

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Cherokee County

S.C. Supreme Court

Robin B. Stilwell, Circuit Court Judge

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DONALD SCOTT JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000778

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APPENDIX

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1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF CHEROKEE ) IN THE COURT OF GENERAL SESSIONS

3  
4 THE STATE )

5 -vs- )

6 DONALD SCOTT JONES, )

7 DEFENDANT. )

TRANSCRIPT OF RECORD

2009-GS-11-840

2009-GS-11-841

MAY 25, 2010

GAFFNEY, SOUTH CAROLINA

8 (VOLUME I)  
9

10 B E F O R E:

11 THE HONORABLE J. DERHAM COLE, JUDGE. ; And a Jury.  
12

13  
14 A P P E A R A N C E S:

15 KIM LESKANIC, ASSISTANT SOLICITOR

16 BARRY BARNETTE, DEPUTY SOLICITOR

ATTORNEYS FOR THE STATE

17 THOMAS SHEALY, ASSISTANT PUBLIC DEFENDER

18 ATTORNEY FOR THE DEFENDANT  
19

20 MICHAEL R. WATTS  
21 CIRCUIT COURT REPORTER  
22  
23  
24  
25

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1 (PROCEEDINGS, May 25, 2010)

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1 THE COURT: All right. Ladies and gentlemen of  
2 the jury panel, we are ready to begin with the first case  
3 that's going to require some of your participation.

4 The title of that case is the State versus Donald  
5 Scott Jones.

6 Mr. Jones has been accused by the prosecutor, the  
7 assistant solicitor in the Seventh Judicial Circuit, with  
8 having committed two separate and distinct criminal  
9 offenses, although they are alleged to have arisen out of  
10 one particular event or course of events which the State  
11 alleges occurred back on May the 29th of 2009.

12 The State alleges by way of two documents, which  
13 are referred to as indictments, and understand that these  
14 are legal documents. These are the manner by which any  
15 person is brought into this court and formally accused of a  
16 crime, but these documents are not proof of anything. They  
17 don't establish anything, so far as the allegations  
18 contained therein are concerned, but they are the means by  
19 which any person is accused of a crime and it puts that  
20 person on notice as to what crime the State alleges that he  
21 or she has committed.

22 In this particular case the State alleges that  
23 Donald Scott Jones did commit the crimes of criminal sexual  
24 conduct in the first degree and assault and battery with  
25 intent to kill. And the State alleges that each of those

1 events occurred back on May the 29th of 2009.

2 And specifically in reading the allegations in  
3 these indictments, the State alleges that Donald Scott Jones  
4 did engage in a sexual battery with a victim by the name of  
5 Kay Spencer, and that that sexual battery was accomplished  
6 by the use of aggravated force; or, the victim was also the  
7 victim of a forcible confinement, a kidnapping, a  
8 housebreaking, a burglary, or any other similar offense or  
9 act in violation of the law.

10 The second indictment alleges that Mr. Jones also  
11 did commit the crime of assault and battery with intent to  
12 kill, in that he did commit an unlawful act of a violent  
13 nature towards the person of another with malice  
14 aforethought, either expressed or implied. And they allege  
15 that he did, in fact, stab and strangle Kay Spencer in  
16 violation of the law.

17 Now, as to those allegations and as to each of the  
18 charges set forth in each of these separate indictments, the  
19 defendant, Donald Scott Jones, has entered a plea of not  
20 guilty.

21 A plea of not guilty places upon the State the  
22 burden of proving the allegations that they have set forth  
23 in each of the separate indictments, the burden of proving  
24 each of the essential elements of the crime alleged in each  
25 of these separate indictments. And, therefore, the burden

1 is upon the State to establish the defendant's guilt to the  
2 satisfaction of twelve jurors beyond a reasonable doubt  
3 before any verdict of guilty could be returned as to either  
4 of the separate indictments.

5 And, therefore, we are going to be selecting  
6 thirteen of you. There will be twelve primary jurors and  
7 one additional juror to serve as an alternate. By way of  
8 your participation you are simply going to be called upon to  
9 listen to the testimony that might be received during the  
10 trial, to consider all of the evidence introduced during the  
11 trial, and at the trial's conclusion the jury will be called  
12 upon to evaluate all that evidence. From that evidence you  
13 will determine what you believe to be the true facts as they  
14 relate to these allegations. Upon deciding the facts you  
15 will apply the law that I will have provided you, and the  
16 jury will determine whether or not the defendant has been  
17 proven guilty of any crime beyond a reasonable doubt. And  
18 if he has, then your verdict would be guilty as to that  
19 particular crime. And if he has not, then your verdict  
20 would be not guilty as to that particular charge.

21 Before we begin with actual jury selection I have  
22 got some questions that I'm going to ask you. And the  
23 purpose of these questions is to determine whether or not  
24 there is some reason why any one of you jurors should not be  
25 selected to participate in the trial of this particular

1 case. And so as these questions are asked, should you need  
2 to respond to them, I'll ask that you please stand and I'll  
3 address those matters with you individually, in the event  
4 that should become necessary.

5 Now, the first thing that I'm going to be doing is  
6 I'm going to be introducing some people to you. That's  
7 going to include the defendant. That will also include the  
8 person alleged to be the victim of these events. That will  
9 also include the lawyers involved in the trial of the case.  
10 That will also include each of the potential witnesses to be  
11 called during the trial. And the reason that I'm  
12 introducing these folks to you is to find out if you have  
13 any connection with them. In other words, are you related  
14 by blood or marriage; do you have any personal,  
15 professional, social, business, religious, or any other  
16 connection whatsoever with these persons. Do you work with  
17 them; do you socialize with them; do you go to church with  
18 them; have you met them somewhere. And I just need to know  
19 if you know of any of these people, and then we will  
20 determine whether or not any connection you have might  
21 impair your ability to be fair.

22 So as a person is introduced, if you have any  
23 connection with that person, I'm going to ask that you  
24 please stand and simply remain standing until I get through  
25 introducing everyone. And then when I'm through with that

1 introduction, I'll ask any juror standing who you know, what  
2 connection you have, and whether or not it affects your  
3 judgment in the case.

4 Now, as I told you, the defendant, the person who  
5 is accused of having committed these crimes, is Donald Scott  
6 Jones.

7 Mr. Jones, if you will please stand and face the  
8 jury panel.

9 Thank you. Be seated.

10 Seated next to Mr. Jones at the defendant's table  
11 is Tom Shealy. That's Mr. Jones' lawyer. He will be  
12 assisting him in the trial of the case.

13 The person who's alleged to have been the victim  
14 of each of these charges is Kay Spencer.

15 Ms. Spencer, if you will please stand and face the  
16 jury panel.

17 Thank you ma'am. You may be seated.

18 Presenting the case on behalf of the State are Kim  
19 Leskanic, an assistant circuit solicitor for the Seventh  
20 Judicial Circuit; and Barry Barnette, who is principal  
21 deputy solicitor for the Seventh Judicial Circuit.

22 Persons who may be called as a witness during the  
23 trial of this case include the following persons:

24 Donnie Sands, Gaffney City Police Department.  
25 Danny Sands.

1 Ronnie Anderson, Gaffney City Police Department.  
2 David M. Clary.  
3 John Fuller, Gaffney City Police Department.  
4 Ron Ramsey, Gaffney City Police Department.  
5 Tommy Kennedy, Gaffney City Police Department.  
6 Mike Segina, Gaffney City Police Department.  
7 Barbara Rolen, Upstate Carolina Medical Center.  
8 Patrick Phillips, Cherokee County detention  
9 officer.  
10 Sue Mobley, Spartanburg Regional medical center.  
11 Jozetta Singleton, State Law Enforcement Division,  
12 technician.  
13 Catherine Leisy, forensic technician, State Law  
14 Enforcement Division.  
15 Dan Karns, physician, Upstate Carolina Medical  
16 Center.  
17 Reggie Petty, 911 communications, Cherokee County.  
18 Doris Yarbrough, forensic technician, State Law  
19 Enforcement Division.  
20 Toni Broome, forensic toxicologist, State Law  
21 Enforcement Division.  
22 Steve Whelchel.  
23 Juliette Saad, physician.  
24 Elizabeth Baxley.  
25 Lavette Norris, Upstate Carolina Medical Center.

1 Nancy Jones.

2 Kenny Brown, Cherokee County detention facility  
3 officer.

4 Kim Humphries and Tom Stokes, both Upstate  
5 Carolina Medical Center.

6 Lucille Whelchel.

7 Myra Hodge.

8 Nancy Jones.

9 I think I have already called her name.

10 All right. Does any juror know any of those  
11 persons?

12 Also that would include if you know anybody  
13 employed in the Seventh Judicial Circuit solicitor's office,  
14 as well as the Seventh Judicial Circuit public defender's  
15 office, in addition to those persons who have been  
16 identified. If so, please stand.

17 All right, I'll start on the front row. I'll work  
18 my way back. If you will give me your name and your juror  
19 number, please, and then tell me who you know.

20 JUROR NUMBER 101: My name is Brian Walker, juror  
21 number -- badge number is 101. I know Scott Jones. I don't  
22 know him personally. I just know of him.

23 THE COURT: And you said that your juror number  
24 was 101?

25 JUROR NUMBER 101: Yes, sir.

1 THE COURT: And is there anything about that  
2 connection or about your knowledge of Mr. Jones that would  
3 have any impact whatsoever upon your decision in this case?

4 JUROR NUMBER 101: No, sir.

5 THE COURT: Okay. Thank you be seated.

6 Yes, ma'am.

7 JUROR NUMBER 52: I'm juror number 52. My name is  
8 Brittany Mann and work at Spartanburg Regional and I also  
9 know Dan Karns.

10 THE COURT: And would that have any bearing upon  
11 your decision in this case?

12 JUROR NUMBER 52: No, sir.

13 THE COURT: You said that you were juror 52.

14 JUROR NUMBER 52: Uh-huh.

15 THE COURT: All right. Thank you, ma'am. You may  
16 be seated.

17 Yes, sir.

18 JUROR NUMBER 9: My name is John Burchstead, juror  
19 number 9, and I know Mr. Shealy.

20 THE COURT: And would that have any bearing upon  
21 your decision in this case?

22 JUROR NUMBER 9: No, sir.

23 THE COURT: Thank you. You may be seated.

24 MR. SHEALY: Your Honor, may we approach?

25 THE COURT: Okay.



1 Your number was 109 or number 9?

2 JUROR NUMBER 9: Number 9.

3 THE COURT: Okay.

4 (Whereupon, the lawyers approached the bench for  
5 an off-the-record discussion)

6 THE COURT: All right, I have one additional  
7 witness that was left off the list and that is Susan Clary.  
8 Does anybody know Susan Clary? If so, please stand.

9 (No response).

10 THE COURT: Now, this is an event, as I told you,  
11 that the State alleges occurred back on May the 29th of  
12 2009. It is alleged to have occurred at a residence on

13 [REDACTED] --

14 MS. LESKANIC: [REDACTED].

15 THE COURT: -- [REDACTED]. At a residence on [REDACTED]  
16 [REDACTED] here in the city of Gaffney.

17 Does any member of the jury panel think that you  
18 might have heard, seen, read, or been exposed to any type of  
19 knowledge or information that might relate to this  
20 particular case? In other words, have you received  
21 information about this case from any source whatsoever or  
22 anything relating to the case? If so, please stand.

23 All right. And I'll just start with the first  
24 lady closest to me. If you will give me your name and your  
25 juror number, please.

1 JUROR NUMBER 28: My name is Miranda Ford. My  
2 juror number is 28.

3 THE COURT: And you believe that you have received  
4 some information that might relate to this case?

5 JUROR NUMBER 28: No, I --

6 THE COURT: Just yes or no.

7 JUROR NUMBER 28: I read or heard about it.  
8 Actually I know about it.

9 THE COURT: Okay. When I ask you a question, just  
10 please be specific. Don't volunteer anything other than a  
11 response to my question, and keep it as short as possible.

12 You say that you have heard something about the  
13 case?

14 JUROR NUMBER 28: Yes.

15 THE COURT: And did you hear something from an  
16 individual, or a newspaper, or television, or radio, or how  
17 did you happen to hear something that you believe relates to  
18 the case?

19 JUROR NUMBER 28: Individuals.

20 THE COURT: Were these people that were -- have  
21 been identified from this witness list as witnesses in the  
22 case?

23 JUROR NUMBER 28: No.

24 THE COURT: No.

25 Just people out in the community somewhere that

1 might have been talking about it?

2 JUROR NUMBER 28: Yes, sir.

3 THE COURT: Okay. And is there anything about  
4 what you have heard from those individuals that you could  
5 not put aside, not consider, and just base your decision  
6 upon what you see and hear during the trial?

7 JUROR NUMBER 28: No.

8 THE COURT: In other words, what I'm asking you  
9 is -- maybe that's not a good -- I didn't phrase that very  
10 well.

11 Let me say this. Notwithstanding that you may  
12 have heard something about the case and notwithstanding that  
13 what you heard might be accurate or it may be totally  
14 inaccurate, my question is can you just put that aside and  
15 not allow it to influence your decision?

16 JUROR NUMBER 28: Yes, sir.

17 THE COURT: Okay. Thank you.

18 That's juror 28.

19 All right. Next juror number? Your number  
20 please, ma'am?

21 JUROR NUMBER 79: I'm number 79, Gena Poovey.

22 THE COURT: And have you heard, seen, or read  
23 something about the case?

24 JUROR NUMBER 79: Heard and read.

25 THE COURT: And from what source did you read

1 something?

2 JUROR NUMBER 79: The newspaper.

3 THE COURT: And what was the name of the  
4 newspaper?

5 JUROR NUMBER 79: The Gaffney Ledger.

6 THE COURT: And how recent was something that you  
7 read?

8 JUROR NUMBER 79: It was close to the time.

9 THE COURT: Back in --

10 JUROR NUMBER 79: Back in the summer.

11 THE COURT: A year or so ago?

12 JUROR NUMBER 79: Yes.

13 THE COURT: All right. And is there anything that  
14 you read in the paper that you could not put aside and not  
15 allow to influence your decision in the case?

16 JUROR NUMBER 79: I don't think there is anything  
17 that would prevent --

18 THE COURT: Do you believe that you could be fair  
19 and impartial?

20 JUROR NUMBER 79: Yes.

21 THE COURT: Notwithstanding you may have been  
22 exposed to information in the newspaper?

23 JUROR NUMBER 79: Correct.

24 THE COURT: Okay. And did you receive information  
25 from any other source?

1 JUROR NUMBER 79: A student of mine was a  
2 neighbor, and so I just heard his report. But, again, no  
3 facts that I think -- that I remember.

4 THE COURT: And that person that you heard  
5 something from, was that person identified as a witness from  
6 this witness list?

7 JUROR NUMBER 79: No, sir.

8 THE COURT: So they were not a witness to anything  
9 that may have occurred?

10 JUROR NUMBER 79: Correct.

11 THE COURT: And could you put aside anything that  
12 that person might have said and not allow that to influence  
13 your decision in the case?

14 JUROR NUMBER 79: I can put that aside.

15 THE COURT: All right. Thank you. That's juror  
16 79.

17 Anyone else needs to respond to that question;  
18 heard, see, or read, or been exposed to information about  
19 the case? If so, please stand.

20 (No response).

21 THE COURT: All right. Is any member of the jury  
22 panel connected by blood or marriage to any type of law  
23 enforcement officer, whether it be a deputy sheriff, a city  
24 police officer, a town or municipal or -- a town or  
25 municipal law enforcement officer, a county detention

1 facility, a state correctional facility officer, a State Law  
2 Enforcement Division agent, an FBI agent, a military police  
3 officer, or any other law enforcement officer? I need to  
4 know if you are connected by blood or marriage to any type  
5 of law enforcement officer. If so, please stand.

6 All right. I'm going to start with the juror  
7 closest to me. I'll work my way back.

8 If you will give me your name and your juror  
9 number, please, ma'am.

10 JUROR NUMBER 51: 51, Stephanie Mace.

11 THE COURT: And how does that question relate to  
12 you?

13 JUROR NUMBER 51: My brother-in-law is a highway  
14 patrolman.

15 THE COURT: In Cherokee County?

16 JUROR NUMBER 51: No.

17 THE COURT: No. What county?

18 JUROR NUMBER 51: Spartanburg.

19 THE COURT: Okay. Would that have any bearing  
20 upon your decision in this case?

21 JUROR NUMBER 51: No.

22 THE COURT: All right. Thank you. You may be  
23 seated.

24 Yes, ma'am.

25 JUROR NUMER 28: Miranda Ford, number 28. My

1       uncle is a police officer at Blacksburg city. He's in  
2       Cherokee County.

3               THE COURT: And his name is what?

4               JUROR NUMBER 28: Brandon Dorsett.

5               THE COURT: Would that have any bearing upon your  
6       decision in this case?

7               JUROR NUMBER 28: No, sir.

8               THE COURT: Thank you. Be seated.

9               Yes, ma'am.

10              JUROR NUMBER 10: My name is Janie Burkholder,  
11       number 10, and my nephew is a county police officer.

12              THE COURT: With the sheriff's department?

13              JUROR NUMBER 10: Yes.

14              THE COURT: Cherokee County?

15              JUROR NUMBER 10: Uh-huh.

16              THE COURT: Would that -- and his name is what?  
17       What's his name?

18              JUROR NUMBER 10: Timmy Hill.

19              THE COURT: Would that have any bearing upon your  
20       decision in the case?

21              JUROR NUMBER 10: No.

22              THE COURT: Thank you. Be seated.

23              Anyone else?

24              JUROR NUMBER 101: Excuse me, Your Honor, what was  
25       the question?

1 THE COURT: The question is if you are related by  
2 blood or marriage to any type of law enforcement officer.

3 JUROR NUMBER 101: Yes, I am.

4 THE COURT: All right.

5 JUROR NUMBER 101: I have cousins that --  
6 Christine? Christy White. I think she's married again.  
7 She is my cousin by marriage. And Steven -- Steven Scoggins  
8 is the -- I think he's a city police department. He's my  
9 cousin. And Dennis Scoggins in Blacksburg is my cousin.  
10 And Chris White I think works for the sheriff's department.  
11 He is my uncle.

12 THE COURT: All right. And you are juror 101?

13 JUROR NUMBER 101: Yes, sir, I'm sorry.

14 THE COURT: And would any of those relationships  
15 have any bearing upon your decision in the case?

16 JUROR NUMBER 101: No, sir.

17 THE COURT: Okay. Thank you.

18 Does any member of the jury panel belong to or  
19 contribute time or money to any type of organization that  
20 might be described or characterized as a law enforcement  
21 support organization? And those might include Mothers  
22 Against Drunk Drivers, Citizens Against Violent Crime, or  
23 the Fraternal Order of Police, The Honorary Sheriff's  
24 Association, The Troopers Association, Neighborhood Watch  
25 Association, or any other similar type of organization that



1 might be characterized as law enforcement support  
2 organizations or victims advocacy-type organizations? If  
3 you belong to any, or you contribute time to it, or you  
4 contribute money to such, I would ask that you please stand.

5 (No response).

6 THE COURT: Has any member of the jury panel or  
7 any members of your immediate family -- and I'm going to  
8 define an immediate family member as a parent, or a spouse,  
9 or a child, or a sibling. A parent, a spouse, a child, or a  
10 sibling. Have you or any members of your immediate family  
11 ever been the victim of -- ever been the victim of or ever  
12 been accused of having committed any type of crime that  
13 might be described as a violent crime? And that would  
14 include for purposes of this question murder, manslaughter,  
15 burglary, armed robbery, robbery, criminal sexual conduct,  
16 assault and battery with intent to kill, assault and battery  
17 of a high and aggravated nature, criminal domestic violence  
18 of a high and aggravated nature, or any other similar type  
19 of offense that might be described as a violent crime or  
20 violent offense?

21 I need to know if you or a family member has been  
22 the victim of such, or you or a family member has been  
23 accused of having committed such a crime. If so, please  
24 stand.

25 All right. Now, I have got five jurors standing.

1 Now, I need your name and number and how the question  
2 relates to you. And if you prefer not to answer the  
3 question standing where you are, feel free to step down here  
4 and I'll discuss it with you here at the bench.

5 All right. All of y'all are on the same row.  
6 I'll start over here to my left and I'll work my across and  
7 back.

8 If you will give me your name and your juror,  
9 please, ma'am?

10 JUROR NUMBER 18: Number 18, Jennifer Cordle. My  
11 mother had my stepfather arrested for criminal domestic  
12 violence, and I have had my husband locked up for criminal  
13 domestic violence.

14 THE COURT: All right. And would either of those  
15 circumstances have any bearing upon your decisions in this  
16 case?

17 JUROR NUMBER 18: No, sir.

18 THE COURT: Thank you. Be seated.

19 Yes, ma'am.

20 JUROR NUMBER 65: My number is 65. My name is Dee  
21 Moody. My sister was murdered.

22 THE COURT: And would that have any bearing upon  
23 your decision in this case?

24 JUROR NUMBER 65: No. No, sir.

25 THE COURT: And did that occur in Cherokee County

1 or somewhere else?

2 JUROR NUMBER 65: Somewhere else.

3 THE COURT: Okay. Thank you, ma'am. You may be  
4 seated.

5 Yes, ma'am.

6 JUROR NUMBER 27: Juror number 27, Michelle Ford.  
7 My brother was accused of criminal sexual assault.

8 THE COURT: And would that have any bearing upon  
9 your decision in this case?

10 JUROR NUMBER 27: Yes, sir.

11 THE COURT: Thank you. You may be seated.

12 Yes, ma'am.

13 JUROR NUMBER 10: Janie Burkholder, juror number  
14 10. Criminal domestic violence.

15 THE COURT: Ma'am, your number is what?

16 JUROR NUMBER 10: 10.

17 THE COURT: Yes. All right. Tell me how the  
18 question relates to you.

19 JUROR NUMBER 10: My husband. Criminal domestic  
20 violence. My ex-husband.

21 THE COURT: He was a victim of it or accused of  
22 it?

23 JUROR NUMBER 10: I was the victim of it.

24 THE COURT: And he was accused of it?

25 JUROR NUMBER 10: He was accused of it.

1 THE COURT: Would that have any bearing upon your  
2 decision?

3 JUROR NUMBER 10: No.

4 THE COURT: Thank you. Be seated.

5 Yes, sir.

6 JUROR NUMBER 13: I'm juror 13. My wife's dad was  
7 murdered.

8 THE COURT: And would that have any bearing upon  
9 your decision in this case?

10 JUROR NUMBER 13: No, sir.

11 THE COURT: All right. Thank you. Be seated.

12 Yes, ma'am.

13 JUROR NUMBER 64: Juror number 64. My brother was  
14 murdered.

15 THE COURT: And was that in Cherokee County or  
16 somewhere else?

17 JUROR NUMBER 64: Cherokee County.

18 THE COURT: Would that have any bearing upon your  
19 decision in this case?

20 JUROR NUMBER 64: No.

21 THE COURT: Thank you. Be seated.

22 Yes, sir.

23 JUROR NUMBER 82: 82. I have a family member that  
24 was convicted of a crime.

25 THE COURT: And what was the nature of the crime?

1 JUROR NUMBER 82: Criminal sexual conduct.

2 THE COURT: All right. Would that have any  
3 bearing upon your decision in this case?

4 JUROR NUMBER 82: No.

5 THE COURT: Thank you. Be seated.

6 Has any member of the jury panel ever been called  
7 to court, subpoenaed, summoned, or just asked to appear  
8 voluntarily to testify' as a witness in a criminal case,  
9 whether you testified on behalf of the prosecution or the  
10 solicitor's office, or you testified on behalf of a  
11 defendant or a person accused of a crime? Has any juror  
12 appeared in court during the trial of a case to testify as a  
13 witness? If so, please stand -- or the defendant. If so,  
14 please stand.

15 All right. Ms. Moody, your number was what?

16 JUROR NUMBER 65: 65.

17 THE COURT: 65.

18 And how long ago was your experience?

19 JUROR NUMBER 65: Last year.

20 THE COURT: Last year?

21 JUROR NUMBER 65: Yes, sir.

22 THE COURT: And did you testify? Did the State  
23 call you as a witness or a defendant call you as a witness?

24 JUROR NUMBER 65: The State called me, but it  
25 wasn't in South Carolina.

1 THE COURT: It was not in South Carolina?

2 JUROR NUMBER 65: No, sir.

3 THE COURT: All right. Thank you, ma'am. You may  
4 be seated.

5 Juror 27.

6 JUROR NUMBER 27: 27, yes, sir.

7 THE COURT: All right. How does that relate to  
8 you, ma'am?

9 JUROR NUMBER 27: I testified for the defense in  
10 January of 2010.

11 THE COURT: Of this year?

12 JUROR NUMBER 27: Yes, sir.

13 THE COURT: Was that in this court?

14 JUROR NUMBER 27: Yes, sir.

15 THE COURT: All right. Thank you. You may be  
16 seated.

17 Anyone else testified as a witness in a criminal  
18 case?

19 (No response).

20 THE COURT: All right. Is there anything about  
21 the nature of the case, that is, what the allegations are in  
22 this case? Is there anything about the nature of the case  
23 itself that would prevent any juror from being able to be  
24 fair and impartial to both sides if you were selected to  
25 serve as a juror in this particular case? If so, please

1 stand.

2 (No response).

3 THE COURT: Has any member of the panel already  
4 made up your mind or formed an opinion as to how you think  
5 the case ought to be decided, based upon what you have heard  
6 up to this point or based upon any other consideration? In  
7 other words, have you already determined what you think the  
8 result ought to be before the case has even been presented?  
9 If so, please stand.

10 (No response).

11 THE COURT: Does any member of the jury panel know  
12 of any reason whatsoever why you think you could not be fair  
13 and impartial if chosen as a juror in this particular case?  
14 If so, please stand.

15 (No response).

16 THE COURT: Any other questions requested by the  
17 State?

18 MS. LESKANIC: No, Your Honor.

19 THE COURT: By the defense?

20 MR. SHEALY: No, Your Honor.

21 THE COURT: All right. We are going to begin with  
22 jury selection.

23 Now, as your name is called, you will be asked to  
24 come forward. You will see Ms. McBee seated right directly  
25 in front of me. If you will just step up to where she is,

1 turn and face towards your fellow jurors. Each side has an  
2 opportunity to have you seated for service in the case or to  
3 have you excused from service in the case.

4 If either side asks that you be excused, you can  
5 simply go back and have a seat where you are now.

6 If both agree to have you seated for service in  
7 the case, you will be having a seat in the jury box to my  
8 left and to your right.

9 So please come forward as your name is called and  
10 you will be instructed if you are to be seated or excused  
11 from service in this case.

12 THE CLERK: Juror number 55, Sylvia Mathis.

13 What says the State?

14 MS. LESKANIC: Please excuse the juror from  
15 service in this case.

16 THE CLERK: You have been excused.

17 THE COURT: You can go back and have a seat, Ms.  
18 Mathis. Thank you.

19 THE CLERK: Juror 11, Clayton Calhoun.

20 What says the State?

21 MS. LESKANIC: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. SHEALY: Please swear the juror.

24 THE CLERK: Please take a seat in the jury box.

25 Juror number 86, Thomas Robertson.



1

What says the State?

2

MS. LESKANIC: Please present the juror.

3

THE COURT: What says the defense?

4

MR. SHEALY: Please swear the juror.

5

THE COURT: Please take a seat in the jury box.

6

Juror Number 33, Robert Hall.

7

What says the State?

8

MS. LESKANIC: Please swear the juror.

9

THE CLERK: What says the defense?

10

MR. SHEALY: Please excuse this juror.

11

THE CLERK: You have been excused in this case.

12

Juror Number 66, Douglas Moore.

13

What says the State?

14

MS. LESKANIC: Please swear the juror.

15

THE CLERK: What says the defense?

16

MR. SHEALY: Please swear the juror.

17

THE CLERK: Please take a seat in the jury box.

18

Juror Number 104, Brent Wallace.

19

What says the State?

20

MS. LESKANIC: Please swear the juror.

21

THE CLERK: What says the defense?

22

MR. SHEALY: Please swear the juror.

23

THE CLERK: Please take a seat in the jury box.

24

Juror Number 49, Gail Tidd.

25

What says the State?

1 MS. LESKANIC: Please swear the juror.  
2 THE CLERK: What says the defense?  
3 MR. SHEALY: Please swear the juror.  
4 THE CLERK: Please take a seat in the jury box.  
5 Juror Number 20, Juanita Roark.  
6 What says the State?  
7 MS. LESKANIC: Please swear the juror.  
8 THE CLERK: What says the defense?  
9 MR. SHEALY: Please swear the juror.  
10 THE CLERK: Please take a seat in the jury box.  
11 Juror Number 46, Elaine Knuckles.  
12 What says the State?  
13 MS. LESKANIC: Please swear the juror.  
14 THE CLERK: What says the defense?  
15 MR. SHEALY: Please excuse the juror in the case.  
16 THE CLERK: You have been excused.  
17 Juror Number 28, Miranda Ford.  
18 What says the State?  
19 MS. LESKANIC: Please swear the juror.  
20 THE CLERK: What says the defense?  
21 MR. SHEALY: Please excuse the juror in the case.  
22 THE CLERK: You have been excused.  
23 Juror Number 29, Lonnie Fowler.  
24 What says the State?  
25 MS. LESKANIC: Please swear the juror.

1 THE CLERK: What says the defense?  
2 MR. SHEALY: Please swear the juror.  
3 THE CLERK: Please take a seat in the jury box.  
4 Juror Number 10, Janie Burkholder.  
5 What says the State?  
6 MS. LESKANIC: Please swear the juror.  
7 THE CLERK: What says the defense?  
8 MR. SHEALY: Please excuse this juror.  
9 THE CLERK: You have been excused.  
10 Juror Number 51, Stephenie Mace.  
11 What says the State?  
12 MS. LESKANIC: Please swear the juror.  
13 THE CLERK: What says the defense?  
14 MR. SHEALY: Please excuse this juror.  
15 THE CLERK: You have been excused.  
16 Juror Number 82, Carl Ramsey.  
17 What says the State?  
18 MS. LESKANIC: Please excuse this juror.  
19 THE CLERK: You have been excused.  
20 Juror Number 76, Ashley Pennington.  
21 What says the State?  
22 MS. LESKANIC: Please swear the juror.  
23 THE CLERK: What says the defense?  
24 MR. SHEALY: Please swear the juror.  
25 THE CLERK: Please take a seat in the jury box.

1 Juror Number 67, Theral Moore.  
2 What says the State?  
3 MS. LESKANIC: Please swear the juror.  
4 THE CLERK: What says the defense?  
5 MR. SHEALY: Please swear the juror.  
6 THE CLERK: Please take a seat in the jury box.  
7 Juror Number 27, Michelle Ford.  
8 What says the State?  
9 MS. LESKANIC: Please excuse this juror.  
10 THE CLERK: You have been excused.  
11 Juror Number 64, Julia Montgomery.  
12 What says the State?  
13 MS. LESKANIC: Please swear the juror.  
14 THE CLERK: What says the defense?  
15 MR. SHEALY: Please excuse this juror.  
16 THE CLERK: You have been excused.  
17 Juror Number 61, Kristen McIntyre.  
18 What says the State?  
19 MS. LESKANIC: Please swear the juror.  
20 THE CLERK: What says the defense?  
21 MR. SHEALY: Please swear the juror.  
22 THE CLERK: Please take a seat in the jury box.  
23 Juror Number 9, John Burchstead.  
24 What says the State?  
25 MS. LESKANIC: Please excuse this juror.

1 THE CLERK: You have been excused.  
2 Juror Number 18, Jennipher Cordle.  
3 What says the State?  
4 MS. LESKANIC: Please swear the juror.  
5 THE CLERK: What says the defense?  
6 MR. SHEALY: Please excuse this juror.  
7 THE CLERK: You have been excused.  
8 Juror Number 52, Brittany Mann.  
9 What says the State?  
10 MS. LESKANIC: Please swear the juror.  
11 THE CLERK: What says the defense?  
12 MR. SHEALY: Please excuse this juror.  
13 THE CLERK: You have been excused.  
14 Juror Number 101, Brian Walker.  
15 What says the State?  
16 MS. LESKANIC: Please excuse this juror.  
17 THE CLERK: You have been excused.  
18 Juror Number 80, Lloyd Pressley.  
19 What says the State?  
20 MS. LESKANIC: Please swear the juror.  
21 THE CLERK: What says the defense?  
22 MR. SHEALY: Please swear the juror.  
23 THE CLERK: Please take a seat in the jury box.  
24 Juror Number 26, Brian Everette.  
25 What says the State?

1 MS. LESKANIC: Please swear the juror.  
2 THE CLERK: What says the defense?  
3 MR. SHEALY: Please excuse this juror.  
4 THE CLERK: You have been excused.  
5 Juror Number 65, Dee Moody.  
6 What says the State?  
7 MS. LESKANIC: Please swear the juror.  
8 THE CLERK: What says the defense?  
9 MR. SHEALY: Please excuse this juror.  
10 THE CLERK: You have been excused.  
11 Juror Number 73, Lolita Patterson.  
12 What says the State?  
13 MS. LESKANIC: Please swear the juror.  
14 THE CLERK: What says the defense?  
15 MR. SHEALY: Please swear the juror.  
16 THE CLERK: Please take a seat in the jury box.  
17 Juror Number 79, Gena Poovey.  
18 What says the State?  
19 MS. LESKANIC: Please swear the juror.  
20 THE CLERK: What says the defense?  
21 MR. SHEALY: Please excuse this juror.  
22 THE CLERK: You have been excused.  
23 Juror number 13, Charles Chitty.  
24 What says the State?  
25 MS. LESKANIC: Please swear the juror.

1 THE CLERK: What says the defense?

2 MR. SHEALY: Please swear the juror.

3 THE CLERK: Please take a seat in the jury box.

4 THE COURT: Those who have been selected, I'll ask  
5 you to please go with the bailiff to your jury room and I'll  
6 bring you back in just a few minutes to begin with the trial  
7 of the case.

8 (The following takes place outside the presence of  
9 the jury panel)

10 THE COURT: Is there any matter that needs to be  
11 addressed regarding jury selection, by the State?

12 MS. LESKANIC: No, Your Honor.

13 THE COURT: By the defendant?

14 MR. SHEALY: No, Your Honor.

15 THE COURT: All right. Those jurors who were not  
16 selected, you are excused for the balance of today. You are  
17 asked to call back this evening after six o'clock to the  
18 number that you have on the front of your juror information  
19 pamphlet. That's the number in the black box, 487-2585.  
20 Please call that number after six o'clock this evening, but  
21 be sure that you call this evening, in order to receive  
22 further reporting information.

23 Now, when you call that number, it may instruct  
24 you to report at a particular time, but it also may ask that  
25 you call back at a particular time in order to receive

1 reporting information, if we are not sure how long this case  
2 is going to take to conclude, so just be sure that you  
3 follow the instructions on the recorded message when you  
4 call that number, and call this evening after six o'clock.  
5 Thank you for your participation. Have a good afternoon.

6 (Whereupon, the jury venire panel left the  
7 courtroom)

8 THE COURT: All right. Any matters that need to  
9 be addressed prior to the jury being sworn?

10 MR. SHEALY: Yes, Your Honor. I think both -- the  
11 State has matters.

12 THE COURT: All right. Who wants to go first?

13 MR. SHEALY: Your Honor, I will go first.

14 THE COURT: Okay.

15 MR. SHEALY: Your Honor, the defendant was placed  
16 under investigative detention at his home. Sergeant  
17 Anderson and Officer Coyle were present.

18 Sergeant Anderson -- according to the report and  
19 on information and belief, Sergeant Anderson advised Scott  
20 of his Miranda Rights. And apparently upon -- after that  
21 happened, the defendant stated that he hoped the victim was  
22 dead. Your Honor, we would move to suppress that statement,  
23 based on the ground that the prejudicial value of the  
24 statement outweighs the probative value of the statement, in  
25 that he is charged with assault and battery with intent to



1 kill. It makes it appear that that was his intent, when in  
2 fact it wasn't. Thank you, Your Honor.

3 THE COURT: And this sole ground for the exclusion  
4 is that you believe the probative value is outweighed by the  
5 prejudicial impact to the defendant?

6 MR. SHEALY: Yes, Your Honor, that's a fact that  
7 it hurts us so much.

8 THE COURT: Ms. Leskanic?

9 MS. LESKANIC: Your Honor, the defendant's  
10 statement that he -- I believe that the statement was "I  
11 hope the bitch is dead," and that's what he said as soon as  
12 the police arrived at the residence. He was Mirandized and  
13 he made the spontaneous statement. It certainly goes to his  
14 intent. We have to prove malice for assault and battery  
15 with intent to kill. That goes to show the wickedness, evil  
16 heart, and that was part of the State's proof.

17 THE COURT: Well, y'all tell me. Do I understand  
18 the statement was made in response to a question or not?

19 MS. LESKANIC: No, Your Honor, there was no  
20 question asked. It was -- the State's presentation would be  
21 that he was mirandized and no questions were asked. He was  
22 just going to be held for the detective to come. As soon as  
23 they Mirandized him, his statement was "I hope the bitch is  
24 dead."

25 THE COURT: Is that accurate, Mr. Shealy?

1 MR. SHEALY: Unfortunately, Your Honor, I have no  
2 information to contradict it.

3 THE COURT: Okay. Well, in any event, the motion  
4 to exclude it is denied.

5 Number one, he was provided his Miranda Warnings.  
6 However, the statement was not made in response to a  
7 question, so Miranda is not really even applicable, although  
8 he was advised, but I don't need to determine if he  
9 understood his rights, because the statement was not in  
10 response to a question by law enforcement, number one.

11 And number two, while it may be prejudicial, it's  
12 certainly probative on the element of his state of mind and  
13 intent, at least as it relates to the charge of assault and  
14 battery with intent to kill.

15 So your motion to exclude it on the basis of undue  
16 prejudice is also denied.

17 MR. SHEALY: Thank you, Your Honor.

18 THE COURT: All right. What's the other matter?

19 MR. SHEALY: Your Honor, we move to suppress the  
20 911 tape. There is three grounds for that.

21 One is that the defense was not provided with a  
22 complete copy. It starts -- I can't say at what part of the  
23 911 call, but the initial part of the call is not present on  
24 the tape that we have. It doesn't say what time it was. It  
25 doesn't say what day it was.

1           The second grounds is that if it's presented  
2 before the witness testifies, then it will bolster their  
3 witness. And under Rule 608 that's not permitted. She's --  
4 her credibility has to be attacked before they can bring the  
5 prior inconsistent statement in to contradict the attack.

6           The third grounds is under 403. Once again, the  
7 prejudicial value outweighs the probative value, because as  
8 the tape goes on, she becomes unresponsive to the questions.  
9 She repeats short phrases "don't let him come back," things  
10 like that. And it becomes more garbled as time goes on. It  
11 invites the jury to speculate as to what's happened to her.  
12 The defense submits that -- if I were on the jury, I would  
13 be begin to think that this was as a result of her wounds,  
14 but there is no evidence of that, because -- with that said,  
15 Your Honor, that invites the jury to speculate as to what's  
16 going on with her over the phone.

17           THE COURT: All right. Ms. Leskanic?

18           MS. LESKANIC: If it please the court, Your Honor,  
19 we do have a complete copy of the 911 call now. I have made  
20 Mr. Shealy aware of that. He simply asked that he be  
21 allowed to listen to that. The only portion of the tape  
22 that was not on both of our original copy was the 911  
23 operator saying "this is 911. Where is your emergency."  
24 And Ms. Spencer responding [REDACTED]." And then it  
25 picks up where she says that she's been stabbed and raped,

1 but I have that for Mr. Shealy to listen to.

2 As far as the date and time, we also provided him  
3 the discovery a copy of the CAD sheet, which is the written  
4 information that's contained on the 911 tape which has the  
5 date and time on that. So that information has been  
6 provided in discovery.

