray in the room (App p 70, lines 11-12, p 156, lines 4-5 )

In the bedroom, the man removed her jogging outfit, raped her numerous times, and forced her to perform oral sex on him (App p 50, lines 15-21, p 51, line 1 – p 52, line 17 ) She pleaded to be released, and he eventually blindfolded her and drove her back to her home (App p 53, lines 5 – 25 ) Upon returning to Sanders' yard, the man removed the blindfold and shoved her out of the truck, threatening to kill her if she told anyone what had happened (App p 54, lines 1-9 ) Sanders stated that she got home around 5 00 am (App p 53, line 9-11 )

Sanders washed herself and changed her underclothes (App p 55, lines 3-6, p 86, lines 2-4 ) Sanders became scared because she was bleeding and in pain and went to her cousin's house (App p 54, lines 16-24 ) Sanders proceeded to the Orangeburg Hospital and was sent to Charleston so that a rape kit could be collected (App p 56, lines 3-20 )

When she reported to police, Sanders provided a description of the perpetrator, his truck, and his house <sup>3</sup> (App p 57, line 22 – p 58, line 13, p 70, line 24 – p 71, line 6, p 153, lines 17-22 ) Sanders was later shown a video from the B P station, and stated that she was about “90% sure” that one of the individuals she saw was her attacker (App p 59, line 15 - p 60, line 3, p 152, line 15 – p 153, line 6, p 153, lines 17-25 ) However, Sanders did not know his name The clerk at the B P station, Diane Warren (“Warren”), recognized Respondent by name without hesitation from the surveillance video taken at the store on March 2 (App p 145, line 1 – p 146, line 6, p 153, lines 9-14 ) Warren also provided a description of Respondent’s vehicle, a black pickup truck (App p 146, lines 7-23 )

Based on the identification in the videotape by Sanders and Warren, a photo lineup was created (App p 154, lines 1-8 ) Sanders then selected Respondent’s photo from the lineup, again stating she was “about 90% sure that that was him ” (App p 61, line 22 – p 62, line 17, p 154, line 9 – p 155 line 3 ) Both the video and the lineup were presented to the jury In addition to her identification of Respondent in the video and photo lineup, Sanders was able to identify Respondent in the courtroom with absolute certainty, even noting, “he doesn’t have facial hair like he did [at the time of the attack] ” (App p 75, lines 4-24, p 100, lines 9-18 )

When investigators went to Respondent’s home more than 20 days after the assault, they found a small, black Ford Ranger pickup (App p 179, lines 9-25, p 181,

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<sup>3</sup> Sanders March 4 statement to police, as testified to by Officer Bamberg, was consistent with her trial testimony with regard to descriptions of the vehicle and the house Officers Bamberg and Graybeal also reported that Sanders had consistently reported the time of the assault though she did not know the exact location because she had been blindfolded (See for example App p 177 line 14 – p 178 line 7 )

lines 2-6, p 186, lines 7-13 ) The pickup had a manual transmission and a strong, unpleasant odor, just as Sanders described (App p 180, lines 3-15 ) Respondent's room matched exactly the description given by Sanders after the attack, details like where the heater was in the room were exactly as Sanders described in her initial accounts of the assault (App p 71, line 23 – p 75, line 3, p 181, line 23 – p 184, line 21, p 206, lines 24-25 ) Sanders recognized a pair of black shoes found in the room as those worn by her attacker (App p 71, line 23 – p 72, line 5, p 74, lines 10-14, p 184, lines 1-7 ) The investigator's attempts to obtain fingerprints from the house and truck were unsuccessful (App p 185, line 4 – p 186, line 6, p 194, line 25 – p 196, line 10 ) No DNA was collected at the house (App p 186, line 18 – p 187, line 13, p 196, line 11 – p 201, line 25 ) No weapon was found (App p 202, line 1 – p 203, line 24 )

Sanders' cousin, Margie Kamner ("Kamner"), provided corroborative testimony as to time and place as allowed by Rule 801(d)(1)(D), SCRE Kamner reported that Sanders had arrived at her home the morning after the assault, March 3, around 10 30 or 11 00 am (App p 135, lines 2012 ) Sanders told Kamner that the assault had happened the night before, March 2-3 (App p 135, lines 13 – 25 ) Sanders was upset, and Kamner called other family members who took Sanders to the hospital (App p 136, line 10 – p 137, line 13 )

Dr Elizabeth Gibbs ("Dr Gibbs") testified to the results of Sanders' sexual assault forensic healthcare assessment and an evidence collection kit performed March 3, 2002 (App p 105, lines 16-17 ) Sanders was found to have redness and petechiae in the roof of her mouth consistent with the oral sexual assault she had described (App p 107, lines 16-18, p 108, line 4 – p 109, line 11 ) The exam also revealed multiple injuries to

Sanders' genital area, including lacerations, bruising, and a fresh traumatic interruption of the hymen (App p 112, line 2 – p 117, line 17) Dr Gibbs opined that the injuries were diagnostic of blunt-force-penetrative trauma and were consistent with the assault Sanders described (App p 118, lines 8-11) Dr Gibbs also testified that a "wet prep" was performed, wherein vaginal fluids were looked at under a microscope for semen or bodily fluids, but none were found (App p 122, lines 19-22, p 124, lines 9-15, p 130, line 7 – p 132, line 16)

## ARGUMENTS

### **I The evidence does not support a finding that Counsel was ineffective for failing to interview a potential alibi witness**

The PCR court found simply that Counsel failed to explain why neither she nor her investigators spoke with a potential alibi witness, Robina Reed (“Reed”) In placing the burden on Counsel to articulate a strategy for each action or inaction, the PCR court applied an incorrect standard in granting PCR on this basis Moreover, applying the correct Strickland v Washington analysis, there is no evidence upon which the PCR court could find (1) deficient performance which (2) resulted in prejudice such that but for the alleged error, the outcome of the trial would have been different

Petitioner submits that Respondent failed to demonstrate deficient performance by Counsel with regard to the investigation of potential alibi witness Robina Reed (“Reed”) The PCR court’s finding that Counsel made no effort to locate an alibi witness based upon information provided by her client is completely unsupported by the evidence Counsel repeatedly testified that Respondent never told her that he had an alibi (App p 372, lines 19-21, p 373, lines 1-3, p 373, line 23 – p 374, line 5, p 378, lines 14-19 ) Counsel stated that Respondent never mentioned Reed to her (App p 378, lines 18-19 ) Respondent confirmed this, admitting that he did not discuss alibi with Counsel (App p 408, lines 19-25, p 409, line 25 – p 410, line 25 )