7 I don't believe there's any question that this  
8 call was made right after the event.

9 We are not planning on playing the tape prior to  
10 Ms. Spencer's testimony, so that should handle the second  
11 part.

12 And as far as her being unresponsive on the tape,  
13 this happened right after the attack, Your Honor. It goes  
14 to the violent nature of the injury, an injury that she  
15 sustained from the stab wound to the chest.

16 THE COURT: And do I understand she's going to be  
17 the person to authenticate the call?

18 MS. LESKANIC: She will testify that she made the  
19 911 call. And we also have Reggie Petty from 911 who will  
20 come in and can establish it as a business record.

21 THE COURT: So what I'm saying is you said that  
22 you are not going to play it before her testimony?

23 MS. LESKANIC: That's correct.

24 THE COURT: So she will be authenticating the  
25 call? She will be identifying what it is and when it was

1 made?

2 MS. LESKANIC: Yes, Your Honor.

3 THE COURT: All right. Mr. Shealy?

4 MR. SHEALY: Your Honor, I think that's our goal  
5 here. I mean, as I said earlier, if it's played after she  
6 testified, I don't think we have --

7 THE COURT: During her testimony.

8 MR. SHEALY: Or during her testimony.

9 THE COURT: Any objection to it?

10 MR. SHEALY: No, Your Honor, as long as -- as long  
11 as she's on the stand and -- as far as playing it, I don't  
12 think they can play it until I attack her credibility, but  
13 obviously I'm going to do that.

14 THE COURT: Well, you won't attack her credibility  
15 before they play it, because as I understand it, they intend  
16 to play it in her direct testimony.

17 MR. SHEALY: Yes. Well, I don't think they can do  
18 that.

19 THE COURT: Okay. I think it's permitted under  
20 803(1), (2) and (3), and it's certainly relevant.

21 All right. What else?

22 Another other motions, Mr. Shealy.

23 MR. SHEALY: Your Honor, just on the comment that  
24 Ms. Leskanic brought up about they intended to introduce the  
25 CAD sheet as a business record. We can deal with that issue

1 before we get to it.

2 THE COURT: She didn't say she was going to  
3 introduce it. She said you had the information based upon  
4 that being disclosed to you.

5 MR. SHEALY: Okay, Your Honor.

6 THE COURT: Am I correct?

7 MS. LESKANIC: Yes, Your Honor, that's correct.

8 THE COURT: All right. Mr. Barnette?

9 MR. BARNETTE: I just have two matters, Your  
10 Honor. We had talked briefly back in chambers. I think Mr.  
11 Shealy agreed to the -- particularly on the chain of custody  
12 on the items that were sent to SLED or State Law Enforcement  
13 Division. I just wanted to put that on the record.

14 THE COURT: There is no objection to the chain of  
15 the evidence after it was received -- or after it was  
16 gathered and turned over to local officers, as well as State  
17 Law Enforcement Division agents?

18 MR. SHEALY: Your Honor, with one caveat. There  
19 was a cell phone that was discovered and brought in by a  
20 family member. I will not stipulate to that, but everything  
21 else that was seized by police officers and put into the  
22 chain I'll stipulate to.

23 The sole objection I have is the cell phone.

24 MR. BARNETTE: And, Your Honor, the cell phone has  
25 not been sent to SLED, I don't think. It was not sent to

1 SLED, so that's no issue.

2 THE COURT: Okay.

3 All right, what else?

4 MR. BARNETTE: Your Honor, we have got a motion.  
5 We have given a copy to the defense, Your Honor. Several  
6 different issues on it.

7 The first one is the Rape Shield Statute,  
8 basically not planning to permit them to talk about any  
9 other sexual things they might content that the victim may  
10 have done outside of what happened that day. Obviously,  
11 Your Honor, any witnesses they would bring in that would say  
12 that there was any kind of sexual relationship or anything  
13 would have to have firsthand knowledge. We would argue it  
14 was hearsay. And even if it was relevant, they have to show  
15 that it's probative more than prejudicial, Your Honor, in  
16 this case.

17 And we would also include in this motion, and I  
18 have done a written motion. I believe the court has a copy  
19 of it of including those things. Anything about her mental  
20 state or anything like that. I think they would have to  
21 have an in-camera hearing to show if it's relevant in this  
22 case, it's not hearsay, and it shows the probative value of  
23 it. We would ask for an in-camera hearing on all those  
24 issues if they intend to present it, Your Honor.

25 THE COURT: All right, Mr. Shealy, let's just

1 start with -- you got a copy of the solicitor's motion.  
2 Let's just start with number one.

3 MR. SHEALY: 'Your Honor, as far as the Rape Shield  
4 Act, it's my intention to call my client to testify that he  
5 has been -- he and Kay Spencer has been playing around since  
6 he was fifteen.

7 THE COURT: Well, did you understand I just want  
8 to go through it one by one. Right now I'm on paragraph  
9 one.

10 You see what they are attempting to limit? They  
11 are moving to prohibit any reference or inquiry by you  
12 regarding prior sexual knowledge or activity concerning the  
13 victim with any person other than the defendant.

14 MR. SHEALY: No, Your Honor, we are not planning  
15 on doing that.

16 THE COURT: No objection to that, okay.  
17 Number two.

18 Well, Mr. Barnette, clarify that for me. On these  
19 issues you are referring to number one?

20 MR. BARNETTE: Yes, sir, number one. And then  
21 also my verbal recitation, Your Honor, anything -- any  
22 family members or anything that would testify about any  
23 sexual activity involving the defendant and the victim in  
24 this case, I would include that.

25 Really number three would be more pertinent to



1 hearsay issues. It would be obviously they don't have to  
2 personal knowledge of it. But if they do have personal  
3 knowledge of it, then obviously the prejudicial value would  
4 outweigh the probative value. We would ask the court to  
5 hear testimony concerning that to see if it would be --  
6 would meet the criteria under this motion.

7 THE COURT: Okay.

8 MR. SHEALY: Judge, I understand that we are only  
9 talking about sexual history?

10 THE COURT: According to the motion, what they are  
11 trying to exclude is any reference to sexual knowledge or  
12 sexual activity concerning the victim with any person other  
13 than this defendant.

14 MR. SHEALY: Your Honor, there is a possibility of  
15 testimony as to sexual relations between the defendant and  
16 the victim from a family member. I don't know the source of  
17 that information, but I submit that if it came from the  
18 victim, that that would be admissible. Not a specific  
19 instance, but a general reference about how long that's been  
20 going on.

21 MR. BARNETTE: Your Honor, I would argue he hasn't  
22 produced that testimony, and we would ask to have a hearing  
23 concerning that, if that's an issue in this case.

24 THE COURT: Well, I assume you will be asking Ms.  
25 Spencer about that, won't you?

1 MR. SHEALY: Yes, Your Honor.

2 THE COURT: All right. Well, before that is  
3 elicited we will take it outside the presence of the jury to  
4 be certain that there is no appropriate challenge to it  
5 based upon the Rules of Evidence.

6 MR. SHEALY: Thank you, Your Honor.

7 THE COURT: All right. What else?

8 MS. LESKANIC: Nothing else from the State, Your  
9 Honor.

10 MR. SHEALY: Nothing more from the defense.

11 THE COURT: Y'all ready to proceed?

12 MS. LESKANIC: Yes, Your Honor.

13 THE COURT: All right. Let's bring the jury in  
14 and ask Mr. Wallace, Brent Wallace, to take the foreperson's  
15 seat.

16 (The following takes place in the presence of the  
17 jury panel)

18 THE COURT: All right, ladies and gentlemen, we  
19 are ready to begin with the trial of the case for which each  
20 of you have been selected.

21 Mr. Wallace, I'm going to ask you to serve as the  
22 foreperson of this jury. As the foreperson, you are going  
23 to have three specific duties that none of the other jurors  
24 will have.

25 Number one, you will be asked to serve as the

1 spokesperson for the jury. And so if during the trial  
2 something arises that needs to be brought to my attention,  
3 that is, you or a fellow juror has some difficulty, problem,  
4 or question, you let the bailiff know, he will let me know,  
5 and I'll address any issue or answer any question that you  
6 may have.

7 Secondly, you are going to be called upon to  
8 preside over jury deliberations in the jury room when the  
9 time comes. That, of course, will not be until the end of  
10 the trial after all of the evidence has been received and I  
11 have instructed you on the law that's applicable in the  
12 case. But when the time does come for the jury to begin its  
13 deliberations, you will preside over that process in the  
14 jury room simply to ensure that those deliberations are  
15 carried out in some orderly fashion.

16 And, thirdly, you will actually write the verdict  
17 or the decision of the jury. You will do that on verdict  
18 forms that I will provide you at the trial's conclusion on  
19 which you will indicate the jury's unanimous decision as it  
20 relates to each of the separate charges.

21 Now, the foreperson has those specific duties that  
22 I have just indicated. That does not, however, mean that he  
23 is any more important than any of you other jurors, because  
24 the decision of the jury is the unanimous consensus opinion  
25 of all twelve jurors. And so each of you will have an equal

1 say and an equal voice and an equal vote in what the  
2 ultimate decisions in this case will be. Someone simply has  
3 to be delegated those responsibilities that I have just  
4 indicated and I have delegated those to Mr. Wallace in  
5 appointing him as the foreperson. But all of you jurors are  
6 equally important insofar as the ultimate decisions in this  
7 case are concerned, because, as I have stated, the verdicts  
8 have to be unanimous. All twelve of you must be in  
9 agreement.

10 Mr. Chitty, you have been selected as an alternate  
11 juror. The function of an alternate juror being to take the  
12 place of one of the original twelve jurors, if during the  
13 trial one of these original twelve cannot continue to serve  
14 for some reason. And so if one of the original twelve is  
15 called away, or an illness arises, or an emergency prevents  
16 a juror from being able to continue, then in that event you  
17 would take that person's place. In that event you would  
18 then become the twelfth juror. And if so, then you would  
19 participate even in the jury deliberations at the trial's  
20 conclusion.

21 If, when the time comes for jury deliberations,  
22 the original twelve are able to participate in that  
23 function, then your service ends. You don't participate any  
24 further, because the decision of the jury is that of twelve.  
25 No more than twelve can participate in that deliberation

1 process. But it is important that you pay just as careful  
2 attention, as we ask of all of the jurors selected in the  
3 case, because it does occur from time to time for one reason  
4 or another one of the original twelve may be unable to  
5 continue. In that event you become the twelfth. So we do  
6 appreciate your participation as an alternate juror, just as  
7 we appreciate the participation of each of you jurors who  
8 have been selected for the purpose of deciding the verdict  
9 in this particular case.

10 You may swear the panel.

11 THE CLERK: Mr. Foreman, ladies and gentlemen,  
12 stand and raise your right hand.

13 Do you solemnly swear you will truly try the  
14 issues joined in this case and true verdict render according  
15 to the law and evidence in this case, so help you God?

16 JURY PANEL: ' (All jurors collectively said I do)

17 THE CLERK: You may be seated.

18 THE COURT: All right, ladies and gentlemen, as  
19 you know, you have been selected to decide the verdicts in  
20 the case of the State versus Donald Scott Jones.

21 Mr. Jones, as you have been informed, has been  
22 accused by the State by way of these two indictments of  
23 having committed the crimes of criminal sexual conduct in  
24 the first degree and an assault and battery with intent to  
25 kill.

1           There are two separate charges. You will be  
2 rendering two separate and distinct verdicts in the cases.  
3 Your verdicts may be the same as it relates to the separate  
4 indictments. They may be different. That will depend, of  
5 course, upon your determination of fact and then your  
6 application of the law that I will have provided you.

7           But the defendant is charged with criminal sexual  
8 conduct in the first degree and assault and battery with  
9 intent to kill, crimes which the State alleges occurred back  
10 on May the 29th of 2009. They allege that he did engage in  
11 a sexual battery with Kay Spencer, which was accomplished by  
12 the use of aggravated force; or, the victim was also the  
13 victim of a forcible confinement, a kidnapping, a  
14 housebreaking, a burglary, or some other similar offense or  
15 act.

16           They also further allege that he did commit an  
17 unlawful act of a violent nature, an injury to the person of  
18 another with malice aforethought, in that he did stab and  
19 strangle Kay Spencer.

20           Now, as to those allegations and as to each of  
21 those charges the defendant has entered a plea of not  
22 guilty. And as I have told you, that plea not guilty,  
23 therefore, places upon the State the burden of proving the  
24 allegations that they have set forth in each of those  
25 indictments, the burden of proving each of the essential

1 elements of the crimes alleged against the defendant. And,  
2 therefore, the burden is upon the State to establish the  
3 defendant's guilt to the satisfaction of you twelve jurors  
4 beyond a reasonable doubt before any verdict of guilty could  
5 be returned as to either of the separate indictments.

6 Every person accused of a crime, and it does not  
7 matter how serious the offense might be, every person  
8 accused of a crime is presumed to be innocent. And that  
9 presumption of innocence remains with any defendant, as it  
10 does with this defendant, from the time that he is placed  
11 under arrest and throughout the course of the criminal  
12 process, and even throughout the course of the actual trial  
13 in the case.

14 That presumption of innocence will be with this  
15 defendant even when you go back to begin with your  
16 deliberations in this case at the trial's conclusion.

17 That presumption of innocence will be with him in  
18 that jury room, and it will be with him forever, unless you  
19 twelve jurors determine that he's no longer entitled to the  
20 presumption of innocence. And that simply means that after  
21 you have carefully considered all the evidence in the case  
22 and from that evidence you have decided the facts. And  
23 after deciding those facts you have applied the law that I  
24 will have provided you, if you twelve jurors unanimously  
25 determine that his guilt as to a particular crime has been

1 proven beyond a reasonable doubt, then he would no longer be  
2 entitled to the presumption of innocence as it relates to  
3 that particular charge. But it's only if, unless, and until  
4 you are satisfied of his guilt beyond a reasonable doubt  
5 that the presumption of innocence would no longer be  
6 applicable.

7 Now, the way trial will proceed that in a moment  
8 the lawyers are going to address you in what are called  
9 opening statements. There are two occasions in the trial of  
10 a case where lawyers are permitted to address the jury, and  
11 that is at the beginning of the trial before any evidence  
12 has been introduced; then again at the conclusion of the  
13 trial, after all of the evidence has been received. But  
14 please keep in mind and understand that the lawyers  
15 statements are not evidence. The lawyers are not witnesses  
16 to anything about this case. They know nothing about this  
17 case of their own personal knowledge or perception, because  
18 if they did, they would be witnesses. They wouldn't be  
19 acting as lawyers in the case. They are not going to take  
20 the witness stand. They are not going to testify under  
21 oath. They are not going to be subjected to direct and  
22 cross examination, as each of the witnesses will be. And so  
23 what they tell you is not to be construed by you or  
24 considered by you as any evidence upon which you will base  
25 your decisions, but you should listen to what the lawyers



1 have to say, because those statements do serve a purpose.

2 The opening statements will serve to provide you  
3 with a basic understanding as to what this case is about  
4 from both the perspective of the State and of the defendant,  
5 so that you will have some context in which to place the  
6 evidence that we will be receiving shortly thereafter.

7 The closing statements occur after the evidence  
8 has been received. And, again, while those statements are  
9 not evidence, it does afford the lawyers an opportunity to  
10 discuss with you the evidence that you have seen and heard  
11 during the trial. And through that discussion each will  
12 have an opportunity to try to persuade you or to convince  
13 you that the evidence in the case does or does not support a  
14 particular decision.

15 And it's in between those opening and closing  
16 statements of the lawyers that we actually receive the  
17 evidence upon which you will base your decision.

18 The State has the burden of proof. The State has  
19 commenced these indictments and these charges and this trial  
20 against the defendant. And so because the State is making  
21 the accusation, the State has the burden of proof. The  
22 State has to establish a defendant's guilt to your  
23 satisfaction beyond a reasonable doubt before a verdict of  
24 guilty could be returned. And so the State does have an  
25 obligation to present evidence by way of witnesses,

1 testimony, and otherwise.

2 After the State has concluded with their  
3 presentation of evidence, a defendant also has an  
4 opportunity to testify or to present evidence, should he or  
5 she wish to do so. But please understand that a defendant  
6 in a criminal trial is never under any obligation to testify  
7 or to call any witness or to produce any evidence. The  
8 burden is not upon a defendant to prove that he or she is  
9 not guilty or to prove that he or she is innocent, because  
10 in some cases that might not even be possible. The burden  
11 is always upon the State, because they brought the charge,  
12 to establish the defendant's guilt beyond a reasonable  
13 doubt.

14 And, therefore, in a trial where a defendant does  
15 not testify or call any witnesses or produce any evidence,  
16 that's not something that a jury can consider in any way.  
17 You can't allow that to enter into your deliberations or in  
18 your consideration or determination as to whether or not his  
19 guilt has been proven beyond a reasonable doubt, because  
20 there is no obligation upon a defendant to testify or  
21 produce evidence. But, as I have stated, every defendant is  
22 afforded an opportunity to testify or present evidence,  
23 should he or she wish to do so.

24 After all of the evidence has been received and  
25 you hear the final summations of the lawyers, I will then

1 instruct you in detail and fully on the law as it relates to  
2 the criminal law generally and as it relates to these  
3 specific crimes particularly, after which you would be asked  
4 to go back and begin with your deliberations. And through  
5 that process you are simply going to be called upon through  
6 the exercise of good judgment and common sense  
7 conscientiously applied to the testimony and evidence  
8 received during the trial to determine what you believe to  
9 be the true facts as they relate to these allegations. And  
10 then upon your determination of those facts, you apply the  
11 law that I will provide you and you will determine whether  
12 or not the defendant's guilt has been proven beyond a  
13 reasonable doubt as it relates to each of the charges. And  
14 if it has, then your verdict is guilty. And if it has not,  
15 then your verdict would be not guilty.

16 Now, all that we are going to ask for you to do is  
17 to pay careful attention throughout the course of the trial.  
18 You have got to pay attention to the first witness, to the  
19 last witness, and every witness in between, because one of  
20 your duties is going to be to determine the facts. And  
21 oftentimes in the trial of a case witnesses testify, and  
22 sometimes they testify in conflict. Sometimes their facts  
23 that are relevant and material to the case are not  
24 identical. And where a fact is important and material to  
25 your resolution of the case, you have to determine what is

1 the most credible testimony and what testimony is not  
2 credible. In order for you to be able to do that, you have  
3 got to give every witness the same degree of attention, so  
4 that when you go back to begin deliberations, you will be in  
5 a proper position to fairly evaluate a witness' testimony,  
6 in light of not just that witness' testimony, but in light  
7 of all of the testimony and all of the evidence in the case.

8 And, of course, it's important that you keep an  
9 open mind throughout the trial and that you not begin making  
10 up your minds or formulating your opinions as to what you  
11 think the ultimate decisions in this case ought to be until  
12 all of the evidence has been received, until I have  
13 instructed you on the law that's applicable and until you  
14 have been asked to begin with your deliberations in the  
15 case.

16 That is the process that is designed for you  
17 twelve jurors to arrive at a fair and just decision. So I  
18 do want to thank you in advance for your participation as  
19 well as to your careful attention. Please give the lawyers  
20 your attention now as they give you their opening  
21 statements.

22 Ms. Leskanic.

23 MS. LESKANIC: May it please the court.

24 The defendant, Donald Scott Jones, was charged  
25 with assault and battery with intent to kill because Kay

1 Spencer, who is sitting here in the purple, he stabbed her,  
2 tried to suffocate her and strangled her. And after he  
3 finished doing that, we get to the criminal sexual conduct  
4 charge, which is rape. He raped her vaginally and he raped  
5 her anally. That's why he's charged with those two things.

6 In the late night hours of May 28th of last year,  
7 this week will be May 28th and 29th, so it's been a year ago  
8 this week that it happened. The late night hours of the  
9 28th into the early morning hours of the 29th, Kay was at  
10 her home at [REDACTED], which is here in the City of  
11 Gaffney, laying down watching TV. She gets a knock on her  
12 door. She goes to the door and it's her nephew, the  
13 defendant. He tells her he just buried a dog and he wants  
14 to talk to her and he walks into her home. She stands at  
15 her door and she doesn't want to sit. She doesn't want him  
16 stay. He said "can I get a drink of water?" He goes into  
17 her kitchen. It's a small house. I'll show you the  
18 pictures of her home. He goes into her kitchen where she  
19 has one real knife and the rest of her silverware and  
20 utensils are plastic that she got at Big Lots. She has one  
21 real knife in her house. It's in her kitchen. He goes in  
22 the kitchen to get a drink of water. And he comes out and  
23 he sits down on her futon, which is her bed. It's a  
24 sparsely furnished home. That's the only piece of furniture  
25 she really had in the house to sit on. He sat down on that

1 and he said "come sit beside me. I need to talk to you."  
2 So she sits down beside him. He's on the right. She's  
3 sitting to the left.

4 While they are sitting there, he places his hand  
5 on her crotch. She takes his hand and she puts it back on  
6 his leg. And at that point he's gotten that knife from her  
7 kitchen. He comes across her and stabs her in the left side  
8 of her chest, almost to her heart. And he pushes that knife  
9 in so hard that the handle of the knife breaks off, and that  
10 knife was stuck in Kay's chest. She slides down from the  
11 futon, bleeding, thinking she's going to die. He continues  
12 physically to assault her. At one point he has her face  
13 down on the futon trying to smother her.

14 She pulls the knife blade out of her chest and she  
15 swings it around trying to get him off of her. She gives  
16 him a cut on the back side of his hand. That will be  
17 important for the blood evidence that you will hear about  
18 later.

19 But that's not enough to save her. He gets a  
20 computer cord. She was there with her laptop playing  
21 solitaire. He gets the computer cord and pops it down on her  
22 neck and strangles her with it. You will see the ligature  
23 marks around her neck when they took the photos of Kay in  
24 the hospital. That knocks her out. She is unconscious,  
25 goes black.

1           When she comes to, that man is raping her. He has  
2 pulled her pants off of her, blood all over her. He pulled  
3 her jeans down, pulled her panties off, and he's raping her  
4 vaginally. He's raping her anally. She keeps going in and  
5 out of consciousness.

6           He tries to clean up the mess that he's made, the  
7 blood that's on the floor. Officers will tell you about the  
8 soapy solution that was all over the floor in the living  
9 room, smears on the floor. You can see somebody tried to  
10 clean it up.

11           Kay will tell you that she remembers when she's  
12 laying on the floor, begging for him to leave, she saw piles  
13 of clothes. She not sure what it was, but whatever he was  
14 using to try to clean up the floor. And then she looked  
15 over there and that pile was gone and he had walked out of  
16 the door. And she thought this was the only chance I have.  
17 She made her way to her door. She thought he would come  
18 back, and she locked her dead bolt.

19           She had a gun in her house. She went, she got her  
20 gun, and sure enough he came back. She hears the door  
21 handle. She hears force being put on the door and she fired  
22 a shot towards the door. Hits the ceiling, hits the door,  
23 doesn't hit him, but it's enough to make him leave. She  
24 waits a little while. She hears the truck start and drive  
25 away. And when he left, he took her purse, he took her cell

1 phone.

2 So now with just her shirt on with a stab wound  
3 through it, no pants, no underwear, no phone, about 1:20 in  
4 the morning she has to go over to her neighbor's house,  
5 David Clary, a young man with only her shirt on, bleeding,  
6 thinking she's going to die. She starts beating on his door  
7 for help. It was time he came to the door and he helped  
8 her. He got a sheet to cover herself. Kay gave David the  
9 gun that she had and he gave her his cell phone and she  
10 called 911 and told them what I have told you.

11 She went to the hospital. She spent about two  
12 weeks in the hospital.' She went to Upstate Carolina. She  
13 also went to Spartanburg Regional, because of the injury to  
14 her chest. And she could tell you about what she's been  
15 through with that.

16 But the defendant, she was able to identify him,  
17 because it's her nephew. She's known him his entire life.  
18 She knew where he lived, with his parents on O'Neal Street,  
19 West O'Neal Street here in Gaffney. She told police that.  
20 They went to that house about 1:30 in the morning, 1:40, and  
21 he was there taking a shower. When he got out of the shower  
22 an officer gave him his Miranda Rights. And before asking  
23 him any questions, that defendant said "I hope that bitch is  
24 dead."

25 We will present you testimony. We have



1 photographs of the scene. We have individuals coming from  
2 the State Law Enforcement Division. There was a sexual  
3 assault kit that was done on Kay. We will tell you what she  
4 had to go through for that. Those are essentially the facts  
5 and what she went through that night and early morning  
6 hours.

7 He is guilty of assault and battery with intent to  
8 kill and of rape, which is criminal sexual conduct.

9 At the conclusion of the trial Judge Cole is going  
10 to tell you what the law is on those, and I will discuss  
11 that more with you, but that is essentially what you will  
12 hear from the State, and I appreciate your time. Thank you.

13 THE COURT: Mr. Shealy.

14 MR. SHEALY: Thank you, Your Honor.

15 I'm Tommy Shealy. I'm one of the two public  
16 defenders here in Cherokee County.

17 That's Donald Scott Jones sitting over there at  
18 the defendant's table. He's my client today.

19 As you have been told, he's charged with criminal  
20 sexual conduct, first degree, and assault and battery with  
21 intent to kill. He denies those allegations.

22 Now, despite what the solicitor tells you, told  
23 you, as the judge told you what she said is not evidence,  
24 and what I'm about to tell you is not evidence.

25 You are going to hear that the facts of the case

1 as related by the two parties are going to be different, and  
2 only y'all can decide which story or which facts are true  
3 and which facts are not. There will be a lot of  
4 self-serving statements here, and there is going to be some  
5 unanswered questions. And all of that in question has to be  
6 resolved in the favor of the defendant.

7 Now, Scott denies all of this. What he -- what  
8 his -- what he tells me happened is that his grandfather was  
9 very, very ill. And Kay was his sister to takes car of him.  
10 If fact, his grandfather died last week, but that's just one  
11 of the incident facts. This grandfather is what started the  
12 whole chain of events here.

13 His momma's dog or a family member's dog died, and  
14 so he decides he's going to take it up to his grandfather's  
15 place to bury it. He goes up there and he buries the dog.  
16 And he finds out that his father is up there all alone.  
17 There is no one there. He's hungry, and Scott knows that  
18 his aunt is supposed to take care of him. He's told that  
19 Kay would be there in ten minutes. She's not there in ten  
20 minutes. He gets miffed. He wants to confront her about  
21 it, and so he goes to her house, this very same house that  
22 the State is going to show you pictures of.

23 She opens the door and she's in bra and panties.  
24 Scott and she go into the living room, but there is no  
25 confrontation. Instead they have sex. Scott will tell you

1 that when he sees a woman dressed as she was, that that  
2 excites him, and that she and he had consensual sex.

3 This is case of what I like to call the unilateral  
4 retroactive withdrawal of consent, being that Kay withdrew  
5 her consent after everything happened. I submit to you you  
6 can't do that.

7 But while they are having sex, Kay asked him to do  
8 it, in her word, in the ass, and that was done too.

9 However, during this love making something  
10 happened that caused Scott to lose interests. And I think  
11 you are going to find out that there should be some  
12 corroborating evidence here. I hope I can show that, but  
13 this angered Kay. It got her mad. Whereupon Scott's  
14 grandmother, Kay's mother had died in the hospital when Kay  
15 was sitting with her. And Scott had some pretty tough  
16 questions he wanted to talk to her about. I don't know why  
17 this all came up, but it did. Kay got extremely angry.  
18 Remember, this is her house. And she came at him with what  
19 he believes to be a knife, but he's not sure, but she didn't  
20 get it from the kitchen. He didn't get it from the kitchen.  
21 He believes it came from the table that was in the room.  
22 She came at him in a rage. Despite that, and you will see  
23 the scar on his thumb. He's cut and bleeding profusely. A  
24 lot of blood that you are going to see is his. And he comes  
25 at her -- she comes at him again and he grabbed her wrist

1 and they struggle over the knife. He tries to twist her  
2 wrist and get her to drop the knife and tries whatever he  
3 can to get her to drop the knife. In the struggle, with  
4 both of them holding the knife, the knife goes into her  
5 chest. At that point the fight is over. The sex is over.

6 He recalls her rolling around on the floor, being  
7 upset, and a computer wire -- he calls it a computer wire  
8 was there, and she was doing something with it, but he won't  
9 tell you what he doesn't know. He didn't see him put it  
10 around her neck or anything like that, but he denied putting  
11 anything around her neck. The computer cord that he knows  
12 is there plugged into that laptop computer and was actually  
13 plugged into the wall when he left.

14 Now, his reaction was to try -- well, he told her  
15 that he was going to call 911. He picked up the cell phone  
16 and she knocked the cell phone out of his hand. That's the  
17 last he sees of the cell phone.

18 He goes and he finds -- rummages around trying to  
19 find something to clean the wound. He finds one whole  
20 bottle and a piece of a bottle of hydrogen peroxide. He  
21 pours that into his wound and tries to help Kay by trying to  
22 pour it into her wound, but she doesn't want that. She is  
23 upset. She is about -- well, he will tell you how she was  
24 acting.

25 The next thing he did was he got a towel and he

1 wrapped it around this wound to stop the bleeding. Then he  
2 told Kay that he was going to take her to the hospital. So  
3 he gets another towel and he goes and puts it in his truck.  
4 When he comes out of the truck and goes back to get Kay to  
5 take her to the hospital, she shoots through a door. At  
6 that point he leaves. He goes home, takes the shower,  
7 cleans himself up. Ultimately he winds up at the Upstate  
8 Medical Center, and Kay is there too, and he gets treated  
9 for his wounds. The police come, cooperates with them. He  
10 tells them what happened, and he consents to a search of his  
11 home. And they go and they find that some evidence was  
12 there.

13 But the whole point is is that it's a criminal  
14 sexual conduct. It wasn't criminal. It was consensual.

15 The assault and battery with intent to kill, that  
16 wasn't what it was. That was self-defense.

17 His comments about "I hope she's dead. I hope the  
18 bitch is dead," you will hear whatever occurred, at that  
19 point was when he was first talking to the police. The  
20 police had first arrived, he was upset. He had been cut by  
21 her, he had been yelled at by her, he had been shot at by  
22 her, and she wouldn't let him take her to the hospital and  
23 he was upset, and he immediately regretted saying that.

24 Now, I think, once this case is all over and you  
25 hear all of the evidence and -- remember, what I just told

1' you is not evidence. Once you sit down to deliberate, I  
2 want you to do a couple of things. I want you to -- while  
3 they are testifying, whoever is testifying, look at them.  
4 Decide are they telling the truth. Look for indicia of  
5 truthfulness. Do they get upset? Do they make eye contact?  
6 You are the experts here. Excuse me, my mouth is getting  
7 dry. You are the experts here. We have got twelve of you  
8 and -- well, right now thirteen, but from entirely different  
9 walks of life, but every single one of you knows, whether  
10 you know you know, what reasonable doubt is. You also know  
11 how to test what's being said as true or not being truthful.

12           Anyway, I want you to look and watch the people  
13 testify. I want you to hear their stories, the consistency  
14 of their stories. And then when you go back to deliberate,  
15 we are confident that you are going to find that the State  
16 has not proven this case beyond a reasonable doubt. And if  
17 you find that, we are confident that you will come back with  
18 a verdict of not guilty on either charge. Thank you.

19           THE COURT: Let me see y'all up here a minute,  
20 please.

21           (Whereupon, the lawyers approached the bench for  
22 an off-the-record discussion)

23           THE COURT: I anticipate the first witness is  
24 going to be of some length and it will probably take us into  
25 the lunch hour, so rather than start that and then break it

1 up, we will just begin with that testimony right after  
2 lunch. So we will excuse you for lunch now. We will resume  
3 this afternoon at two o'clock. At two o'clock this  
4 afternoon.

5 Now, before I let you go, let me caution you and  
6 keep in mind that you are always to follow the instructions  
7 of the court. And one of those is you are never permitted  
8 to talk about a case while the trial is in progress. You  
9 are only permitted to discuss the case when you are involved  
10 in jury deliberations. And that, of course, won't be until  
11 the end of the trial, until all the evidence has been  
12 received and I have instructed you on the law and have asked  
13 you to go back and begin your jury deliberations.

14 So at any time that we take a break, whether it be  
15 a short interim break,, or a lunch break, or even an  
16 overnight recess, you are not permitted to discuss this case  
17 in any fashion whatsoever with any person whatsoever. That  
18 includes your fellow jurors. You are only permitted to do  
19 that during jury deliberations.

20 Now, after you have reached a decision, you can  
21 talk about the case as much as you would like, to as many or  
22 as few as you would like, but you can't talk about it until  
23 the case has been decided, except when you are involved in  
24 your deliberations, and I'll let you know when that time  
25 comes.

1           So, during the lunch break, no discussions about  
2 the case with any person whatsoever in any fashion  
3 whatsoever.

4           Also you have to base your decision upon what you  
5 see and hear during the trial. You are not permitted to be  
6 influenced by any outside consideration. And, therefore,  
7 during the trial you can't conduct any research. You can't  
8 do your own investigation into any issue. You can't seek  
9 outside help or outside information. You cannot permit  
10 yourselves to be exposed to any type of media coverage that  
11 might relate to the case, whether it be from the television,  
12 item, newspaper article, radio spot, or whatever. You can't  
13 allow yourselves to be exposed to any type of media coverage  
14 or influenced by any outside consideration. Your decision  
15 has been to be based upon what you see and hear during the  
16 trial.

17           So, during the course of the trial, no discussions  
18 about the case. No research, no investigation, no media  
19 exposure.

20           Do have a good lunch and please report to your  
21 jury room at two o'clock this afternoon. At two o'clock  
22 this after afternoon.

23           Now, as you leave, you will be leaving from the  
24 side door. The bailiff will show you. You will leave the  
25 side door, which is the door across the street from the back



1 side of the First Baptist Church. When you come back,  
2 that's the door that you will report to. You will be let in  
3 that door and you will come straight upstairs and go back to  
4 your jury room. Please be there not later than two o'clock  
5 this afternoon. Have a good lunch. We will see you at two  
6 o'clock.

7 (The following takes place outside the presence of  
8 the jury panel)

9 THE COURT: All right. The court is in recess  
10 until two o'clock this afternoon.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 (Sexual Assault Kit on Kay Spencer marked as  
14 State's Exhibit No. 1 for identification)

15 (1.1 - Blood Standard from Kay Spencer marked as  
16 State's Exhibit No. 1-A for identification)

17 (1.3 - Vaginal Swab from Kay Spencer marked as  
18 State's Exhibit No. 1-B for identification)

19 (1.5 - Rectal Swab from Kay Spencer marked as  
20 State's Exhibit No. 1-C for identification)

21 (1-10.1 - Pubic Hair Combing from Kay Spencer  
22 marked as State's Exhibit No. 1-D for identification)

23 (Standard from Donald Scott Jones marked as  
24 State's Exhibit No. 2 for identification)

25 (Swab - Blood on top side of bath tub marked as

1 State's Exhibit No. 3.1 for identification).

2 (Swab - Blood on inside floor of the bath tub  
3 marked as State's Exhibit No. 3.2 for identification)

4 (Pair of Sandals from Donald Scott Jones marked as  
5 State's Exhibit No. 4 for identification)

6 (4.1 - Swab from right sandal - middle stripe -  
7 marked as State's Exhibit No. 4-A for identification)

8 (4.2 - Swab from right sandal - from of first  
9 stripe - marked as State's Exhibit No. 4-B for  
10 identification)

11 (4.3 - Swab from left sandal near the inner side -  
12 marked as State's Exhibit No. 4-C for identification)

13 (Shirt and Bra from Kay Spencer marked as State's  
14 Exhibit No. 6 for identification)

15 (Eyeglasses marked as State's Exhibit No. 7 for  
16 identification)

17 (7.1 - Swab from eye glasses marked as State's  
18 Exhibit No. 7-A for identification)

19 (Power cord with adaptor marked as State's Exhibit  
20 No. 8 for identification)

21 (8.1 - swab from power cord marked as State's  
22 Exhibit No. 8-A for identification)

23 (8.2 - swab from adaptor marked as State's Exhibit  
24 No. 8-B for identification)

25 (Blue Jeans marked as State's Exhibit No. 9 for

1 identification)

2 (Panties marked as State's Exhibit No. 10 for  
3 identification)

4 THE COURT: All right, ready for the jury?

5 MS. LESKANIC: The State is ready, Your Honor.

6 MR. SHEALY: Yes, Your Honor.

7 THE COURT: All right, bring them in, please.

8 (The following takes place in the presence of the  
9 jury panel)

10 THE COURT: Good afternoon, ladies and gentlemen.  
11 We are going to begin with the presentation of the State's  
12 evidence.

13 MS. LESKANIC: May it please the court?

14 THE COURT: Ms. Leskanic.

15 MS. LESKANIC: Thank you, Your Honor.

16 The State calls Kay Spencer.

17 KAY SPENCER, having been first duly sworn,  
18 testified as follows:

19 DIRECT EXAMINATION BY MS. LESKANIC:

20 Q. Kay, will you please introduce yourself to the ladies  
21 and gentlemen of the jury? Tell them your name.

22 A. Kay Spencer.

23 Q. Where do you live, Kay?

24 A. I was living with my dad and then he passed last week.

25 Q. Do you live here in Gaffney?

- 1 A. Yes.
- 2 Q. Have you lived in Gaffney most of your life?
- 3 A. Yes, ma'am.
- 4 Q. Do you know the defendant Donald Scott Jones?
- 5 A. Yes, I do.
- 6 Q. How do you know him?
- 7 A. It's my sister's son. It's my nephew. My nephew.
- 8 Q. Have you known him his entire life?
- 9 A. Yes, ma'am.
- 10 Q. Were you staying at [REDACTED] on May 29th
- 11 of 2009?
- 12 A. Yes, ma'am. Some nights I stayed with my daddy and
- 13 some nights I stayed by myself, but most of the nights I
- 14 stayed with my daddy.
- 15 Q. Okay.
- 16 A. But I did live there.
- 17 Q. Did anyone stay with you at [REDACTED]?
- 18 A. Not at that time, no. Not at that time I was not.
- 19 Q. Okay. Is that located here in Gaffney?
- 20 A. Yes, ma'am, it's right off College Drive.
- 21 Q. In Cherokee County?
- 22 A. Yes, ma'am.
- 23 Q. Did your nephew come over to your home on [REDACTED]
- 24 that night?
- 25 A. On the 28th, the night of the 28th.

1 Q. Okay.

2 A. Right after eleven o'clock.

3 Q. Okay.

4 A. Seinfeld was on. I had been cutting grass that day and  
5 I was just laying down knowing that I needed to get up and  
6 take a shower, but I was just laying there putting it off  
7 and Seinfeld was on and I was watching Seinfeld. And that's  
8 how I knew it after eleven o'clock, because he comes on at  
9 eleven.

10 Q. All right. And what happened next?

11 A. Well, a knock on the door. And I got a glass pane in  
12 my door where I could see out. And I looked out and I saw  
13 it was him. And I also had a storm door. I opened up the  
14 wooden door, though, and he just kind of -- in the same  
15 instance that he's walking in he says "I want to talk to you  
16 a few minutes." He just kind of came in, made his way in  
17 and said he wanted to talk to me a few minutes. And I stood  
18 there beside the front door.

19 Q. All right.

20 A. Okay. Do you want me to continue?

21 Q. Yes, ma'am.

22 A. Okay. I stayed standing at the front door. He said  
23 something about his mother's dog had died and he buried it.  
24 And I said "I know, that's what papa had told me," what my  
25 daddy had told me. And then he says "can I have a drink of

1 water?" That was about his second sentence or his third  
2 sentence. It wasn't nothing -- it wasn't no time after he  
3 came in. He wanted a drink of water. That's what he said  
4 and he went in.