There was a videotaped interview with Respondent<sup>4</sup> Counsel maintained that she watched the video and would have either played it for Respondent or told him what it

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<sup>4</sup> The video statement is a court s exhibit in this matter and is on file with the Court of Appeals Citations to the video in this brief will be indicated by Vid followed by the approximate time at which the statement begins for example (Vid , 00 00 )

asked for permission to take bed sheets to be tested for semen and DNA, Respondent said that there actually been two (2) other women in the house (Vid , 1 00 00 )

Counsel believed that her investigator pursued information on Reed (App p 371, line 20 – p 372, line 14, p 374, lines 13-18 ) Respondent testified that he told the investigator about his alibi Respondent testified that he met with the investigator once, then testified they met “about twice” (App p 408, lines 9-16, p 409, lines 4-11 ) Counsel’s file contained a sheet of handwritten notes, including a note reading “Rovenia Manager Hardees ” (Supp App , Plaintiff’s Exhibit 4 ) Counsel testified that the note was in her investigator’s handwriting (App p 373, lines 10-14 ) Counsel stated that if she had been told of a potential alibi witness she would have vigorously explored such a possibility (App p 374, lines 3-6, p 378, lines 20-24 ) Respondent’s evidence shows that some effort was made to locate “Rovenia Manager Hardees,” and Counsel’s testimony was that her investigator did try to locate this individual

Counsel recalled discussing the evidence against Respondent, noting that Sanders had provided specific details of the interior of his home The defense theory of the case was, in part, that there had been consensual intercourse between Sanders and Respondent This theme is intertwined into counsel’s cross-examination of witnesses and argued in her closing argument (See for example App p 122, lines 1-8, p 236, line 1 – p 244, line 2 ) Not only was this theory a viable one developed in communication with her client, it was a far better theory than the Respondent now wishes to present An alibi explains neither Sanders’ familiarity with his truck and home nor her injuries Under the circumstances of the case Counsel’s performance was reasonable Her client, by his own testimony, did not inform her of an alibi defense Nonetheless, her investigator pursued the lead, apparently

without success Without a viable alibi defense, Counsel pursued a more plausible defense theory

Respondent further failed to demonstrate that the result of the proceeding would have been different had Counsel pursued an alibi defense Reed testified that she had known Respondent for about two (2) years in March 2002 (App p 388, lines 14-21 ) Reed testified that she and Respondent had a romantic relationship at the time (App p 393, lines 16-20 ) She stated that Respondent had a key to her home, spent time there on the weekends and would give her rides from work (App p 393, line 16 – p 394, line 12 ) Reed worked mostly nightshifts as the manager of Hardee’s (App p 389, line 21 – p 390, line 6 ) Reed stated that when PCR counsel first tried to reach her in January 2007 she had thrown his card away (App p 390, lines 18-21 ) Reed stated that no one had ever contacted her regarding Respondent’s case (App p 391, line 14 – p 392, line 9 ) She stated she did not know what had happened to Respondent in late March 2002 and thought he had just “got tired of [her] mouth” and left (App p 395, lines 6-21 )

Reed testified that during the first week of March she and Respondent were sharing a sexual relationship (App p 397, lines 15-18 ) In response to leading questions, Reed stated that Respondent had stayed with her every weekend night for six (6) months or a year leading up to March 2002 and would also stay on weekdays (App p 397, line 21 – p 398, line 4 ) She recalled that generally on Saturdays she worked from 2 00 pm until 11 00 pm (App p 398, lines 5-9 ) Respondent would come in at the end of the shift to pick her up (App p 398, lines 10-19 ) When asked whether she spent the night with Petitioner on March 2, 2002, Reed responded, “I guess I did ” (App p 399, lines 3-6 ) She claimed she last spent the night with him after that on a Sunday “in March, I don’t

know ' (App p 399, lines 11-13 ) Reed stated she had left Respondent to burn her yard and never saw him again (App p 399, line 21 – p 400, line 21 ) Reed also said that the two had broken up in late March (App p 404, lines 5-6 ) After averring that Respondent was with her on March 2, Reed then said, “well, I know he was with me but I can’t say a particular date No, I don’t know what date ya’ll want ” (App p 403, lines 2-5, p 404, lines 20-21 ) Reed was clear that he was “with her” in 2002 but she did not know what dates (App p 405, lines 4-22 )

Further, Respondent had given a videotaped statement that he was with Greg for a portion of the night Greg was not discussed at PCR hearing

The PCR court erred in granting relief where there is no evidence of an alibi Reed’s testimony failed to establish an alibi defense To establish an alibi defense, a defendant must present some evidence that he was at another place at the time of the crime and could not therefore have committed the crime State v Diamond, 280 S C 296, 297, 312 S E 2d 550 (1984), citing State v Robbins, 275 S C 273, 271 S E 2d 319 (1980) (since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all Reed’s testimony would not have constituted an alibi defense because she could not definitely account for Petitioner’s whereabouts during the time the crime was committed See Cherry v State, 300 S C 115, 386 S E 2d 624 (1989) (no prejudice where witness’ testimony would not account for defendant’s whereabouts during the time of the crimes and would be cumulative), Glover v State, 318 S C 496, 458 S E 2d 538 (1995) (finding no prejudice where witnesses’ testimony did not establish an alibi because the petitioner could have traveled to the

crime scene) Therefore, even if Respondent had told Counsel about the alibi witness, there is no evidence tending to establish that the outcome of the trial would have been different

**II The PCR court applied an improper standard of review in granting relief to Respondent Applying the appropriate standard of review as articulated in Strickland v Washington, 466 U S 668, 104 S Ct 2052, 2064, 80 L Ed 2d 674, 692 (1984), Respondent failed to carry his burden of demonstrating deficient performance which prejudiced him such that the outcome of the trial would have been different with regard to the issues of (a) counsel's failure to request a continuance to receive written results of forensic testing, (b) counsel's failure to inquire about a time discrepancy in a nurse's statement, and (c) counsel's failure to investigate the victim's alcohol use The PCR court further erred in employing the doctrine of "cumulative error" where (a) the doctrine has not been espoused in South Carolina and (b) the evidence would not support such conclusion even if the doctrine was to be applied**

In its order, the PCR court finds that, "Trial Counsel articulated no trial strategy" for several alleged deficiencies Before discussing the deficiencies, the PCR court first determined that

the [Respondent had] independently established a second ground for prejudice with the cumulative effect of Trial Counsel's error in her failure to investigate Sanders' alcohol use, her failure to move to continue the hearing to await the written results of the forensic testing, her failure to cross-examine the witnesses as to the discrepancy of the conflicting times of the incident, and her failure to investigate or interview Reed, the combination of which prejudiced the [Respondent]

(App p 444 )

As a precursor, the PCR court erred in the standard it applied to reviewing counsel's conduct The court should have first evaluated Counsel's performance by its "reasonableness under professional norms " Cherry, 300 S C at 117, 386 S E 2d at 625, citing Strickland v Washington, 466 U S 668, 104 S Ct 2052, 2064, 80 L Ed 2d 674,

692 (1984) Moreover, there is a presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment Strickland, supra The Applicant must overcome this presumption in order to receive relief Cherry v State, 300 S C 115, 386 S E 2d 624 (1989) The PCR court's requirement that counsel articulate a strategy for any action or inaction is not the correct standard and places the burden of proof on counsel The court should undertake a prejudice analysis only upon a finding of deficient performance Then, if the court finds deficient performance, under the second prong of Strickland the applicant must demonstrate that the deficiency prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different " Cherry, 300 S C at 117-18, 386 S E 2d at 625

Each of the remaining issues addressed in the PCR court's order are discussed below in detail pursuant to the Strickland v Washington standard, and an analysis of cumulative error follows

- a **Under the two-prong Strickland analysis, no evidence supports a finding of ineffective assistance where Counsel did not request a continuance in order to obtain written lab results showing no sperm or DNA was found on Sanders following the assault Counsel knew the results of the test, and evidence that no such link was found was introduced at trial**

The PCR court first found that absence of a request for a continuance to await the results of a SLED forensic report was part of a "cumulative prejudicial effect" (App pp 444-445, Supp App, Plaintiff's Exhibit 1) The PCR court then found that Counsel "articulated no trial strategy for her failure to investigate the results of forensic testing being performed by the South Carolina Law Enforcement Division [SLED]" (App p 447) The PCR court further found that "Trial Counsel gave no explanation as to why she

did not know that the testing had not been completed” (App p 447) The PCR court finds that had Counsel had the report she could have stressed to the jury the absence of forensic testing (App p 447) However, the PCR court then found that this alone did not establish prejudice (App p 447) After finding no prejudice, the PCR court makes the inference that this is, nonetheless, “further evidence of trial counsel’s ineffectiveness” (App p 447)

First, Respondent must demonstrate that Counsel’s performance was unreasonable under professional norms, an analysis of prejudice is unnecessary in the absence of deficient performance Applicant asserted that counsel should have requested a continuance to await written results of SLED testing However, the uncontroverted testimony at PCR hearing was that Counsel knew of the SLED findings before trial, the PCR court erred in finding otherwise (App p 352, lines 2-7, p 416, lines 18-22, p 417, line 7 – p 418, line 5) Counsel was aware that the results from SLED indicated that there was no sperm or semen found on the victim and that the DNA found was all the victim’s own Given that Counsel knew of this evidence and was able to elicit the evidence from the witnesses at trial, Counsel’s failure to request a continuance so that the written report could be obtained was certainly reasonable <sup>5</sup>

The PCR court correctly found that Respondent suffered no prejudice in this regard Though the PCR court did not undertake any specific analysis of why there was no prejudice, the evidence clearly supports the conclusion The written report shows that no semen, sperm, or DNA other than the victim’s own was found on the victim (Supp

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<sup>5</sup> Moreover, the transcript indicates that the case had been called for trial at least once before, two months before the eventual trial date (App p 171 lines 12-15)

App , Plaintiff's Exhibit 1 ) The absence of forensic evidence linking Respondent to Sanders was repeatedly established through the testimony of other witnesses at trial For example, on cross-examination of lead investigator Stuart Graybeal ("Graybeal"), Counsel elicited that Graybeal had not attempted to collect DNA from Respondent to compare to the rape kit, in fact, Graybeal did not even know if the kit had been tested at all (App p 190, line 14 – p 194, line 10 ) On cross-examination, Dr Gibbs specifically stated that in her own testing no sperm were found in vaginal fluids collected from Sanders (App p 122, lines 19-22, p 124, lines 9-15, p 130, line 7 – p 132, line 16 ) Sanders reported consistently that she had washed and changed her undergarments before even reporting what happened to her family members later that day The written report with no findings would have only been cumulative to the trial testimony that no sperm, semen, or DNA evidence of value existed See Cherry v State, 300 S C 115, 386 S E 2d 624 (1989) (no prejudice where testimony of witness would be cumulative to those presented at trial and did not establish an alibi defense) Therefore, Respondent suffered no prejudice in this regard

**b Counsel's failure to inquire of Sanders regarding the discrepancy between the time Sanders reported arriving at the B P station at trial and the time listed in nurse Gretchen Overstolz's report does not constitute deficient performance Moreover, in light of the numerous discrepancies in Sanders' statements which Counsel did explore, Respondent suffered no prejudice**

The PCR court first found Counsel's failure to ask Sanders about a report prepared by nurse Gretchen Overstolz ("Overstolz") was part of a "cumulative prejudicial effect" (App pp 444-445, Supp App , Plaintiff's Exhibits 2 and 5 ) The PCR court found that Counsel offered no strategic reason for failing to cross-examine Sanders or

call all officers who prepared the reports to inquire about the time discrepancies <sup>6</sup> The PCR court found this would be reasonable to do in order to cast doubt on Sanders' identification of Respondent as the perpetrator, specifically finding that Counsel had a duty to interview the police and nurses who prepared reports. The PCR court makes no finding of prejudice except for its earlier note regarding "cumulative prejudicial effect."