5 I let him go by himself into the kitchen and I stayed  
6 at the front door standing. He came back in. He had a seat  
7 on the couch on this side of me. And he patted -- he says  
8 "come sit just a few minutes" and he patted the seat. And I  
9 thought to myself, well, I will just sit a few minutes and  
10 it will all -- you know what I mean, because it was late and  
11 I was tired, so I come and sit down a few minutes. We said  
12 a couple of sentences talking about my mother had passed  
13 just a month before and I was talking about my mother, how  
14 she died, and then he reached over and put his hand -- laid  
15 his hand on this part of my lap. And I just picked it up by  
16 his wrist and I put it back on his leg.

17 And then about -- he said about a few words. Then he  
18 got up and -- he got up and he had his knee on the couch and  
19 he was in my face, stabbed me like that, just one hard time.  
20 It wouldn't -- it was that one stab and he wouldn't turn  
21 lose and wouldn't stabbing and he wouldn't quit putting the  
22 pressure on me. It just felt like I was just cemented or  
23 glued there. I mean, the pain was terrific. And then -- it  
24 felt like it lasted forever. And then all of the sudden he  
25 held out his hand and the plastic handle to it was in his

1 hand. And in one stroke I pushed him off of me. When I  
2 did, I pulled that blade out of my chest, because I didn't  
3 want him to push that blade in my chest no more. I wanted  
4 it out of my chest. So I pushed him off of me. And when I  
5 did, I just went down. It ain't like I wanted to go down.  
6 It just -- I don't know, I just started sliding off the  
7 couch into the floor, and then that's when I went.

8 And then I was scooting around on my back using my feet  
9 to push myself around, and then he came up and he pecked me  
10 up by my head and he done my head like this two times, like  
11 he was trying to break my neck. And I guess I'm a heavy  
12 woman and I had on blue jeans and my floor is slick. I  
13 don't know, but it didn't. And then he dropped me. And  
14 then he turned around and he picked me up again by my head  
15 and he tried to choke me with his hand. And I would push my  
16 fingers in like this to keep his -- the pressure off of my  
17 throat, because it was a lot of pressure, and then he would  
18 drop me again.

19 And then he picked me up again and he put me down like  
20 this on my couch. And I just felt like he was standing or  
21 pushing or -- his knee, his leg, his whole body was just on  
22 top of me. You know, my face down in that cushion. And the  
23 whole time I'm holding that blade, it's a little skinny  
24 blade, that knife, I'm holding it in my hand like this so he  
25 wouldn't see it, because I pulled it out and I held it like

1       that the whole time that I was up and down off the floor, up  
2       and down off the floor.

3               So then when he had me down there, I was trying to  
4       stick my fingers in like this to get me some air like this.  
5       And when I did that, I realized -- I became aware that  
6       knife -- that blade in my hand. So when -- sure enough, I  
7       started going back down on the floor again, you know. And  
8       when I started going down on the floor that time, I reached  
9       up and I slung that blade at his hands, because he is  
10      standing up and I'm going down and I'm going down again and  
11      I slung it at him. And then I even tried to do some more  
12      damage. I tried to stick him with it in his leg, or  
13      something. And as soon as I done it, I slung it as hard as  
14      I could sling it and I don't know where it went.

15      Q.    Were you able to cut him?

16      A.    I think I cut it. Well, yeah, because he said "you cut  
17      me." And I was -- yeah, he said "you cut me."

18             And then I slung the blade. And then after that  
19      happened, I'm in the floor and I don't know. I'm conscious,  
20      but it's like a nightmare. It's like you can't believe it's  
21      happening. He's coming in there, in the room, and he's  
22      dropping a towel, or clothes, or something, and he's pouring  
23      peroxide. He's got his feet and he's swiping it, swiping it  
24      up. And then I would see him occasionally throw whatever in  
25      a corner. He would throw it in the corner, whether it was a



1 towel, a shirt, or what he was using. And then he would do  
2 that in between times, because he still attacked me another  
3 time.

4 He picked me up and he tried to choke me one more time  
5 with his hands again. And, again, I done it. And how I  
6 survived that, I did.

7 And then he kept coming in there with that, and I could  
8 hear him slamming the cabinet doors. I could hear him  
9 slamming the doors in my kitchen and in my bathroom. And I  
10 thought he was hunting something else to kill me with.  
11 That's what I thought, but he kept coming in and out of the  
12 room and he kept wiping up the blood out of the floor -- out  
13 of the floor and then he would throw it in there. And it  
14 was like I'm laying on the floor and it's like I'm watching  
15 this happen to me and I can't do nothing about it.

16 Well, this other time he come in before he choked me,  
17 tried to choke me that last time, I had got my cell was on  
18 my little table beside the couch and it was on charger. And  
19 when he went out one time to get towels, or God know what he  
20 was looking for, I grabbed my cell phone. And he come back  
21 in and he caught me with it. He said "what are you doing,"  
22 and he jerked it from me. And then I -- that's when I  
23 begged him. I said "there is my purse. My keys to my truck  
24 is in it. My debit card is in there. I will give you the  
25 code. Please go and let me die in peace," and that was my

1 exact words to him. "Go and let me die in peace." And I  
2 begged him. I begged him that. And he said "I don't want  
3 your money."

4 So then he was just walking. And that computer cord  
5 was plugged up on that side of a little room. It's a narrow  
6 room. It was plugged up on that wall, and I was in the  
7 floor, but on this side a little bit. And by the time I saw  
8 it, he saw it too. He picked it up. I'm already on the  
9 floor. I have been on the floor. That's where I had been  
10 the whole time, except when he picked me up. He got it and  
11 he popped me in the neck, and he did it so hard it bounced  
12 my head back. It bounced me back hard. He hit me hard. He  
13 didn't wrap it around my throat. He popped it down the  
14 front of my throat. And then I -- it didn't feel like two  
15 seconds and I was out. Then it was blackness. Just  
16 blackness. Darkness. But I don't know if there was  
17 somewhere in my head I knew that I was still alive. I knew  
18 I was still alive.

19 And then at some point in time started back coming to  
20 and I'm still in the floor, y'all. So it's not like I  
21 opened up my eyes big and wide, like y'all got them. I just  
22 opened up and looked through the bottom of my eyelashes and  
23 he was raping me. It seems like he was holding my shirt or  
24 something, because I still had on my shirt. And I had wore  
25 a baggy shirt because I gained some weight and I just wore

1 baggy clothes. And he had me by the shirt, it seems like,  
2 and he was raping me and I was on the floor. And then I  
3 went out again. And when I come back to, he was raping me  
4 from the behind part. And then I went back out again.

5 And while I was out, I heard my door close. I heard my  
6 door close and I didn't want to wake up. I didn't want to  
7 wake up. I didn't want to go be back a part of that place  
8 no more, but a voice told me to look over there in the  
9 corner. So I turned my head and I looked over there in the  
10 corner and all of those bloody rags, or whatever it was, all  
11 that was gone. And I knowed in my mind he was coming back  
12 for me. That's what my mind told me. So I reached up and I  
13 tried to lock the dead bolt. And I tried one time and I  
14 couldn't do it, because I will still on my back. And then I  
15 tried one hard time, one more time. I reached up and I did  
16 lock the dead bolt.

17 And I don't know how. I can't tell you how I got up  
18 out of that floor, and I can't tell you how I walked across  
19 that room, but I did. But I don't remember one step of it,  
20 but I did it. And I was in front of that drawer, that  
21 drawer where I had that gun. I just bought it three months  
22 ago. I never owned a gun in my life, but I had bought that  
23 gun three months ago. And there was that gun. And I was  
24 standing in front of the drawer and I had that gun. And it  
25 was hard for me to unbuckle it. It was like my strength was

1 gone, so I stepped back. I don't know how many steps it  
2 took me and I just went back and collapsed on that couch.  
3 And I sat laid there waiting for him to come back, because I  
4 wanted to see the side door and I wanted to see the front  
5 door, and that's why -- and I was glad I was there, because  
6 I could see both doors. And sure enough he come. I could  
7 hear the doorknob. And he said "Aunt Kay," and I remember  
8 thinking. And then it started to get a little bit more  
9 force with the doorknob and I was afraid he was to going to  
10 bust in on me, so I shot. I didn't know -- I shot at the  
11 door. I didn't know my gun went up and hit the ceiling, but  
12 the bullet, or whatever, but I shot at the door. I tried to  
13 shoot where I thought he was standing. And then when I did,  
14 it wasn't no time I heard the truck crank. I mean it was  
15 like no time after that bullet went off I heard that truck  
16 crank. And I was kind of surprised, because when I opened  
17 the door, I didn't see no vehicle. There was no vehicle  
18 parked in front of my house whatsoever.

19 And then I got up again. I had strength and I walked  
20 to that door and then I saw the taillights daddy's truck  
21 going down the road, the taillights. So I opened the door  
22 and I pulled my shirt down as far as I could pull it and I  
23 went up to that next house, because I knowed who lived  
24 there. It was two young boys, and I pulled my shirt down as  
25 far as I could and I went down to that young boy's house,

1 because I saw their porch light on. And then I sat down on  
2 the porch light -- porch step and I pulled my shirt down,  
3 keeping it down, and I used the back of my hand to bang on  
4 their storm door. And I knocked forever and ever and then  
5 that young boy come to the door. And I know it had to be  
6 horrible on him. I was probably the shape I was in and I  
7 had a gun in my hand and there I sat and I couldn't get up.  
8 I think I told him I was attacked, you know, and -- I think  
9 I told him I wanted him to have the gun -- I mean, not the  
10 gun, a phone or something to call the ambulance. Maybe. I  
11 don't know. I can't remember exactly what I said to him by  
12 then. But he was scared, and I told him I would give him my  
13 gun, you know, if he wouldn't let him come back and hurt me,  
14 and he told me he would.

15 Q. Did he give you his cell phone?

16 A. Yes, ma'am, he gave me his cell phone and I think I  
17 dialed 911 myself. I don't know, but --

18 And then I was there by myself and then I looked over  
19 and there must have been a first responder was standing over  
20 there, a lady. She had on dark clothing, like Navy blue or  
21 something, you know. I asked her to ask him to give me  
22 something to cover myself over with -- up with. Cover my  
23 bottom up with. And then from there they come and they  
24 helped me and they took me away.

25 Q. Where did they take you first, Kay?

1 A. I can't even remember. I guess I was in and out of it.  
2 I can't remember the drive, but when I did come to, I  
3 remember I was at Gaffney hospital in emergency room. And  
4 the nurse -- there was a nurse there talking to me and she  
5 was asking me where my doctor was, and I didn't really have  
6 a set doctor or anything. But, anyway, it all come down to  
7 me going to Spartanburg Regional.

8 Q. How long were you in Spartanburg Regional Hospital?

9 A. I'm thinking it was about three and a half weeks.

10 Q. And why did you have to use your neighbor's phone to  
11 call 911? Where was your phone?

12 A. Because when I had -- when he come in that room that  
13 one time and I had reached up and got my phone off the  
14 charger, I was trying to dial 911. But when he come in,  
15 he -- he grabbed it out of my hand. That's when he said  
16 "what are you doing," and he took my phone from me. So I  
17 had to use that phone. I had to get somebody to help me.

18 Q. And you remember him raping you vaginally?

19 A. Yeah, I remember being on the floor on my back and he  
20 was over me raping me.

21 And then I remember -- I thank God I passed back out,  
22 and I thank God I did. And then I come back to and then he  
23 was from the behind.

24 Q. So he was raping you anally then?

25 A. Yes, he was. I was from behind.

1 Q. Did you always -- when stayed at that house, did you  
2 stay there alone? Would he have known you were home alone?

3 A. At that particular time, yes, I would have been.

4 My mother lived there with me for about a year and a  
5 half, I think, and then I moved -- got my mom to move back  
6 into her home. And so the house was there. And I allowed  
7 my son to live there a little bit and he was gone. So there  
8 was nobody living there. There was nobody living there and  
9 I kept the power and water on, because I liked to have my  
10 own place sometimes. You know, I don't to live at momma and  
11 daddy's always. I don't want to live at somebody else's  
12 house always. I want my own place sometimes.

13 Q. Where did the knife come from that he stabbed you with?

14 A. It come from my house. When my son moved out of my  
15 house, he took all my silverware, all the silverware, so I  
16 went up to Big Lots and I got the plastic utensils. What  
17 you call them, the plastic forks and spoons and stuff, just  
18 a box of it. And then I had one knife, those little black  
19 plastic handle knives., I only had one knife to cut cheese,  
20 or whatever, and I had it there. And that was -- I feel  
21 like it was in my drainer, because I used it all the time,  
22 so I would -- it would probably be there, but I don't know  
23 where it was, but it was in my kitchen.

24 MS. LESKANIC: May I approach the witness, Your  
25 Honor?

1 BY MS. LESKANIC:

2 Q. Ms. Spencer, I would like to show you first what's been  
3 marked as State's Exhibit 5 and State's Exhibit 12. If  
4 would just look at those, please, and tell me if you  
5 recognize those.

6 A. That's that little house I own. That's that little  
7 house I own.

8 Q. All right. Is that the house that you were living in  
9 when this happened?

10 A. Yes -- yes, ma'am. I owned it and I stayed there  
11 sometimes. It was my house. It was my home. You know,  
12 when I wasn't taking care of my mom my daddy, that's where I  
13 stayed.

14 Q. So State's Exhibit 5 and 12, those are photos of the  
15 home that you were living in at [REDACTED]?

16 A. Yes.

17 Q: If you will next take a look at State's Exhibit 11 and  
18 tell me what that is.

19 A. That's my truck. I still got this truck. It's my  
20 truck. And my riding lawnmower -- not my riding lawnmower.  
21 My push lawnmower was back there and some wood and stuff I  
22 think where I cleaned up the yard and cut grass that day.  
23 It was back of my truck.

24 Q. Okay. And that's what you had been doing that day is  
25 cutting grass?



1 A. Yes, cutting grass at a country house down in Corinth  
2 that I own.

3 Q. All right. Let me show you State's 13, 14 and 16. If  
4 you will take a look at those and tell me if you recognize  
5 those?

6 A. Yes, ma'am. This is the front door, and that's that  
7 little click-clack couch they call it. It's like a futon.  
8 It folds out into a bed, if you want it to. That's in  
9 living room when you walk into it, and that's that couch.

10 And that's the remote to my TV, and that's that little  
11 table and my glass.

12 And that's that little chest of drawers, which I had  
13 the TV sitting on. My little TV sat on it, and that's my  
14 drawer right there.

15 Q. Okay. Let me show you State's Exhibit 15, 17, 18, and  
16 19. Take a look at those and tell me if you recognize them.

17 A. This is pair of blue jeans of mine. And really those  
18 are my momma's. We bought them for my momma, but I gained  
19 some weight. My mom had passed and I had been wearing them.

20 Q. Are those jeans that you had on that night?

21 A. Oh, yeah, I cut grass in them and everything like that.

22 That's my -- my -- my -- undoubtedly my underwear and  
23 my jeans right there.

24 Q. That's what you were wearing that night?

25 A. Yes, ma'am.

1 Q. Okay.

2 A. And a shirt a bra, of course. Yeah, that's what I was  
3 wearing.

4 And then this is me. And undoubtedly that's a mark on  
5 my neck, and undoubtedly that's where I was stabbed at.

6 Q. A photo of you in the hospital with your injuries?

7 A. Yeah, and that's -- you can see it more there with  
8 that, where the red thing was.

9 And there is where the stab thing was right there where  
10 they sewed it up.

11 Q. Okay. All of these fairly and accurately either show  
12 your home or the injuries that you suffered that night?

13 A. Yes, ma'am. Well, yes, ma'am.

14 MS. LESKANIC: Your Honor, at the time the State  
15 offers State's Exhibit 12, 5, 11, 13, 14, 16, 15, 17, 18,  
16 and 19 for admission as evidence.

17 MR. SHEALY: No objection, Your Honor.

18 THE COURT: They are admitted.

19 MS. LESKANIC: Thank you, Your Honor.

20 BY MS. LESKANIC:

21 Q. Kay, I'm going to start with State's Exhibit 12.

22 A. That's the front door. That's the front door of my  
23 house right there. It just like had a little stoop, like  
24 one little step and you was in there.

25 And that's the -- that's the glass --

1 THE COURT: Ms. Spencer, be careful about that  
2 microphone, please.

3 THE WITNESS: Yes, sorry.

4 A. And that's the glass. And the wooden door, you see the  
5 little glass pane so you can see out of. That's the front  
6 door, or it was my front door.

7 BY MS. LESKANIC:

8 Q. Okay. Let me show you State's Exhibit 5.

9 A. Okay. That's around the side. That's still that  
10 little house. That's around the side of the house.

11 Q. Where is the front door?

12 A. Right there beside those water -- those electric  
13 meters, those meter boxes, the front door was right there.

14 Q. Is that the door that --

15 A. The white -- the white storm door you see and that's my  
16 front door.

17 Q. Is that the door that he came to that night?

18 A. Yes, ma'am. Yes, ma'am.

19 Q. I'll show you now State's Exhibit 11. Is that what you  
20 already testified to? That was the lawnmower in the back of  
21 your truck where you had been cutting grass that day?

22 A. Yes, ma'am. And undoubtedly some yard tools or  
23 something back there. Maybe some pieces of wood or  
24 something I was carrying off, or something like that. But,  
25 yes, ma'am, that's -- I worked out of the back of that

1 pickup truck.

2 Q. Okay. I'll show you now State's Exhibit 13. You  
3 testified that that is a view into your living room from the  
4 front door?

5 A. Right, with the -- that's the click clack or that's the  
6 little couch or -- that you can sit on or sleep on, if you  
7 wanted to. That was the couch. That -- yeah.

8 Q. All right. State's Exhibit 14, is that the couch that  
9 you were --

10 A. Yes, ma'am, that's it.

11 Q. That the defendant was sitting on?

12 A. Yes, ma'am.

13 Q. Did you have any other furniture or places to sit  
14 inside that home?

15 A. No, ma'am, I didn't. No, ma'am, I didn't. My son  
16 had -- that was the only thing you could sit on or sleep on  
17 was that thing right there. I think of -- the only thing I  
18 can think of. I had that and a chest of drawers and I think  
19 that was about it, and a stove and a refrigerator.

20 Q. And is that where you and the defendant were sitting  
21 when he stabbed you?

22 A. Yes, ma'am. I think I -- he had made himself -- I  
23 didn't sit down. He sat down first. He sat down over  
24 there, and then I was sitting more towards that remote  
25 control part. That's where I was sitting.

1 Q. Okay. I'll show you State's Exhibit 16.

2 A. Uh-huh.

3 Q. What is that?

4 A. That's the chest of drawers. That's where I -- the  
5 chest of drawers I had, and that's the -- is that the  
6 holster that the gun was in? That must have been the  
7 holster, because it was in a holster. And then my TV is  
8 sitting on top of that. If you look over to the side, you  
9 can -- I had my TV angled so I could lay on that couch and  
10 watch TV or sit on it, or whatever.

11 Q. All right. This is State's Exhibit 15?

12 A. Yes, ma'am.

13 That's my -- that was my pants and my underwear  
14 undoubtedly that I had on that night.

15 Q. Were you wearing that when the defendant got to your  
16 house?

17 A. Oh, yes, ma'am.

18 Q. Did you take those off?

19 A. Uh-uh, no, ma'am, I don't -- I had my shirt and my bra  
20 and my pants and panties on. I may have not had on no  
21 shoes, but, no, I was -- that the way I was. I come in. I  
22 was thinking about getting up and taking a bath because I  
23 had been cutting grass all day. I was dirty and sweaty.

24 Q. State's Exhibit 17?

25 A. That's me.

1 Q. Is that you in the hospital?

2 A. Yes, ma'am.

3 Right there down there at that gauze part, that's where  
4 the stab was. And up there, you can see where he choked me  
5 with that computer cord.

6 Q. State's Exhibit 18?

7 A. Again, that is a shot of my throat, I think.

8 Q. And State's Exhibit 19?

9 A. That's the stab wound where they sewed me up. The stab  
10 wound.

11 Q. Let me also show you what's been marked as State's  
12 Exhibit 6 and ask you if you recognize State's Exhibit 6?

13 A. That's a -- a friend of mine had a daughter that went  
14 to USC and she had gave me this shirt. This was the shirt  
15 that I -- yeah, my shirt that I had on, and my bra, yes,  
16 ma'am.

17 Q. So this is the shirt that you were wearing the night  
18 that he came over?

19 A. Yes, ma'am.

20 Q. Were you wearing this when he stabbed you?

21 A. Oh, gosh, yeah. Yes, ma'am. Yes, ma'am.

22 It's a work shirt, you know. Yes, I had that on and  
23 them blue jeans.

24 Q. Okay.

25 MS. LESKANIC: Your Honor, at this time we would

1 offer State's Exhibit 6 for admission as evidence.

2 MR. SHEALY: 'No objection, Your Honor.

3 THE COURT: It's admitted.

4 BY MS. LESKANIC:

5 Q. Kay, did you ever get your cell phone back?

6 A. Well, wow, eventually I did. I was at --

7 Q. Who returned it to you?

8 A. I was still -- I was still in the hospital and my daddy  
9 come to see me and Lucille. She brought my daddy to come  
10 see me and she had said that she had been at the defendant's  
11 house.

12 MR. SHEALY: Objection, Your Honor, it's hearsay.

13 THE COURT: Sustained.

14 A. What?

15 BY MS. LESKANIC:

16 Q. Did you get your phone back?

17 A. Yes. Yes, I did. Eventually, yes, ma'am.

18 Q. Who gave it back to you?

19 A. I had to go to the police station and get it.

20 Q. So an officer returned your cell phone to you?

21 A. Yeah. Well, I went up there and got it yes, ma'am.

22 They returned it to me.

23 Q. Okay.

24 MS. LESKANIC: One moment, please.

25 (Off the record)

1 (Back on the record)

2 BY MS. LESKANIC:

3 Q. Kay, I'm going to show you what's been marked State's  
4 Exhibit 9.

5 A. Yes.

6 Q. Do you recognize this?

7 A. Yes, ma'am.

8 Q. And what is that?

9 A. Some pants that belonged to my mom that I took over.  
10 Yes, ma'am, them is my pants, the pants I had on the night  
11 that occurred.

12 Q. Okay.

13 A. Yes, ma'am. My pants.

14 Q. Let me show you also State Exhibit 10.

15 A. Yes, ma'am. Yes, ma'am, that's my --

16 Q. What's that?

17 A. That's my underwear. It's the underwear that I had on.

18 Q. Okay. That night?

19 A. Yes, ma'am, that night.

20 MS. LESKANIC: Your Honor, at this time the State  
21 would offer State's Exhibit 9 and 10 for admission as  
22 evidence.

23 MR. SHEALY: 'No objection, Your Honor.

24 THE COURT: They are admitted.

25 BY MS. LESKANIC:



1 Q. I'm going to show you what's been marked as State's  
2 Exhibit 7.

3 A. I don't know if I could see my place.

4 Q. Do you recognize those?

5 A. Yes, ma'am.

6 Q. And what are those?

7 A. It's some glasses of mine. Some glasses.

8 Q. They were at your house that night?

9 A. Yes, ma'am. I was trying to determine whether I bought  
10 them like at a -- how you will buy them at a drug store,  
11 whether they were prescription, but these are my glasses,  
12 yes, ma'am.

13 Q. Were they broken before that night?

14 A. No, ma'am.

15 THE COURT: Be careful of the microphone, please.

16 A. No. No. No, ma'am.

17 MS. LESKANIC: Your Honor, we would also offer  
18 State's Exhibit 7 for admission.

19 MR. SHEALY: No objection, Your Honor.

20 THE COURT: It's admitted.

21 BY MS. LESKANIC:

22 Q. Kay, I'm going to show you the shirt that's part of  
23 State's Exhibit 6.

24 Why don't you come on down.

25 (Witness off the witness stand)

1 A. Can I get my glasses?

2 BY MS. LESKANIC:

3 Q. Let's show the stab wound where the knife went through  
4 your shirt?

5 A. Yes, it is. It's -- the stab was right here.

6 Q. Do you have a scar from that stab?

7 A. Yes, I do.

8 Q. Would you mind showing it to the jury? Would you show  
9 it?

10 A. For real?

11 Q. If you don't want to, that's okay. That's okay. You  
12 don't have to. Okay.

13 A. It's a -- it's on my breast mostly.

14 Q. Okay.

15 (Witness back on the witness stand)

16 BY MS. LESKANIC:

17 Q. Kay, I'm going to show you what's been marked as  
18 State's Exhibit 8. Do you recognize that?

19 A. Yes, ma'am.

20 Q. What is that?

21 A. That's that laptop that I had. There is a plug to it.

22 THE COURT: Pull that microphone closer to you,  
23 please.

24 A. The laptop that I had, the cord that went to that  
25 laptop that I had.

1 BY MS. LESKANIC:

2 Q. Is that what he used to -- is that what he popped down  
3 on your neck?

4 A. Yes, ma'am.

5 MS. LESKANIC: Your Honor, at this time we offer  
6 State's Exhibit 8 for admission as evidence.

7 MR. SHEALY: No objection.

8 THE COURT: It's admitted.

9 BY MS. LESKANIC:

10 Q. Kay, when you went to Spartanburg Regional --

11 A. Yes.

12 Q. -- did they do a rape kit on you?

13 A. A lady come in and asked me. I guess she was from -- I  
14 don't know where she was from. You know, your -- everything  
15 was just so --

16 A lady come in and asked me did I want one done and I  
17 said yes, I did.

18 Q. Okay.

19 A. And she did one on me.

20 Q. All right. So they did a rape kit on you?

21 A. Yes, ma'am, they did.

22 Q. Do you see the man that did all these things to you in  
23 the courtroom?

24 A. Yes, I do.

25 Q. Could you identify him for the court, please?

1 A. Donald Scott Jones.

2 Q. Where is he in the courtroom?

3 A. Right over there sitting beside Mr. Shealy.

4 Q. Thank you very much.

5 Please answer any questions that Mr. Shealy may have.

6 CROSS EXAMINATION BY MR. SHEALY:

7 Q. I'm sorry for standing all the way over here, but the  
8 bar is a little crowded.

9 Ms. Spencer, when you went to the hospital, did they  
10 ask you what your employment was?

11 A. When I went to the hospital?

12 Q. Yes.

13 A. Did they ask me what my employment was?

14 Q. Did they?

15 A. If they did, I can't remember. I can't remember  
16 everything that was asked me, no, sir. I don't know.

17 Q. Do you recall telling them that you were disabled?

18 A. I probably did tell them that.

19 Q. Okay. Are you -- at that time were you disabled?

20 A. Yes. I draw disability.

21 Q. What was the nature of your disability?

22 A. A depression.

23 Q. And were you taking medication during this time?

24 A. I don't know. I can't tell you, Mr. Shealy, because  
25 sometimes I would take them and then sometimes I would stop

1       them.

2       Q.    And --

3       A.    The effects are something.

4       Q.    When you didn't take your medication, how would you  
5       feel after a period of time?

6       A.    Sometimes you feel depressed, you know.  You feel  
7       hopeless.

8       Q.    Do you feel anger?

9       A.    Yeah, I feel anger sometimes.

10      Q.    And sometimes this anger, you don't even know why you  
11      feel it?  You just feel it?

12      A.    No, usually I know why I feel anger.

13      Q.    Ma'am, the first person -- first off did you -- did  
14      you -- did the police have you execute any written  
15      statements?

16      A.    The police?

17      Q.    Right.

18      A.    If they did -- are you talking about at Gaffney  
19      hospital, or Spartanburg hospital?

20      Q.    I'm talking about any police officer.  Who were the  
21      detectives in this case?

22      A.    It wasn't Chris Skinner, but it was the dark haired  
23      guy.

24      Q.    Was it this guy right here with the white shirt and red  
25      tie?

1 A. I think so, yes, sir, it is.

2 Q. Okay. If I told you that was Detective Ramsey, would  
3 you believe that?

4 A. Yes, sir. I remember seeing him at the hospital.

5 Q. But that's the man that interviewed you, is that  
6 correct?

7 A. Yes.

8 Q. At the hospital?

9 A. Yeah, even at Gaffney hospital.

10 Q. Well, I understand he probably -- he didn't ask you to  
11 sign anything while you were being treated for the stab  
12 wound, did he?

13 A. I was -- I don't think even -- I don't even know when  
14 they started treating me for my stab wound.

15 Q. Okay. Let's try it this way. At Upstate Medical you  
16 talked to Detective Ramsey?

17 A. Uh-huh.

18 Q. But he didn't ask you to sign anything? He didn't  
19 write out what you said and have you sign it, did he?

20 A. Not to my knowledge, sir. I can't remember everything,  
21 but not to my knowledge.

22 Q. I understand.

23 Now, when you went to Spartanburg Regional, you were  
24 there I believe you testified for about three and a half  
25 weeks?

1 A. I'm thinking it was three and a half weeks.

2 Q. And did any police officers, Detective Ramsey -- and  
3 you are right, there is Detective Skinner. There is all  
4 sort of police officers. Did any of them come back over and  
5 talk to you?

6 A. Yes, Mr. Ramsey came over with Mr. Skinner one time  
7 that I do remember. If he came over there other times, I  
8 don't know.

9 Q. Okay. And then when you talked to them, did they write  
10 down what you said, or have you write down what you were  
11 going to say?

12 A. I do not know, sir, what they was doing. I do not  
13 know.

14 Q. Do you recall signing any statements?

15 A. I -- I -- I do not know, sir, whether I signed anything  
16 or not.

17 Q. Well, do you know if you recall or not?

18 A. Well, sir, they had some strong drugs in me, so I don't  
19 know. A lot of people would come and see me and would be  
20 sitting beside me and I wouldn't even know they was there.

21 Q. So you don't know if you signed any statements?

22 A. I don't know whether I did or not.

23 Q. Now, was Officer Skinner the first -- I mean, I'm  
24 sorry, Detective Ramsey, was he the first police officer  
25 that you talked to about this?

1 A. At Gaffney hospital, that's the first hospital they  
2 took me to, and I do remember him coming in there briefly.  
3 I remember him coming in there briefly.

4 Q. And do you recall telling him that the defendant  
5 stabbed you and suffocated you to the point that you fell  
6 unconscious by holding your face down into a padded futon?

7 A. At some point or time maybe I did say that that way,  
8 but I don't know if I said it in that order or not.

9 Q. And did you say it that at that point he raped you  
10 vaginally and anally?

11 A. I remember telling people that I was raped this -- from  
12 the front of me laying on my back. And then I remember I  
13 passed out and then I came back to and I remember he was  
14 raping me from -- but I can't tell whether it was -- if  
15 he -- when he was raping me from behind, sir, I don't know  
16 if it was -- in what part it was he was raping.

17 Q. Okay. But you told Detective Ramsey that at the time  
18 that you passed out or you fell unconscious, at the point  
19 that you became unconscious, that he raped you vaginally and  
20 not anally?

21 A. I was unconscious and I come to and he was raping me.

22 Q. Okay. And then at that point when you came back, you  
23 gained consciousness, you said he grabbed a power cord from  
24 a laptop charger --

25 A. No.



1 Q. -- and tried to strangle you.

2 A. The power cord went first. He choked me with the cord  
3 first. Then I became unconscious. And then when I came to,  
4 then he was raping me.

5 Q. So Detective Ramsey's notes are wrong?

6 A. I don't know what order he put them in. A lot happened  
7 to me that night, you know. I was -- I tried to be  
8 suffocated on the couch, but that was before the choking of  
9 the cord.

10 Q. But you told Detective Ramsey that after being raped  
11 and coming back, regaining consciousness, it was at that  
12 point that he tried to strangle you with a cord, a computer  
13 cord?

14 A. That's not what happened, and I don't know that I told  
15 him that. I'm telling you what happened was he choked me  
16 with a computer cord. I passed out and I came to and he was  
17 raping me then.

18 Q. Now, also that night you talked to the hospital staff,  
19 is that correct?

20 A. At Gaffney --

21 Q. Right.

22 A. -- and at Spartanburg, yes, sir.

23 Q. I'm just talking about the one at Gaffney.

24 A. Okay.

25 Q. Now, they interviewed you about what had happened in

1 order so they could best treat you, is that right?

2 A. They asked me questions of what happened to me.

3 Q. Okay.

4 A. And I don't know my condition at that time, whether I  
5 was going in and out of consciousness, but I do remember  
6 them asking me questions about what happened to me.

7 Q. Okay. Do you remember telling them that Scott was at  
8 your house that night and that he started assaulting you  
9 around 11:30 p.m.?

10 A. That time was -- I don't know if it was 11:30, or a  
11 little bit before 11:30, but that's when the assault took  
12 place, but I --

13 Q. And that you told them that he tried to smother you in  
14 the couch.

15 A. He did.

16 Q. And that he tried to choke you with a computer cord and  
17 then he stabbed you in the left breast with a steak knife.

18 A. No, sir, the stabbing was the first thing that happened  
19 to me. The stabbing was the first. Then he tried to break  
20 my neck. Then he tried to choke me with his hands. Then he  
21 tried to suffocate me. Then he tried to choke me with his  
22 hands again, and then he choked me with the computer cord.  
23 Then he raped me.

24 Q. And then you told them that after you were stabbed,  
25 that your nephew raped you vaginally and anally?

1 A. The stabbing took place and the raping took at the last  
2 part of the attack.

3 Q. Okay. So --

4 A. I don't know what -- I don't know.

5 Q. So --

6 A. I don't know what they wrote down.

7 Q. The official report -- how you are describing things to  
8 Detective Ramsey is different from what you told the jury  
9 today.

10 A. I don't know what I said. I can't even remember what I  
11 said to him, sir.

12 Q. And that's still different than what you told the  
13 physicians that were going to treat you.

14 A. I don't know what the physicians said. I don't know.  
15 I don't know everything that was said.

16 When I said it, how I said it, what condition I was in.

17 Q. And when they were filling out the transform form --  
18 the transfer form to send you to Spartanburg Regional,  
19 didn't you tell them that your nephew tried to kill you? He  
20 assaulted you with a computer cord, tried to choke you with  
21 a cord, smothered her in the couch, stabbed her with a steak  
22 knife, and then sexually assaulted you?

23 A. He did all those things. I don't know if I told them  
24 that that's the order they happened in, but -- I don't know  
25 what order I told them that it happened in, but all those

1 things occurred, but I don't know how I told them at that  
2 time under the condition I was in.

3 Q. Would you describe that knife for me again?

4 A. It was kind of a cheap knife. It had a metal blade and  
5 a plastic handle, a black plastic handle.

6 Q. About how long was it?

7 A. The blade, the length of it?

8 Q. The whole knife.

9 A. It was probably maybe about that long. It wasn't very  
10 long. It was about that long.

11 Q. Okay. It has one of those molded plastics handles to  
12 it?

13 A. I don't know if it was a molded handle or not. It was  
14 just a cheap little plastic -- the handle was black and  
15 plastic.

16 Q. Okay. But the handle took about half of the length of  
17 the knife?

18 A. I don't know how far up the metal went in the handle.  
19 I don't know how far.

20 Q. But how long was the metal from the handle to the tip?

21 A. From the handle to the tip of the knife?

22 Q. Right.

23 A. About that long.

24 Q. That's how long you said the knife was.

25 What I'm asking is from the handle -- top of the handle

1 of the knife to the blade, how long was that?

2 A. Well, all I held in my hand was the blade, because the  
3 handle had already broken off. So if you added a handle to  
4 it, I don't know, the plastic handle may have been this  
5 long.

6 Q. All right. The knife you bought?

7 A. Well, it was in my house.

8 Q. I thought you said you bought it at the store.

9 A. No, I bought plastic -- plastic forks and spoons and  
10 stuff at Big Lots.

11 Q. But --

12 A. But this was a metal knife.

13 Q. But you are familiar with this knife?

14 A. Yes, because my son had left it at the house.

15 Q. And you cut cheese with the knife?

16 A. Yeah, I guess I did, or anything like if you cut toast  
17 or whatever.

18 Q. Well, you testified --

19 A. It was the only sharp object I had.

20 Q. You testified that you cut cheese with it.

21 A. Well, yeah.

22 Q. Okay. So now you know the knife that we are talking  
23 about. Show me how long the knife is.

24 A. The blade and the handle?

25 Q. Yes.

1 A. The handle and the blade.

2 Q. Okay. Was there a guard between the handle and the  
3 blade?

4 A. I don't think so.

5 Q. So you said the blade -- show me again how long.

6 A. I'm thinking it was about this long.

7 Q. Just the blade?

8 A. About this long.

9 Q. And how long is that?

10 A. I held it in my hand. It was about this long.

11 Q. How long -- give me an estimate of what that would be.

12 A. I don't know. You got a ruler? I'll measure it for  
13 you.

14 Q. I don't, but do you have an estimate?

15 A. No, sir. Just an eye estimate.

16 Q. Now, you told Spartanburg Regional that you stabbed  
17 Scott in the wrist and the leg, is that correct?

18 A. I tried to cut -- I slashed and I tried to cut at his  
19 arm, because his arms was hanging and I was going down again  
20 and I wanted to take the opportunity, so I slashed at him.  
21 And then I did try, because his leg -- he's standing up.  
22 I'm going down. I tried to stab at him. I don't know if I  
23 stabbed his leg or not, but I tried.

24 Q. On May 31st at Spartanburg Regional you talked to a  
25 consultant and you told the consultant that you were

1 assaulted by your nephew, stabbed in the chest, and he kept  
2 holding your head on the floor, was trying to break your  
3 neck, and that you were also raped. Do you remember telling  
4 the consultant that?

5 A. He picked up my -- he picked me up by my head and  
6 jerked my head. He was holding my head and he was jerking  
7 me like that. He did it twice. He didn't try to break --  
8 what I consider breaking your neck, he didn't try to do it  
9 by holding my head down onto the floor, no.

10 Q. All right. But do you recall telling this consultant  
11 that he pushed your head down on the floor and held your  
12 head down against the floor?

13 A. I don't recall saying that, because he held my head  
14 against the couch, and tried to choke my throat, and tried  
15 to break my neck. But, no, I don't remember saying he held  
16 my head down onto the floor.

17 Q. So that would be wrong?

18 A. I don't remember saying that.

19 Q. But it didn't happen?

20 A. Uh-uh.

21 Q. On August 12th, 2009, when they are getting ready to  
22 discharge you, did you tell Dr. Thurston that you were  
23 physically and sexually assaulted by your nephew; that you  
24 were attacked from behind; that you were stabbed in your  
25 left chest; and that you were strangled and sexually

1 assaulted?

2 A. I don't remember the words from behind.

3 Q. That's the only time that you have ever said that you  
4 were assaulted from behind.

5 A. No, he didn't assault me from behind.

6 Q. So why did you tell Dr. Thurston that?

7 A. I don't remember saying that to Dr. Thurston.

8 Q. Okay.

9 A. Maybe I said he raped me from behind. That's the only  
10 thing -- the only way I would have said from behind if when  
11 he raped me that time from behind, but that's -- why would I  
12 say from behind except for the rape, but not -- when he  
13 assaulted me, or stabbed me, or whatever, it was always --  
14 it was to my face at that time.

15 Q. All right. Well, you testified about a sex protocol a  
16 little bit ago. Do you remember talking to that woman about  
17 what happened?

18 A. What woman?

19 Q. The woman that did the sex protocol.

20 A. I don't know what the word protocol means, but there  
21 was a lady that come at Spartanburg Regional that asked me  
22 did I want to do a rape test and I said yes. And she asked  
23 me had I been raped. And I'm sure I probably told her, but  
24 at the same time she was talking to me they was also making  
25 a hole in my side to drain the blood off my lung. I was in



1 a lot of pain and they undoubtedly must have give me  
2 something then at that time.

3 Q. All right. Do you recall telling --

4 All right. When the solicitor asked you about the  
5 protocol, you said that that happened. Did it happen or --  
6 did they come do the sex protocol on you or did they not do  
7 the sex protocol on you?