Petitioner submits that there is no evidence of deficient performance in this regard. A defense attorney must conduct a reasonable investigation, a duty determined by the particular facts and evidence in a case. Respondent asserts that Counsel erred when she did not inquire of Sanders as to Overstolz's note that the Sanders what at the gas station at 7:00 pm (Supp App, Plaintiff's Exhibit 2). At trial, Sanders insisted that it was daylight when Respondent was fixing her car (App p 60, lines 5-20). While Counsel did not specifically question Sanders on some time discrepancies from her earlier statements, Counsel cross-examined the victim on the timeline of events (App p 76-77, p 79, line 24 – p 80, line 14, p 82, lines 18 –22). On cross-examination at trial, Sanders stated she had left for Dollar General in the afternoon, she estimated that the time was between 3:00 and 5:00 pm, but stated that she did not remember the exact times (App p 76, lines 4-20). Sanders stated that it was dark by the time she was at Respondent's house (App p 77, lines 23-25). Sanders had difficulty recalling when she had given statements to police (See for example App p 91, lines 2-25, p 92, line 21 – p 93, line 9). Sanders specifically stated that she didn't really keep up with time since she no longer worked (App p 93, lines 6-9). Counsel elicited from Sanders multiple times

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<sup>6</sup> It is unclear from the order who the officers who prepared the initial reports were what reports the order refers to and Respondent did not pursue this issue at PCR hearing

that she didn't remember certain details such as time Counsel performed cross-examination that was well within reasonable professional norms with regard to Sanders and the officers who investigated the case Counsel cannot be expected to ask every foreseeable question, such a requirement would be unreasonable Further, Counsel had no reason to interview the nurse, Overstolz, who prepared the report, it was reasonable to assume that the report reflected what Overstolz would say Time was not an essential element of the case, and Counsel identified several other inconsistencies through her cross-examination Under these circumstances, the failure to ask a question (or failure to interview the nurse) about one time discrepancy is not unreasonable under professional norms

Moreover, it certainly did not affect the outcome of the trial One additional discrepancy regarding time where the witness said several times that her recollection of the time was not clear would not have had an effect on the outcome of the trial Through her cross-examination, Counsel brought out other inconsistencies that cast doubt on Sanders' credibility and the accuracy of her memory with regard not only to the timeline but also as to other more salient aspects of her story Notably, Counsel inquired of Sanders and the officers regarding Sanders' description of a gun which Respondent allegedly threatened her with The jury eventually acquitted Petitioner of the weapon charge Further, in reviewing the remainder of Sanders' statement, every other detail other than the time corroborates her trial testimony (Supp App , Plaintiff's Exhibit 2 ) It would certainly have been more damaging for defense counsel to have opened the door for the remainder of the statement to come in See Rule 106, SCRE, Rule 801(d)(1)(B), SCRE Counsel also inquired as to other inconsistencies between Sanders' initial reports

and her later statements (See for example App p 163, line 22 – p 164, line 6, p 168, line 18 – p 169, line 1 ) The PCR court’s order focuses on the victim’s identification of Respondent as the perpetrator and overlooks the other evidence in the case Not only did Sanders identify Respondent, she provided a detailed description of the vehicle and home where she was held Unique details, such as the positioning of the heater in the room, the location of the bathroom, the location of the ashtray, the linens hanging from the windows and doorways, the transmission and other features of the truck, and the foul stench in both the truck and home, were given in Sanders’ description of the location Each of these unique details were found in the Respondents’ home and vehicle, and Sanders identified photos of the home and vehicle Her detailed description of the truck and home, details corroborated by photos of the home, added to her credibility Sanders’ extensive injuries also matched the unique description of the assault (e g the petechiae to the roof of her mouth indicative of the forcible oral sex she described) Given her wavering testimony about every aspect of time, any further inquiry regarding time discrepancies would not have shaken Sanders’ credibility Further, because neither Overstolz nor the officers who prepared the initial reports testified at the PCR hearing, any benefit this additional investigation could have yielded is merely speculative

- c Counsel’s failure to specifically inquire through investigation or cross-examination about whether or not the victim had been treated for alcoholism in order to attack her credibility was not deficient performance Moreover, Counsel had already elicited from the victim that she had been drinking during and after the assault, making any evidence of a drinking habit cumulative because victim had already conceded her actions on the day in question**

The PCR court first found that failure to investigate or inquire as to the victim’s alcohol use is part of “a cumulative prejudicial effect” (App pp 444-445 ) The PCR

court then found that Counsel failed to articulate a trial strategy for failing to investigate Sanders' alcohol use. The PCR court found that this failure "prevented the jury from considering Sanders' credibility in her identification of the [Respondent] as her assailant" (App pp 445-446). The PCR court then finds that standing alone, this failure to investigate Sanders' use of alcohol did not establish prejudice.

Pursuant to the correct Strickland standard, Petitioner submits that Counsel's failure to investigate or inquire as to whether Sanders had undergone treatment for alcoholism to cast doubt on her credibility is not unreasonable under reasonable professional norms. Counsel had employed the services of an investigator in the case. Counsel stated flatly at PCR hearing that she did not challenge Sanders with regard to alcohol treatment in cross-examination. Counsel stated that she cross-examined on other salient to the facts of the case, including but not limited to Sanders' alcohol use that particular night and morning, Sanders' claim that her assailant allowed her to smoke cigarettes, and Sanders' claim that he allowed her to pick up her purse as they were leaving and believed she had been able to reveal issues with Sanders' credibility. (See App p 386, lines 8-16.) Cross-examination on the facts of the attack was certainly a more pressing concern. Moreover, such evidence could not be used to attack credibility. Drug addiction and drug convictions are generally not considered probative of truthfulness. Rule 608, SCRE, State v. Aleksey, 343 S C 20, 538 S C 248 (2000) (narcotics offenses generally not probative of truthfulness), State v. Harris, 189 N C App 49, 657 S E 2d 701 (N C App 2008) (testimony regarding victim's drug addiction properly excluded because it was not probative of her character for truthfulness or untruthfulness, also finding no prejudice because victim admitted her drug use and

addiction problems on cross-examination) Finally, Counsel cannot be expected to ask every foreseeable question or to delve into every foreseeable negative aspect of a victim's character, especially where the more critical issues to the case are being thoroughly challenged For these reasons, Petitioner submits that Counsel's performance in this regard was well within reasonable professional norms

Without a finding of deficient performance, it is unnecessary to take on an analysis of prejudice Even assuming, *arguendo*, that Counsel should have made efforts to procure an interview with the victim of a violent sexual assault, should have made efforts to procure the victim's confidential medical records, or should have posed questions that would lead to inadmissible evidence, there is no evidence of prejudice to the Respondent The PCR court specifically reviewed the issue in terms of Respondent's ability to use evidence of the victim's alcohol use to attack her credibility As stated above, such evidence is not probative of truthfulness or untruthfulness Even if such evidence could be considered probative of character for truthfulness or untruthfulness, Respondent presented only a note that the victim intended to pursue "ETOH treatment" from the nurse's report about the sexual assault (Supp App, Plaintiff's Exhibit 2) Respondent presented no additional evidence of Sanders' alcohol use or treatment before or after the attack Therefore, Respondent's speculation as to what additional investigation or questioning would have yielded does not establish prejudice See for example Lorenzen v State, 376 S C 521, 657 S E 2d 771 (2008)

Moreover, Counsel did elicit testimony from the victim regarding her alcohol use on the night in question Counsel elicited that Respondent had given Sanders a beer during the course of the night (App p 94, lines 15-24) Counsel also elicited from

Sanders that she had mixed herself “a big drink” of rum and Coke between the time she was dropped off around 5 00 am and the time she went to her cousin’s house around 11 00 or 11 30 am (App p 86, line 15 – p 87, line 12, p 98, lines 19-20 ) Counsel elicited from Kaminer on cross-examination that Sanders had been drinking Kaminer reported that Sanders had arrived at Kaminer’s house with a cup in hand and that Sanders had stated she had “mixed her[self] a drink to calm her nerves ” (App p 138, lines 10-16 ) Even if Counsel had been able to elicit additional testimony about Sanders’ alcohol use, such testimony would be cumulative to that already given For these reasons, Respondent has failed to carry his burden of establishing both deficient performance and prejudice in this regard

**d In finding prejudice, the PCR court erred in applying a cumulative error standard Cumulative error analysis is not recognized in South Carolina Moreover, even if cumulative error analysis was an accepted standard, the evidence supports would not support a finding of ineffective assistance**

The PCR court first that Counsel was ineffective with regard to her investigation of Reed (App pp 442-444 ) The PCR court then found

that the Applicant has independently established a second ground for prejudice with the cumulative effect of Trial Counsel’s error in her failure to investigate Sanders’ alcohol use, her failure to move to continue the hearing to await the written results of the forensic testing, her failure to cross-examine the witnesses as to the discrepancy of the conflicting times of the incident, and her failure to investigate or interview Reed, the combination of which prejudiced the Applicant

(App p 444 ) Each of the alleged errors has been discussed in the preceding sections herein Petitioner submits that the cumulative error is not espoused in South Carolina However, even if it were, the analysis was applied inappropriately in this case

In Green v State, 351 S C 184, 196-197, 569 S E 2d 318, 324-325 (2002), the South Carolina Supreme Court opined

Although [a PCR applicant] must ordinarily show actual prejudice, he may be relieved of that burden if counsel's ineffectiveness is so pervasive as to render a particularized prejudice inquiry unnecessary

[A PCR applicant] must show more than the fact trial counsel committed errors, he must show the errors adversely affected his right to a fair trial Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina The facts of this case do not give this Court an opportunity to settle such a question

While it is unsettled law whether individual errors, which may not be independently prejudicial, may be prejudicial when taken as a whole, we recognize the threshold to asking the cumulative prejudicial question is to first find multiple errors

[Internal citations omitted ] In Fisher v Angelone, 163 F 3d 835, 852-853 (4<sup>th</sup> Cir 1998), the Fourth Circuit held that consideration of the cumulative effect of attorney error was inappropriate where the claims, taken individually, did not violate the defendant's constitutional rights The Fisher court noted that a constitutional error in terms of the Sixth Amendment right to counsel occurs only upon a showing of *both* deficient performance *and* prejudice If no individual claim on its own amounts to constitutional error, then the claims cannot collectively amount to error Put another way, "the fact that many claims of counsel error are pressed does not alter fundamental math-a string of zeros still adds up to zero " Hunt v Smith, 856 F Supp 251, 258 (D Md 1994)

In the present case, the PCR court erred in finding prejudice from multiple claims where no constitutional violation was established. In its order, the PCR court specifically finds that

- “ standing alone, the failure by Trial Counsel to investigate Sanders’ use of alcohol does not establish prejudice ” (App p 446 )
- ‘ Trial Counsel’s failure to ask for a continuance to await the completion of forensic testing does not, standing alone, establish prejudice, ’ (App p 447 )

The PCR court made no finding of prejudice with regard to Counsel’s failure to cross-examine on time discrepancies, and Petitioner submits that no prejudice can be shown in this regard. Finally, Petitioner failed to demonstrate prejudice from any failure to investigate Reed where she could not offer an alibi defense. Based solely on the absence of prejudice in each instance, Respondent has failed to demonstrate a single constitutional error.<sup>7</sup> “Because [Respondent] has not shown that any of the alleged instances of ineffective assistance of counsel deprived him ‘of a fair trial, a trial whose result is reliable[,]’ he cannot show that the accumulation of these non-errors warrant relief” Campbell v U S, 364 F 3d 727, 736 (6<sup>th</sup> Cir 2004) [Internal citation omitted].

The PCR court erred in finding cumulative error in the absence of any constitutional error.

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<sup>7</sup> Petitioner maintains that these instances do not constitute deficient performance by counsel. However, even if the PCR court’s findings with regard to performance are upheld, the PCR court found no prejudice from these errors individually which was sufficient to find prejudice such that the outcome of the trial would have been different. Therefore, even if all of the PCR court’s findings with regard to performance are upheld, the PCR court erred in finding cumulative error in the absence of any constitutional error.

**CONCLUSION**

For all of the foregoing reasons, it is respectfully submitted that the judgment of the lower court be reversed

Respectfully submitted,

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Feb 18, 2010

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Certiorari to Aiken County  
The Honorable Doyet A Early, III, Circuit Court Judge

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JOSEPH WALKER,

Petitioner,

v

STATE OF SOUTH CAROLINA,

Respondent

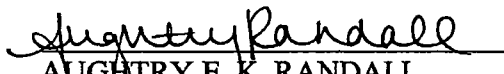
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**CERTIFICATE OF SERVICE**

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I, Aughtry Randall, certify that I have served the Brief of Petitioner on Appellant by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Kathrine H Hudgins, Esquire, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served

  
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February 18, 2010

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Certiorari to Aiken County

Doyet A. Early, III, Circuit Court Judge

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JOSEPH WALKER,

RESPONDENT,

V

STATE OF SOUTH CAROLINA,

PETITIONER

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BRIEF OF RESPONDENT

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### **Rules**

<u>Rule 71 1(e), SCRPC</u>	9
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## ISSUES PRESENTED

1 Did the PCR judge correctly find trial counsel ineffective in failing to interview and call as an alibi witness, Robina Reed, when Ms Reed's name and address appear in evidence provided to trial counsel from the State, prior to trial respondent gave trial counsel's investigator Ms Reed's name and place of employment and the investigator's note was in trial counsel's file and Ms Reed's testimony at the PCR hearing establishes an alibi?

2 Did the PCR judge correctly find that the cumulative effect of trial counsel's errors in failing to move for a continuance to obtain a forensic report revealing that no semen was identified from the sexual assault evidence kit collected from the complainant, failing to investigate the complainant's alcohol use, failing to cross examine the complainant in regard to discrepancies as to the time of the alleged incident and failing to interview the alibi witness, Ms Reed, resulted in prejudice to respondent?