8 A. A lady did come and asked me from the rape wanted to  
9 know like how they -- did I want a rape test and whatever  
10 you call it and I said yes -- or you know where they do it  
11 when a woman has been raped.

12 Q. Well --

13 A. Take -- the sit there and --

14 Q. I'm confused as to why when the solicitor asked you  
15 about the sex protocol, you knew what she was talking about,  
16 but when I asked you about it, you don't know what --

17 A. What does protocol mean? What is protocol?

18 Q. I don't get to answer your questions. I'm sorry.

19 THE COURT: Well, you have got to clarify the  
20 question for her if you want her to answer it.

21 BY MR. SHEALY:

22 Q. Well, you said it was something where they come and  
23 talked to you about a rape anytime somebody gets raped?

24 A. Uh-huh, right.

25 Q. And that happened?

1 A. And she did. She come to Spartanburg Regional.

2 Q. Now, did you tell her that an assailant stabbed you in  
3 your left chest area with a four inch knife, the handle  
4 broke off, and that you cut the assailant's wrist and leg;  
5 that the assailant penetrated you in your vagina and anus  
6 several times; left in his green truck; she was able to shut  
7 and lock your door and get your gun?

8 A. I'm not going to say I said several times because I  
9 don't remember those words, and those words must mean  
10 something. I want to say exactly -- I woke up and he was  
11 raping me from -- I was on my back. And then I passed out  
12 and I came back to and he was raping me from behind, but I  
13 don't know if he was dping it one way or the other, what  
14 part. I just don't know. And then I think and I blacked  
15 out again, but I don't remember saying the word several  
16 times, sir.

17 Q. But you answered her questions as best you could?

18 A. The lady that came to Spartanburg Regional?

19 Q. Yes.

20 A. Yes, sir, I'm sure I did.

21 Q. Now, do you recall talking to a Lucille Whelchel?

22 A. At what point, sir?

23 Q. After this incident took place.

24 A. Like when she would come to the hospital, was I still  
25 in the hospital?

1 Q. Well, I'll ask you that. Do you recall talking --

2 A. I remember talking to --

3 Q. Who is Lucille Whelchel?

4 A. The sister.

5 Q. She's your sister.

6 Now, in fact, she's your older sister?

7 A. No, she's not my oldest sister.

8 Q. Not oldest, but older?

9 A. She's an older sister.

10 Q. Now, the first time that you talked to her about this  
11 incident, do you remember that?

12 A. No, sir, I can't remember the first incident that I  
13 talked to her about it. No, sir, I cannot.

14 Q. Do you recall telling her that Scott came in and sat on  
15 the couch and he was talking and asked to use the bathroom  
16 and he came back with a knife, pulled you off the couch and  
17 stabbed you?

18 MS. LESKANIC: Your Honor, may we approach?

19 THE COURT: Yes.

20 (Whereupon, the lawyers approached the bench for  
21 an off-the-record discussion)

22 MS. LESKANIC: Thank you, Your Honor.

23 THE COURT: You may continue.

24 BY MR. SHEALY:

25 Q. Do you recall telling her that on this first occasion

1 that -- well, that he asked you to use the bathroom and you  
2 let him go use the bathroom?

3 A. No, sir, I don't recall saying that, because he didn't  
4 ask to use the bathroom.

5 Q. And that when he came back, those things that I just  
6 mentioned to you took place; that he choked you, raped you,  
7 stabbed you, those sorts of things?

8 A. You are asking me did I tell my sister Lucille that  
9 this?

10 Q. Right.

11 A. Are you asking me that I told her that in these  
12 order -- in that order that you just said or something,  
13 or --

14 Q. Well --

15 A. I didn't -- I didn't say he asked to use the bathroom,  
16 because he didn't ask to use the bathroom.

17 Q. He did not?

18 A. He asked for a drink the water.

19 Q. Okay. That was your second time that you talked to her  
20 that you talk about the water. Do you recall that?

21 A. I don't recall everything that I said the first time,  
22 the second time, or the third time.

23 Q. Well, back to the first time. Did you ever hear tell  
24 that he was looking through your chest of drawers?

25 A. Uh-uh, no.

1 Q. That he didn't get to the last drawer, the bottom  
2 drawer, because that's where the gun was?

3 A. No, my gun was in the top drawer.

4 Q. We saw that from the picture.

5 A. Uh-huh.

6 Q. Do you recall telling your sister it was in the bottom  
7 drawer?

8 A. Uh-uh, I don't recall telling her it was in the bottom  
9 drawer. It never was in the bottom drawer.

10 Q. Now, on May 29th, or the evening of May 28th, you say  
11 Scott arrived around there around three o'clock?

12 A. No, sir.

13 Q. I'm sorry, around eleven o'clock --

14 A. Yes.

15 Q. -- at night?

16 A. It had to be maybe -- maybe ten, fifteen minutes after  
17 eleven, because -- my best of recall, because Seinfeld was  
18 on. I don't know how long it had been on, but it was just  
19 on.

20 Q. And how long had you been -- how long was he at your  
21 house before he left?

22 A. Well, I didn't -- all I know is about -- I can tell you  
23 about when he arrived and about how many minutes later  
24 before he started the attack. And then everything else that  
25 happened in between, I had no idea how much time had

1 elapsed. And then when I called 911, you just kind of got  
2 to fill in the blanks about when it started and when the 911  
3 call was made.

4 Q. All right. Well, let's talk about when Scott arrived.

5 A. Uh-huh.

6 Q. Now, is it true that you and Scott have had a sexual  
7 relationship since he was a teenager?

8 A. No, sir.

9 Q. Now, when he arrived at your house, were you dressed in  
10 bra and panties?

11 A. I was dressed in bra and panties and shirt and blue  
12 jeans.

13 Q. Were you dressed just in bra and panties?

14 A. No, sir, I was not.

15 Q. And was having sex your idea?

16 A. No, sir. No, sir.

17 Q. Why are you smiling?

18 A. Because it's just so weird. It's a weird thing to ask  
19 somebody. An aunt -- it's a weird thing to ask an aunt  
20 about a nephew.

21 Q. Now, do you recall Scott talking to you about your  
22 momma?

23 A. No, I remember bringing up one sentence about mother.

24 Q. Do you remember Scott accusing --

25 A. I don't remember Scott talking to me about it, though,

1 no.

2 Q. Talking about it was your night to stay with her the  
3 night she died?

4 A. No, I was with her when she died, yes, sir.

5 Q. And that he believed -- or that he told you that you  
6 let your momma die and didn't try to get help?

7 A. No. No, sir, I did not.

8 Q. Did you get angry at that?

9 A. No, sir, I didn't get angry because I didn't hear that.

10 Q. Something like that would make you very, very angry  
11 though, wouldn't it?

12 A. If somebody said that I let my mother die, yes, it  
13 would make me angry.

14 Q. Now, you said there is only one knife in your house?

15 A. Uh-huh.

16 Q. Now, isn't it true that you left and you got that knife  
17 and you attacked Scott?

18 A. No. No, sir, I did not.

19 Q. And that your first slash at Scott, you caught him on  
20 the side of his thumb?

21 A. I don't know where it actually hit. I was just -- I  
22 was going down and I reached up and I done like that, so I  
23 don't know where it hit. To this day I don't know where it  
24 hit.

25 Q. Scott was trying to knock your hand away, but you

1 sliced him?

2 A. No. No, sir, he wasn't trying to knock my hand away.

3 I don't even think he knew it was coming.

4 Q. And that's when he said "you cut me." That's before  
5 you were even stabbed.

6 A. No, this was after I was stabbed.

7 Q. And then y'all struggled over the knife? Do you  
8 remember him --

9 A. No, we never struggled over the knife.

10 Q. Do you remember him grabbing you by the wrist and  
11 trying to twist your wrist to get you to drop the knife?

12 A. No. No, sir. No, sir.

13 Q. Do you think --

14 A. No, sir, that never -- that never happened.

15 Q. He couldn't make you let go of the knife, could he?

16 A. No, that never happened, sir. I didn't --

17 Q. As a result of y'all struggling back and forth, the  
18 both of you, you holding onto the knife and him holding onto  
19 your wrist, that's how you would up getting cut, getting  
20 stabbed?

21 A. No, sir, that's not how it happened.

22 Q. He tried to turn it back and it went into you?

23 A. No, sir.

24 MS. LESKANIC: Objection. Asked and answered.

25 A. It didn't happen that way.



1 THE COURT: Overruled.

2 BY MR. SHEALY:

3 Q. At that point Scott tried to help you. Do you remember  
4 him trying to pour hydrogen peroxide in your wound?

5 A. No. No, sir, I don't remember that.

6 Q. You said something about hydrogen peroxide in your  
7 testimony.

8 A. Yes.

9 Q. You had, what, two bottles?

10 A. I was laying in the -- I was laying -- my son has mersa  
11 and we keep hydrogen peroxide and alcohol at my house  
12 because of that to treat any infection or insect bite that  
13 you might have to keep it from getting bad.

14 You see, I had peroxide there and I do remember it. I  
15 was laying on the floor. And he would pour it and get up,  
16 throw a rag down and use it to wipe it up, and I assumed it  
17 was the blood.

18 Q. Do you remember him pouring it on his thumb?

19 A. I don't remember that.

20 Q. Do you remember him trying to pour it on your chest?

21 A. No, sir.

22 Q. Do you remember him telling you he was going to take  
23 you to the --

24 Well, first off, he told you he was going to call 911,  
25 didn't he?

1 A. No. No. No, sir, that's not the way it happened.

2 Q. And he took your phone to call 911?

3 A. I was trying to call 911 myself when he took my phone  
4 away from me.

5 Q. But actually it was Scott, and you knocked the phone  
6 from his hand?

7 A. No. No, sir, that's not it. It was my phone, and, no,  
8 it didn't happen that way.

9 Q. Now, he promised you he wouldn't call 911 if you would  
10 go to the hospital with him, didn't he?

11 A. No. No. No, sir, that did not happen that way. There  
12 was no promise, no words like that spoken.

13 Q. And you laid on the floor. Now, you testified that  
14 that computer cord, the power cord to whatever -- I don't  
15 know if that's computer, but the power cord is what he hit  
16 you with?

17 A. That's what he choked me with. That's when he come  
18 down on my throat with.

19 Q. Now, isn't it true that when you were down on the  
20 floor, he got a computer wire, but not the power cord, not  
21 the power cord, but you got another wire and was messing  
22 with it? I'm not saying he put it around your neck or  
23 anything like that, but you were missing with it?

24 A. No, sir, I wasn't. I was immobile. I was unable to do  
25 anything except scoot around on my back by using my feet.

1 Q. And when Scott told you that he was going to put out --  
2 well, he wrapped his own hand in a towel, is that correct?  
3 Do you remember that?

4 A. I don't know. I don't remember that either.

5 Q. And when he told you he was going to get the truck  
6 ready to take you to the hospital, he meant that he was  
7 going to put a towel on the seat of his truck?

8 A. I never heard those words, so -- I never heard nobody  
9 say that, nothing like that.

10 Q. And then when he came back, you had locked the door and  
11 you shot through the door intending to shoot him?

12 A. When I heard him go out the door, I heard the door  
13 close, I looked over and seen the bloody towels, the rags,  
14 whatever they were, they were gone, and -- they had been in  
15 the corner. They had been in a corner and they were gone.  
16 I reached up. I was still laying on my back, reaching up on  
17 my back and tried to reach the dead bolt.

18 Q. All right. I'm going to show you State's Exhibit 15.  
19 Do you remember State's Exhibit 15?

20 A. Yes, sir.

21 Q. All right. That's your blue jeans and your --

22 A. Underwear.

23 Q. Underwear.

24 Now, that -- is that still at your house?

25 A. You mean is it taken at my house?

1 Q. Yes.

2 A. That picture?

3 Q. That picture taken at your house?

4 A. Yes, I'm assuming, it is taken at my house. That looks  
5 like my flooring.

6 Q. Well, does that look like your futon up there on the  
7 top left?

8 A. Yes. Let's see. I'm looking at that white at the top  
9 there.

10 Q. Okay. And --

11 A. Yes, it looks like it's at my house, yes.

12 Q. And I'll show you what's been marked as State's Exhibit  
13 14.

14 A. Yeah.

15 Q. Do you know what that is?

16 A. Yes, sir, that's that click clack or that futon couch,  
17 yes. Yes.

18 Q. All right. Now, can you tell me -- and it's not shown,  
19 and you may not be able to do this, but can you tell me in  
20 relation to this futon where your pants and panties are on  
21 that first picture?

22 Well, they are obviously not on the front and they are  
23 not there --

24 A. It must be this way or something.

25 Q. On this front right corner?

1 A. I'm guessing so. I'm guessing so. I don't -- I didn't  
2 take them off, so I don't know where they are laying.

3 Q. Okay. But it here they were off, right?

4 I'm sorry, on that other picture they are off of you?

5 A. Oh, yes, of course, they are off of me, but I don't --  
6 I didn't take them off, so I don't know where they was  
7 laying on the floor.

8 Q. Okay. Now, the -- but you didn't have much furniture  
9 in the living room. You had a TV tray table there.

10 A. That little tray table and I had that.

11 Q. And then that's not what the TV is on, though, is it?

12 A. Oh, no. You go in the next little room right there and  
13 I had a chest of drawers sat catty corner, and I had that TV  
14 sitting on it kind of catty corner so I could put my head  
15 like where the remote is or sit there, and I could look  
16 right down the -- right down that little hall and that  
17 little doorway and I could see my TV.

18 Q. Okay. So in this whole room you have the futon, you  
19 have the tray table. What else do you have?

20 A. Well, small or big? I mean, are you talking about  
21 furniture-wise?

22 Q. Well, anything.

23 A. I'm thinking -- I'm thinking that was the only  
24 furniture I had in there. I'm not sure, but I'm thinking  
25 that's the only furniture I had in there.

1 Q. Did you have a carpet there?

2 A. No, no, no carpet.

3 Q. All hardwood floors?

4 A. Yeah, it was that laminate flooring.

5 Q. Now, it's your testimony that Scott used towels to try  
6 to clean up, is that correct?

7 A. Yeah, he would pout stuff and wipe it up and take --  
8 some -- I don't know if it was towels, or my clothes, or  
9 what. He would go back -- he would go out of the room and  
10 come back with something and then he would wipe it with his  
11 foot. He kept going out and coming back in and going back  
12 out and coming back in.

13 Q. Okay. Now, the -- but he took all these bloody towels,  
14 all these cleaning utensils or cloths and took them out the  
15 door and you never saw them again?

16 A. I never saw them again.

17 Q. Why did he take those?

18 A. I don't know why he took them. I mean, he took them  
19 and then he came back.

20 Q. Right.

21 A. So --

22 Q. But he didn't take -- if he wanted to hide the stuff,  
23 he didn't take the most incriminating evidence of all.

24 A. That couch?

25 Q. No, the -- well, that would have been a nice thing to

1 take, too. He could have put it in his pickup truck,  
2 couldn't he?

3 A. Yes.

4 Q. The panties and the blue jeans.

5 A. Okay. You are almost asking me what I think happened.  
6 I think he took the bloody towels.

7 MS. LESKANIC: Your Honor, objection.

8 A. And I think he was going to come back after me.

9 THE COURT: Overruled. Go ahead.

10 A. And then maybe he was going to come back after the  
11 bloody panties and pants and me. You know, I don't know why  
12 he left them there. And then when I shot the gun, he took  
13 off before he could get them. I don't know. All right.

14 BY MR. SHEALY:

15 Q. All right. After he left, did you try to take a soapy  
16 solution from your kitchen, mix it with water? In that  
17 little glass right there and try to clean up your --

18 A. No, sir, there is no way.

19 Q. And most of that is just wet from the water, isn't it?

20 A. No, sir. If I had had any energy, I would took care of  
21 myself. I could have cared less about that.

22 Q. But there are some stains that's not even touched.

23 A. I don't know. I can't figure that out either.

24 MR. SHEALY: Excuse me just a moment, Your Honor.

25 (Off the record)

1 (Back on the record)

2 BY MR. SHEALY:

3 Q. What was your last statement? You said you don't know  
4 what happened?

5 A. No, I don't know why he didn't try to clean up those  
6 spots either.

7 Q. There is a lot of questions about that. Why even  
8 bother to do that?

9 A. I know.

10 Q. And he took the dirty -- the bloody towels and left the  
11 bloody clothes.

12 A. Uh-huh. Well, on his way again, and I'm just  
13 speculating, is he was going to come back after them and  
14 then I pulled the gun out and shot and he left before he  
15 could get them.

16 Q. Or he was coming back and take you to the hospital  
17 after he fixed the towels.

18 A. (No response).

19 Q. That's also valid speculation, isn't it?

20 A. Well, that's -- that's you, you know, but --

21 Q. And just to make one last thing clear, he stabbed you,  
22 broke the handle off, you reached in and pulled the blade  
23 out?

24 A. He stabbed me and kept pushing and pushing. And I  
25 don't know, and then the handle broke off in his hand, and



1 he opened it up and I got my hand in between this, pulled  
2 the blade out and pushed him off of me.

3 Q. Okay. And only after all this cutting went on was  
4 there any sex?

5 A. The stabbing took place first and the rape took place  
6 last.

7 MR. SHEALY: Thank you, Your Honor. That's all I  
8 have.

9 MS. LESKANIC: No redirect, Your Honor.

10 THE COURT: You may step down.

11 We are going to take a short break. I'll ask you  
12 the jury to please go to your jury room and do not discuss  
13 the case in any fashion. I'll bring you back after that  
14 short break.

15 (The following takes place outside the presence of  
16 the jury panel)

17 THE COURT: Court is in recess for fifteen  
18 minutes.

19 (Whereupon, proceedings were recessed)

20 (Whereupon, proceedings were reconvened)

21 THE COURT: All right, bring the jury in please.

22 (The following takes place in the presence of the  
23 jury panel)

24 THE COURT: All right, Ms. Leskanic.

25 MS. LESKANIC: Thank you, Your Honor.

1                   The State calls David Clary.

2                   DAVID CLARY, having been first duly sworn,  
3 testified as follows:

4 DIRECT EXAMINATION BY MS. LESKANIC:

5 Q.   Your name is David Clary?

6 A.   Yes, ma'am.

7 Q.   All right. And where do you live, David?

8 A.   [REDACTED].

9 Q.   How long have you lived there?

10 A.   Probably about two years or so.

11 Q.   Are you employed?

12 A.   Yes, ma'am.

13 Q.   Where do you work?

14 A.   I'm the manager at the car wash on it's called Floyd  
15 Baker Boulevard.

16 Q.   Cruizers?

17 A.   Yes, ma'am.

18 Q.   Okay. Do you know Kay Spencer?

19 A.   Yes, ma'am.

20 Q.   How do you know Ms. Spencer?

21 A.   I just met her from living beside her and -- that was  
22 about it. I talked to her occasionally.

23 Q.   All right. Did you see her on the early morning hours  
24 of May 29th, 2009?

25 A.   Yes, ma'am.

1 Q. Would you please tell the jury what you saw and heard  
2 that night?

3 A. Well, I got woke up at about 1:30 and -- somebody was  
4 beating on the door, so I walked through the living room and  
5 looked out the window. I saw a lady with a bloody shirt on  
6 and everything, so I cracked the door, you know, because I  
7 didn't know what was going on, and she was like "help me, I  
8 have been stabbed and raped." And she is like "help me, he  
9 is coming back to kill me," or something like that.

10 Anyway, she said -- I can't remember what she said  
11 about a phone or something, but I knew I needed to call 911,  
12 so I went and grabbed the phone real quick and handed it  
13 back to her and she went ahead and called them. And she was  
14 sitting on my front porch steps, so -- but she was still  
15 like "help me." You know, like "he's coming back to kill  
16 me," so I ran back inside.

17 MR. SHEALY: Objection to the hearsay as to what  
18 she said.

19 THE COURT: Overruled. She's already testified.

20 A. Anyway, I ran back inside and grabbed the baseball bat  
21 and a flashlight and cut on all the lights and the flood  
22 lights and then ran back outside. And then I told her I was  
23 like "I got a baseball bat now," or whatever, and then she  
24 handed me the gun. And so I went -- I just sat outside on  
25 my porch. And by that time she was laying on the ground in

1 front of the steps.

2 I remember her saying his name, or whatever. She said  
3 Donald Scott Jones, but I can't remember exactly when she  
4 said it, or whatever, but she seemed to be going like in and  
5 out of consciousness when she was laying on the ground, and  
6 that's about it. And I just held the gun there until the  
7 first police officer got there, and that's about it. That's  
8 about it right there.

9 BY MS. LESKANIC:

10 Q. Okay. What was she wearing when she got to your house?

11 A. It was like a bloody shirt. It looked like a nightgown  
12 to me, but, I mean, I really don't know exactly what it was,  
13 but it might have been just like a big shirt, but I guess it  
14 was a shirt, you know.

15 Q. Did she ever anything on the bottom?

16 A. Not that I know of.

17 Q. How did she appear to you?

18 A. I didn't even recognize her at first when she came to  
19 the door. I don't know if it's from everything that  
20 happened to her, or what, but I didn't even recognize her at  
21 first until I got outside, really, and that's about it right  
22 there.

23 Q. All right. Okay. I think that's all the questions  
24 that I have, David. If you would, please, answer any  
25 questions that Mr. Shealy may have.

1 CROSS EXAMINATION BY MR. SHEALY:

2 Q. Mr. Clary, when she came to your door, did you see the  
3 gun right off, or --

4 A. No, sir, I didn't see the gun right off.

5 Q. How did she hand you the gun?

6 A. It was just -- she just handed it to me pretty much. I  
7 mean, she was sitting on the steps and maybe that's why I  
8 didn't see it, but once I came out with the baseball bat and  
9 the flashlight, she handed me the gun. And that's when I  
10 sit down on the steps and she wouldn't lay down on the porch  
11 or whatever.

12 Q. Okay. And you live at [REDACTED], not [REDACTED]?

13 A. [REDACTED].

14 Q. [REDACTED].

15 A. I hadn't changed my address, so I really live at [REDACTED]  
16 [REDACTED].

17 Q. Okay. So you lived at [REDACTED] --

18 A. That's my legal address.

19 Q. Oh, okay. That's an entirely different house than  
20 where you were at?

21 A. Right, right, right.

22 Q. Oh, okay, I'm sorry.

23 About how far was your house from her house?

24 A. Probably about thirty, forty feet, you know. Like from  
25 where she was to her house, to her front door, is

1       probably -- it's probably about forty feet.

2       Q.     Okay.   Just a moment, okay?

3               (Off the record)

4               (Back on the record)

5               MR. SHEALY: Your Honor, we have no further  
6       questions.

7               MS. LESKANIC: No redirect, Your Honor.

8               THE COURT: You may step down.

9               MS. LESKANIC: Your Honor, we would ask that Mr.  
10      Clary be excused.

11              THE COURT: He may be.

12              MS. LESKANIC: The State would call Sue Mobley.

13              SUE MOBLEY, having been first duly sworn,  
14      testified as follows:

15      DIRECT EXAMINATION BY MS. LESKANIC:

16      Q.     Ms. Mobley, will you please introduce yourself to the  
17      ladies and gentlemen of the jury?

18      A.     I'm Sue Mobley. I'm one of the ER nurses at  
19      Spartanburg Regional.

20      Q.     How long have you been a nurse?

21      A.     Since 1974.

22      Q.     And where have you worked during that time?

23      A.     Most of it at Spartanburg Regional.

24      Q.     Do you have a specific duty now at Spartanburg Regional  
25      Hospital?

1 A. I'm one of the SANE nurses.

2 Q. What does SANE stand for?

3 A. Sexual assault nurse examiner.

4 Q. And how long have you been a sexual assault nurse  
5 examiner?

6 A. Probably over at least twenty years.

7 Q. Okay.

8 THE COURT: Excuse me, please put that microphone  
9 down so you don't breath into it.

10 BY MS. LESKANIC:

11 Q. All right. And what exactly does it mean to be a  
12 sexual assault nurse examiner? What do you do?

13 A. You are basically called in on cases that are  
14 identified as either sexual assault or rape, and we go and  
15 collect the evidence off the victim.

16 Q. Do you have to have special education or training to  
17 become a SANE nurse?

18 A. Yes, you go through forty hours in one week of  
19 training. And then you do sixty hours afterwards of riding  
20 with law enforcement, going with Safe Homes Rape Crisis  
21 Coalition; also with the sexual assault response team,  
22 understanding what they do; also gaining clinical experience  
23 with pelvic exams. We have to do over ten.

24 Q. And is there any sort of yearly certification or  
25 continuing legal education that you have to go through?

1 A. Yes, you have to have twelve continuing educational  
2 units a year.

3 Q. Have you ever testified in court as an expert in  
4 performing sexual assault exams and sexual assault  
5 diagnoses?

6 A. Yes, sir.

7 Q. Have you testified in General Sessions Court?

8 A. Yes.

9 Q. Where has that taken place?

10 A. Spartanburg County courthouse.

11 Q. Okay.

12 MS. LESKANIC: Your Honor, at this time I would  
13 offer Sue Mobley as an expert in performing sexual assault  
14 exams and in diagnosing sexual assaults.

15 MR. SHEALY: No objection, Your Honor.

16 THE COURT: She is so qualified.

17 MS. LESKANIC: Thank you, Your Honor.

18 BY MS. LESKANIC:

19 Q. Did you perform a sexual assault exam on Kay Spencer on  
20 May 29th of 2009?

21 A. Yes.

22 Q. Could you please tell the jury in general what someone  
23 has to do in order to go through a sexual assault exam?

24 A. You first -- once I am called, I call Safe Homes so an  
25 advocate can come and be with the victim. I also call law



1 enforcement to make sure a report was made. And then we get  
2 the room set up and get the equipment and supplies together.

3 Q. All right. What type of equipment and supplies are  
4 needed to do a sexual assault exam?

5 A. Well, SLED has a special sexual assault kit that we use  
6 and collect the evidence in.

7 Q. Okay. Let me show you what's been marked State's  
8 Exhibit 1 and tell me if you recognize this?

9 A. Yes.

10 Q. Okay. And what is this?

11 A. This is the kit that SLED provides for us to collect  
12 the evidence in, envelopes, and document on papers that they  
13 provide for us.

14 Q. And is this sealed when you receive it?

15 A. Yes, you have to break the seal on the side.

16 Q. Okay. And is this the actual sexual assault kit, at  
17 least the box, that you used in this case with Ms. Spencer?

18 A. Yes.

19 MS. LESKANIC: Your Honor, at this time I would  
20 offer State's Exhibit 1 for admission into evidence.

21 MR. SHEALY: No objection.

22 THE COURT: It's admitted.

23 BY MS. LESKANIC:

24 Q. So you have the sexual assault kit. That's one of the  
25 supplies that you have that's provided by SLED.

1           And what other supplies or instruments do you need to  
2 perform the exam?

3       A.   Basically what you use is a mag light or equivalent  
4 Woods Lamp to identify any semen that's on the body.

5           You also get a culdoscope, which is used to visualize  
6 the area down in the pelvic area when you get ready to do --  
7 prepared to do the pelvic exam.

8       Q.   Okay. And what does -- what did Ms. Spencer or any  
9 other victim of a sexual assault have to do prior to the  
10 exam? Do they disrobe, or can you just explain the  
11 procedure what they have to go through?

12      A.   Yes, we go in and explain to the victim that they will  
13 have to disrobe and their clothes will be sent to SLED. And  
14 then they are disrobed on a white piece of paper. And that  
15 white piece of paper is folded and put back into the kit, as  
16 well as the clothes that are placed in the white bag that  
17 SLED provides.

18      Q.   What is the purpose of standing on the white piece of  
19 paper?

20      A.   To collect any kind of debris that may fall off the  
21 clothes.

22      Q.   So they are standing on a white piece of paper and then  
23 they have to disrobe completely in front of you?

24      A.   Yes, and then we put our hospital gown on them.

25      Q.   What's next in the exam?

1 A. We explain to her what we will be actually doing, and I  
2 will be collecting all swabs of her different orifices of  
3 her body, any cavities, any swabs of any area that she may  
4 have been licked or sucked or bit. We have different swabs  
5 in envelopes to collect that evidence also in the SLED kit.

6 Q. And do you know what swabs you had to do in this  
7 particular case, what orifices that you swabbed?

8 A. Yes, we have to do the buccal swab and the oral swab  
9 that's inside the mouth, which identifies her DNA; also if  
10 there is any DNA from the assailant.

11 Q. And how do you do a buccal swab?

12 A. You take the cotton applicator and swab on the inside  
13 of each cheek and place it into -- well, we air dry it  
14 first, because we have an air dryer that dries the swabs,  
15 because SLED says you got to completely have the swabs dry  
16 before you put them down in the envelope or they will adhere  
17 to the envelope and destroy your evidence.

18 Q. Okay. So you let it air dry and then you seal that for  
19 SLED?

20 A. Yes.

21 Q. What other types of swabs did you do on Ms. Spencer?

22 A. We swabbed some of the vaginal area. Where we did the  
23 pelvic exam, we swabbed the vaginal area, as well as the  
24 rectal area.

25 Q. And when you performed that exam, is it kind of like

1 going to a gynecologist where you lay back and you have your  
2 feet in stirrups?

3 A. In the lithotomy position with the feet up. And we  
4 explained to her, you know, just like she goes for the GYN  
5 annual exam, that she will be placed in that position so  
6 that we can collect the specimens from the vaginal and  
7 rectal area.

8 Q. Okay. Let me show you what's been marked as State's  
9 Exhibit 1-B and 1-C. Look at those and tell me if you  
10 recognize those.

11 A. Yes.

12 Q. And what are those?

13 A. That's the vaginal swabs I collected and also the  
14 rectal swabs.

15 Q. All right. Those are the ones that you collected from  
16 Kay Spencer on the 29th?

17 A. Yes.

18 Q. And what did you do with these swabs after collecting  
19 them?

20 A. We put them in the air dryer and let them dry  
21 completely, because those swabs were so saturated with body  
22 fluids that we had to dry them a little bit longer than the  
23 oral swabs.

24 Q. And then you placed those in the box to be sent to  
25 SLED?

1 A. Yes.

2 Q. Is that correct?

3 A. Yes.

4 MS. LESKANIC: Your Honor, at this time we offer  
5 State's Exhibit 1-B and 1-C for admission as evidence.

6 MR. SHEALY: No objection.

7 THE COURT: Excuse me for a minute. What is the  
8 number?

9 (Off the record)

10 (Back on the record)

11 BY MS. LESKANIC:

12 Q. Are there any other swabs that you did or any other  
13 evidence selected?

14 A. Well, SLED has -- what they call a pubic combing that  
15 they require us to do before we do perform the vaginal exam,  
16 and that's to comb any kind of pubic hair. And the purpose  
17 of that is to collect any kind of DNA evidence, whether it  
18 be assailant's hair or semen.

19 Q. All right. Now, how does that work? Is it just a  
20 combing, or do you actually have to pluck hairs, or --

21 A. Well, you do pluck head hairs and pubic hairs, and, of  
22 course, comb the pubic hairs for any kind of evidence.

23 Q. And you did that in this case?

24 A. Yes.

25 Q. Let me show you what's been marked as State's Exhibit

1 1-D and tell me if you recognize that?

2 A. Yes.

3 Q. And what is this?

4 A. That's the pubic hair combing.

5 Q. That you did on Kay Spencer?

6 A. Yes.

7 Q. All right. And what did you do with the pubic hair  
8 combing after performing that?

9 A. You fold the comb back up into the towel that's  
10 provided underneath the victim and you put it in an envelope  
11 and seal it and put it in the box.

12 MS. LESKANIC: Your Honor, at this time I would  
13 offer State's Exhibit 1-D for admission as evidence.

14 MR. SHEALY: No objection.

15 THE COURT: It's admitted.

16 BY MS. LESKANIC:

17 Q. Are there any other, I guess, tests or anything else  
18 that's performed, other than the swabbing every orifice,  
19 pulling hair head, pulling pubic hair head, doing the  
20 combings and doing a full exam?

21 A. Well, we collect the gray top tube for SLED for -- and  
22 that for toxicology analysis.

23 Q. And that is a blood draw?

24 A. Yes.

25 Q. Is that correct?

1 A. Yes.

2 Q. Let me show you State's Exhibit 1-A and tell me if you  
3 recognize that?

4 A. Yes.

5 Q. And what is that?

6 A. That is the gray top tube that SLED wants to identify  
7 her DNA.

8 Q. Okay. And this is what you --

9 A. DNA substance -- I mean toxicology substances as well.

10 Q. And you collected this from Ms. Spencer during the  
11 sexual assault exam?

12 A. That's correct.

13 MS. LESKANIC: Your Honor, at this time we would  
14 offer State's Exhibit 1-A for admission as evidence.

15 MR. SHEALY: Your Honor, I sort of missed that.  
16 Is that the blood, drew blood and that's what that is?

17 THE WITNESS: That's correct.

18 MR. SHEALY: Thank you.

19 THE COURT: It's admitted.

20 MS. LESKANIC: Thank you, Your Honor.

21 BY MS. LESKANIC:

22 Q. Going specifically now, Ms. Mobley, to the exam that  
23 you performed on Ms. Spencer, can you tell me what your  
24 results were on that exam, what you found during the pelvic  
25 examination?

1 A. There was quite a bit of blood and fluid in the  
2 outside, as well as inside the vaginal vault that we had to  
3 clean up and kind of swab before we could start doing the  
4 regular swabs for SLED's collection.

5 And there was a sort of like a -- at 6:30 on the clock  
6 is how we identify where the tears are, or abrasions. In  
7 this case she had an abrasion in the fossa navicularis and  
8 also the posterior fourchette, which is before you enter  
9 into the vagina.

10 Q. What does that indicate to you, based on your  
11 experience and training?

12 A. There was trauma.

13 Q. And this is to the vaginal area?

14 A. Right.

15 Q. Now, with all of the blood and fluid, did you find  
16 that -- where did you find that?

17 A. Inside the vaginal vault, as well as outside the  
18 vagina. And, of course, there was blood all over her leg to  
19 the -- when she was first presented to me.

20 Q. All right. What does the bloody drainage that you  
21 found, what does that indicate?

22 A. That there was some excessive penetration and trauma to  
23 that area.

24 Q. Did you find any evidence -- talking about the vaginal  
25 area, did you find any evidence as far as the rectal area?



1 A. There was blood all around the rectum. And, of course,  
2 there was feces also, because she evidently urinated and  
3 defecated on herself during the traumatic event.

4 Q. Okay. To have that sort of bloody drainage and also  
5 the injury that you noted, would that indicate to you in  
6 your expert opinion consensual sex or un-consensual,  
7 nonconsensual sex?

8 A. I would classify it as nonconsensual.

9 Q. Why is that?

10 A. Because with consensual you don't see that much trauma  
11 in the vaginal and rectal area, and you certainly don't see  
12 that much blood.

13 Q. If it appeared in the rectal area, would that have been  
14 consensual or nonconsensual?

15 A. Nonconsensual.

16 Q. And why is that?

17 A. Because the amount of debris and feces and blood that  
18 was on the victim.

19 Q. With the amount of blood, does that indicate to you  
20 whether there was any force used, or -- what would cause  
21 that type of bleeding?

22 A. Any kind of penetration, either with the penal shaft of  
23 the assailant or any kind of object.

24 Q. But normally, with normal sexual intercourse, you  
25 wouldn't expect to see a bloody drainage, is that correct?

1 A. That's correct.

2 Q. So what's different in this case from what I would call  
3 normal sexual intercourse or consensual sexual intercourse?

4 A. This was evident with this victim, I have not seen as  
5 bloody evidence in the vaginal vault, as well as the rectum,  
6 exhibited with this victim that was to this trauma. She was  
7 very tore up down there.

8 Q. Okay. That's all questions that I have. If you would  
9 please answer any questions that Mr. Shealy may have.

10 A. All right.

11 CROSS EXAMINATION BY MR. SHEALY:

12 Q. Ms. Mobley, do you have a copy of the protocol with  
13 you?

14 A. Yes, sir.

15 Q. Would you pull it out and take a look at it?

16 A. Yes, sir, I have got both copies.

17 Q. Okay. Now, is that your handwriting on this report?

18 A. Yes, SLED's.

19 Q. It's a SLED report. Is it entitled sexual assault  
20 examination protocol?

21 A. Yes, sir.

22 Q. And name of victim is Kay Spencer?

23 A. Yes, sir.

24 Q. All right. There is a brief summary of assault. Who  
25 wrote that brief summary of assault?

1 A. I did.

2 Q. And where did you get that information?

3 A. From the victim.

4 Q. Okay. And would you read it to the jury, please?

5 A. "Victim states assailant stabbed her in left chest area  
6 with four inch knife and handle broke off. Victim stated  
7 she cut assailant's wrist and leg. She stated assailant  
8 penetrated her vagina and anus several times. He left to go  
9 to his green Toyota truck. She was able to shut and lock  
10 the door and get her gun. Assailant took victim's cell  
11 phone and she had to go to the neighbor's house to dial  
12 911."

13 Q. All right. And then there is a series of questions  
14 under a section called, during alleged assault?

15 A. Yes, sir.

16 Q. Do you see that?

17 A. Yes, sir.

18 Q. And there is squares and various words and checks,  
19 usually it's yes or no, but sometimes it's parts of the  
20 body, is that correct?

21 A. Yes, sir.

22 Q. Okay. Now, where did the -- when you made a check  
23 mark, where did that information come from?

24 A. The victim.

25 Q. Okay. Now, on a question was "was there hand digital

1 penetration," what did she say?

2 A. "Yes. The hand."

3 Q. She said the hand? How do you know it's just the hand  
4 and not the digital -- digital is fingers, right?

5 A. Yes.

6 Q. And that response how, do you know if it's the hand or  
7 the fingers?

8 A. Based on what she told me, it was hand.

9 Q. All right. Well, you didn't strike out the word  
10 digital, did you?

11 A. No, sir.

12 Q. Okay. Now, there is also a question "was there  
13 masturbation"?

14 A. Yes, sir.

15 Q. Who was -- who had masturbation?

16 A. The assailant masturbated the victim, according to what  
17 she told me.

18 Q. And was the assailant -- did the assailant masturbate  
19 himself?

20 A. She stated no.

21 Q. Did she say he bit her, lick her, or kissed her?

22 A. No.

23 Q. Did he say -- what did he say -- what did she say about  
24 fondling of her?

25 A. Part of his hand was down there in the vaginal area.

1 Q. All right. Was it laying there, or was he doing  
2 something with it?

3 A. He was trying to introduce his penis into the vagina.

4 Q. That's what she told you?

5 A. (Shaking head yes).

6 Q. Did she tell you that she was unconscious at the time?

7 A. She was in and out of consciousness, because he had  
8 tried to use a computer cord earlier to strangle her.

9 Q. Now, the -- what was her response "was a lubricant  
10 used"?

11 A. She said there was so much blood, she didn't know for  
12 sure whether he did or not.

13 Q. Would you look at your form?

14 What did she say when you asked her was lubricant used?

15 A. She did not believe he used any lubricant.

16 Q. Do you see a box there that says "I do not believe"?

17 A. No, sir, it says no.

18 Q. And that's exactly what you checked?

19 A. Yes, sir.

20 Q. You didn't add all these other words?

21 A. No, sir.

22 Q. But you got a line there that you could identify or add  
23 comments to?

24 A. Yes, sir.

25 Q. But you didn't do that?

- 1 A. No, sir.
- 2 Q. You didn't add who masturbated who either, did you?
- 3 A. No, sir. It just says of victim.
- 4 Q. It just says the victim was -- well, it says --
- 5 A. A victim.
- 6 Q. Was there masturbation of victim?
- 7 A. Yes.
- 8 Q. Of assailant?
- 9 A. Of assailant, no,, because if it was of assailant, she
- 10 would have done it to him.
- 11 Q. Now, is it your testimony that you never see a bloody
- 12 drainage when you have consensual sex?
- 13 A. You will have some -- I have seen some.
- 14 Q. Okay. Now, something like the things that you have
- 15 described, would that be the result of not using a
- 16 lubricant?
- 17 A. They can be.
- 18 Q. Friction can cause these injuries?
- 19 A. Yes, sir.
- 20 Q. Even if it was consensual?
- 21 A. Yes, I have.
- 22 Q. Now, do you have any idea, based on your examination,
- 23 of at what point did she defecate on herself?
- 24 A. My -- and you want my personal opinion?
- 25 Q. No, I want your expert opinion.

1 A. Expert opinion is probably when he strangulated her,  
2 she probably lost incontinence of the bowels and the blood.

3 Q. But that didn't -- it doesn't necessarily mean that's  
4 when that took place?

5 A. Well, it could have took place when he also tried to  
6 introduce his penis into the vagina and also the rectum.

7 Q. She can defecate whenever she needed to defecate,  
8 couldn't she?

9 A. Somebody going through that trauma, I probably would  
10 too.

11 Q. Yeah. So she could have defecated on the way to  
12 neighbor's house, urinated on herself, whenever?

13 A. She could have. .

14 Q. Is that correct?

15 A. If she had a prolapsed bladder.

16 Q. And all of these items you sent to SLED for  
17 examination?

18 A. Yes, sir.

19 Q. Tell me, is there a difference between semen and  
20 spermatozoa?

21 A. Yes.

22 Q. What's the difference?

23 A. The semen is the liquid fluid that the sperm floats in.

24 Q. Okay. Now, you mentioned that you collect semen to get  
25 DNA?

1 A. Yes, sir. Well, we try to use the mag light to  
2 identify any semen on the body.

3 Q. Did you collect any semen?

4 A. We did not see any with the mag light.

5 Q. Okay. Did you collect any spermatozoa?

6 THE COURT: Don't blow into the microphone,  
7 please.

8 A. Based on what was the wet prep we presented to the lab,  
9 there was not any spermatozoa.

10 BY MR. SHEALY:

11 Q. Now, did you -- before you started your examination,  
12 did you review the records from Upstate Carolina?

13 A. We never had received the records from Upstate  
14 Carolina.

15 Q. You never received the records from --

16 A. I did not when I was called to the SANE exam.

17 Q. Well, before you do the protocol, wouldn't you want to  
18 see what's already been done?

19 A. No, I'm asking the victim. The victim is what I  
20 collect the evidence on. That's my job as a SANE nurse.

21 Q. So you don't -- you don't know what their examination  
22 in Gaffney would be?

23 A. All they told me that would affect my exam was that  
24 they washed the victim's vaginal and rectal area in order to  
25 insert a Foley catheter, which could wash away some of the



1 evidence.

2 Q. What if they told you that --

3 MS. LESKANIC: Objection, Your Honor, hearsay.

4 THE COURT: Is this information that you are  
5 relying upon in making your assessment and evaluation?

6 THE WITNESS: Is what part, sir?

7 THE COURT: The records from Upstate Carolina  
8 Medical Center.

9 THE WITNESS: The records I never saw until after  
10 the fact because --

11 THE COURT: Okay.

12 THE WITNESS: -- she was brought in as a trauma.

13 THE COURT: All right, sustain the objection.

14 BY MR. SHEALY:

15 Q. So you did see the records after the fact?

16 A. Yes, sir, after I collected the evidence.

17 Q. Were you able to reconcile what Upstate Carolina found  
18 and what --

19 MS. LESKANIC: Objection, Your Honor. May we  
20 approach?

21 THE COURT: Yeah.

22 (Whereupon, the lawyers approached the bench for  
23 an off-the-record discussion)

24 MR. SHEALY: May I have just a moment, Your Honor?

25 (Off the record)

1 (Back on the record)

2 MR. SHEALY: Thank you, Your Honor.

3 No further questions.

4 MS. LESKANIC: No redirect, Your Honor.

5 THE COURT: You may step down.

6 MS. LESKANIC: Your Honor, we would ask that she  
7 be excused. Thank you.

8 The State would call Officer Ronnie Anderson.

9 OFFICER RONNIE ANDERSON, having been first duly  
10 sworn, testified as follows:

11 DIRECT EXAMINATION BY MS. LESKANIC:

12 Q. Would you please state your full name for the jury?

13 A. Ronnie Anderson.

14 Q. And where are you employed?

15 A. Gaffney Police Department.

16 Q. How long have you been employed with the police  
17 department?

18 A. About seven years.

19 Q. And what are your current duties with the police  
20 department?

21 A. I am a patrol sergeant and canine handler for the  
22 police department.

23 Q. What were your duties back last year in May of 2009?

24 A. They were the same then. I was a supervisor on the  
25 road, as well as a canine handler then.

1 Q. Were you called out to a crime scene on May 29th of  
2 2009, at [REDACTED]?

3 A. Yes, ma'am, I was.

4 Q. Where is that residence located?

5 A. It's in City of Gaffney off of College Drive.

6 Q. Cherokee County?

7 A. Yes, ma'am.

8 Q. And what was the nature of the call that you received?

9 A. We were notified there was a stabbing at that address.

10 Q. And what did you do?

11 A. We -- myself and a couple other officers responded to  
12 the scene. Went to the address, didn't see anybody  
13 initially, and we noticed that she was up -- the next house  
14 up we noticed that there was a female there. Officer Sands  
15 and myself proceeded to that address.

16 Mr. Clary had a weapon at the scene, which I secured  
17 right away. We noticed Ms. Spencer was lying there on the  
18 ground.

19 Q. How did she appear?

20 A. She appeared to me to be unconscious. She was bloody.  
21 She had a white shirt on. Very disoriented at best.

22 Q. Did you notice what she was wearing or not wearing?

23 A. I noticed that she had a T-shirt on and that's all I  
24 could tell at that point.

25 Q. All right. Did you do anything else at that scene at

1       that time?

2       A.   At that particular time I did secure the weapon in the  
3       back of my vehicle. I went back and secured the weapon.  
4       Officer Sands stayed there.

5               And when I went back up, she was then talking somewhat,  
6       and at that time she identified Mr. Jones as being the one  
7       that attacked her and gave us the physical address of where  
8       he lived at.

9               At that time Officer Fuller had also arrived and I  
10      advised Officer Fuller to go to that address and try to  
11      locate him on West O'Neal Street.

12     Q.    So y'all went immediately from talking with Ms. Spencer  
13      to his address?

14     A.    Yes, ma'am, shortly after our arrival I did send  
15      Officer Fuller there to try to locate the vehicle and the  
16      person.

17     Q.    Were you given a vehicle description by Ms. Spencer?

18     A.    Yes, ma'am, it was a -- I don't remember the color, but  
19      it was a Toyota pickup truck that she advised us of.

20     Q.    Did you, in fact, go to the home on O'Neal Street where  
21      he was staying?

22     A.    I did.

23     Q.    And did you see a vehicle there that she described?

24     A.    I did. It was parked in the driveway.

25     Q.    Okay. What did you do when you arrived at that

1 residence?

2 A. When I arrived at the residence, Officer Fuller was  
3 already there. The father was -- he had asked the father if  
4 he was there. He said he wasn't sure.

5 I went to the door where Officer Fuller was still  
6 standing. The mother, Mr. Jones mother, had came to the  
7 door and I asked if he was there. And she stated that she  
8 didn't know for sure, but she thought he may be in the  
9 shower, at which point she invited us into the residence.

10 Q. All right.

11 A. And we went into the residence, Officer Fuller and  
12 myself, and we stood at the bathroom door. As he exited the  
13 bathroom, that's where I first made contact with him. I  
14 advised him of who I was and told him that I was there  
15 investigating a crime, and at that point I did advise him of  
16 his Miranda Rights.

17 Q. Okay.

18 A. Once I advised him of his rights, I did not ask him any  
19 questions. He then looked at me and Officer Fuller and said  
20 "I hope the bitch is dead."

21 Q. And could you tell when he came out of the bathroom if  
22 he had, in fact, just taken a shower?

23 A. Yes, ma'am, his head and body was still somewhat wet.

24 Q. And did you question him further after he made that  
25 statement?

1 A. No, ma'am. He was placed in investigative detention  
2 and held there until Detective Ramsey arrived on the scene.

3 Q. And you hadn't asked him any questions at the point  
4 that he made that statement?

5 A. No, ma'am, I did not.

6 Q. Do you know, Officer Anderson, what time you arrived at  
7 the home on West O'Neal Street, approximately?

8 A. I don't have the incident report in front of me. I  
9 think it was probably a matter of ten or fifteen minutes  
10 after we received the call, approximately.

11 Q. Okay. If it was during the -- the 911 call, I believe  
12 Mr. Clary testified that he had a knock on his door  
13 somewhere around 1:30 in the morning?

14 A. Okay.

15 Q. So based on your response time, receiving that call and  
16 getting requested at O'Neal Street, do you feel comfortable  
17 estimating approximately what time you would have been at  
18 his home when he was getting out of the shower?

19 A. Approximately twenty minutes would be the long end and  
20 maybe fifteen -- you know, ten to fifteen being the short.

21 Q. So probably before two a.m.?

22 MR. SHEALY: Objection, Your Honor. The solicitor  
23 is testifying.

24 THE COURT: Overruled.

25 A. Okay. I would say that we were definitely there before

1 two a.m..

2 BY MS. LESKANIC:

3 Q. That's all the questions that I have for you. If you  
4 will, please answer Mr. Shealy's questions.

5 A. Yes, ma'am.

6 CROSS EXAMINATION BY MR. SHEALY:

7 Q. Do you have a copy of the incident report?

8 A. I do. It's over at my seat.

9 Q. Well, let's see, I have got a copy here. Let's see if  
10 that's what you have got, okay?

11 A. Thank you.

12 Q. Is that what you have got?

13 A. Yes, sir.

14 Q. All right. Now, I see there is two reporting officers  
15 at the bottom. Did you write this report?

16 A. Officer Sands actually wrote the report.

17 Q. But you verified it?

18 A. Yes, sir.

19 Q. Now, I would like for you to look at that report. And  
20 down at the bottom, about two lines from the bottom -- from  
21 the narrative thing, there is a place there that's in  
22 parenthesis "see attached statement." Do you see that?

23 A. I'm looking now.

24 I do.

25 Q. Okay. Right after that, that tells where you got the

1 handgun. Where did you get the handgun from?

2 A. I received the handgun from Mr. Clary.

3 Q. Would you read the sentence, please?

4 A. "CV," which is complainant/victim, "had a handgun in  
5 her possession that Sergeant Anderson secured."

6 Q. Okay. So the gun was secured from the CV?

7 A. I can elaborate further, if you will allow me to.

8 We were notified by Mr. Clary that he had that -- that  
9 he got the handgun from her, so ultimately the handgun did  
10 come from her.

11 Q. So you didn't take the handgun from her?

12 A. No, sir, it was actually handed to me from him.

13 Q. So that report is a bit misleading?

14 A. Not actually, no, sir, it's not.

15 Q. At what point does it say that you got a handgun from  
16 Mr. Clary?

17 A. It's not notated as such.

18 Q. It says you got assistance from Mr. Clary?

19 A. Right. "CV had a handgun in her possession that  
20 Sergeant Anderson seized."

21 Q. Right.

22 A. Okay.

23 Q. So which is true?

24 A. I believe, depending upon how you want to look at it,  
25 both of are, sir.



1 Q. She didn't have the handgun.

2 A. She did at the -- if I believe Mr. Clary, and I did,  
3 she did have a handgun whenever she got to his residence.

4 Q. But that's not what you are talking about.

5 What I want to know is when you got to the residence  
6 who had the handgun?

7 A. Mr. Clary.

8 Q. Okay. But you reported it -- well, you didn't, but Mr.  
9 Sands, that you verified.

10 A. Okay.

11 Q. It says you took it from the CV?

12 A. Okay. I can't -- I can't tell you why he wrote it that  
13 way, unless he understood it the way I did.

14 Q. What did you notice when this guy came out of the  
15 shower?

16 A. I'm sorry?

17 Q. What did you notice about Scott when he came out of the  
18 shower?

19 A. That he appeared to be just out of a shower. He had --  
20 his hair was wet. He -- I think he had blue jean shorts on.  
21 I can't remember exactly. And he was standing there and he  
22 had cut on his hand.

23 Q. Was the cut covered?

24 A. I don't think so.

25 Q. Okay. So tell me where was the cut.

- 1 A. It was his left hand, if I recall accurately.
- 2 Q. Look down on the second page narrative.
- 3 A. Okay.
- 4 Q. About where Officer Fuller transported subject one,
- 5 down towards the bottom.
- 6 A. Okay.
- 7 Q. Okay. So read that and tell me --
- 8 A. It says right hand.
- 9 Q. So his laceration was on his right hand and y'all saw
- 10 fit to take him to the hospital?
- 11 A. Yes.
- 12 Q. Is that true?
- 13 A. That's fair, yes, sir. I recalled it wrong.
- 14 Q. All right. And were you involved in the search of
- 15 Scott's home?
- 16 A. I assisted.
- 17 Q. Are you aware that he gave a consent to search?
- 18 A. Yes, sir, I was.
- 19 Q. So he cooperated however he could, is that correct?
- 20 A. His parents did as well, sir.
- 21 Q. And you actually served -- well, someone served the
- 22 search warrant. Were you involved in that at all?
- 23 A. I -- I don't recall if I was involved in that or not.
- 24 Q. Fair enough. But do you recall any resistance at all
- 25 from Scott or --

1 A. I'm sorry, sir?

2 Q. Do you recall any resistance at all from Scott?

3 A. No, sir, I don't.

4 Q. Thank you.

5 MR. SHEALY: Thank you, Your Honor. That's all I  
6 have.

7 MS. LESKANIC: No redirect, Your Honor.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you, sir.

10 MS. LESKANIC: I ask this witness be excused.

11 THE COURT: He may be.

12 MS. LESKANIC: Thank you, Your Honor.

13 MR. BARNETTE: May we approach, Your Honor, for a  
14 second?

15 (Whereupon, the lawyers approached the bench for  
16 an off-the-record discussion)

17 MR. BARNETTE: I would like to call Officer Tommy  
18 Kennedy to the stand, please.

19 OFFICER TOMMY KENNEDY, having been first duly  
20 sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BARNETTE:

22 Q. All right, sir, please give your full name for the  
23 record, please.

24 A. Tommy Kennedy.

25 Q. And where do you work at, sir?

1 A. Gaffney City Police Department.

2 Q. And what's your position there, sir?

3 A. I'm the sergeant over training and crime scenes for the  
4 department.

5 Q. How long have you been with the department, sir?

6 A. Approximately twelve years.

7 Q. Back on May 29th of last year were you called to

8 [REDACTED]?

9 A. Yes, I was.

10 Q. And later on did Captain Segina also meet you there  
11 from the department?

12 A. Yes, sir. I called Captain Segina at approximately  
13 four o'clock in the morning, or I had Lieutenant Ramsey call  
14 him.

15 Q. And this location is in the City of Gaffney in Cherokee  
16 County?

17 A. Yes, sir, just off College Drive, right near the  
18 college.

19 Q. And when you arrived there, did you take pictures of  
20 the scene, or did you and Captain Segina take them together?

21 A. I took the photographs. However, when I first arrived  
22 at [REDACTED], I wasn't there just a couple of minutes  
23 and I was called away to the hospital to actually photograph  
24 the victim prior to going back to [REDACTED].

25 Q. The pictures that we have seen, and I think there was a

1 couple other pictures of Ms. Spencer, you took those  
2 pictures, is that correct?

3 A. Yes, I took those pictures.

4 Q. Okay. And did you also go to the defendant's  
5 residence, or his parents?

6 A. Yes, I went to his residence on East O'Neal Street.

7 Q. And did you also collect evidence and take pictures  
8 there?

9 A. Yes, I did.

10 Q. And you also took pictures of the victim's residence?

11 A. Yes, I did.

12 Q. Let me show you what's been marked State's Exhibit 20  
13 through 44 and see if those are pictures that fairly  
14 represent you what saw that night?

15 A. All right. (Witness reviewing pictures).

16 Yes. The only one that I didn't shoot myself was this  
17 picture.

18 Q. Okay.

19 A. For discretionary purposes I asked a nurse.

20 Q. Does that picture fairly represent what you saw?

21 A. Yes.

22 Q. Okay.

23 MR. BARNETTE: Your Honor, I would like to enter  
24 State Exhibits 20 through 42 into evidence at this time.

25 MR. SHEALY: Your Honor, If I could take a quick

1 look. I think I have looked at them, but --

2 THE COURT: 20 through what?

3 MR. BARNETTE: 20 through -- they are out of  
4 order, Your Honor. I believe there are 24. I believe  
5 through 44.

6 MR. SHEALY: , Your Honor, the bulk of them I have  
7 no objection, but I do have on Exhibit 34 and 35. I don't  
8 know -- I don't understand what it's trying to depict.

9 I know 41, I have no objection. I just want to  
10 take outside of the --

11 THE COURT: Let me see.

12 (Whereupon, the lawyers approached the bench for  
13 an off-the-record discussion)

14 THE COURT: All right. Mr. Shealy, I understand  
15 there is no objection to 34 and 35. You do have an  
16 objection to 41?

17 MR. SHEALY: Yes, Your Honor.

18 THE COURT: That objection is overruled.

19 MR. BARNETTE: Thank you, Your Honor.

20 THE COURT: Okay.

21 MR. BARNETTE: May I publish these to the jury,  
22 Your Honor?

23 THE COURT: You may.

24 BY MR. BARNETTE:

25 Q. Let me show what is State's 42. Is this a picture of

1 the bathroom at the defendant's residence?

2 A. Yes, it is.

3 Q. And did you go in the bathroom in this case, sir?

4 A. Yes, sir, I did.

5 Q. And these -- this item right here, are these sandals  
6 that you collected?

7 A. Yes, sir.

8 Q. And let me show you State Exhibit 4. I know that you  
9 have looked at these before. Are these the sandals inside  
10 the box that you collected, sir?

11 A. Yes, sir.

12 MR. BARNETTE: Your Honor, I would like to move  
13 these into evidence at this time as State's Exhibit 4.

14 MR. SHEALY: Assuming that the sandals are in the  
15 box, Your Honor, I have no objection.

16 MR. BARNETTE: They are. I can open them, if you  
17 would like.

18 THE COURT: You have not seen them before now?

19 MR. SHEALY: I have seen the picture of them. I  
20 knew that they were collected and they have been tested, so  
21 I have --

22 THE COURT: 4 is a pair of sandals collected.  
23 It's admitted.

24 MR. BARNETTE: Okay. Yes, sir, thank you.

25 BY MR. BARNETTE:

1 Q. And in there did you find -- I'll show you State  
2 Exhibit No. 43. Is this the sides of the bathtub in that  
3 bathroom?

4 A. Yes, sir.

5 Q. And did you swab one of those spots, sir?

6 A. Yes, sir.

7 Q. And I'll show you State's Exhibit No. 44, this item  
8 here. Did you swab that area also, sir?

9 A. Yes, sir.

10 Q. And what did they appear to be to you?

11 A. They appeared to me to be blood.

12 Q. And let me show you State Exhibit 3.1 and 3.2. Was  
13 these the two swabs that you collected, sir, from those  
14 blood spots?

15 A. Yes, sir.

16 MR. BARNETTE: Your Honor, I would like to move  
17 these into evidence at this time.

18 MR. SHEALY: No objection, Your Honor.

19 THE COURT: They are admitted.

20 BY MR. BARNETTE:

21 Q. Were those collected into evidence and given to Captain  
22 Segina to take down to the State Law Enforcement Division,  
23 sir?

24 A. Yes, Captain Segina is our evidence technician, so any  
25 time that we get evidence, it's turned over to him.



1 Q. And did y'all search around the house to find that  
2 there was any bloody clothes, any bloody towels, anything  
3 around the residence there of the defendant's -- or his  
4 parents' house?

5 A. Yes, we searched the house itself. The bathroom had a  
6 large pile of clothes that we went through. The vehicle  
7 outside, the trash can outside. We did not find any of  
8 those items.

9 Q. Let me show you State's Exhibit No. 20. I'm trying to  
10 make it a little bit lighter so they can see it.

11 Let me do it this way. I'll do it a little faster.

12 Turn the lights back on, if you would, please?

13 If you would come on down here for me, please.

14 (Witness off the witness stand)

15 BY MR. BARNETTE:

16 Q. Let me show you State's Exhibit No. 20. Let the jury  
17 see it at the same time and I'll pass it down to them. Is  
18 that a picture going from the front door into the living  
19 room area?

20 A. It is.

21 Q. Let me show you State's Exhibit No. 21. Is this a  
22 picture --

23 MR. SHEALY: Objection, Your Honor. The solicitor  
24 is telling the police officer what it is and then the police  
25 officer is agreeing. The police officer took the pictures.

1 He should be able to tell us what it is.

2 MR. BARNETTE: I will be glad to do it that way,  
3 Your Honor.

4 THE COURT: Okay.

5 BY MR. BARNETTE:

6 Q. State's Exhibit No. 21, could you tell us what that is,  
7 sir?

8 A. Yes, sir. There were three rooms in the house. When  
9 you come off of [REDACTED], you enter into the front  
10 door.

11 Q. I'll try to put it up here --

12 A. You go through the living room area. A small middle  
13 room where there was a chest of drawers in the corner. And  
14 then you move into the kitchen.

15 The picture that he's referring to on this one is  
16 actually taken from the center room back into the living  
17 room area.

18 Q. Can you tell us what these items are, sir, that --

19 A. Yes, sir. The two large items in front of the doorway,  
20 one is a pillow that appeared to come off the futon.

21 The dark black item just to the upper side and to the  
22 right of the pillow is a Dell laptop computer.

23 Just to the left of the pillow is a power cord for the  
24 laptop computer.

25 To the left of that cord is the blue jeans and panties

1 in a wad right at the corner of the futon, I guess.

2 Q. Let me show you State's Exhibit No. 22. Would you  
3 please tell us what these items are?

4 A. These are the same items that I previously described,  
5 the Dell computer to the far left pillow.

6 Next to it, you come to the power cord. If you  
7 noticed, there is a little line right here to the far right  
8 of the power cord. That is actually a piece of broken  
9 eyeglasses.

10 And then to the upper right is the jeans and panties.

11 And on the bottom portion of the screen, the rest of  
12 the broken eyeglasses and the other part of the power cord.

13 Q. And what does the substance appear that is on the  
14 hardwood floor that was there?

15 A. There was a blood, and it appeared to be a soapy type  
16 solution the entire residence smelled of.

17 Q. State's Exhibit 23, is that just another picture of  
18 this area, but a different angle?

19 A. Yes, sir.

20 Q. State Exhibit 24, can you tell us what this is, sir?

21 A. Yes, sir. It's the blue jeans that were wadded up in  
22 the bulk. It appears to have a large stain on them.

23 Q. What color was that stain, sir?

24 A. The part that we could see here in this picture is it  
25 appeared to be blood.

1 Q. Showing you State's Exhibit No. 25. What is that a  
2 picture of, sir?

3 A. That was the underwear. That's how we saw it after we  
4 separated these garments.

5 Q. Okay. State's Exhibit No. 26, what is this, sir?

6 A. That is the blue jeans. The large dark splotches, the  
7 really dark splotches, appeared to be blood. The darker  
8 splotch there in the crotch area was urine.

9 Q. Could you smell it, sir?

10 A. Yes.

11 Q. State Exhibit No. 27, what does this appear to be, sir?

12 A. It's blood stains with swipe marks as if someone had  
13 tried to clean it up.

14 Q. State Exhibit No., 28, what is that, sir?

15 A. It's the biggest portion of the broken eyeglasses that  
16 had some blood spatter on the lens.

17 Q. State Exhibit No. 29, what is that, sir?

18 A. That is a pillow on the floor.

19 Q. What substance appears to be on that, sir?

20 A. Well, there is blood on that and there was also a soapy  
21 solution on it too.

22 Q. State Exhibit No. 30, what is this a picture of, sir?

23 A. The blood stains on the floor.

24 Q. Was there any like footprints or anything when ran  
25 through?

1 A. There was, and actually you are probably looking at my  
2 best shot at the laminate surface was giving me a lot of  
3 glare back on the camera, so the actual shoe impression  
4 didn't turn out. However, I did get a shot of the blood.

5 Q. State Exhibit No. 31, what is this, sir?

6 A. That is a bottle of hand soap in the sink of the  
7 kitchen. That's the farthest room all the way into the rear  
8 of the residence.

9 Q. State's 32, what's that a picture of, sir?

10 A. The same bottle of soap with the pop topped on it --  
11 the top popped on it, rather, and just a close-up of it.

12 Q. State Exhibit No. 33, what's that a picture of, sir?

13 A. That is a drinking glass. It had a soapy solution in  
14 it, and the solution had the same odor as the bottle soap in  
15 the sink and the rest of the house.

16 Q. State Exhibit No. 36, what is this, sir?

17 A. That's the chest of drawers in the center room with the  
18 television. The top drawer was open and there is a pistol  
19 holster in the top drawer.

20 Q. State Exhibit 37, what is that, sir?

21 A. That is Captain Mike Segina pointing out a bullet hole  
22 in the wall next to the front door of the residence.

23 Q. Later on did y'all go back and look at that again?

24 A. Yes, sir. This particular night we didn't have the  
25 power tools to actually go through this. This is a solid

1 wood wall. It's not drywall. So we went back, once we  
2 gained access to the tools and did cut the bullet out of the  
3 wall.

4 Q. State Exhibit 38, now what is this a picture of, sir?

5 A. That's a picture of -- a picture of the victim, Ms.  
6 Spencer.

7 Q. Did she appear to have something on her nose? It's  
8 hard to see it almost the way it is.

9 A. She has -- she has an oxygen feed through her nose.

10 Q. I might see it better if you are looking at it.

11 A. Oh, yeah, she got a big scuff mark, a smack on her  
12 nose.

13 Q. State Exhibit No. 39.

14 I'm going to show you State's Exhibit 40. Is that just  
15 another picture of the victim's neck in this case?

16 A. It is, but as you notice, the red ligature mark is just  
17 up under the chin and it's looking down to the side.

18 Q. State Exhibit No. 34, what is this, sir, a picture of?

19 A. It's a picture of the soapy solution. It was on  
20 everything.

21 Q. Okay. And State Exhibit No. 35, what's that a picture  
22 of, sir?

23 A. Well, we took a picture of this. It's the bottom of  
24 the Dell computer. Once you picked it up and turn it over,  
25 all the glistening that you see, all the -- there is a

1 wetness and bubbles from the soapy solution.

2 Q. If you would, sir, please have a seat.

3 (Witness back on the witness stand)

4 MR. BARNETTE: Your Honor, permission to go ahead  
5 and publish 38? I know it's hard for them to see it up on  
6 the screen, the victim's nose in this case.

7 Additionally, State's Exhibit No. 30, on the  
8 footprint. It's easier to see on this instead of up on the  
9 screen also.

10 And State Exhibit 22, which is easier to see also.  
11 I would like to pass that around too, Your Honor.

12 One moment, Your Honor, please.

13 (Off the record)

14 (Back on the record)

15 BY MR. BARNETTE:

16 Q. Let me publish State Exhibit 15. I will put this back  
17 on the screen briefly. Is this the way that you found the  
18 pants and the underwear?

19 A. It is.

20 Q. And how did they appear to be?

21 MR. SHEALY: Objection, Your Honor. The picture  
22 speaks for itself.

23 MR. BARNETTE: I think he can describe the  
24 picture. I think that's one thing that he got -- I think  
25 the officer can describe the picture, Your Honor.

1 THE COURT: He can.

2 Go ahead, officer.

3 A. It appeared to me that they had been forcibly removed.  
4 One leg was through a leg on the panties, and that  
5 particular leg was turned inside out. The other leg was  
6 still the correct side out, and they were just all wadded up  
7 on the floor.

8 BY MR. BARNETTE:

9 Q. Did you look at the zipper also, sir?

10 A. After we separated the two items, we turned them right  
11 side out. The jeans are female jeans with the zipper on the  
12 side, the elastic type band, and the zipper was all the way  
13 in the closed position.

14 Q. Let me show you State's Exhibit No. 41. What is this a  
15 picture of, sir?

16 A. That is --

17 Q. I'll try to angle it.

18 A. That's Ms. Spencer's back side, and it appears to have  
19 dirt and grit and fecal matter on it.

20 Q. All right.

21 MR. BARNETTE: I would like to pass these around  
22 and publish them to the jury at this time also, Your Honor.

23 BY MR. BARNETTE:

24 Q. Thank you, sir. If you would answer any questions Mr.  
25 Shealy may have for you.



1 A. Yes, sir.

2 MR. SHEALY: Your Honor, I will need to wait until  
3 the pictures circulate through the jury.

4 (Off the record)

5 (Back on the record)

6 MR. SHEALY: Your Honor, may I approach the jury  
7 and retrieve the exhibits?

8 THE COURT: Yes.

9 CROSS EXAMINATION BY MR. SHEALY:

10 Q. Officer Kennedy, on the Exhibit 41, the one of the --  
11 that you described as being the buttocks and having dirt and  
12 fecal matter on it, did you test that matter?

13 A. No. No, I did not.

14 Q. So you don't know what it was?

15 A. No, sir, that's just what it appeared to me to be.

16 Q. That's right. That's what it appeared?

17 A. Yes, sir.

18 Q. The -- on Exhibit 15, the one with the pants leg and  
19 the panties --

20 A. Yes, sir.

21 Q. -- intertwined, it's your discretion how it appeared to  
22 you, is that correct?

23 A. Yes, sir.

24 Q. Thank you.

25 Are you married?

1 A. I am.

2 Q. Do you ever pick up after your wife after she has taken  
3 off pants and her underwear at the same time?

4 A. Generally she picks up after me, but, yes, I have.

5 Q. Okay. I appreciate it.

6 Something like that is not uncommon, other than the  
7 zipper being zipped up?

8 A. Not completely. It could happen.

9 Q. Okay. Now, on State's Exhibit 22, you said that there  
10 were two power cords?

11 A. Actually -- I don't know how to describe it. I'm sure  
12 the younger jurors will understand, but there was a box in a  
13 plug that goes into the box, and then one end plugs in the  
14 computer and the other end plugs into the wall. So it  
15 actually comes in two pieces. The same cord, two pieces.

16 Q. Okay. I'm going to try to put up on this thing, but --

17 A. I understand.

18 Q. All right. This is what you are describing as a power  
19 cord that has the box and one end plugs into the wall and  
20 one end plugs into the computer?

21 A. That is correct.

22 Q. All right. What is this line right here? There is a  
23 second line. Is that the --

24 A. That's the --

25 Q. -- mouse, or what is that?

1 A. No, that's the other end of the same power cord.

2 Q. Did you seize those cords? Did you seize those cords?

3 A. Yes, we collected those.

4 Q. So they are in evidence? I mean, not in evidence here  
5 at court, but you have got it in your possession --

6 A. Yes.

7 Q. -- as evidence of the State. You are not the evidence  
8 tech?

9 A. Exactly.

10 Q. All right. You also testified that this was blood on  
11 the floor. It appeared to be smeared as if somebody was  
12 cleaning it up?

13 A. That's correct.

14 Q. It also appeared how it appeared if somebody was laying  
15 the floor and sliding around? The same smudges, right?

16 A. The swipe marks were in an arc pattern as if you were  
17 swinging your arm, because that's a natural movement. You  
18 will come from a parallel point on your body, go out to an  
19 extended point, so it give you that rainbow effect.

20 Q. Okay. But it could be caused other ways? For  
21 instance, someone's buttocks sliding in a rainbow effect  
22 there, correct?

23 A. Possibly. I'm not a physicist, so -- that's all  
24 possibilities.

25 Q. I understand that, but I want you to be -- you are not

1 a physicist when you talk about the --

2 A. No.

3 Q. --- rainbow effect of swiping it with a towel?

4 A. That's correct. It's just what it appeared to be.

5 Q. Right.

6 And here is another picture of the bloody floor. Do  
7 you know whose blood that is?

8 A. No, sir.

9 Q. All right. Now, did you take samples of that or that  
10 your area? Do you take samples and send it to SLED?

11 A. I generally -- I am the crime scene guy, so I do the  
12 collecting of evidence when we were at the scene.

13 Q. Did you collect that evidence to find out what it was  
14 and whose it was?

15 A. No. The blood on the floor, no, I did not.

16 Q. How about the blood on the panties?

17 A. No, we collected the panties.

18 Q. Yeah. Did you send a section to SLED, two sections to  
19 SLED?

20 A. No.

21 Q. You didn't, but somebody else might have?

22 A. Could be, yes.

23 Q. Okay. You talked about the wet marks on there and the  
24 soapy solution. Did you ever test it to see if it contained  
25 any hydrogen peroxide?

1 A. No, I did not. It didn't have the smell of hydrogen  
2 peroxide. It smelled like the soap bottle that was in the  
3 sink.

4 Q. Okay. He attempted to ask you -- well, what's hydrogen  
5 peroxide smell like?

6 A. It's got a different odor than soap. It doesn't --

7 Q. Does it have any odor at all?

8 A. Sure.

9 Q. Did you attempt to take any fingerprints off of that  
10 glass of soapy solution?

11 You can't see that. I'm sorry.

12 There you go. Off of that soapy solution?

13 A. No, I did not.

14 Q. Do you know if anybody did?

15 A. No, sir.

16 Q. Did anyone try to take prints off of this soapy  
17 solution -- or the soap. It's not even a solution. The  
18 soap.

19 A. We took the bottle of soap into evidence. I don't know  
20 that it was sent to SLED for fingerprinting or not.

21 Q. But it could have been?

22 A. It could have been, yes, sir.

23 Q. Now, the reason you were sending pieces of the jeans  
24 and the underwear to SLED, and the samples of the blood  
25 drops in the bathroom and that sort of thing, would be to

1 find out what it is and possibly even whose is it, is that  
2 correct?

3 A. That is correct.

4 Q. Test the fluids or whatever?

5 A. That is correct.

6 Q. All right. Now, how did you gain access to Scott's  
7 house?

8 A. His parents signed a consent to search form.

9 Q. Do you recall if Scott signed a consent to search?

10 A. I believe Scott was in jail at the time of it.

11 Q. Did you -- did you participate in taking the swabs from  
12 and blood samples from Scott?

13 A. Yes.

14 Q. Was he cooperative?

15 A. Yes, he was.

16 Q. Excuse me just a moment.

17 (Off the record)

18 (Back on the record)

19 BY MR. SHEALY:

20 Q. I'm going to hand you a document. Could you tell me  
21 what that document is?

22 A. That is a consent to search authorization.

23 Q. What's it a consent to search authorization for?

24 A. It appears to be the residence at [REDACTED]  
25 Street.

1 Q. And who signed the consent?

2 A. It looks to be Mr. Jones.

3 Q. Scott Jones?

4 A. That's what it says.

5 Q. Thank you.

6 A. I didn't actually take the consent.

7 Q. I understand. You were unaware of where this came  
8 from?

9 A. Exactly.

10 Q. Okay.

11 MR. SHEALY: Thank you, Your Honor. I have no  
12 further questions.

13 MR. BARNETTE: Just one question, Your Honor.

14 REDIRECT EXAMINATION BY MR. BARNETTE:

15 Q. Let me show you State's Exhibit No. 2, sir. I believe  
16 Mr. Shealy asked you about this. This is the blood sample  
17 obtained from the defendant in this case, Mr. Jones?

18 A. Yes, sir.

19 Q. And was that collected and sent to SLED for testing?

20 A. It was.

21 MR. BARNETTE: Your Honor, I would like to move  
22 this into evidence at this time.

23 MR. SHEALY: What is it?

24 MR. BARNETTE: It's the blood sample from Mr.  
25 Jones.

1 MR. SHEALY: Oh, I have no objection, Your Honor.

2 THE COURT: It's admitted.

3 MR. BARNETTE: Thank you, Your Honor.

4 THE COURT: You may step down.

5 THE WITNESS: Thank you, sir.

6 THE COURT: All right, ladies and gentlemen, we  
7 are going to recess for the afternoon.

8 Keep in mind my caution I have previously given  
9 you prior to excusing you for lunch. No discussions about  
10 this case with any person whatsoever, in any fashion  
11 whatsoever. Don't conduct any research. Don't do any type  
12 of any investigation. Do not allow yourselves to be exposed  
13 to any type of media coverage that might relate to the case,  
14 whether it be television, radio, or newspaper.

15 Have a good evening and please report to your jury  
16 room by 9:30 in the morning. 9:30 in the morning.

17 (The following takes place outside the presence of  
18 the jury panel)

19 THE COURT: Court is in recess until 9:30 in the  
20 morning.

21 Let me see y'all just a minute, please.

22 (Whereupon, proceedings were adjourned to May 26,  
23 2010)

24

25



1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF CHEROKEE ) IN THE COURT OF GENERAL SESSIONS

3  
4 THE STATE )  
5 -vs- ) TRANSCRIPT OF RECORD  
6 DONALD SCOTT JONES, ) 2009-GS-11-840  
7 DEFENDANT. ) 2009-GS-11-841  
8 ) MAY 26, 2010  
9 GAFFNEY, SOUTH CAROLINA

10 (VOLUME II)

11 B E F O R E:

12 THE HONORABLE J. DERHAM COLE, JUDGE. ; And a Jury.

13  
14 A P P E A R A N C E S:

15 KIM LESKANIC, ASSISTANT SOLICITOR  
16 BARRY BARNETTE, DEPUTY SOLICITOR  
17 ATTORNEYS FOR THE STATE

18 THOMAS SHEALY, ASSISTANT PUBLIC DEFENDER  
19 ATTORNEY FOR THE DEFENDANT

20 MICHAEL R. WATTS  
21 CIRCUIT COURT REPORTER  
22  
23  
24  
25

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1 (PROCEEDINGS, MAY 26, 2010)

2 (SLED DNA Report marked as State's Exhibit No. 46  
3 for identification)

4 THE COURT: Are you ready for the jury?

5 MS. LESKANIC: Yes, Your Honor.

6 THE COURT: All right, bring them in.

7 (The following takes place in the presence of the  
8 jury panel)

9 THE COURT: Good morning, ladies and gentlemen.

10 THE JURY PANEL: Good morning.

11 THE COURT: As you know, when we recessed  
12 yesterday the State had begun with their presentation of  
13 evidence, so we will continue with that presentation this  
14 morning.

15 Mr. Barnette.

16 MR. BARNETTE: Thank you, Your Honor.

17 May it please the court, I would like to call Mike  
18 Segina to the stand, please.

19 OFFICER MIKE SEGINA, having been first duly sworn,  
20 testified as follows:

21 DIRECT EXAMINATION BY MR. BARNETTE:

22 Q. If you would, sir, state your full name for the record,  
23 please.

24 A. Michael Segina.

25 Q. And where do you work at, sir?



1 A. I work at the Gaffney Police Department.

2 Q. And what is your position there, sir?

3 A. I'm a patrol captain.

4 Q. And how long have you been with the force, sir?

5 A. Eighteen years with the City of Gaffney.

6 Q. Are you also in charge of evidence also, sir? At one  
7 point was you in charge of evidence?

8 A. At this time, and for the last fourteen years, I have  
9 been the evidence custodian, which any evidence is brought  
10 to the station is turned over to me to be placed in a secure  
11 area within the police' department.

12 Q. Yes, sir.

13 Back on May 29th, 2009, was you contacted to go to  
14 [REDACTED]?

15 A. Yes, I was. I was called by Lieutenant Ron Ramsey with  
16 the Gaffney Police Department about 4:53 a.m. to come to [REDACTED]  
17 [REDACTED].