## STATEMENT

In August 2002, the Aiken County Grand Jury indicted Walker for criminal sexual conduct first degree, possession of a firearm or knife during the commission of a violent crime and kidnapping. On July 22, 2003, Walker proceeded to jury trial before the Honorable James R. Barber, III. The jury returned a verdict of not guilty of possession of a firearm or knife during the commission of a violent crime and guilty of criminal sexual conduct first degree and kidnapping. Judge Barber sentenced Walker to 24 years concurrent for each charge. An appeal was perfected on Walker's behalf and the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Walker, Op. No. 2004-UP-618 (S.C. Ct. App. filed December 9, 2004).

On January 7, 2005, Walker filed an application for post conviction relief. On March 9, 2007, an evidentiary hearing was held before the Honorable Doyet A. Early, III. Walker, Robina Reed, trial counsel Kelly Perkins Brown and Assistant Solicitor Brenda Brisbin testified at the PCR hearing. In a written order signed May 24, 2007, Judge Early granted post conviction relief, finding that counsel was ineffective in failing to interview Robina Reed as an alibi witness and Walker was prejudiced by counsel's deficient performance. Additionally, Judge Early found that Walker established prejudice through the cumulative effect of trial counsel's errors in failing to obtain a forensic report revealing that no semen was identified from the sexual assault evidence kit collected from the complainant, failing to investigate the complainant's alcohol use, failing to cross examine the complainant in regard to discrepancies as to the time of the alleged incident, and failing to interview the alibi witness, Ms. Reed.

The State filed a notice of intent to appeal. On January 4, 2008, the State filed a petition for writ of certiorari. Respondent filed a return to the State's petition for writ of certiorari on September 2, 2008. In an order dated November 20, 2009, this Court granted the State's petition for writ of

certiorari The State filed the brief of petitioner on February 18, 2010 This brief of respondent follows

## ARGUMENT

1 The PCR judge correctly found trial counsel ineffective in failing to interview and call as an alibi witness, Robina Reed, when Ms Reed's name and address appears in evidence provided to trial counsel from the State, prior to trial respondent gave trial counsel's investigator Ms Reed's name and place of employment and the investigator's note was in trial counsel's file and Ms Reed's testimony at the PCR hearing establishes an alibi

Margaret Sanders, the prosecuting witness, testified that on March 2, 2002, her car broke down at the BP gas station in Denmark, South Carolina Ms Sanders testified that a black man repaired her car, replacing a wire, and she told him to follow her to her house so that she could pay him (App p 45, lines 10 – p 46, lines 1-25) According to Ms Sanders, the man followed her into her home, grabbed her, blindfolded her and put her in his truck Ms Sanders testified that when he finally stopped driving, he took her into a house and sexually assaulted her (App p 49, lines 14- p 50, 51, 52) According to Ms Sanders, the man took her back to her house early the next morning (app p 53, lines 9 – 20)

Lieutenant Rhonda Bamberg of the Orangeburg County Sheriff's Office testified that after interviewing Ms Sanders, she obtained a video surveillance tape for March 2, 2002, from the BP station in Denmark (App p 151, lines 3-7) Lieutenant Bamberg showed the tape to Ms Sanders and Ms Sanders picked out a black male on the tape who "was most likely the person that had sexually assaulted her" (App p 152, lines 15 – p 153, lines 1-2) According to Lieutenant Bamberg, the clerk from the BP identified the man selected from the video as respondent, Joseph Walker Based on the information from Ms Sanders and the clerk, Ms Sanders was shown a photo line-up and, predictably, picked Walker as her assailant (App p 154, lines 1-19)

During the PCR hearing, Walker testified that he told Detective Redd that he was at his girlfriend Robina's house during the time of the sexual assault (App p 411, line 25 – p 412, 413,

lines 1-21) Detective Redd was not called as a witness at trial Walker testified that prior to trial Bennie, an investigator working for trial counsel, asked him if he had any witnesses and Walker told him where Robina worked (App p 408, lines 9-13) Robina was not called as a witness at trial

Trial counsel admitted that she never spoke with Robina Reed (App p 371, line 25 – p 372, lines 1-16) Trial counsel claimed that Walker did not tell her about the alibi witness, Robina Reed (App p 372, lines 19 – p 373, lines 1-25) Walker testified that he asked trial counsel and trial counsel's investigator to talk with Robina Reed (App p 413, lines 14-15, p 408, lines 9-13 ) Trial counsel admitted that there was a note in her file referencing Robina, a manager at Hardees (App p 371, lines 22 – 24) When asked by the PCR judge what Ms Reed's name was doing in her file, trial counsel testified that Mr Walker had given the name to her investigator, Bennie Williams and the note was written by the investigator, corroborating Walker's testimony at the PCR hearing (App p 373, lines 9-14) Trial counsel admitted that she did not know if the investigator took any steps to locate the witness, Robina Reed (App p 373, lines 15-19) Trial counsel admitted that she did not discuss with her investigator the significance of the name, Robina, written on a note contained in trial counsel's file The note was admitted in evidence at the PCR hearing as plaintiff's exhibit No 4 (Supplemental App p 6) Additionally, a receipt provided to trial counsel from the State prior to trial lists Robina Reed's name and address (App p 371, lines 5 – 12) The receipt was admitted in evidence at the PCR hearing as plaintiff's exhibit No 3 (Supplemental App p 5)

Robina Reed testified at the PCR hearing that in March of 2002, she and Walker were lovers (App p 393, lines 16-20) While Ms Reed could not remember the specific date, she testified that she and Walker spent every weekend together for six months to a year before Walker "disappeared" in late March (App p 397, lines 21 – p 398, lines 1-2) Ms Sanders' incident

took place on Saturday, March 2, 2002 (App p 360, lines 2-7) Ms Reed testified that her relationship with Walker ended in late March of 2002, and she was unaware of Walker's arrest on March 22, 2002 (App p 404, lines 5-9, p 395, lines 3-21, p 399, lines 20-21) Ms Reed testified that she believed that Walker "got tired of my mouth" and took off (App p 395, lines 10-14)