18 Q. And if you will tell the jury what you found once you  
19 got there, sir?

20 A. I was met there by Lieutenant Ramsey and Sergeant  
21 Kennedy. They walked me through the house. I noticed blood  
22 on the floor and on a couch in the living room.

23 There was a black Dell laptop computer on the floor.  
24 It was also had blood stains on it.

25 The cushions from -- or pillows from the couch were on

1 the floor and they also had blood stains on them.

2 There was an electrical cord from the computer on the  
3 floor, which also had blood stains on it.

4 There was a pair of blue jeans and a panties on the  
5 floor by the couch.

6 There was a glass of a liquid on the floor under the  
7 couch that had a smell of soap.

8 In the room beside the living room there was a chest of  
9 drawers that had an open drawn that contained an empty  
10 holster and a white rope.

11 There was a pair of blue jeans and panties that were  
12 lying on the floor. They had blood stains concentrated on  
13 one side, on the left side. One leg was inside out and the  
14 panties were rolled up in that leg of the pants, and both  
15 the pants and the panties had a smell of urine about them.

16 There was a clear liquid on the floor that had a soapy  
17 look with the bubbles. It was on the computer and the  
18 pillow also.

19 I located a bottle of --

20 MR. SHEALY: Your Honor, I wanted to object. This  
21 is all cumulative. We have already gone over everything.  
22 We have even looked at pictures of everything that was  
23 found.

24 THE COURT: Overruled.

25 BY MR. BARNETTE:

1 Q. If you will continue, please, sir.

2 A. We located a bottle of Macrel antibacterial soap that  
3 was sitting in the kitchen sink opened. The top was opened.

4 There was water on the floor in front of the kitchen  
5 sink.

6 We found no signs of forced entry into the residence.

7 The wet marks on the couch around the blood stains,  
8 they appeared to have been wiped.

9 The soapy solution was underneath the computer that was  
10 sitting on the floor, kind of a protected area.

11 The cushions on the floor by the computer had a wet  
12 soapy solution under it also.

13 During the walk-thru we found no metal -- no edged  
14 weapons anywhere in the house. We only found a plastic  
15 knife in the sink.

16 And we also found a bullet hole in the wall by the  
17 front door, plus a mark on the ceiling.

18 Q. As you were looking around, did you ever find any piles  
19 or anything of that nature, or anything like that?

20 A. No, we did not.

21 Q. Later on did you go over to the defendant's residence  
22 also, sir?

23 A. Yes, on 5-29, about 6:29 in the morning, we went to the  
24 [REDACTED] and we searched that apartment -- or  
25 excuse me, that residence.

1 Q. Did you find any bloody clothes there?

2 A. No, we did not.

3 Q. Did you find any bloody towels or anything there, sir?

4 A. No, we did not.

5 Q. And as evidence custodian do you collect or was  
6 evidence collected and given to you to put into evidence,  
7 holding until it was taken to the State Law Enforcement  
8 Division, sir?

9 A. Yes, it was.

10 Q. And did y'all collect a shirt that she was wearing that  
11 night, as well as the bra?

12 A. Yes, sir.

13 Q. I think it's been marked as State's Exhibit 6. Yes.

14 If you would, take a look at that, sir. Is that the  
15 shirt and bra that she was wearing that night?

16 A. Yes, it was.

17 Q. If you would pull it out for a second, sir, if you  
18 would.

19 (Witness off the witness stand)

20 BY MR. BARNETTE:

21 Q. If you would, hold it up, sir.

22 When you collect evidence, do you also examine and look  
23 at evidence too, sir?

24 A. Yes, we do.

25 Q. And obviously talking to the victim, looking at the

1 victim, she has a stab wound to her chest?

2 A. She did.

3 Q. And looking at the shirt, did you find a stab wound in  
4 the shirt?

5 A. Yes, we did.

6 Q. Would you show the jury where you saw the stab wound?

7 A. The shirt has been cut off of the victim, so if I was  
8 to be wearing the shirt, it would look like this. Of  
9 course, it's been cut down the middle. There is a little --  
10 on the left side right at the O in Gamecocks there's a small  
11 cut through the shirt and the numbers -- or the letters,  
12 excuse me.

13 Q. Is that consistent with where her wound was on her  
14 body?

15 A. Yes, it was.

16 Q. Okay. Put that back in, please.

17 (Witness on the witness stand)

18 BY MR. BARNETTE:

19 Q. And the jeans and the panties were also collected also,  
20 is that right?

21 A. Yes, they were.

22 Q. And I think you testified earlier they were found one  
23 leg inside out with the panties intertwined with the  
24 panties?

25 A. They were.

1 Q. And do you remember the zipper too, sir?

2 A. The zipper was in the up position or the zipped  
3 position.

4 Q. And once you collected all this evidence, at a later  
5 date was it taken to the State Law Enforcement Division for  
6 testing?

7 A. It was. On 6-24-09, at 12:58 p.m., it was delivered to  
8 the State Law Enforcement Division.

9 Q. And was it sealed in your presence before it was left  
10 at --

11 A. It was.

12 Q. And later on did you gather or receive this evidence  
13 back once the testing was done?

14 A. Yes, I'm the custodian. I'm responsible for taking it  
15 to SLED. And then once processing is done, picking it up  
16 and bringing it back to the police department and placing it  
17 again in our storage facility within the department.

18 Q. And then you brought -- you obviously brought this  
19 evidence over yesterday?

20 A. Yes, I did.

21 Q. And was it secured in that time from when you received  
22 it back until it was brought to court yesterday?

23 A. Yes, it's secured inside a room that's located inside  
24 the police department.

25 Q. Thank you.

1 MR. BARNETTE: Thank you, Your Honor. One moment.

2 (Off the record)

3 (Back on the record)

4 BY MR. BARNETTE:

5 Q. Please answer any questions that Mr. Shealy may have  
6 for you, sir. Thank you.

7 A. Yes, sir.

8 CROSS EXAMINATION BY MR. SHEALY:

9 Q. Detective Segina -- I'm sorry, Captain Segina, who gave  
10 you permission to search Scott's house?

11 A. When I went to [REDACTED] to search that  
12 apartment, we were given consent to search by the parents of  
13 that residence, the two individuals that were there at the  
14 time we arrived.

15 Q. But isn't it true that Scott Jones gave you permission?

16 A. No, I never saw Mr. Jones that morning.

17 Q. He wasn't there?

18 A. No, he was not.

19 Q. All right. I'm going to show you something titled  
20 consent to search authorization. Who signed that consent?

21 A. This consent was signed by D. Scott Jones.

22 Q. Donald Scott Jones?

23 A. Yes.

24 Q. Okay. So that gives permission to search what?

25 A. It was Donald Scott Jones giving the Gaffney Police

1 Department permission to search [REDACTED], a  
2 residence, but it is dated 5-29-09, at 3:17 a.m.. That was  
3 prior to my arrival.

4 Q. Okay. So the night of the incident Donald Scott Jones  
5 is cooperating with the police?

6 A. He gave consent to the police department to search his  
7 residence.

8 Q. And he never withdrew that consent?

9 A. Not in my presence he didn't.

10 Q. Now, do you have a list of the stuff that you took to  
11 SLED?

12 A. I have the laboratory request inventory sheets, yes.

13 Q. Okay. Did you send two batches?

14 A. Two?

15 Q. Or just one batch of evidence?

16 A. There was actually two times that evidence was taken;  
17 one on 6-24-09, at 12:58, and then again -- and then a later  
18 submission on 9-4-09, at 11:38 a.m..

19 Q. All right. Let me ask you this. Did you send the bra  
20 down to be processed?

21 A. No, the bra was not sent with the other evidence.

22 Q. The blue jeans?

23 A. Yes, they were sent.

24 Q. The panties?

25 A. Yes, they were sent.



1 Q. What did you ask to be done to the blue jeans?

2 A. We were asked for processing and DNA.

3 Q. DNA testing?

4 A. Yes.

5 Q. And did you ask -- when you say processing, what is  
6 that?

7 A. Processing the items for trace evidence, where they  
8 would look at the whole garment to find if there is anything  
9 on it of evidentiary value.

10 Q. Including what?

11 A. Including blood.

12 Q. Because you would want an expert opinion on whether or  
13 not that's blood?

14 A. That's correct.

15 Q. Because when you testified there was blood everywhere,  
16 that was your opinion, because you had been around blood,  
17 but you needed to get an expert opinion?

18 A. Yes, in my opinion what I saw in the residence that  
19 night appeared to be blood, but we sent the items to be  
20 tested to make sure that it was blood, and then a DNA of  
21 that blood.

22 Q. The blue jeans, you mentioned it had a zipper on the  
23 side. What did it have around the waist?

24 A. It was an elastic-type waistband, the stretchy  
25 material.

1 Q. The -- you seized a knife in the bathroom, is that  
2 correct?

3 A. Yes, there was a folding knife in a brown leather  
4 scabbard recovered.

5 Q. And Scott's parents told you that that couldn't have  
6 been used in the incident, because it was there all night?

7 A. I never spoke to the parents. I was conducting a  
8 search in the house.

9 Q. Well, did you send that in for processing?

10 A. Yes, one knife, a folding knife, and the brown leather  
11 scabbard was sent.

12 Q. All right. The what we believed -- or what you believe  
13 is blood on the floor, was that -- was swabs taken of that  
14 and tested?

15 A. Were there swabs of blood tested, or off of the floor?

16 Q. From the floor. Did you test the blood that was on  
17 the -- asked for processing of the blood that was on the  
18 floor?

19 A. No, we did not.

20 Q. Wouldn't that be important to know whose blood that  
21 was?

22 A. Yes, it would.

23 Q. But now we won't know?

24 A. The items that we have sent - the pants and the  
25 computer and the cord - were laying on the floor where the

1 blood was, and they also had what appeared to be blood  
2 stains on those, so that's what we sent.

3 Q. Okay. Now, the -- I mean, I may have misheard. Did  
4 y'all seize a towel at the scene? And whenever I'm saying  
5 that, at either scene.

6 A. Yes, there was a white towel seized.

7 Q. Were you present when the blood was taken from Donald  
8 Scott Jones?

9 A. No, I was not.

10 Q. In fact, you did send a vial of his blood down to SLED?  
11 I'm sorry to run you around like this.

12 A. It's no problem. I just want to make sure I'm on the  
13 right form.

14 Yes, on the June 24th submission of evidence to SLED,  
15 there was a blood standard from Donald Scott Jones taken  
16 down with other evidence.

17 Q. And there was also a blood standard of Kay Spencer?

18 A. Yes, that was made on the submission on June the 24th,  
19 along with other evidence.

20 Q. And that's necessary in order for the DNA to be  
21 processed? Identified?

22 A. I'm not a DNA person, but we do submit a standard from  
23 the victim and then from the possible suspect.

24 Q. At Scott's house, did you find what you believed to be  
25 blood?

1 A. Are you asking did I?

2 Q. Yes.

3 A. No, that was collected prior to my arrival.

4 Q. But, to your knowledge, blood samples were collected  
5 from there?

6 A. There were blood samples collected at that scene on [REDACTED]  
[REDACTED].

8 Q. Do you know why the bra wasn't sent to SLED?

9 A. We had sent the pants and the panties and we didn't  
10 feel there was a reason to send the bra, because the victim  
11 was wearing it. We knew who it belonged to.

12 MR. SHEALY: Excuse me just a moment, Your Honor.

13 (Off the record)

14 (Back on the record)

15 BY MR. SHEALY:

16 Q. Now -- all right. What is that in that picture? I  
17 don't want you to describe everything, but just what's in  
18 the scene there?

19 (Witness off the witness stand).

20 A. It's a photograph of the Macrel antibacterial soap that  
21 we located in the sink, and the top was open. It's a  
22 photograph of the evidence, where it was at when we found it  
23 prior to it being collected as evidence.

24 BY MR. SHEALY:

25 Q. Now, does that have a smooth plastic body, didn't it?

1 A. Yes, it did.

2 Q. Whose fingerprints are on it?

3 A. We did not fingerprint the item.

4 Q. Why not?

5 A. The soapy solution was all over it.

6 Q. Okay. This is a close-up of that. You are saying a  
7 soapy solution was all over that bottle?

8 A. Yes, from the run-over from the sides from where it was  
9 spilled out.

10 Q. Okay. So why didn't you take fingerprints off of it?

11 I'm familiar with liquid soap, but many fingerprints --

12 MR. BARNETTE: Objection, Your Honor. If he would  
13 like to ask a question, I think he can ask a question. He  
14 can't comment.

15 THE COURT: You don't get to testify, Mr. Shealy.

16 MR. SHEALY: Thank you, Your Honor.

17 BY MR. SHEALY:

18 Q. Have you ever had any experience with liquid soap?

19 A. I have washed my hands with it, yes, sir.

20 Q. Have you ever had it on the side of the bottle? When  
21 your fingers come in contact and pull them away, your  
22 fingerprint is there?

23 A. I'm sure that could be possible. I have never had that  
24 experience myself.

25 Q. Okay. All right. What is that? You can't hardly see

1 that, can you?

2 A. That is a picture of the soap under the couch in the  
3 living room with a drinking glass full of the soapy  
4 solution.

5 Q. Was that -- that glass was full, is that correct?

6 A. I can't really tell by the picture like that. I  
7 believe it was partially full. I don't believe it was to  
8 the top.

9 Q. Was that fingerprinted?

10 A. No, it was not.

11 Q. What in that room was fingerprinted?

12 A. We did not do any fingerprinting that day, that  
13 morning.

14 (Witness back on the witness stand)

15 BY MR. SHEALY:

16 Q. All these items you personally took down to SLED and  
17 turned them in?

18 A. Not all the items. There were several items that were  
19 collected that we did send to SLED, but not all the evidence  
20 that was selected that morning.

21 Q. Right. An example of what you didn't send would be the  
22 bra?

23 A. Repeat it, please.

24 Q. An example of what you didn't -- you collected but did  
25 not send would be the bra?

1 A. That's correct. The bra was collected, but it was not  
2 sent to SLED.

3 Q. Now, have you looked at this bra?

4 A. Yes, we did.

5 Q. Was there a hole in it?

6 A. No, there was not.

7 Q. There was not a stab to correspond to the Carolina  
8 shirt?

9 A. No, there was no hole in the bra.

10 Q. Now, you told us where in relation to the stab wound  
11 the shirt was. Now, if she was wearing that bra, would  
12 there be a corresponding tear in it?

13 A. If where the shirt was at, the bra was directly  
14 underneath it, there would have been a corresponding hole.  
15 But if the bra was not underneath the shirt in the area  
16 where it was stabbed, then, of course, there wouldn't be a  
17 hole.

18 MR. SHEALY: Thank you, Your Honor. No further  
19 questions.

20 MR. BARNETTE: Just a couple on redirect, Your  
21 Honor.

22 REDIRECT EXAMINATION BY MR. BARNETTE:

23 Q. Talking about the bra, whose bra was it?

24 A. It was Ms. Spencer's.

25 Q. So obviously it would be her blood on the bra?

1 A. Yes. We did not question whose it was or whose blood  
2 was on the bra, because it was taken off her at the -- I  
3 guess at the emergency room.

4 Q. And where was the stab wound? Is the upper part of the  
5 breast, or the chest area there?

6 A. I did not personally see the wound at the hospital, but  
7 from what it was described, it was high up on the chest.

8 Q. And like you said, if the bra was just sitting  
9 underneath the breast, or whatever, it would have been in  
10 that spot?

11 A. Again, if the bra would have been directly underneath  
12 the shirt at the point where the knife went in, then it  
13 would have left a hole. But if it was lower or off to the  
14 side, then it would not have been under the spot where the  
15 knife went through the shirt.

16 Q. But like you said, there is a knife wound in the shirt?

17 A. Yes, we found a single cut in the shirt on the left  
18 side of the shirt.

19 Q. Let's talk about fingerprints and whatever. Was there  
20 any question about who the two people was in that house or  
21 in that situation?

22 A. No, we knew that Ms. Spencer was at the house, and she  
23 identified Mr. Jones as the person who assaulted her. We  
24 didn't need to -- because we didn't feel that collecting  
25 fingerprints to prove identity was necessary. We had the



1 blood standards that we were taking also.

2 Q. He asked you about fingerprints and soap, water, things  
3 like that. Does this destroy fingerprints or get rid of  
4 them?

5 A. Yes, liquids, water, soaps, they can distort  
6 fingerprints or cause us to where we can't use the powders  
7 or the fuming techniques that we use to collect  
8 fingerprints.

9 Q. Are useable fingerprints easy to collect?

10 A. No, they are not.

11 Q. And just because I touch this surface, did I leave a  
12 useable print?

13 A. You may or you may not. It depends on how you touched  
14 it, the surface, the oils on your hands. Many different  
15 factors determine whether a fingerprint is left.

16 And then even if a fingerprint is left, whether or not  
17 it would be identifiable or have enough characteristics to  
18 positively identify it, someone's -- that is someone's  
19 fingerprints.

20 Q. And if I did this, what would happen to the  
21 fingerprint?

22 A. The fingerprints, of course, would be smeared or  
23 smudged as the hand moves across, therefore, not being able  
24 to identify the different characteristics of the  
25 fingerprints to make a positive identification.

1 Q. In other words, water and soap would definitely affect  
2 the fingerprint?

3 A. Correct, and there was a good amount of the soapy  
4 solution on a lot of the items in the room, of course, and  
5 the sink and the soap bottle.

6 Q. Have you ever collected a fingerprint off of a soapy  
7 surface or a wet surface like that?

8 A. I have made attempts, but to my recollection none that  
9 had any evidentiary value.

10 Q. Thank you, sir.

11 A. Yes, sir.

12 CROSS EXAMINATION BY MR. SHEALY:

13 Q. Captain Segina, you could have tried, couldn't you?

14 A. Yes, we could have tried.

15 Q. And you might have been successful for the first time  
16 in your career?

17 A. There is a possibility.

18 Q. And if you checked Scott's fingerprints and it wasn't  
19 his and you checked Kay's fingerprints and it wasn't hers,  
20 what would that tell you?

21 A. That there could have been someone else in there.

22 Q. Between the time the incident took place and y'all  
23 arrived there at her residence?

24 A. It could happen, yes.

25 MR. SHEALY: Thank you.

1 MR. BARNETTE: No further questions, Your Honor.

2 THE COURT: You may step down.

3 THE WITNESS: Thank you, sir.

4 MR. BARNETTE: We would ask him to be excused,  
5 Your Honor.

6 THE COURT: He may be.

7 THE WITNESS: Thank you, sir.

8 MR. BARNETTE: Your Honor, the State would like to  
9 call Ms. Singleton, or Ms. Blair now that she's married.

10 SLED AGENT JOZETTA BLAIR, having been first duly  
11 sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BARNETTE:

13 Q. Ma'am, if you would, give your full name for the  
14 record, please.

15 A. Jozetta Blair.

16 Q. I think you have got married since we got the  
17 paperwork?

18 A. Yes.

19 Q. Where do you work at, ma'am?

20 A. The South Carolina Law Enforcement Division, commonly  
21 known as SLED.

22 Q. And what is your position there, ma'am?

23 A. I'm a forensic technician within evidence processing.

24 Q. And what kind of training did you receive for that job,  
25 ma'am?

1 A. Once we are hired for the position, we receive training  
2 under a senior analyst for approximately a year. We work  
3 along with them on their assigned cases, approximately two  
4 hundred cases, and then we observe them in court.

5 And then once we are finished with that processing of  
6 observing them and working with them, we take a competency  
7 test and a proficiency test. Once that is passed, we  
8 proceed to go on line and process evidence.

9 Q. And that's your job is to process evidence that's  
10 brought into SLED or the State Law Enforcement Division?

11 A. Yes.

12 Q. And in this case did you receive some items, ma'am?

13 A. Yes, I did.

14 Q. And let me show you -- if you would, come on down for a  
15 second, ma'am, if you would.

16 (Witness off the witness stand)

17 BY MR. BARNETTE:

18 Q. Did you receive State Exhibit No. 6, State Exhibit No.  
19 9, in this case, ma'am? If you would look at that.

20 MR. SHEALY: This is Exhibit 9.

21 MR. BARNETTE: What's that?

22 MR. SHEALY: What the exhibit number?

23 MR. BARNETTE: It's I think 9.

24 A. Okay. When we process evidence, I am able to identify  
25 the items, because I placed my item number, the lab number

1 for the case, and my initials. And, yes, these are my  
2 initials, lab number, and item number. I did process these.

3 BY MR. BARNETTE:

4 Q. If you would, just show the jury where you marked on  
5 them so they can look and see where you processed them at?

6 A. And you can see where I made a cutting here and a  
7 cutting here.

8 Q. But there was other evidence on the --

9 A. And -- say that again.

10 Q. And you made checks? You checked for blood and so  
11 forth?

12 A. Yes, this evidence was submitted for blood and possible  
13 semen. So where you see the circles, I tested for possible  
14 semen; and the cuttings is where I collected for possible  
15 blood.

16 Q. Okay. Thank you, ma'am.

17 Let me show you State's Exhibit No. 4. If you would  
18 take a look at that, ma'am, and see if those are the things  
19 that you tested?

20 A. Again, with this item No. 4, you can see where I put  
21 the item number, the lab number, and my initials. So I am  
22 able to identify that these are the sandals that I  
23 processed.

24 These were submitted for possible blood. And on this  
25 one you see where I put a swab for possible blood here,

1 possible blood here, and possible blood here.

2 Q. And did you collect those swabs and sent them for DNA  
3 testing?

4 A. Yes.

5 Q. Ah let me these are marked as State Exhibits 4-A, 4-B  
6 and 4-C, but I think they are 4.1, 4.2, 4.3 in your numbers.  
7 Are those the swabs that you collected, ma'am, from these  
8 sandals?

9 A. And as you can see, on the back I initialed and dated  
10 them. And the item number, the sub-item number is on here.  
11 So, yes, these are the swabs I sent to DNA.

12 MR. BARNETTE: Your Honor, I would like to move  
13 these into evidence at this time.

14 MR. SHEALY: No objection, Your Honor.

15 THE COURT: They are admitted.

16 BY MR. BARNETTE:

17 Q. I would ask you to look at this, ma'am. I believe it's  
18 State Exhibit No. 8. If you would, take a look at that,  
19 ma'am, and see if you examined that.

20 A. And, again, you see the item number, the lab number,  
21 and my initials. Yes, these are my identifying markers.

22 Q. Okay. Did you also have a marker on the cord itself?

23 A. Not on the cord itself, because it is attached as one  
24 piece so --

25 Q. Okay.

1 A. -- this would be the identifier, but I do have a marker  
2 for where I tested for possible blood here and also on the  
3 back here.

4 Q. Okay. Did you take swabs of those areas too?

5 A. Yes, sir.

6 Q. Let me show you what's been marked as State's Exhibit  
7 No. 8-A and 8-B. Are those the swabs that you took?

8 A. Yes. Again, my initials are on the back.

9 MR. BARNETTE: Your Honor, I would like to move  
10 these into evidence at this time.

11 MR. SHEALY: No objection, Your Honor.

12 THE COURT: They were admitted.

13 BY MR. BARNETTE:

14 Q. If you would, pull the cord back out again, ma'am.

15 If you would, show the marks. Like I say, one of these  
16 swabs came from each area?

17 A. Correct. This is 8.1 here. This is the first  
18 visual -- when I did a visual examination, I saw this spot  
19 first. And what I do is I'll take a phenol saline test and  
20 it gives me an indication of the color of pink and then it  
21 let's me know it's a possible blood. This is the first swab  
22 I collected.

23 And then here on the back I collected a swab here,  
24 because there was a stain and this tested positive for  
25 presumptive test for blood, 8.2.

1 BY MR. BARNETTE:

2 Q. Put that back in there.

3 Let me show you State's Exhibit No. 10, ma'am. Did you  
4 also examine that, ma'am?

5 A. And again I'm looking for my initials, lab number, and  
6 item number. There they are, so, yes, I did.

7 Q. And does that appear to be blood on those underwear or  
8 panties, ma'am?

9 A. Yes. I put two cuttings for possible blood, which is  
10 right here and here.

11 Q. Thank you, ma'am.

12 A. Uh-huh.

13 Q. I'm looking for State Exhibit No. 7. That's what I was  
14 looking for next, the eyeglasses.

15 I would ask you to look at State Exhibit No. 7 and ask  
16 you to look at that and see if you?

17 A. Now, on this, due to the condition and the size of it,  
18 I did not put the item numbers on there, but I did place the  
19 markings where I took the possible blood stains, which is  
20 here, 7.1, right above here.

21 Q. Did you place that sample then?

22 A. Yes, I did.

23 Q. And is this the sample that you collected?

24 A. Yes.

25 Q. And that is State Exhibit 7-A or 7.1, we would like to



1 enter that into evidence at this time, Your Honor.

2 MR. SHEALY: No objection.

3 THE COURT: It's admitted.

4 MR. BARNETTE: Thank you, Your Honor.

5 If you would please, ma'am, have a seat.

6 (Witness back on the witness stand)

7 BY MR. BARNETTE:

8 Q. Ma'am, once you collected all this evidence and the  
9 swabs for processing, was this sent to DNA for testing?

10 A. Yes.

11 Q. And was that your swabs that were sent to DNA for  
12 testing, ma'am?

13 A. Yes.

14 Q. Okay.

15 MR. BARNETTE: One moment, Your Honor, please.

16 (Off the record)

17 (Back on the record)

18 BY MR. BARNETTE;

19 Q. Please answer any questions that Mr. Shealy may have  
20 for you, ma'am.

21 A. Okay.

22 CROSS EXAMINATION BY MR. SHEALY:

23 Q. Thank you.

24 You requested DNA testing on the pants?

25 A. I sent a cutting, 9.1 and 9.2, to DNA, yes.

1 Q. Let do this.

2 Would you tell the jury all the items that you sent for  
3 DNA testing?

4 A. Okay. Item 4 was the pair of sandals. I sent 4.1,  
5 4.2, 4.3.

6 Q. Could you tell them what 4.1 is?

7 A. Okay. 4.1 was a swab for possible blood from the right  
8 sandal middle strap.

9 4.2 was a swab for possible blood from the right sandal  
10 in the front of the first strap near the toe area.

11 4.3 was a swab for possible blood from the left sandal  
12 on the inner side.

13 Item No. 7 was the eyeglasses, and I sent a swab, 7.1,  
14 which is from the right lens for possible blood.

15 Item 8.0 is a power cord with adaptor.

16 And I sent item 8.1, which is the from the power cord  
17 for possible blood.

18 8.2, which is a swab from the adaptor for possible  
19 blood.

20 Item 9 was the jeans.

21 And I sent 9.1, which is a cutting for possible blood.

22 And 9.2, which is was sent for possible blood.

23 And item 10 was the panties.

24 I made a cutting 10.1, which was sent for possible  
25 blood.

1 And 10.2, which was sent for possible blood.

2 Q. The possible blood, was any of that sent for DNA  
3 testing?

4 A. Yes, sir.

5 Q. Okay. Just to clarify, this 1. And .2, that relates  
6 back to the original object? The eight point, like -- for  
7 instance, the 8.0 means 8.1 is a swab from 8.0, 8.2 means  
8 it's another swab from 8.0? It's from the same evidence,  
9 correct?

10 A. Right, those are sub-items from -- taken from the  
11 parent item.

12 MR. SHEALY: Thank you, Your Honor. I have no  
13 further questions.

14 MR. BARNETTE: We ask this witness be excused,  
15 Your Honor.

16 THE COURT: You may step down. You may be  
17 excused. Thank you.

18 MR. BARNETTE: I would like to call Ms. Leisy to  
19 the stand, please.

20 SLED AGENT CATHERINE LEISY, having been first duly  
21 sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BARNETTE:

23 Q. If you will, please state your full name for the  
24 record.

25 A. Catherine Leisy.

1 Q. And where do you work at, ma'am?

2 A. I work with the South Carolina Law Enforcement  
3 Division.

4 Q. And what's your position there, ma'am?

5 A. I am a forensic scientist assigned to the DNA and  
6 serology unit.

7 Q. And how long have you been in that position, ma'am?

8 A. Four years.

9 Q. And if you would, give the jury a little bit of  
10 background --

11 MR. BARNETTE: Will the defense stipulate to the  
12 her qualifications?

13 MR. SHEALY: I would like to hear her. I have  
14 never met her.

15 MR. BARNETTE: No problem.

16 BY MR. BARNETTE:

17 Q. If you will, give us a little bit of your educational  
18 background?

19 A. I have a Bachelor of Science of Genetic Engineering  
20 from Cedarcrest College in Allentown, Pennsylvania.

21 Q. And before going to SLED did you work in a private lab  
22 before that?

23 A. I did. For four years I was a forensic DNA analyst at  
24 a private testing facility known as Cellmark in Germantown,  
25 Maryland, processing and performing the same types of tests

1 and analysis that I do here at SLED.

2 Q. How many times have you been qualified to do DNA  
3 analysis in circuit courts here in South Carolina?

4 A. Here in South Carolina approximately ten times.

5 Q. And how many times when you was working for Cellmark  
6 were you qualified?

7 A. Including appearances in California, Massachusetts, New  
8 Jersey, Florida, and the District of Columbia, I have been  
9 qualified approximately thirty times.

10 MR. BARNETTE: Your Honor, I would submit she's an  
11 expert in the field for DNA analysis.

12 MR. SHEALY: No objection.

13 THE COURT: She is so qualified.

14 BY MR. BARNETTE:

15 Q. Ma'am, if you would, tell the jury what DNA is.

16 A. DNA stands for deoxyribonucleic acid. It's the genetic  
17 material found in our body cells.

18 DNA is packaged into structures called chromosomes,  
19 which contain our genes. And genes are simply strands of  
20 DNA that code for our physical characteristics, such as our  
21 height or our hair color. We receive half of our DNA from  
22 our mother and half of our DNA from our father, and,  
23 therefore, have two copies of every gene.

24 Now, approximately 99.9 percent of an individual's DNA  
25 is identical to that of everyone else's, and its variation

1 in that remaining .1 percent that allows us to tell  
2 different people apart.

3 Q. And what y'all do, you look at the, I guess,  
4 different -- there is like 13 or 16 different points of DNA  
5 you look at see if it matches up?

6 A. Correct, we test fifteen different DNA locations, as  
7 well as what's called innaluge gennin, which is a gender  
8 marker, which tells us male or female.

9 Once we have developed the DNA profile from a piece of  
10 evidence, we can compare it to the DNA profile of a known  
11 individual to try and determine whether or not that  
12 individual could have contributed DNA to that piece of  
13 evidence.

14 Q. Did you receive several items in this case to test,  
15 ma'am?

16 A. Yes, I did.

17 Q. And did you create a report from that?

18 A. I did.

19 Q. Okay. Let me show you what's been marked as State's  
20 Exhibit No. 46. Is this a copy of your report, ma'am?

21 A. Yes, it is.

22 MR. BARNETTE: Okay. Your Honor, I would like to  
23 move this into evidence at this time.

24 MR. SHEALY: Your Honor, it was taken from me, but  
25 I don't know what it was.

1 (Off the record)

2 (Back on the record)

3 No objection, Your Honor.

4 THE COURT: That's 46?

5 MR. BARNETTE: Yes, sir, it is.

6 THE COURT: It's admitted.

7 BY MR. BARNETTE: .

8 Q. If you would, ma'am, please come on down here.

9 MR. BARNETTE: I would like to publish this to the  
10 jury at this time, Your Honor.

11 (Witness off the witness stand)

12 BY MR. BARNETTE:

13 Q. Ma'am, this is a copy of your report?

14 A. Yes, sir.

15 Q. And on the first page, these are some of the items that  
16 you received, ma'am?

17 A. Yes, they are.

18 Q. The first thing, did you get a blood standard from the  
19 victim in this case?

20 A. Yes, a blood standard was included in the sexual  
21 assault evidence collection kit that was submitted from Kay  
22 Spencer.

23 Q. And did you also receive vaginal swabs and rectal swabs  
24 in that rape kit? .

25 A. Yes, that's correct.

1 Q. And did you do a presumptive test to see if semen was  
2 indicated?

3 A. Yes, I did.

4 Q. And was it indicated by that test?

5 A. It was. The test was positive, indicating the possible  
6 semen on those items.

7 Q. Okay. Looking at -- looking at 1.1 in that case, the  
8 pubic hair combings of Ms. Spencer, did you receive those  
9 too?

10 A. Yes, I did. They were also included in that sexual  
11 assault evidence collection kit.

12 Q. And did you do an analysis on that, ma'am?

13 A. I did.

14 Q. And did you also receive a blood standard from Donald  
15 Scott Jones?

16 A. Yes.

17 Q. And did you receive swabs from a bathtub?

18 A. I did.

19 Q. And then you received swabs from some sandals?

20 A. Yes, I did.

21 Q. And these numbers correspond -- like these numbers here  
22 would correspond with the numbers that Ms. Blair collected,  
23 is that right?

24 A. That's correct.

25 Q. And did you also collect the swab that Ms. Blair



1 collected from the eyeglasses, the power cord and adaptor?

2 Did you also receive those?

3 A. Yes, I did.

4 Q. And did you do an analysis on those?

5 A. I did.

6 Q. Now, on the swab that you did have semen indicated, or  
7 whatever, you found no profile foreign to Kay Spencer.

8 When you do a DNA testing from there, or whatever, with  
9 semen, do you always get DNA samples from the semen or what  
10 happens in that situation?

11 A. When we have an item that indicates positive for  
12 possible substance of semen, we perform a DNA extraction and  
13 attempt to separate any male DNA from female DNA that may be  
14 on the item.

15 It is possible that there was not enough male DNA  
16 present. It's also possible that there was so much female  
17 DNA, that I was not able to get a clear enough separation  
18 between the male and female profiles to be able to generate  
19 the DNA profile from a male individual who could have  
20 contributed.

21 Q. But you have -- this does happen in situations?

22 A. It is possible in this type situation, yes.

23 Q. Now, the items from the pubic combings from the pubic  
24 hair, did you do a test on that, ma'am?

25 A. Yes, I did.

1 Q. And what was the result of that?

2 A. The DNA profile developed from the pubic hair  
3 identified as blood item 1.10.1 is a mixer of at least two  
4 individuals.

5 The DNA profile developed from the major contributor to  
6 this mixture matches the DNA profile of Donald Scott Jones.

7 The probability of randomly selecting an unrelated  
8 individual having a DNA profile matching the major  
9 contributor to this mixture is approximately 1 in 170  
10 quadrillion.

11 Kay Spencer cannot be excluded as a possible minor  
12 contributor to this mixture.

13 Q. So the DNA that you have found was from her pubic hair  
14 came from Donald Jones?

15 A. I am comfortable saying that within a reasonable degree  
16 of scientific certainty Mr. Jones was the main contributor  
17 of DNA from that pubic hair, yes.

18 Q. When you are talking about 1 out of 170 quadrillion,  
19 how many people in the world today?

20 A. The current population is approximately seven billion.

21 Q. And how much bigger is that number than --

22 A. It is several million times larger than the current  
23 population of the earth.

24 Q. So in looking at statistics and everything, you feel  
25 like it was a match under scientific --

1 A. Yes, that's correct.

2 Q. And you tested other items of the pubic hair. They  
3 weren't as strong to give you an indication that you got  
4 from that sample?

5 A. The other pubic hair that I tested, identified as blood  
6 item 1.10.2 was also a mixer of two individuals. That  
7 particular mixer I did not have what we call the major  
8 contributor. A major contributor occurs when one individual  
9 contributes significantly more DNA than the other. In that  
10 particular item I could not pull out a major contributor,  
11 but Mr. Jones and Ms. Spencer cannot be excluded as possible  
12 contributors to this mixture.

13 Q. Let me go down to items 3.1, 3.2, 4.1, 4.3, 7.1, 8.1  
14 and 8.2. Those samples that were taken from those items,  
15 did they match the DNA profile of Donald Jones?

16 A. Yes, the DNA profile developed from those swabs also  
17 matches the DNA profile from Mr. Jones.

18 Q. If we go back to the front, the items submitted, 3.1  
19 was the bathtub?

20 A. Correct, the top side of the bathroom.

21 Q. 3.2?

22 A. Inside floor of the bath tub.

23 Q. So those two samples matched him? They came from him?

24 A. That's correct, they were a match.

25 Q. 4.1, 4.2, 4.3, those came from the sandals?

1 A. Yes, they did. And 4.1 and 4.3, again, the profile  
2 matches that of Mr. Jones.

3 Q. 7.1, 8.1, 8.2, did those match Mr. Jones?

4 A. Yes, the DNA profile developed from those swabs also  
5 matches the DNA profile of Mr. Jones.

6 Q. And 8.1, 8.2 was from the power cord?

7 A. Correct.

8 Q. And the adaptor?

9 A. Yes.

10 Q. And those matches the same item?

11 A. Yes, the same statistic of approximately 1 in 170  
12 quadrillion of an unrelated individual identified in those  
13 individuals as well.

14 Q. And those match him?

15 A. Yes.

16 Q. I notice there was some areas that you did not do an  
17 analysis. Why did you not do an analysis for those area?

18 A. Our standard procedure when we have a sexual assault,  
19 we process the sexual assault evidence collection kit first.  
20 With the items that were possible -- excuse me, positive for  
21 the possible presence of semen, I was not able to develop a  
22 male DNA profile, I requested that the panties and jeans be  
23 processed for the possible presence of semen on those items.

24 The paperwork that I received back from processing  
25 indicated no semen, that only possible blood was present.

1 And because I had already processed items taken from the  
2 sexual evidence collection kit that did link Mr. Jones to  
3 those items taken directly from the victim's body, I did not  
4 perform testing on the possible blood cuttings from the  
5 jeans or the panties.

6 Q. Thank you, ma'am. If you will have a seat, please.

7 (Witness back on the witness stand)

8 BY MR. BARNETTE:

9 Q. So page four consists of what the report and your  
10 results of your report was, is that correct?

11 A. That's correct.

12 MR. BARNETTE: One moment, Your Honor, please.

13 (Off the record)

14 (Back on the record)

15 BY MR. BARNETTE:

16 Q. If you would, please answer any questions Mr. Shealy  
17 may have for you.

18 A. Yes, sir.

19 CROSS EXAMINATION BY MR. SHEALY:

20 Q. Ms. Leisy?

21 A. Yes, sir.

22 Q. Ms. Leisy, on the pants and panties, were you aware  
23 that there were two people in that room?

24 A. Based on the submission paperwork, it indicated that  
25 there was at least two people present, yes, sir.

1 Q. And who would they be?

2 A. From what I received, it would be a Kay Spencer and  
3 Donald Scott Jones.

4 Q. Okay. Now, those pants, you didn't test for blood?

5 A. No, I did not.

6 Q. So we don't even know if there is blood on there, do  
7 we?

8 A. Based on the testing that was performed by Ms. Blair  
9 and the paperwork that she sent, her paperwork does indicate  
10 a possible presence of blood. I did not perform my own test  
11 to confirm that.

12 Q. But now we don't know whose blood is on it?

13 A. I do not know whose blood that is, no, sir.

14 Q. Would it have been particularly difficult to test and  
15 find out whose blood it is?

16 A. Not especially, no.

17 Q. So why didn't you test to find out whose blood it is?

18 A. Again, with potential sexual assaults, it's not  
19 uncommon for clothing to be submitted, as well as an  
20 evidence collection kit.

21 Our standard protocol is that we go through the kit  
22 first. If we are not able to confirm the presence of semen,  
23 we will then request that the clothing be tested for the  
24 possible presence of semen.

25 As the clothing came back negative for semen and there

1 was only the possible presence of blood, again, as I had  
2 already tested items from the evidence collection kit taken  
3 directly from Ms. Spencer's person that linked Mr. Jones, I  
4 did not feel it necessary to test the possible blood taken  
5 from the jeans. I didn't know how much more useful  
6 information that that would provide, and no specific request  
7 for those items was given.

8 Q. All right. Those pants and shirt were worn by Kay.  
9 What's the assumption that's going to be raised by that?  
10 Whose blood is it?

11 MR. BARNETTE: Your Honor, I'm going to object at  
12 this point. He's asking the witness to speculate.

13 THE COURT: Sustained.

14 BY MR. SHEALY:

15 Q. So we had an opportunity to learn whose blood was on  
16 the pants and the panties?

17 A. Yes.

18 Q. But you didn't test for it?

19 A. I did not test them, no, sir.

20 Q. And you work for the State?

21 A. Yes, sir.

22 Q. When you say that Donald Jones and Kay Spencer cannot  
23 be excluded as possible contributors, essentially you can't  
24 exclude anybody as being a possible contributor, is that  
25 correct?

1 A. No, that isn't correct. If I were to compare a DNA  
2 profile from another individual to that mixture, if the DNA  
3 types from that individual are not seen in that mixture,  
4 they could potentially be excluded as a possible  
5 contributor.

6 Q. So you saw enough to tell you that it could be them,  
7 but not enough to tell you that it was them?

8 A. Again, with the mixture, if I don't have what we call a  
9 major contributor or someone who gives significantly more  
10 DNA, I can't make a matched statement, as I did with say  
11 swabs from the bathtub. I can only compare that individual  
12 to the mixture and say they cannot be excluded as a possible  
13 contributor.

14 Q. All right. What about 1.2, what was that?

15 A. 1.2 was a collection of smears, which are glass  
16 microscope slides, that had biological materials smeared on  
17 to them for microscopic examination. Smears were taken from  
18 vaginal, oral, and rectal swabs from the kit.

19 Q. So they were taken from Kay Spencer, is that correct?

20 A. That's correct, they were included in the sexual  
21 assault evidence collection kit that was submitted from Ms.  
22 Spencer.

23 Q. And there is some swabs from her vagina, her mouth, and  
24 her anus?

25 A. Yes, sir.



1 Q. And what was the result of that?

2 A. On the smears, sir?

3 Q. Right.

4 A. After microscopically examining the smears, I was not  
5 able to visually determine if there were any spermatozoa  
6 present.

7 Q. Now, would you tell them tell the jury the difference  
8 between spermata -- what you just said and semen?

9 A. Spermatozoa, or what we would commonly call sperm  
10 cells, are one component of semen. There is not always  
11 sperm cells present in semen, but it is one test that we use  
12 to confirm the possible presence of semen.

13 Q. And this may be beyond your kin, but I'm going to ask  
14 and you can tell me, okay. Does that indicate that Scott  
15 Jones did not ejaculate?

16 A. It could be that there was no ejaculation. It could  
17 just be that there were no sperm cells present due to  
18 physical or health issues or vasectomy.

19 Q. It could be any of those things?

20 A. That's correct, yes, sir.

21 Q. Did you test a knife, by any chance?

22 A. No, sir, I did not.

23 MR. SHEALY: Thank you, Your Honor. That's all I  
24 have.

25 MR. BARNETTE: No further questions of this

1 witness, Your Honor.

2 THE COURT: You might step down.

3 MR. BARNETTE: We would ask her to be excused,  
4 Your Honor.

5 THE COURT: She may be.

6 THE WITNESS: Thank you, sir.

7 MS. LESKANIC: Your Honor, the State rests.

8 THE COURT: All right, ladies and gentlemen,  
9 that's all the testimony or other evidence to be offered by  
10 the State.

11 Before we go further I have got some matters to  
12 address with the lawyers, so I'll ask you to please go to  
13 your jury room. Do not yet begin any discussions regarding  
14 the case. It's not concluded. I'll bring you back after  
15 that break.

16 (The following takes place outside the presence of  
17 the jury panel)

18 THE COURT: All right, Mr. Shealy, any motions or  
19 other matters to address?

20 MR. SHEALY: Your Honor, my client has the  
21 decision to make as to whether or not he's going to testify.  
22 I would appreciate it if you would discuss that with him.

23 THE COURT: Okay. Do you have any motions you  
24 want to make?

25 MR. SHEALY: Your Honor, I would move for a

1 directed verdict, in that the sum total of all the evidence  
2 we submit that he couldn't be found guilty of.

3 Thank you, Your Honor.

4 THE COURT: All right. That motion is denied.

5 Mr. Jones, your lawyer has indicated that you and  
6 he have discussed your right to testify, as well as not to  
7 testify. Have you discussed that right with Mr. Shealy?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you understand that when you  
10 are charged with a crime you always have an absolute right  
11 to remain silent, which just simply means that you don't  
12 have to take the witness stand. You don't have to testify.  
13 You don't have to make any statements. You don't have to  
14 answer any questions as they relate to these charges, and  
15 that's because the burden is on the State to establish your  
16 guilt to the satisfaction of this jury beyond a reasonable  
17 doubt, and you don't -- you can never be required to help  
18 them in their efforts to convict you by you testifying or  
19 making statements or answering questions that might tend to  
20 prove your own guilt. So you do have an absolute right to  
21 remain silent.

22 At the same time, if you wish to testify, if you  
23 wish to provide this jury with any additional evidence, then  
24 now is the only opportunity that you will have to do so. So  
25 if you want to testify, now has come the time that you are

1 permitted to present evidence by way of your own testimony,  
2 or by calling other witnesses and then providing testimony,  
3 or by introducing other types of evidence.

4 Now, if you make the decision to take the witness  
5 stand and testify, you got to answer not just your lawyer's  
6 questions, but you got to answer the prosecutor's questions,  
7 so far as they are relevant, even if the responses to those  
8 questions might tend to prove you guilty of some crime they  
9 claim that you committed.

10 And if you make the decision not to take the  
11 witness stand and testify, I will instruct the jury they  
12 can't hold that against you. They can't consider it in any  
13 way. They can't allow that to enter into their  
14 deliberations or in their determination as to whether or not  
15 your guilt has been proven beyond a reasonable doubt.

16 And you can call other witnesses to testify or  
17 introduce other evidence without yourself taking the witness  
18 stand.

19 Do you understand your right to testify, as well  
20 as not testify?

21 THE DEFENDANT: Yes, sir, I do.

22 THE COURT: Do you understand that you are the  
23 only person that can make that decision?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that it is your

1 decision?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you and Mr. Shealy discussed the  
4 advantages and disadvantages of your testifying, as well as  
5 not testifying?

6 THE DEFENDANT: Yes.

7 THE COURT: And do you appreciate what those  
8 advantages and disadvantages are?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And have you had time to reflect upon  
11 your decision as to whether or not you will testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you made a decision?

14 THE DEFENDANT: Yes, sir, I have.

15 THE COURT: Now, what is that decision?

16 THE DEFENDANT: I will testify.

17 THE COURT: And is that a decision that you made  
18 of your own free will and accord?

19 THE DEFENDANT: Yes, sir, it is.

20 THE COURT: Has anybody forced you into it?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anybody suggested that's what you  
23 need to do?

24 THE DEFENDANT: No, sir.

25 THE COURT: You made that decision on your own?

1 THE DEFENDANT: I made on it my own.

2 THE COURT: And you are satisfied with it?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Thank you. Be seated.

5 Any other matters to address?

6 MR. SHEALY: Yes, Your Honor.

7 Scott has a scar on his right thumb. He also has  
8 a bracelet identifying him as an inmate on his right wrist.  
9 We would ask that that be removed.

10 THE COURT: Okay.

11 MR. SHEALY: And if I could just have a few  
12 moments to make sure my witnesses are here.

13 THE COURT: All right, we are going to take a  
14 short break.

15 MR. BARNETTE: Your Honor, just one thing.

16 I just want to revisit the motion we made prior to  
17 the trial to the rape shield, about irrelevant evidence or  
18 anything like that. I don't know what kind of evidence he's  
19 trying to present. Obviously I need -- we would deal with  
20 that at that point, if it comes up, but I just wanted to  
21 remind the court of that. Obviously we would like to have  
22 an in-camera hearing if that evidence comes up.

23 THE COURT: What evidence comes up?

24 MR. BARNETTE: Anything about anybody  
25 testifying -- I know he had one sister possibly that could

1 testify about supposedly she made statements about sexual  
2 activity or so forth. I would ask for an in-camera hearing  
3 concerning any kind of -- I know he can testify, obviously,  
4 to anything, but anything would be hearsay or anything like  
5 that. I think the court would need to make a determination  
6 on that before it's submitted.

7 THE COURT: Well, if you are talking about the  
8 rape shield evidence, if I'm not mistaken, and after reading  
9 your motion, Section 16-3-659.1, which is commonly referred  
10 to as the Rape Shield Statute provides that you can't  
11 introduce evidence of specific instances of sexual activity  
12 by a victim with persons other than the defendant.

13 As I understand it, there is no evidence to be  
14 offered by any sexual activity of Ms. Spencer with anybody,  
15 other than the defendant?

16 MR. SHEALY: No, Your Honor. I can make a proffer  
17 if you would like, if you want to take a moment.

18 THE COURT: Well, I just -- you tell me you are  
19 not intending to offer that.

20 MR. SHEALY: What I'm intending to offer is Mr.  
21 Jones' testimony as to when he started having sexual  
22 relations.

23 THE COURT: I understand. And understand, the  
24 State is not objecting to that, is that true?

25 MR. BARNETTE: That's correct, Your Honor.

1 THE COURT: You don't have any evidence you are  
2 going to introduce about Ms. Spencer having any type of  
3 sexual relationship with anybody else, other than the  
4 defendant, do you?

5 MR. SHEALY: No, but I do have an aunt that can  
6 testify as to they have been having sex since he was a  
7 teenager.

8 THE COURT: I understand.

9 MR. SHEALY: I just want to make sure I --

10 THE COURT: That doesn't relate to anybody else --

11 MR. SHEALY: No.

12 THE COURT: -- having a relationship with Ms.  
13 Spencer that relates to the defendant.

14 MR. SHEALY: That's correct.

15 THE COURT: And then that issue is whether or not  
16 that's based upon hearsay, or based upon personal  
17 observation, or experience, or personal knowledge. What is  
18 it?

19 MR. SHEALY: If I could have a moment, Your  
20 Honor --

21 THE COURT: With who?

22 MR. SHEALY: -- with Ms. Whelchel.

23 THE COURT: All right. Well, let's take fifteen  
24 minutes and you can address that and we will talk about it  
25 when we come back.



1 MR. SHEALY: Thank you, Your Honor.

2 THE COURT: Court is in recess for fifteen  
3 minutes.

4 (Whereupon, proceedings were recessed)

5 (Whereupon, proceedings were reconvened)

6 THE COURT: All right, ready for the jury?

7 MR. SHEALY: Your Honor, if I could just have a  
8 moment. I need to talk to my client.

9 THE COURT: All right.

10 MR. SHEALY: I just got back from the office.

11 (Off the record)

12 (Back on the record)

13 MR. SHEALY: Your Honor, I have -- I have served a  
14 subpoena on Myra Hodge. We are prepared to go forward. I  
15 have contacted her. It seems that she's baby-sitting a 98  
16 year old woman. She's going to make an effort to find  
17 somebody to take her place so she can come, so what I  
18 propose to do is I'll just take her out of turn when she  
19 gets here, and we are ready to proceed.

20 THE COURT: Okay.

21 MR. BARNETTE: Your Honor, can I respond as  
22 briefly about that witness, or do you want to wait until the  
23 witness is called?

24 THE COURT: What's there to respond to? He just  
25 said she's not--

1 MR. BARNETTE: Well, I know we went back in  
2 chambers and he discussed with Your Honor about checking to  
3 make sure service was done and everything. He mentioned he  
4 was going to talk about the anger of the victim. To me, the  
5 first thing that's not relevant. But if it is relevant, we  
6 would like to have a hearing about how it's more prejudicial  
7 than relevant in the case at that point.

8 THE COURT: Well, I don't know what all is  
9 relevant or not, because I haven't heard -- I haven't heard  
10 anything that would make it as such. We will see.

11 All right, bring the jury in, please.

12 (The following takes place in the presence of the  
13 jury panel)

14 THE COURT: All right, as you know, the State's  
15 has rested in their presentation, so we will now proceed  
16 with any to be offered by the defendant.

17 Mr. Shealy.

18 MR. SHEALY: Thank you, Your Honor.

19 Your Honor, we would call Lucille Whelchel to the  
20 stand.

21 LUCILLE WHELCHER, having been first duly sworn,  
22 testified as follows:

23 DIRECT EXAMINATION BY MR. SHEALY:

24 Q. Would you tell the jury your full name, please?

25 A. Lucille Little Whelchel.

1 Q. And Ms. Whelcher, do you live here in Gaffney?

2 A. Yes, I do.

3 Q. And do you know Kay Spencer?

4 A. Yes. She's my sister.

5 Q. And do you have contact with Kay?

6 A. Yes, I do.

7 Q. Okay. Now, you are familiar with the case at trial  
8 today, is that correct?

9 A. Yes, sir, I am.

10 Q. And during -- shortly after the incident that took  
11 place, did you and Kay talk about what happened?

12 A. Yes, sir, we did.

13 Q. All right. The first time that you talked about it,  
14 what did she say happened?

15 A. She shared with me that Scotty came by that night and  
16 talked. They were sitting on the couch.

17 Q. Was everything calm?

18 A. Yes, sir.

19 And that he asked her could he use her bathroom and she  
20 said yes. And she said he came back with a knife and  
21 snatched her off the couch and stabbed her.

22 And the second time that she -- and -- pardon me.

23 Q. Let's --

24 A. And that she --

25 Q. Go ahead.

1 A. -- passed out. And that when she woke up, that he was  
2 raping her.

3 Q. Did she say anything about her dresser?

4 A. Dresser?

5 Q. Right.

6 A. No, sir.

7 Q. About Scott searching through her dresser?

8 MR. BARNETTE: Objection, Your Honor, he's trying  
9 to lead the witness.

10 THE COURT: Sustained.

11 A. She said at one time she came to and that he was  
12 rambling through the drawers of a dresser or a stand of some  
13 sort, a chest of drawers, and that he did not touch the  
14 bottom drawer.

15 BY MR. SHEALY:

16 Q. And what was in the bottom drawer?

17 A. A gun.

18 Q. She told you that?

19 A. Yes.

20 Q. Okay. What was the -- the next time that y'all  
21 discussed it, what did she say happened?

22 A. The next time she said that they -- he tried to  
23 force -- walked like he was upset or mad into her front  
24 door. And that they again were talking and that he asked  
25 her could he go get a drink of water. And, again, he came

1 back and he snatched her from the couch and stabbed her.

2 Q. Okay. Does your sister have anger issues?

3 A. My sister is on mental disability and --

4 MR. BARNETTE: Objection, Your Honor.

5 THE COURT: Sustained.

6 MR. BARNETTE: May we approach the bench for a  
7 second, Your Honor?

8 THE COURT: You may.

9 (Whereupon, the lawyers approached the bench for  
10 an off-the-record discussion)

11 THE COURT: All right, ladies and gentlemen, I  
12 have got one issue I need to address before we go further.  
13 Please go to your jury room. Don't discuss the case. I'll  
14 bring you back in just a moment.

15 (The following takes place outside the presence of  
16 the jury panel)

17 THE COURT: All right. Make your proffer, Mr.  
18 Shealy.

19 MR. SHEALY: Thank you, Your Honor.

20 BY MR. SHEALY:

21 Q. Ms. Whelcher, I asked you does your sister have anger  
22 issues. Have you had her get angry at you?

23 A. Yes, I have in the past. She goes into fits of rage,  
24 vengeful fits of rage.

25 Q. And those fits, are they well founded? Are they

1 expected?

2 A. Most -- I would say they were for the most part in her  
3 imagination.

4 Q. And so she can go into a rage without you expecting it?

5 A. Yes, sir.

6 Q. And how do you feel about that? How do you feel  
7 towards your sister about that?

8 A. It hurts.

9 Q. Are you intimidated?

10 A. It hurts, and she is my sister, and it hurts me. It  
11 has hurt my children before, that she does this sort of  
12 thing.

13 Q. All right.

14 A. I mean, it's things that she gets in her mind that she  
15 cannot let go of.

16 Q. Now, in regard to your mother and your father, was she  
17 particularly volatile with them?

18 A. I beg your pardon? I didn't hear.

19 Q. In regards to your mother and your father, was she  
20 particularly volatile about them?

21 A. At one point here a few years back we had to have my  
22 mother put in the nursing home at Magnolia, which was a very  
23 nice facility. And she pulls up in front of my home and  
24 comes across my carport in a very, very angry mood and said  
25 "how dare you put my mother in a rat infested dump."

1 Q. Was that called for?

2 A. Was it called for? No, sir. I was trying to do the  
3 best that I could do at that point.

4 Q. What kind of condition was she in when she was telling  
5 you about this?

6 A. When Kay was telling me -- saying that? She was  
7 raging.

8 Q. What about your grandfather -- I mean your father,  
9 Scott's grandfather? He just recently died, is that  
10 correct?

11 A. My father was buried on Sunday.

12 Q. All right.

13 A. He was in the hospital for two and a half weeks. When  
14 he was discharged from the hospital, I was asked did I want  
15 hospice to come in and I said yes -- you know, as much as  
16 they could help us out we would appreciate it. And so I  
17 signed the contract with this lady for five days a week.

18 I go in down at daddy's and I am told that Kay has had  
19 it down to two days a week. And I don't -- I didn't  
20 understand that, when he was in need of their services. The  
21 family was in need of their services.

22 Q. Did she approach you about it?

23 A. But it's like she has to be in control. She has to  
24 make the decisions.

25 Q. Did she talk to you about that?

1 A. No, she did not talk to me about that.

2 Q. Thank you.

3 MR. SHEALY: Thank you, Your Honor. That's it.

4 I would not introduce the part about the rest  
5 home.

6 THE COURT: About the what?

7 MR. SHEALY: About the grandfather.

8 THE COURT: Well, what part of that do you  
9 perceive to be relevant in this case? What part of any of  
10 that testimony do you perceive to be relevant?

11 MR. SHEALY: Your Honor, our position is, is that  
12 Scott went over there after finding Kay -- Kay was supposed  
13 to be staying with the grandfather. And Scott went there  
14 for a reason and found that Kay was not there, and that the  
15 grandfather said -- told him that she would be there in ten  
16 minutes. He waited the ten minutes and she didn't come.  
17 And ultimately Scott goes there to ask her about it. And  
18 that into the visit all of the sudden Kay flipped, got  
19 extremely angry and came in with a knife, and it's that  
20 anger that we want to bring out.

21 THE COURT: Okay. Well, I don't perceive that to  
22 be relevant at this point. It may become relevant at some  
23 point, but it's not right now, because what your position is  
24 is not what the evidence has established.

25 MR. SHEALY: Your Honor, even Kay testified she



1 has anger issues.

2 THE COURT: Okay. That doesn't make it relevant,  
3 does it? Maybe that wasn't objected to, was it?

4 MR. SHEALY: I thought it was relevant, what  
5 happened --

6 THE COURT: Was it objected to?

7 MR. SHEALY: No, Your Honor.

8 THE COURT: That's why it's in.

9 This has been objected to, and I don't see the  
10 relevance of it at the present time.

11 MR. SHEALY: Then, Your Honor, I would ask that in  
12 my direct examination the right to recall her.

13 THE COURT: Okay. Anything else?

14 MR. SHEALY: 'No, Your Honor.

15 THE COURT: Bring the jury back.

16 (The following takes place in the presence of the  
17 jury panel)

18 THE COURT: All right, Mr. Shealy.

19 MR. SHEALY: Thank you, Your Honor.

20 BY MR. SHEALY:

21 Q. I have no further questions. Please answer any  
22 questions that the solicitor might have.

23 MR. BARNETTE: Thank you, Your Honor. Just one or  
24 two.

25 MR. SHEALY: Your Honor, I would like the right to

1 recall her.

2 THE COURT: Okay.

3 CROSS EXAMINATION BY MR. BARNETTE:

4 Q. Ma'am, when you came and visited Kay, was it in the  
5 hospital?

6 A. Yes.

7 Q. And was she being treated at that time?

8 A. I assumed that's why she was in the hospital, to be  
9 treated.

10 Q. Didn't she have a collapsed lung and a stab wound to  
11 her chest?

12 A. She did.

13 Q. And she had been medicated at that time, too, weren't  
14 you?

15 A. In the hospital?

16 Q. Yes, sir.

17 A. Yes, she had surgery while she was in the hospital.

18 Q. Yes, ma'am, she was in the hospital for three weeks,  
19 three and a half weeks?

20 A. Something like that.

21 Q. And who did you bring to the hospital with you when you  
22 came there?

23 A. I came to the hospital every day but two, and I brought  
24 our dad with me to visit with her.

25 Q. Okay.

1 A. I did everything that a sister could do for her.

2 Q. I understand, but when you talked to her about the  
3 statements and everything, she was under medication and  
4 under care at that time, isn't that correct?

5 A. I didn't understand your question.

6 Q. I'll rephrase it, ma'am. I'm sorry.

7 Basically she was being medicated at the time when you  
8 talked to her?

9 A. No.

10 Q. She was under hospital care?

11 A. No.

12 Are you asking me did she -- was she medicated when she  
13 talked to me about the incident?

14 Q. No, what I was asking you, she was being treated  
15 medically at the time of the incident? She was in the  
16 hospital?

17 A. No, this was -- I didn't discuss what happened to her  
18 with her while she was in the hospital.

19 Q. So you never visited her in the hospital?

20 A. I visited her in the hospital, but we did not discuss  
21 what happened.

22 Q. Okay. Thank you.

23 MR. BARNETTE: I have no other questions.

24 MR. SHEALY: No redirect, Your Honor.

25 THE COURT: You may step down.

1 MR. SHEALY: Your Honor, at this time we would  
2 call Scott Jones.

3 DONALD SCOTT JONES, having been first duly sworn,  
4 testified as follows:

5 DIRECT EXAMINATION BY MR. SHEALY:

6 Q. Would you tell the jury your full name, please?

7 A. My name is Donald Scott Jones.

8 Q. Scott, are you the defendant in this case?

9 A. Yes, sir, I am.

10 Q. Do you recall what happened on May the 29th of last  
11 year?

12 A. Oh, yes, sir, I do.

13 Q. Now, we don't need to start where you woke up, but what  
14 was one of your tasks you had to do that day?

15 A. I had to go bury a dog for my mother, a big old collie.

16 Q. A family dog?

17 A. Family dog.

18 Q. And where did you go to bury that dog?

19 A. Down to my grandfather's.

20 Q. And what was his name?

21 A. Jack Little.

22 Q. And how old was your grandfather?

23 A. About ninety years old.

24 Q. Okay. And were you close to him?

25 A. Yes, sir, very close.

1 Q. And was he able to take care of himself?

2 A. No, sir.

3 Q. So who took care of him?

4 A. I tried to. My -- both of my aunts and my momma tried  
5 to.

6 Q. Okay. And Kay is one of your aunts?

7 A. Yes, sir.

8 Q. So they took turns sitting with him?

9 A. Yes, sir, we did.

10 Q. Whose turn was it to sit with your grandfather that  
11 day?

12 A. Well, there was no turn at this time, because she had  
13 done -- Kay had done made everybody quit going around him.

14 Q. So who is supposed to be sitting with him?

15 A. She was supposed to be there.

16 Q. Okay. When you got there, was she there?

17 A. No, sir.

18 Q. Did you expect her to return in ten minutes?

19 A. My grandfather was taking up for her at the time,  
20 because he knowed I would be mad, and I waited ten minutes.

21 Q. Then after you waited, were you angry?

22 A. Yeah, I was angry. I was mad.

23 Q. Were you explosive angry, or just --

24 A. No, just frustrated.

25 Q. So what did you decide to do?

1 A. Well, I was going to go over there and talk to her  
2 about it.

3 Q. Go over where?

4 A. To Kay's house.

5 Q. Did you know she would be home?

6 A. No, I didn't. There ain't no telling where she was at.

7 Q. Okay. When you got to her house, tell me what you did  
8 as soon as you arrived.

9 A. Knocked on her door and she peeped out a little window  
10 in the door.

11 Q. There's a little window in the front door?

12 A. Yes, sir.

13 Q. You saw it on those pictures yesterday?

14 A. No, I didn't pay no attention, but, yes, it's there.

15 Q. Okay. And when she saw you through the window, what  
16 did she do?

17 A. She smiled and told me to hold on a minute.

18 Q. Okay. And why did she ask you to hold on a minute?

19 A. I don't know.

20 Q. How long did she take to open the door?

21 A. Thirty seconds. Thirty seconds to a minute.

22 Q. Okay. Did she invite you in?

23 A. Yes.

24 Q. What was the mood at that point?

25 A. Well, she was in her bra and panties.

1 Q. She didn't have her blue jeans on?

2 A. No, sir, she did not.

3 Q. What about the Carolina shirt?

4 A. No, sir, it was not on at the time.

5 Q. Okay. And your intention was to talk to her about  
6 what?

7 A. A couple of things. I was going to talk to her about  
8 my grandfather, but the first thing I wanted to find out was  
9 some names of a doctor, a nurse and a lawyer about my  
10 grandmother's death.

11 Q. Okay. And did y'all start to talk about that?

12 A. No, sir, I was seduced.

13 Q. Why not?

14 A. I was seduced.

15 Q. What you mean you were seduced?

16 A. Well, she pulled me over with my shirt to the couch and  
17 began taking my britches down.

18 Q. Okay.

19 A. And I didn't have no -- nothing to say at that point to  
20 her.

21 Q. Is this unusual behavior for her towards you?

22 A. It just depends on the day.

23 Q. Have you ever had sex with her before?

24 A. Yes, sir.

25 Q. How old were you?

1 A. Two other times.

2 Q. How long -- how old were you the first time that you  
3 had sex?

4 A. Seventeen.

5 Q. And before that did y'all do anything?

6 A. When I was fifteen she -- she made me watch her  
7 masturbate.

8 Q. Now, so when she started doing this, what was your  
9 reaction?

10 A. At the masturbation?

11 Q. No, when she is now seducing you.

12 A. Oh, I stood there while she gave me oral sex.

13 Q. Okay. And then what happened?

14 A. She gets up and gets on her hands and knees on that  
15 couch and asked me to penetrate her. And excuse my  
16 language, excuse my language for what I'm about to say, but  
17 she told me to fuck her.

18 Q. Okay. And where did you fuck her?

19 A. In her vagina.

20 Q. Okay. And what about her anal area?

21 A. Well, that's another issue. She turned around -- after  
22 awhile she turned around and looked at me and told me to put  
23 it in her ass.

24 Q. Did you do that?

25 A. Yes, I did.



1 Q. Were you stimulated at this time?

2 A. Somewhat, yes, sir.

3 Q. What did she start doing that caused you to become --  
4 to lose that stimulation?

5 A. Spitting in her hand and rubbing it on her ass.

6 Q. So to lubricate herself?

7 A. (Shaking head yes).

8 Q. And that turned you off?

9 A. Yes, sir.

10 Q. And when you came off the bull, what was her reaction?

11 A. She was a little upset. She got up and put her shirt  
12 on --

13 Q. Okay.

14 A. -- and went to the bathroom.

15 Q. What did you do?

16 A. I just stood there. I pulled my britches up and waited  
17 on her to come back into the room.

18 Q. Okay. And when she came back into the room, what did  
19 you do?

20 A. I said -- she wanted to know what was wrong, and I said  
21 "I just got a lot on my mind. I got some things that I need  
22 to talk to you about." I said "let's sit down and talk."

23 Q. Did you sit down?

24 A. No, sir, I didn't.

25 Q. What happened then?

1 A. She went over and got in front of me and wanted to know  
2 what was wrong. And I asked her, I told her, I said "I want  
3 to know the names of the doctor, a nurse, and a lawyer that  
4 was supposed to be investigating my grandmother's death,"  
5 and she told me that was none of my damn business, for me to  
6 leave it alone. I said "no, there is somebody going to go  
7 to jail, because there was something could have been done to  
8 stop her death," and she went into a rage.

9 Q. Describe the rage.

10 A. Drawing her hands up, and cursing real bad, and  
11 stomping. Just carrying on like a young-in, really.

12 Q. What about her face? What color was her face?

13 A. Her whole head was jerking back and forth and carrying  
14 on.

15 Q. And then what happened?

16 A. I told her, I said "and, furthermore," I said "since  
17 you are not going to stay with my grandfather, I'm going  
18 back to live with him."

19 Q. And what was her reaction then?

20 A. She said "oh, hell no, you won't. You will die first."

21 Q. And what happened after she told you that?

22 A. I stepped back and she was coming at me. I held my  
23 hand back. I said "don't do that. Don't do it," because  
24 she had just picked something up off that little old table  
25 beside the couch.

1 Q. The tray table?

2 A. Whatever. To hold the lamp.

3 Q. Okay.

4 A. And I held my hand out like that. I said "don't do it,  
5 bitch," and she came to me and she slashed at me.

6 Q. She slashed at you?

7 A. Yes, and hit my hand.

8 Q. What happened to your hand?

9 A. It started bleeding immediately.

10 Q. So she hit you with something sharp?

11 A. Had to be something sharp.

12 Q. Did you see what it was?

13 A. No. It appeared to be a steak knife.

14 Q. Okay. And did you say anything at that point?

15 A. I said -- yes, sir I did.

16 Q. What did you say?

17 A. I stepped back and pushed her away again and I reached  
18 down on the couch to get a cell phone that was there and I  
19 said "you are going to jail this time."

20 Q. What were you going to do?

21 A. I was going to call 911.

22 Q. What did she do?

23 A. She slapped it out of my hand.

24 Q. Did you ever see that cell phone again?

25 A. No. Well, when it hit -- when she slapped it out of my

1 hand, it hit the floor and I seen the cover fly off of it.

2 Q. You saw what?

3 A. The cover fly off of it.

4 Q. Did you pick it back up?

5 A. No, sir.

6 Q. Did she pick it up?

7 A. Not at that time, no, sir.

8 Q. So it was your intention to call 911?

9 A. Yes, sir.

10 Q. All right. What's happening with your hand?

11 A. It's bleeding very bad. It's -- blood is just gushing  
12 out of it.

13 Q. Okay. After you pushed her back and you say she  
14 knocked the cell phone out of your hand, what happened then?

15 A. She came at me again with the knife raised.

16 Q. And what did you do?

17 A. I grabbed her arm and I pulled her to me and I twisted  
18 her hand and I went forward with it towards her. Not --  
19 away from me, towards her. And when I did, she went back  
20 and fell over the computer that was on the floor.

21 Q. Okay. And did you try to twist the knife out of her  
22 hand?

23 A. I was -- I was trying to get it away from me is what I  
24 was trying to do. I wasn't worried about it.

25 Q. Then what happened?

1 A. She fell on the floor. And she said she was hurt. And  
2 I said -- I went over and stood over her. I said "are you  
3 okay? Can you get up?" She said "just don't call the law.  
4 I'm fine. Just don't call the law.

5 "I'm not going to call the law right now."

6 Q. So you promised not to call the law?

7 A. I promised her I wouldn't call. I said -- I was  
8 worried about her at this point.

9 Q. Okay. At what point did you realize she had been  
10 stabbed?

11 A. When she rolled over in the floor, she had her hand on  
12 her chest and I seen some blood. And I said "you got --  
13 "you got stabbed, didn't you?"

14 Q. And she said?

15 A. She said "yes." She said "I'm hurt."

16 Q. And when you realized that she was hurt, what did your  
17 attitude become?

18 A. I was worried about both of us at this point, because I  
19 was bleeding real bad.

20 Q. Was she bleeding real bad too?

21 A. It wasn't like I was bleeding. I was bleeding pretty  
22 bad. I mean, there was puddles forming.

23 Q. And at that time was she wearing her panties?

24 A. No, sir.

25 Q. Was she wearing her blue jeans?

1 A. No, sir.

2 Q. Just her Carolina shirt?

3 A. Yes, sir.

4 Q. So what steps did you take after you realized she had  
5 been cut?

6 A. Well, I went to the bathroom and I looked under the --  
7 in the little old -- under a shelf is what it was and I got  
8 a bottle of hydrogen peroxide. It had a little bit in it,  
9 so I went back in there and I took the top off and I poured  
10 some on my hand. And then I tried to get her to let me help  
11 her, but she wouldn't let me help her.

12 Q. Did you intend to pour that on her wound too?

13 A. Yeah, that's what I was going to do to boil it out is  
14 what I have always been taught. And I used all that up and  
15 I sat it down on the floor, the empty bottle. And I went  
16 and got another bottle, a brand new bottle, and I opened it.  
17 And I went back in there and I continued to pour it on my  
18 hand, and I kept trying to pour it on her, but she wouldn't  
19 let me.

20 Q. And was she able to stand up?

21 A. I -- I got her to stand up one time and she sat down on  
22 the couch. And I went back in there to get me a towel to  
23 wrap my hand up, and I came back up through the little foyer  
24 there and she was back in the floor. I said "what are you  
25 doing back in the floor." I said "get up." She said "I

1 don't want to get blood on the couch." I said "I done got  
2 blood on the couch." I said "I got the blood everywhere."

3 Q. Okay. Now, when she was on the floor, was she sliding  
4 around?

5 A. Yes, she was on her back at one point sliding with her  
6 feet, because she was hurt. She said she was hurting, and  
7 that's why I kept on trying to get her to stand up.

8 Q. Okay. And tell me about the computer.

9 A. Well, after she fell over it and she was moving around  
10 on the floor, I got the computer by -- the computer and the  
11 cord, which was stretched under the couch and I moved it  
12 toward the couch.

13 Q. Was the computer plugged in?

14 A. It appeared to be at the time.

15 Q. Both sides?

16 A. There was a cord coming from it going under the couch,  
17 and then she had another cord had been wrapped up in her  
18 left hand that was over against the wall.

19 Q. What was she doing with that cord?

20 A. I don't know. I don't know if she was going to slap me  
21 with it, or what she was going to do with it, but she had it  
22 in her hand.

23 Q. Did you see her put it around her neck?

24 A. No, I didn't.

25 Q. At no point you saw her put anything around her neck?

1 A. No, sir.

2 Q. Did you put anything around her neck?

3 A. No, sir, I didn't.

4 Q. Did you try to?

5 A. No, sir, I didn't.

6 Q. Did you hit her?

7 A. No, sir, I didn't.

8 Q. All right. After you got out the hydrogen peroxide,  
9 what did you do? What did you do next?

10 A. I got her pants and panties up and I give them to her.  
11 I said "put these on.", I said "we will go to the hospital."  
12 She said "no, don't call the law." I said "I ain't calling  
13 the law." I said "I'll drive us to the hospital."

14 Q. Did she put them on?

15 A. Yes, she put them on. And while she was putting them  
16 on I went out to the truck.

17 Q. All right. You saw the pictures of the panties and the  
18 blue jeans. Was there blood on them at that time?

19 A. No, sir, unless I got some on them from me. I don't --  
20 I don't know. I didn't see none at that time.

21 Q. All right. And then once you got her getting dressed,  
22 what did you do with her?

23 A. Like I said, I went outside to unlock the door of my  
24 truck and to spread some towels my daddy has got out there  
25 in the truck so I didn't to get blood all over his seat.



1 Q. These towels are already in your truck?

2 A. The ones I was spreading out, yes. I had one on my  
3 hand too.

4 Q. All right.

5 A. That was hers.

6 Q. The one on your hand is hers.

7 Did you take any other towels of hers?

8 A. No, sir.

9 Q. And did you attempt to clean up the couch?

10 A. No, sir.

11 Q. Did you handle that cleaning solution?

12 A. No, sir, I didn't. I didn't even go in that kitchen.

13 Q. At all?

14 A. At all.

15 Q. You saw that glass of soapy water. Do you know where  
16 that came from?

17 A. No, sir, I never seen that -- that wasn't there when I  
18 was there.

19 Q. Did you tell her that you were going to prepare the  
20 truck to take her to the hospital?

21 A. Yes, I said "I'm going to go out to the truck and  
22 unlock the door." I said "I'll be back and get you,"  
23 because I figured I was going to have to help you.

24 Q. And that's what you did?

25 A. That's what I did.

1 Q. And when you went back to get her, what happened?

2 A. The door was locked. I heard her slam the door. And I  
3 went and tried to open the door and the door was locked.  
4 And I hollered for her, I said "Kay, now come on and quit  
5 your bull." I said "let's go to the hospital," and I heard  
6 a gunshot and that scared me. I didn't know, you know, if  
7 she's shooting at me or not, but I figured she probably was,  
8 so I left.

9 Q. You didn't see the bullet hole appear in the wall?

10 A. No, sir.

11 Q. And when that happened, what did you do?

12 A. I left. I went to my mother and father's house.

13 Q. And is that when the police met you?

14 A. Yes, sir. Well, I pulled up in the driveway and I got  
15 out and went to my room and got a pair of shorts on. I  
16 changed clothes and put a clean pair of shorts on.

17 I went back to the front yard where my dad has got a  
18 spigot and I started rinsing out my pants. I had blood on  
19 them and I had dog hair on it too, because my mother  
20 wouldn't let me use her washing machine with all that stuff  
21 that was on it.

22 Q. Go ahead.

23 A. So after I got that washed out and everything, I draped  
24 them over the fence.

25 Q. Then what did you do?

1 A. I went back in the house and took a shower, because I  
2 was going to the hospital.

3 Q. So you had already planned to go to the hospital?

4 A. Yes, I was going to the hospital.

5 Q. And when did you take the shower?

6 A. Just to get all that mess off of me. I had dog hair on  
7 me. I had blood all over me, and I had sex all over me.

8 Q. Okay. Did you -- were you still bleeding?

9 A. Yes, sir, profusely.

10 Q. Okay. Now, did you go to the hospital?

11 A. Not -- not on my account. The law took me.

12 Q. Okay. Well, when you got out of the shower, who was  
13 there?

14 A. The law was there waiting on me.

15 Q. And what did you do?

16 A. Then I just put my clothes on. They was standing at  
17 the door with their guns drawn and I said "oh, God, I am  
18 probably going to jail for CDV. She done called the law on  
19 me."

20 Q. Okay. Did you consent for them to search your house?

21 A. Yeah, I didn't care if they searched anything that I  
22 had.

23 MR. SHEALY: Excuse me a moment, Your Honor.

24 (Off the record)

25 (Back on the record)

1 BY MR. SHEALY:

2 Q. All right. This is a xerox copy. What is this  
3 document?

4 A. Consent to search.

5 Q. And is that your signature on it?

6 A. Yes, sir, it is.

7 Q. Did you agree to let them search your house?

8 A. Yes, sir, I did.

9 Q. Did they force you?

10 A. No, sir, they didn't force me.

11 Q. Did you have anything to hide?

12 A. No, sir, I don't have nothing to hide.

13 Q. Okay. Did anybody ask you where your clothes were?

14 A. No, sir.

15 Q. Where were your clothes?

16 A. The ones that I had on during this incident, they was  
17 draped over the fence.

18 Q. In the front yard?

19 A. Well, the fence is on the side of the yard.

20 Q. Okay. Now, after the law came and you consented to the  
21 search, what happened then?

22 A. They read me my rights.

23 Q. All right.

24 A. Put handcuffs on me and set me on the front steps. And  
25 I asked them could I smoke, so my mother give me a

1 cigarette, and I was sitting there smoking. And one of the  
2 detectives, I think it was Ramsey, I think that's his name,  
3 and he started talking to me, asking me questions. He said  
4 "you have taken a shower." I said "yes, sir, I sure did."  
5 I said "I got dog -- I had dog stuff all over me. And he  
6 said "well, your aunt has said that you raped her." And I  
7 said "that's just hearsay, though," and he said "well, I'm  
8 going to have to take you in on that." And that made me  
9 mad. I was getting madder and madder by the minute. She  
10 done cut my hand, shot at me. Then she done told the police  
11 that I raped her. And I blurted out -- no, my mother said  
12 "at least Kay is alive." I said "well, I wish the bitch was  
13 dead."