Ms Reed testified that she had worked at Hardees since 1988, and worked as the manager of Hardees in March 2002 (App p 388, lines 22 – p 389, lines 1-24) She testified that Walker would spend the night at her house during that time (App p 393, lines 21-22) Ms Reed testified that in March of 2002, her car was broken and Walker would come to the Hardees and wait on her to take her home (App p 394, lines 4-12) The PCR judge asked Ms Reed, "And you're telling me that you spent - - Mr Reed (sic) was staying with you that first weekend in March of 2002?" Ms Reed responded, "Yes" (App p 403, lines 2-5) Upon further questioning, Ms Reed testified, "I know we spent a lot of days together I can't tell you no particular day" (App p 405, lines 17-18) She was able to testify, however, that prior to the last time she saw Walker, they spent every weekend together at either her house or his (App p 406, lines 4-8) PCR counsel asked Ms Reed, "Prior to the last time that saw Mr Walker did y'all spend every weekend together?" (App p 406, lines 4-5) Ms Reed responded, "Yea, we spend every weekend together" (App p 406, line 6)

The PCR judge correctly found trial counsel ineffective in failing to interview and call as an alibi witness, Robina Reed, when Ms Reed's name and address appear in evidence provided to trial counsel from the State, prior to trial respondent gave trial counsel's investigator Ms Reed's name and place of employment and the investigator's note was in trial counsel's file As the PCR judge noted in the order granting relief, "Trial counsel was aware or should have been aware, of the existence of the alleged alibi witness, Robina Reed" (App p 442)

The PCR judge applied the proper standard in granting post conviction relief. In the order the judge wrote, **“THE COURT THEREFORE FINDS AND CONCLUDES** that the Applicant has met his burden to establish both that his Trial Counsel was ineffective, and that prejudice resulted. Strickland, supra, Rule 71 1(e), SCRPC” (App p 444). The order granting post conviction relief applies the correct law and correctly cites Strickland v. Washington, 466 U.S. 668, 685, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The State’s contention that the PCR judge applied an incorrect standard is without merit. In the order granting PCR, the judge wrote, “Trial counsel offered no explanation as to her failure, or the failure of her investigators, to attempt to locate Reed [the alibi witness]” (App p 444). Respondent established that trial counsel was deficient in failing to locate the alibi witness and the PCR judge simply noted that trial counsel offered no strategic reason for failing to contact the alibi witness.

The State’s assertion that trial counsel was not deficient because, according to trial counsel, respondent never provided her with the alibi information is not supported by the record. The record supports the finding that respondent provided trial counsel’s investigator with the alibi witness’s name and place of employment. Trial counsel knew or should have known of the existence of the alibi witness through her investigator as well as discovery provided to her by the State. The record supports that counsel was deficient in failing to contact the alibi witness and that respondent was prejudiced by counsel’s deficient performance.

Ms. Reed’s testimony at the PCR hearing establishes an alibi. While, five years later at the PCR hearing, Ms. Reed could not remember the specific date of March 2, 2002, her testimony indicated that during that time frame she and Walker spent the weekends together, making it impossible for Walker to have been with Ms. Sanders from Saturday night, March 2, 2002, until five in the morning the following day as testified by Sanders. This case is easily distinguished from

Glover v State, 318 S C 496, 458 S E 2d 538 (1995), where the failure to call witnesses did not result in prejudice because the witness' testimony placed the defendant in Florida between 8 00 and 8 30 AM and the crime took place at 8 30 PM in Williamsburg County In Glover the fact that the defendant was in Florida at 8 00 AM did not preclude him from being in Williamsburg County at 8 30 PM Unlike the facts in Glover, Ms Reed's testimony establishes an alibi

Trial counsel was ineffective in failing to interview and call Ms Reed as an alibi witness Walker was prejudiced In order to establish prejudice there must be "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" Cherry v State, 300 S C 115, 117, 386 S E 2d 624, 625 (1989) The State's case against Walker was based entirely on the testimony of the one complaining witness, Ms Sanders There was no forensic evidence linking Walker to an assault of Ms Sanders and no witnesses who could corroborate Ms Sanders' testimony Ms Sanders' identification of Walker was made only after she had viewed a video tape of Walker entering the BP station There is a reasonable probability that Ms Reed's testimony would have made the difference in obtaining an acquittal See Martinez v State, 304 S C 39, 403 S E 2d 113 (1991)

In the order of dismissal the PCR judge wrote, "The Court finds that this failure [trial counsel's failure to locate and call Reed as an alibi witness] severely prejudiced the Applicant's right to a fair trial While it is the role of the jury to gauge the credibility of the witnesses at trial, the Court finds that the testimony of Reed at the PCR hearing was credible The jury would have weighed the credibility of the testimony of the witnesses, and it is reasonable to assume that the outcome of the deliberations may have been different had this witness testified in light of the facts of this case" Walker was prejudiced by trial counsel's deficient performance

PCR findings must be upheld where supported by any evidence of probative value in the record Ard v. Catoe, 372 S C 318, 642 S E 2d 590 (2007) The PCR judge's findings that trial counsel was deficient in failing to interview and call Robina Reed as an alibi witness and that respondent was prejudiced by the deficient performance are supported by evidence in the record The finding of the PCR judge must be upheld

- 2 The PCR judge correctly found that the cumulative effect of trial counsel's errors in failing to move for a continuance to obtain a forensic report revealing that no semen was identified from the sexual assault evidence kit collected from the complainant, failing to investigate the complainant's alcohol use, failing to cross examine the complainant in regard to discrepancies as to the time of the alleged incident and failing to interview the alibi witness, Ms Reed, resulted in prejudice to respondent

The PCR judge found three additional instances of ineffective assistance of counsel The PCR judge found counsel ineffective in failing to move for a continuance to await completion of forensic testing that revealed that no semen was identified from the sexual assault evidence kit collected from the complainant, failing to investigate the complainant's alcohol use, failing to cross examine the complainant in regard to discrepancies as to the time of the alleged incident The PCR judge wrote, "THE COURT FURTHER FINDS AND CONCLUDES that the Applicant has independently established a second ground for prejudice with the cumulative effect of Trial Counsel's error in her failure to investigate Sanders' alcohol use, her failure to move to continue the hearing to await the written results of the forensic testing, her failure to cross-examine the witness as to the discrepancy of the conflicting times of the incident, and her failure to investigate or interview Reed, the combination of which prejudiced the Applicant " (App p 444)

The PCR judge applied the proper standard in granting post conviction relief. The State's contention that the PCR judge applied an incorrect standard is without merit. The PCR judge citing Green v State, 351 S C 184, 569 S E 2d 318 (2002) wrote, "These failures cumulatively prejudiced the Applicant and adversely affected his right to a fair trial under the fact of this case" (App p 445). In Green the South Carolina Supreme Court wrote, "Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina. Compare State v Peterson, 287 S C 244, 335 S E 2d 800 (1985) (accumulation of errors warranted reversal, but Court also found each individual error caused prejudice), overruled on other grounds by State v Torrence, 305 S C 45, 406 S E 2d 315 (1991), with State v Freeman, 319 S C 110, 459 S E 2d 867 (Ct App 1995) (finding multiple errors, which were not prejudicial separately, could be prejudicial to deny an individual a right to a fair trial when they were viewed together)" 351 S C at 197, 569 S E 2d at 324. The PCR judge correctly found that, in this case, the multiple errors by trial counsel denied respondent the right to a fair trial.

Based on Ms Sanders' report of a sexual assault, several items were submitted to the South Carolina Law Enforcement Division [SLED] for serology and DNA analysis. At the time of Walker's trial, however, SLED had not completed the written report in regard to the forensic testing. Consequently, at the time of trial, counsel did not have a written copy of the results of forensic testing performed by SLED. The SLED report is dated August 27, 2003, and was admitted in evidence at the PCR hearing as plaintiff's exhibit No 1 (Supp App pp 1-2). Walker's trial was held on July 22 and 23, 2003. Testing of smears, swabs and panties collected in the sexual assault evidence collection kit from Ms Sanders on March 3, 2002, (Ms Sanders alleged that the incident started on March 2, 2002, and continued into the early morning hours of March 3, 2002),

revealed no spermatozoa and no semen (Supp App pp 1-2) Ms Sanders testified that the assailant penetrated her more than three times (App p 51, lines 14 – p 52, lines 1 – 3) The nurse’s notes indicate that the assailant did not wear a condom (Supp App p 4)

The State’s contention that respondent was not prejudiced by trial counsel’s failure to await completion of the written report because trial counsel was told by the solicitor, prior to trial, that no semen was found is without merit Trial counsel admitted at the PCR hearing that it would have been important for the jury to have known about the results of the SLED forensic testing (App p 367, lines 9-11) While there was limited testimony about the lack of DNA evidence, the written SLED report could certainly have called into question the credibility of the complainant, a critical issue in this case as her testimony was the only evidence against respondent

In an interview with Ms Sanders following the incident, a nurse noted the following, “She [Ms Sanders] has been planning on attending ETOH treatment this week and is still planning to begin this week” ((App p 369, lines 1-8, Supp App p 4) The interview was admitted as evidence at the PCR hearing as plaintiff’s exhibit No 2 Trial counsel admitted that she did not cross examine Ms Sanders in reference to the alcohol treatment referenced in the note (App p 386, lines 10-19) Additionally, trial counsel admitted that when Ms Sanders initially reported the incident to law enforcement, the officers noted that she smelled of alcohol (App p 353, lines 21 – 24) Trial counsel admitted it would have been important to cross examine Ms Sanders about her smelling of alcohol at the time of reporting the incident to police (App p 354, lines 1-8) Trial counsel further admitted that she failed to call the nurse or the officers to testify about the alcohol treatment and her smelling of alcohol (App p 354, lines 9-14) In the order of dismissal the PCR judge wrote, “Trial counsel merely made reference that alcohol had been consumed by Sanders during and after the incident as part of a confirmation of events Sanders claimed had

transpired. The only evidence linking the Applicant to Sanders was Sander's identification of the Applicant. Trial counsel's failure to investigate the impact of alcohol use prevented the jury from considering Sanders' credibility in her identification of the Applicant as her assailant." (App pp 445-446)

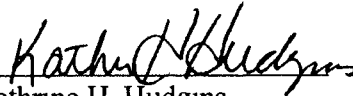
Counsel admitted failing to cross examine Ms Sanders in regard to discrepancies about the time of day she alleged the incident began (App p 356, lines 18 – p 357, lines 1-25). Ms Sanders initially told the police she stopped at the BP station at 8:00 PM (App p 357, lines 2-4). Ms Sanders told the nurse that she was at a gas station at 7:00 PM (Supp App p 4). The video surveillance from the BP station, however, reflects that Ms Sanders entered the store at 2:20 PM (App p 357, lines 19-25). Trial counsel admitted it would have been important to explore this significant discrepancy in the time (App p 357, lines 7-9).

The PCR judge correctly found that the cumulative effective of trial counsel's errors independently established prejudice and deprived Walker of the right to a fair trial. Trial counsel's multiple errors of failing to move for a continuance to await completion of a written forensic report revealing that no semen or spermatozoa was identified from the sexual assault evidence kit collected from Ms Sanders, failing to investigate and cross examine Ms Sanders about her alcohol use, failing to cross examine Ms Sanders in regard to serious discrepancies as to the time of the alleged incident and failing to interview the alibi witness, Ms Reed, constitutes ineffective assistance of counsel requiring a new trial. The PCR judge's finding that Walker was prejudiced by the cumulative effect of multiple errors committed by trial counsel is supported by the record. The finding of the PCR judge must be affirmed.

CONCLUSION

Based on the above arguments, the order of the PCR judge granting post conviction relief should be affirmed

Respectfully submitted,

  
Kathrine H Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of June, 2010

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Certiorari to Aiken County

Doyet A. Early, III, Circuit Court Judge

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JOSEPH WALKER,

RESPONDENT,

V

STATE OF SOUTH CAROLINA,

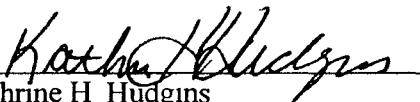
PETITIONER

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CERTIFICATE OF SERVICE

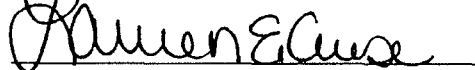
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I certify that a true copy of the brief of respondent, in this case has been served on Mary S  
Williams, Esquire, this 30th day of June, 2010

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day  
of June, 2010

 (L S)  
Notary Public for South Carolina  
My Commission Expires August 23, 2014



# SCCID

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June 30, 2010

Mary S Williams, Esquire  
Assistant Attorney General  
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Re Joseph Walker v State of South Carolina

Dear Mary

Enclosed are two copies of the brief of respondent in the above case that I filed with the S C Court of Appeals today

If you have any questions concerning this matter, please contact me

Sincerely,

Kathrine H Hudgins  
Appellate Defender

KHH/khh

Enclosures



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June 30, 2010

Mr Joseph Walker # 162475  
Lieber Correctional Institution  
PO Box 205  
Ridgeville, SC 29472

Re Your appeal

Dear Mr Walker

Enclosed please find a copy of the brief of respondent that I filed today with the South Carolina Court of Appeals on your behalf

Should you have any questions concerning this matter, please contact me

Sincerely,

Kathrine H Hudgins  
Appellate Defender

KHH/khh

Enclosures