14 Q. And right after you said that how did she feel?

15 A. I felt remorseful. I don't usually say things like  
16 that.

17 Q. Did you mean it?

18 A. At the time I might have meant it, but after I said it,  
19 I felt it in my heart that I didn't.

20 Q. Now, after you said it, what happened then?

21 A. They put me in the police car and took me to the  
22 hospital.

23 Q. Did you ever talk to Detective Ramsey?

24 A. He was sitting right beside me when they was putting  
25 stitches in me.

1 Q. And did you tell him what happened?

2 A. He didn't really ask me what happened from that point.

3 Q. Did y'all discuss -- at any time did y'all discuss what  
4 happened?

5 A. Yeah, he asked me what happened, and I told him -- you  
6 know, I give him a slight description.

7 Q. So you were cooperative? You were willing to talk?

8 A. Yes, sir.

9 Q. Did he ever --

10 A. They never did take no statement or anything.

11 Q. Yeah.

12 He never required' you to do a written statement?

13 A. No, sir, he just asked me, he said "have you been  
14 drinking?" I said "yeah, I have. I took a few beers  
15 earlier before I went and buried that dog." And he asked me  
16 "was Kay tore up from the floor up."

17 MS. LESKANIC: Objection, Your Honor.

18 THE COURT: Sustained.

19 BY MR. SHEALY:

20 Q. Okay. You can't testify as to what somebody else said.

21 A. Oh, okay, I'm sorry.

22 Q. Now, when you were at the hospital, what kind of  
23 treatment did you receive?

24 A. Well, he started stitching me up, the doc did, and he  
25 got about halfway and said "do you have insurance?" I said

1 "no, sir, I have been laid off and it has been expired," and  
2 he stopped the procedure right then halfway through.

3 Q. He didn't complete sewing you up?

4 A. No, sir, he didn't.

5 Q. Now, do you have any physical markings resulting from  
6 that incident?

7 A. Yes, sir, I got a three inch scar on my thumb.

8 MR. SHEALY: Your Honor, I would ask that he be  
9 allowed to approach the jury and publish his thumb.

10 THE COURT: He may be.

11 MR. SHEALY: Come down, please.

12 (Witness off the witness stand)

13 BY MR. SHEALY:

14 Q. Show them the scar. Show them where the stitches are.

15 A. Right here, all the way up to the top.

16 Q. Well, let's show them in the back.

17 A. Halfway up.

18 MS. LESKANIC: Your Honor, please do not talk to  
19 the jury when he's answering questions, please.

20 THE COURT: Yes, Mr. Shealy, I thought that you  
21 were just asking him to show the jury his thumb.

22 MR. SHEALY: That's all I am, Your Honor.

23 THE COURT: Well, let's do it properly, okay?

24 MR. SHEALY: Yes, Your Honor. I told him not to  
25 say anything.

1 (Witness showing thumb to the jury panel.

2 MR. SHEALY: Please have a seat.

3 (Witness back on the stand)

4 BY MR. SHEALY:

5 Q. You saw these pictures with all the blood on the floor  
6 and on the -- didn't you?

7 A. Yes, sir.

8 Q. Now, whose blood is this?

9 A. Most of it is probably mine.

10 Q. Is any of it Kay's?

11 A. It's possible.

12 Q. So you were the one that was bleeding the most?

13 A. Yes, sir.

14 Q. Did you have anything to do with the eyeglasses?

15 A. I never seen those eyeglasses. They must have been on  
16 the floor or something. I -- I never seen them.

17 Q. Did you take her cell phone?

18 A. No, sir, I didn't.

19 Q. When was last time that you saw the cell phone?

20 A. It had fell out of my hand -- out of my hand and the  
21 cover fell off.

22 Q. That's when she knocked it away?

23 A. Yeah.

24 Q. All right. You saw the pictures of the soapy solution.  
25 Did you try to clean up that area?



1 A. No, sir.

2 Q. Did you get any other towels other than the one that  
3 you wrapped around your hand?

4 A. No, sir.

5 Q. The blue jeans and the panties, when was the last time  
6 that you saw those?

7 A. She was putting them on.

8 Q. Do you know how they came off?

9 A. No, sir, I don't.

10 Q. That's the way that they were?

11 A. I just don't know.

12 Q. Did you ever use your fists against her?

13 A. No, sir, I didn't.

14 Q. There was no punches thrown by anybody, is that  
15 correct?

16 A. No, sir, no punches.

17 Q. When the police came to take your blood and the saliva,  
18 did you give it to them?

19 A. Yes, sir.

20 Q. Willingly?

21 A. Yes, sir.

22 Q. Do you have anything to hide?

23 A. No, sir, I don't have nothing to hide.

24 Q. All right. This knife, what happened to it?

25 A. I have no idea what happened to the knife.

1 Q. They found a knife in your bathroom. Did you use that  
2 knife?

3 A. No, that's -- that's my work knife.

4 Q. Okay. You didn't even have it there at the time?

5 A. No, I didn't have no need for it.

6 Q. Okay. Now, one thing I don't understand is you went  
7 there to confront Kay about your grandfather. As soon as  
8 you got there, you didn't confront her. Why is that?

9 A. I guess because she was half naked.

10 Q. And so what did you do?

11 A. I sort of just went with it.

12 Q. Now, at all times that you were having sex, at whose  
13 invitation were you having sex?

14 A. Hers.

15 Q. And who attacked who after the sex and the argument?

16 A. She attacked me.

17 Q. Was she alert when you got there?

18 A. Yes, sir.

19 MR. SHEALY: Thank you, Your Honor. That's all I  
20 have.

21 MS. LESKANIC: If it please the court?

22 CROSS EXAMINATION BY MS. LESKANIC:

23 Q. You made some phone calls from the jail when you were  
24 in there, didn't you, Mr. Jones?

25 A. Yes, ma'am, quite a few. Quite a few.

1 Q. All right. You made some to your mom and dad?

2 A. Yes, ma'am.

3 Q. All right. And in one of those calls you told them  
4 that you would do what you had to do to try to get out of  
5 this, didn't you?

6 A. To get out of jail, yes, ma'am.

7 Q. Get just out of jail, but not out of this situation,  
8 the charges?

9 A. I -- I remember saying out of jail, for them to do  
10 anything.

11 Q. Now, I'm not talking about asking for bond. I'm  
12 talking about you said that, "do what I have to do to try to  
13 get out of this."

14 A. Yes, ma'am, I did say that.

15 Q. Okay. And you also said "lie for a lie, I got to do  
16 what I have to do"?

17 A. Yes, ma'am, I did say that and I'm doing it.

18 Q. All right. And in the first phone call to your parents  
19 you told them that you went down to her house to bitch at  
20 her a little bit and to get some information?

21 A. Yes, ma'am, I did tell them that.

22 Q. And you told them "I'm not in her. I got a girlfriend  
23 for that"?

24 A. Yeah, I did say that.

25 Q. You didn't tell them anything about any consensual sex,

1 did you?

2 A. No.

3 Q. In fact, you denied having any sex with her and said  
4 that there wouldn't be any DNA, that we couldn't find you in  
5 her or on her.

6 A. Well, I said that to my mother. Yeah, I probably did.

7 Q. All right. You were mad when you went down there.

8 A. Yes.

9 Q. That's the reason you went there, you were mad at her?

10 A. I was frustrated, yeah.

11 Q. And when your mom asked you about telling Detective  
12 Ramsey that it was consensual sex, from the jail phone you  
13 said "well, she claims I raped her. What else am I supposed  
14 to say?" Is that correct?

15 A. I don't remember, ma'am.

16 Q. You admitted that you said that you hoped she was dead?

17 A. Yes, ma'am, I did say that.

18 Q. How old are you, Mr. Jones?

19 A. Forty-one.

20 Q. Forty-one?

21 A. Yes.

22 Q. All right. And you had -- you watched Kay masturbate  
23 when you were fifteen?

24 A. Yes, ma'am, I did.

25 Q. And you had sexual intercourse with her when you were

1       seventeen?

2       A.    Yes, ma'am.

3       Q.    And those are the two instances you told Mr. Shealy  
4       about?

5       A.    Yeah, there was another time.

6       Q.    Oh, so now there is a third time?

7       A.    Yes.

8       Q.    When was that?

9       A.    We had sex three times.  I only watched her masturbate  
10      once.

11      Q.    You told Mr. Shealy y'all had sex twice.

12      A.    Before this incident.

13      Q.    Okay, when was the other time?

14      A.    I was about thirty-one.

15      Q.    About thirty-one?

16      A.    Thirty-one, thirty-two years old.

17      Q.    All right.  And where was that?

18      A.    At a place we were remodeling.

19      Q.    So you didn't tell Mr. Shealy about that one, but you  
20      told Mr. Shealy when you were fifteen you watched her  
21      masturbate.  When you were seventeen you had sex, and now --  
22      how many times have you seen her since you were seventeen or  
23      even thirty-one, how often do you see your Aunt Kay?

24      A.    Quite a few -- quite a few.

25      Q.    Quite a few times?

1 A. Yes.

2 Q. How many times have you seen her since you were  
3 seventeen?

4 A. A lot. I helped her do a lot of work.

5 Q. Okay. And in all those times that you saw her since  
6 you were seventeen, now that you are forty-one, out of the  
7 blue she comes dressed in her bra and Hanes Her Way  
8 panties -- Hanes Her Way panties and wants to have sex with  
9 you?

10 A. Yes, she did.

11 Q. You spent all this time with her remodeling houses, you  
12 see her all the time, and just this day you popped by after  
13 burying a dog -- and you had been drinking, is that right?

14 A. That's right.

15 Q. You had been drinking that night.

16 And for some reason in the early morning hours, she has  
17 been cutting grass all day, she just has to have you?

18 A. I don't know what her state of mind was. I'm telling  
19 you what she did.

20 Q. And she seduced you?

21 A. Yes.

22 Q. You are forty-one?

23 A. Yes.

24 Q. What happened to your clothes, Mr. Jones?

25 A. They were draped over a fence.

1 Q. Okay. That's what you did with them. I asked you what  
2 happened to them?

3 A. I don't know.

4 Q. Do you have a sister?

5 A. Yes, ma'am.

6 Q. What's her name?

7 A. Christine.

8 Q. Did Christine do anything with those clothes?

9 A. Not that I know of.

10 Q. What did she burn for you?

11 A. What are you talking about?

12 Q. Another jail conversation, a three-way call with your  
13 sister, Christine, what did she burn for you?

14 A. I had some stuff the other dogs might would get into in  
15 a bag. I told her to get rid of it. It was right there on  
16 the fence at my house.

17 Q. You had what?

18 A. Some weed killer and some ant killer in a bag and I  
19 told her to get rid of it.

20 Q. And so she burned --

21 A. I guess she -- I don't know what she did with it.

22 Q. Well, didn't you tell you that's what you wanted to her  
23 with it?

24 A. Do something with it. To get rid of it.

25 Q. I just want to make sure. You had a -- you had to talk

1 to Christy, and we can play these phones calls if we need  
2 to, but you were asking your mom and dad where Christy was.  
3 You had to talk with her, is that correct?

4 A. Yeah.

5 Q. And they were even concerned why it's so important you  
6 talk with Christy, is that correct?

7 A. Yes, ma'am.

8 Q. All right. But it's so important that you talk to  
9 Christy, because the dog is going to get into the ant killer  
10 and weed killer? Is that what you want the members of the  
11 jury to believe?

12 A. That's what was going on.

13 Q. All right. And she was going to take it to Jonesville?

14 A. She wanted it, she could have had it.

15 Q. All right. Well, somebody saw her putting it in a bag.  
16 She was concerned about that, is that right?

17 A. I don't know.

18 Q. All right. So your sister is going to take weed killer  
19 and ant killer to Jonesville. Somebody sees her put it in a  
20 bag. I would think it's already in a bag. Is it not  
21 already in a bag?

22 A. It's in a bag.

23 Q. She had to put it in another bag?

24 A. I don't know. I was not there. I was in jail.

25 Q. Okay. All right. But this was your main concern when



1 you were in jail?

2 A. Yeah, because the other dogs around there might get  
3 into it. I had a dog one time to get into ant killer and it  
4 killed him.

5 Q. Where was the ant killer and weed killer?

6 A. It was in a bag.

7 Q. Where?

8 A. It was either in the mom and dad's fence or the  
9 neighbor's fence where I was using it.

10 Q. What do you mean it was in the fence?

11 A. Inside the fence.

12 Q. How would the dogs get to it?

13 A. To the dog pen.

14 Q. Well, you put it in there?

15 A. Yeah, I put it in there earlier.

16 Q. Why would you put it in there earlier with the dog if  
17 you were so concerned that you had to talk to Christy about  
18 getting it away from the dog?

19 A. I was using it in the backyard.

20 Q. But you left it in there with the dog --

21 A. Yes.

22 Q. -- and this is what's so important that Christy takes  
23 to -- wants to take it Jonesville, but then has to burn?

24 A. When I was in jail, I got to thinking about it.

25 Q. What happened to all the towels that you were in your

1 truck that you took from Kay's house?

2 A. I didn't take no towels, but the one that was wrapped  
3 around my hand.

4 Q. You don't remember during your direct testimony, I  
5 believe. Maybe it wasn't. Maybe it was the opening. I  
6 thought you took towels to your truck, so when you took her  
7 to the hospital to get her help --

8 A. I took the towel that was wrapped around my hand, and  
9 dad had two towels already in the truck.

10 Q. Okay. So you didn't take any towels from her house and  
11 put them in the truck --

12 A. Except for the one on my hand.

13 Q. -- for Kay.

14 What happened to that towel?

15 A. I really don't know.

16 Q. Well, what did you do with it?

17 A. I remember washing it out and I draped it over the  
18 fence too.

19 Q. And when did you do all this washing out clothes from  
20 blood and dog hair?

21 A. When I left Kay's.

22 Q. All right. And what time was that?

23 A. I don't know what time it was. I really don't.

24 Q. About 1:15 in the morning, maybe?

25 A. I have no idea.

1 Q. Was it dark outside?

2 A. Yes, it was very dark.

3 Q. And at that time of night you went outside to rinse off  
4 clothes?

5 A. Yes, ma'am, I did.

6 Q. And then you took a shower?

7 A. Yes, ma'am, I did.

8 Q. When Kay was on the floor, she told you she was dying,  
9 didn't she?

10 A. No.

11 Q. She said "I'm dying"?

12 A. No, ma'am, she didn't.

13 Q. You don't remember telling your mom that on a jail  
14 phone call? She's laying on the floor saying I'm dying, I'm  
15 dying, and you said no, you're not?

16 A. Yes, ma'am, she did say that.

17 Q. Oh, she did say that now, okay.

18 A. She said she was hurt.

19 Q. She didn't say she was dying? You didn't tell your  
20 momma that?

21 A. I can't remember.

22 Q. You said that you were going down to give her hell. Is  
23 that what you said?

24 A. I may have said that.

25 Q. You gave Detective Ramsey just a slight description of

1        what happened that night?

2        A.    Yes, ma'am.

3        Q.    You have given us a more detailed one today?

4        A.    Yes, ma'am.

5        Q.    All right. So you went in there and Kay is dressed in  
6        Hanes Her Way underwear and her bra, after cutting grass all  
7        day in her Carolina Gamecock T-shirt and y'all have sex?

8        A.    (Shaking head yes).

9        Q.    And then tell me what happens next.

10       A.    I just told you.

11       Q.    Tell me again.

12       A.    We was having sex and I -- I lost interest.

13       Q.    Uh-huh.

14       A.    And when she found out I lost interest, I guess she was  
15       offended.

16       Q.    Okay. When did she put her shirt on?

17       A.    Right then.

18       Q.    But she didn't put on her underwear or her pants?

19       A.    No, sir -- no, ma'am.

20       Q.    All right. But she was trying to put those on after  
21       you went outside?

22       A.    I give them to her to put on.

23       Q.    Uh-huh.

24       A.    The pants and the panties.

25       Q.    And did you see her put those on?

1 A. She was putting them on when I went out the door.

2 Q. What did you do go out the door for?

3 A. I was going to go unlock the doors of the truck to  
4 spread the towels that my dad has got in there.

5 Q. Okay. So there weren't towels from her house? You  
6 were going out there to spread towels?

7 A. (Shaking head yes).

8 Q. Would it surprise you that on the jail phone call you  
9 told your mother you were going out there to look for your  
10 keys?

11 A. No.

12 Q. No, you didn't say that; or, no, it wouldn't surprise  
13 you that that's a different version than what you are  
14 testifying to today?

15 A. I'm telling you what really happened today.

16 Q. So you lied to your momma?

17 A. I don't know if that's what I said or not. I don't  
18 remember saying that.

19 Q. You don't remember saying that, okay.

20 I'll show you State's Exhibit 17. What happened to  
21 Kay's neck?

22 A. I have no idea what's wrong with her neck. I read some  
23 documents from the hospital that says there was no marks on  
24 her neck.

25 Q. Is there a mark on her neck?

1 A. Yes, ma'am, there sure are.

2 Q. Well, how did that happen? You were with her that  
3 night.

4 A. I didn't see nothing around her neck. I did not do  
5 nothing to her neck.

6 Q. Didn't do anything to her neck.

7 She tells the police that you popped the power cord  
8 around her neck.

9 A. Yeah, I'm aware of that.

10 Q. And are you aware that your blood is on that power  
11 cord?

12 A. No doubt.

13 Q. No doubt?

14 A. No doubt. It was all in my blood.

15 Q. It was all in, -- what was all in your blood?

16 A. That cord, plus I touched it.

17 Q. And you stabbed her.

18 A. I didn't stab her. I may have caused the stabbing, but  
19 I didn't in no way touch that weapon that she had in her  
20 hand.

21 Q. So you caused the stabbing, but you didn't do the  
22 stabbing?

23 A. I didn't actually stab her.

24 Q. State's Exhibit 15, these are the panties and jeans  
25 that you were giving to her to put on?

1 A. Yes, ma'am, I gue'ss they are.

2 Q. And she was starting to put these on?

3 A. Yes, ma'am. She was putting them on.

4 Q. She was.

5 So she wasn't bleeding as badly as you were?

6 A. She was bleeding.. She wasn't bleeding as much as I was  
7 at that time that I seen her.

8 Q. But there is blood all over her underwear.

9 A. Yes, ma'am, there is.

10 Q. And there is blood all over her jeans.

11 A. It might be mine.

12 Q. On the outside?

13 A. I know she was sitting in a puddle of it at one time of  
14 my blood.

15 Q. State's Exhibit 25, it's all on the left side, isn't  
16 it?

17 A. Yes, ma'am, the panties and --

18 Q. The blood is all on the left side?

19 A. Yes, ma'am.

20 Q. The same side that she was stabbed on?

21 A. Exactly.

22 Q. It was on the outside of her panties that she had on  
23 when you stabbed her?

24 A. I didn't stab her. She didn't have panties on when the  
25 incident happened.

1 Q. State's Exhibit 26, blood on her jeans, the majority on  
2 the left side?

3 A. (Shaking head yes).

4 Q. On the outside of the jeans, is that correct?

5 A. That's what it looks like.

6 Q. That she was wearing when you stabbed her?

7 A. No.

8 Q. A stab mark through her shirt where you stabbed her.  
9 Did you cause that stab mark in her shirt?

10 A. I caused the stabbing.

11 Q. And you went outside to the truck to spread out some  
12 towels?

13 A. (Shaking head yes).

14 Q. For what?

15 A. So we wouldn't get blood on my dad's truck seat.

16 Q. Not to look for your keys?

17 A. No. The keys was in my pocket.

18 Q. Oh, they weren't on the floorboard, like you told your  
19 momma?

20 A. I can't -- no, they was in my pocket.

21 Q. All right.

22 A. I usually keep them in the floorboard, though.

23 Q. What time did you call 911 to check and see how Aunt  
24 Kay was doing?

25 A. Ma'am?



1 Q. What time did you call 911 so that Aunt Kay could get  
2 some help for the stab wound?

3 A. She didn't want me to call 911. She begged me not to.

4 Q. But you were trying to get her to the hospital?

5 A. I was going to take both of us to the hospital.

6 Q. All right. Did she need to go to the hospital?

7 A. I thought so.

8 Q. So you could have called 911 and not given your name.

9 A. I could have.

10 Q. Did you do that?

11 A. No, ma'am, I didn't.

12 Q. Did you have a phone?

13 A. The only phone I seen at the time was in the floor.

14 Q. Okay. Well, you went home. Do your parents have a  
15 home?

16 A. I wasn't going to help her then at that point.

17 Q. Why not?

18 A. Because she done 'shot at me.

19 Q. How do you know she was who shooting at you?

20 A. Who else would she be shooting at?

21 Q. Well, you said in another jail phone call she might  
22 have shot herself.

23 A. She may have.

24 Q. You weren't going to call and say there may be a dead  
25 body at [REDACTED]?

1 A. No.

2 Q. Why not?

3 A. I just wasn't. I was worried about myself at that time  
4 bleeding.

5 Q. How long were you at the hospital?

6 A. I don't know, about twenty, thirty minutes.

7 Q. Twenty, thirty minutes.

8 Do you know how long Kay was at the hospital?

9 A. Yes, ma'am, I do.

10 Q. How long?

11 A. About three weeks.

12 Q. But you were more worried about your hand than you were  
13 of her?

14 A. At the time I didn't know she was in that bad of a  
15 shape.

16 Q. She had been stabbed in her chest. You were aware of  
17 that, and you say that you caused the stab mark in her  
18 shirt.

19 A. Yeah, but she was -- she wasn't acting like she was in  
20 that kind of pain. She was just worried about me calling  
21 the law.

22 Q. You told your momma on the phone "she was laying in the  
23 floor saying I'm dying, I'm dying." You don't think that's  
24 serious?

25 A. It was serious, but she stood it up after she said it.

1 Q. She stood up? The only time she stood up was to go get  
2 a gun, wasn't it, when you went outside and took the bloody  
3 towel and the rags and you put those in your truck?

4 A. No, that ain't -- no, that ain't right.

5 Q. What were you using to clean the floor?

6 A. I did not do that.

7 Q. You didn't do any cleaning?

8 A. No, ma'am, I didn't.

9 Q. You just -- you walk out into the living room with the  
10 bottle of peroxide and that's how it got on the floor?

11 A. Yeah.

12 Q. You were pouring it over our hand. Instead of pouring  
13 it in the sink, you are just pouring it over your hand on  
14 the floor? Is that what you want these folks to believe?

15 A. I was sitting on the edge of the couch at one time  
16 doing it, and I was knelt down beside her doing it at one  
17 point.

18 Q. But just pouring it right on the floor?

19 A. At that point the blood was all in the floor anyway.  
20 It was going to have to be cleaned up, and I -- I wasn't  
21 thinking straight, I don't guess.

22 Q. How much had you had to drink?

23 A. About three beers. Two or three beers. Big beers.

24 Q. Big beers?

25 A. Yes.

1 Q. So after you get -- you are going to your truck to  
2 spread out towels to get both of you to the hospital, okay.  
3 Why do you come back to the house?

4 A. What house?

5 Q. Her house. You tried to come back in and you find that  
6 the door had been locked.

7 A. Yes. Yes, ma'am, I did.

8 Q. Yes.

9 A. I was going in there to get her.

10 Q. You were going in there to get the rest of the her  
11 pants and her underwear and some more cleaning up.

12 A. No, I was going to get her.

13 Q. And you hear a gunshot?

14 A. Ma'am?

15 Q. And you hear a gunshot?

16 A. Yes, ma'am, I heard a gunshot.

17 Q. All right. And then what do you do?

18 A. I left.

19 Q. And you don't know whether she shot herself or shot  
20 you?

21 A. No.

22 Q. And you don't care?

23 A. At that point I was getting out of there because I  
24 wasn't going to find out.

25 Q. And you hoped the bitch was dead anyway, is that right?

1 A. Not at that point, I didn't.

2 Q. At what point did you hope the bitch was dead?

3 A. When I found out she told the law that I was going  
4 to -- that I had raped her, and she had done cut me.

5 Q. And you had stabbed her.

6 A. I didn't stab her. I caused the stabbing.

7 Q. And you had raped her.

8 A. I didn't rape her.

9 Q. And had you choked her to the point that she had lost  
10 consciousness.

11 A. No, I did not choke her.

12 Q. If your cut was so bad, that you were bleeding so  
13 profusely, you were more worried about yourself than Kay,  
14 why did you go home and worry about spraying off the clothes  
15 and the towel? Why didn't you go to the hospital?

16 A. I wanted to be clean. I had all kind of stuff all over  
17 me.

18 Q. Well, didn't you bury a dog?

19 A. Plus I wanted to clean out my wound.

20 Q. Wouldn't the hospital be the best place to do that?

21 A. Yeah.

22 Q. But that's not where you went --

23 A. No.

24 Q. -- is it?

25 A. No.

1 Q. You went home to spray off evidence of a crime.

2 A. Not evidence. I went to clean myself up. Yes, I did.  
3 I admit that.

4 Q. Well, cleaning yourself up is a shower. Spraying your  
5 clothes off?

6 A. Well, I couldn't wash them clothes in the washing  
7 machine with all that stuff on it.

8 Q. Well, you told your mom on a jail phone call that you  
9 left the house in jeans, and then she corrected you and said  
10 "no, you were wearing shorts."

11 A. Yeah.

12 Q. And then you said "I don't think I had a shirt on."  
13 And she said "yeah, you had on your white button down  
14 shirt."

15 A. Uh-huh.

16 Q. Where did that stuff go, Mr. Jones?

17 A. It should be -- it was laying across the fence when the  
18 police was there. Why didn't they see it?

19 Q. Your sister saw it, didn't she?

20 A. No, my sister didn't see that. My sister wasn't there.

21 Q. Maybe not right then, but your sister got your clothes  
22 and your sister got the towels and those items have been  
23 burned.

24 A. No, ma'am.

25 Q. So the only thing that's been burned is the weed killer

1 and ant killer. She burned that.

2 A. I'm thinking she burned it.

3 Q. Does that make sense to you?

4 A. I just told her to get rid of it.

5 Q. You didn't want your parents to see your clothes that  
6 you were wearing that night, is that correct?

7 A. I didn't want -- I didn't want to wash them clothes in  
8 their washing machine.

9 Q. And Mr. Jones, you have been convicted of a felony  
10 before, is that correct?

11 A. Yes, ma'am.

12 Q. You never called to get Kay any help, correct?

13 A. Not at that time, no, ma'am, I didn't.

14 Q. You didn't give Detective Ramsey a full version of  
15 events that you are telling today?

16 A. I answered his questions.

17 Q. You told your parents on the phone that you never had  
18 sex with your mother's sister --

19 A. Exactly.

20 Q. -- Aunt Kay?

21 A. I probably did tell them that.

22 Q. But you did say "I'll do what I have to do to get out  
23 of this."

24 A. I probably did.

25 MS. LESKANIC: Nothing further.

1 THE COURT: She's finished. Do you have some  
2 stuff.

3 MR. SHEALY: I'm sorry, Your Honor, I didn't  
4 realize she was done.

5 REDIRECT EXAMINATION BY MR. SHEALY:

6 Q. Did they find your DNA in Kay?

7 A. No, sir, they couldn't find my DNA in Kay.

8 Q. Did you ejaculate inside her?

9 A. No, I lost interest during our relations.

10 Q. And the sex took place before the fight?

11 A. Yes, sir.

12 Q. Who was holding the knife whenever Kay got stabbed?

13 A. She was.

14 Q. And what were you trying to do?

15 A. Get it away from me.

16 Q. Keep you from getting cut again?

17 A. Exactly.

18 Q. Now, the solicitor asked you why all of the sudden you  
19 become concerned about the weed killer and the ant killer.

20 A. Uh-huh.

21 Q. Now, did this happen here at the county jail?

22 A. Sir?

23 Q. Did you make that phone call here at the county jail?

24 A. Yes, sir.

25 Q. And are there any televisions in the county jail?



1 A. Yes, sir.

2 Q. Do you watch TV?

3 A. Oh, no, not in the dorm I'm in, there is not no  
4 television.

5 Q. Okay. In fact, there is nothing for y'all to do?

6 A. No, sir.

7 Q. Is that correct?

8 A. Nothing.

9 Q. So you have a whole lot of time to think?

10 A. Yes, sir.

11 Q. Now, you told the solicitor and you told me that you  
12 told Detective Ramsey at the hospital a condensed version of  
13 what happened, is that correct?

14 A. Yes.

15 Q. Did he seem satisfied with your answers?

16 A. He must have been. He never did ask for no written  
17 statement or any more questions to me. He never did come to  
18 the jail or nothing.

19 Q. Okay. But at the time that you did this, this was at  
20 the hospital, is that correct?

21 A. Sir?

22 Q. That was at the hospital?

23 A. Yes, sir.

24 Q. And the focus was getting you medical care?

25 A. Yes, sir.

1 Q. At the time -- you have been cooperative with the  
2 police the whole time?

3 A. Yes, sir.

4 Q. If he would have come and asked you to give a written  
5 statement, would you have done that?

6 A. Yeah, I told her I was supposed to do that.

7 Q. And you were willing to go into a little bit more  
8 detail?

9 A. Yes, sir.

10 Q. So you didn't stab Kay?

11 A. No, sir, I didn't.

12 Q. That's a result of her own actions and you are trying  
13 to defend yourself?

14 A. I might have been the cause of it, but I didn't  
15 actually do the stabbing. My actions might have supported  
16 her wound.

17 Q. The reason she got stabbed is you were trying to push  
18 the knife away from you?

19 A. Yes, sir.

20 Q. Were you trying to stab her?

21 A. I wasn't trying to stab her. I was just trying to get  
22 the knife away from me.

23 Q. Was she trying to cut you?

24 A. She was coming at me with it.

25 Q. She had already cut you once?

1 A. Yeah, she done cut me once.

2 Q. Did anybody ask you where your clothes were?

3 A. No, sir.

4 Q. Would you have told them if they did?

5 A. Yes, sir, I guess I would have.

6 Q. Well, you gave the police everything that they wanted?

7 A. Everything that they asked me I give them.

8 Q. And today have you answered all the questions  
9 truthfully?

10 A. Yes, sir, to the best of my knowledge.

11 Q. Even when the answers hurt?

12 A. Yeah, they hurt. There was a few of them hurt.

13 Q. Thank you.

14 MR. SHEALY: Your Honor, that's all I have.

15 MS. LESKANIC: Briefly, Your Honor.

16 RECROSS EXAMINATION BY MS. LESKANIC:

17 Q. They got a search warrant for your blood and buccal  
18 swab, isn't that right?

19 A. Yes, ma'am.

20 Q. And you lost interest in raping Kay.

21 A. I didn't rape her, ma'am.

22 Q. You put the power cord around her neck and she lost  
23 consciousness.

24 A. I didn't do that.

25 Q. Is that when she urinated and defecated on herself?

1 A. I don't know when she done that.

2 Q. Is that what caused you to lose interest?

3 A. No.

4 Q. Her panties and her pants were soaked in urine. Sue  
5 Mobley testified that she had defecated on herself.

6 A. She had got up and went to the bathroom. Put her shirt  
7 on and went to the bathroom.

8 Q. But she wasn't wearing her pants and -- she went to the  
9 bathroom. She didn't go in her pants.

10 A. No, she didn't go in her pants. She just put her shirt  
11 on and went to the bathroom.

12 Q. Okay. So she went to the bathroom right before the  
13 stabbing?

14 A. She went to the -- when we -- when I stopped having sex  
15 with her, she got upset.

16 Q. Okay.

17 A. And she put her shirt on and then she went to the  
18 bathroom.

19 Q. Did she have her bra on?

20 A. I don't remember her putting a bra on.

21 Q. Well, you were having sex with her. Did she have a bra  
22 on?

23 A. Yes.

24 Q. But you don't remember her putting it on?

25 A. I don't remember her having it on under the shirt or

1 not. I don't know she had it on under the shirt.

2 Q. So you disrobed her completely while y'all were having  
3 sex and she puts her bra and shirt on?

4 A. I didn't disrobe her.

5 Q. You just said she wasn't wearing her bra while you were  
6 having sex with her. Is that what you said?

7 A. No, that's not what I said.

8 Q. Okay, what did you say?

9 A. I said I didn't know if she had her bra on under her  
10 shirt or not.

11 Q. Right, but I'm asking you did she have her bra on while  
12 you were having sex with her?

13 A. Yes.

14 Q. Yes?

15 A. Yes.

16 Q. Now, fifteen seconds ago the answer was no.

17 A. Right.

18 Q. But now it's yes.

19 A. When we started, she had her bra on.

20 Q. And then at some point she didn't?

21 A. Exactly.

22 Q. And then she put it back on?

23 A. I don't know what she did, as far as that goes.

24 Q. So she goes in the bathroom after you lose interest in  
25 sex and puts her bra and shirt on?

1 A. I don't know what she put -- I know she put her shirt  
2 on.

3 Q. Well, there is blood all over her bra, so would you say  
4 she put her bra back on?

5 A. Yes, sir.

6 MR. SHEALY: Objection, Your Honor, calls for  
7 speculation for him to answer the question.

8 THE COURT: Overruled.

9 BY MS. LESKANIC:

10 Q. Her pants and underwear are soaked in urine and she has  
11 feces on her and that's why you lost interest in raping her.

12 A. I didn't rape her.

13 MS. LESKANIC: That's all.

14 REDIRECT EXAMINATION BY MR. SHEALY:

15 Q. Scott, were you here when Kay testified?

16 A. Sir?

17 Q. Were you here when Kay testified?

18 A. Yes.

19 Q. Did she ever say that she had an electric cord around  
20 her neck?

21 A. No.

22 Q. Thank you.

23 THE COURT: You may step down.

24 MR. SHEALY: Your Honor, if I may have a few  
25 moments.

1 (Off the record)

2 (Back on the record)

3 MR. SHEALY: ' May we approach?

4 THE COURT: Yes.

5 (Whereupon, the lawyers approached the bench for  
6 an off-the-record discussion)

7 MR. SHEALY: Your Honor, we recall Lucille  
8 Whelchel.

9 THE COURT: Ms. Whelchel, you already have been  
10 placed under oath and you are still under oath for the  
11 purposes of these questions.

12 THE WITNESS: Yes, sir.

13 REDIRECT EXAMINATION BY MR. SHEALY:

14 Q. Ms. Whelchel, have you experienced Kay Spencer's anger?

15 MR. BARNETTE: Your Honor, I going to object at  
16 this point concerning the relevance of this testimony.

17 THE COURT: All right, overruled.

18 BY MR. SHEALY:

19 Q. What happens when she gets angry?

20 THE COURT: That wasn't the question, Mr. Shealy.  
21 The question you asked would allow for a yes or no response.

22 BY MR. SHEALY:

23 Q. Have you experienced your sister's anger?

24 A. Yes.

25 Q. And is she prone to go into rage?

1 A. Yes.

2 Q. Are they expected when they happen?

3 A. Yes. Yes.

4 Q. They are expected?

5 A. Yes.

6 Q. Are they frequent?

7 MR. BARNETTE: Your Honor, I'm going to object at  
8 this point in time. I don't know whether it's relevant in  
9 this situation.

10 THE COURT: Overruled. Go ahead.

11 Yes or no.

12 A. No, they are not that frequent.

13 BY MR. SHEALY:

14 Q. But when they are, they are disturbing?

15 A. Yes, sir.

16 Q. Thank you.

17 MR. SHEALY: I have no further questions.

18 MR. BARNETTE: No questions for this witness, Your  
19 Honor.

20 THE COURT: You may step down.

21 MR. SHEALY: Your Honor, we call Myra Hodge.

22 Your Honor, may she be excused?

23 THE COURT: She may be.

24 You are referring to Ms. Whelchel?

25 MR. SHEALY: Yes.



1 THE COURT: She may be.

2 MYRA HODGE, having been first duly sworn,  
3 testified as follows: .

4 DIRECT EXAMINATION BY MR. SHEALY:

5 Q. Would you tell the jury your full name, please?

6 A. Myra Hodge.

7 Q. And Ms. Hodge, do you know Kay Spencer?

8 A. I do.

9 Q. And do you know Scott Jones?

10 A. I do.

11 Q. Do you know their whole family, or most of their  
12 family?

13 A. Yeah, right.

14 Q. At one time were you sitting with the grandfather?

15 A. The grandmother.

16 Q. The grandmother?

17 A. Right.

18 Q. At one point was the grandmother related to the  
19 grandfather -- or -- okay.

20 Have you experienced Kay Spencer's anger?

21 A. Yes.

22 Q. And have you experienced just in the ordinary  
23 conversation of her getting madder and madder for no reason?

24 A. Yes.

25 Q. And the rages, were they directed at you?

1 A. At one point, yes.

2 Q. And are they permissible?

3 A. I'm sorry?

4 Q. Are they permissible? Are they impressive?

5 MR. BARNETTE: I'm going to object at this point.  
6 He's leading the witness.

7 THE COURT: Sustained.

8 MR. BARNETTE: Thank you.

9 BY MR. SHEALY:

10 Q. Did they happen often?

11 A. The threat?

12 Q. Well --

13 A. Is that what you mean?

14 Q. I don't want --

15 MR. BARNETTE: Your Honor, I'm going to object at  
16 this point in time, the relevance to it, or whatever at this  
17 point in time. We need to approach the bench I guess.

18 THE COURT: Yeah. Well, y'all approach, please.

19 (Whereupon, the lawyers approached the bench for  
20 an off-the-record discussion).

21 MR. SHEALY: Thank you, Your Honor. That's all I  
22 have.

23 MR. BARNETTE: Just one question, Your Honor.

24 CROSS EXAMINATION BY MR. BARNETTE:

25 Q. Didn't Kay fire you for the care? Wasn't she the one

1       that fired you in this situation?

2       A.    No, absolutely not.

3       Q.    Thank you.

4               MR. SHEALY: Your Honor, may we approach?

5               THE COURT: If you need to.

6               (Whereupon, the lawyers approached the bench for  
7       an off-the-record discussion)

8               THE COURT: Anything else for this witness?

9               MR. SHEALY: No, Your Honor.

10              THE COURT: You may step down.

11              MR. SHEALY: Your Honor, the defense rests.

12              THE COURT: All right. Any reply?

13              MR. SHEALY: Your Honor, may she be excused?

14              THE COURT: She may be.

15              MR. BARNETTE: Your Honor, may we approach the  
16       bench for just a second?

17              (Whereupon, the lawyers approached the bench for  
18       an off-the-record discussion)

19              THE COURT: All right, ladies and gentlemen, we  
20       are going to recess for lunch. Keep in mind my caution.  
21       You are the still not to discuss the case in any fashion and  
22       don't conduct any research, don't allow yourselves to be  
23       exposed to any type of media coverage that might relate to  
24       it. Have a good lunch and please report to your jury room  
25       at two o'clock. Two o'clock this afternoon.

1           (The following takes place outside the presence of  
2 the jury panel)

3           THE COURT: All right. Court is in recess until  
4 two o'clock.

5           (Whereupon, proceedings were recessed)

6           (Whereupon, proceedings were reconvened)

7           THE COURT: Is there to be any reply testimony or  
8 other evidence?

9           MS. LESKANIC: No, Your Honor.

10          THE COURT: All right. Mr. Shealy, do you want to  
11 renew your motions?

12          MR. SHEALY: I do, Your Honor, on the same ground.

13          THE COURT: All right. That's denied.

14          Any requests for instructions?

15          MR. SHEALY: From the defense, Your Honor, there  
16 is a request for self-defense and consent as a defense to  
17 criminal sexual conduct, first degree.

18          THE COURT: Anything else?

19          MR. SHEALY: No, Your Honor.

20          THE COURT: All right. Bring the jury in, please.

21          (The following takes place in the presence of the  
22 jury panel)

23          THE COURT: All right. Is there any reply  
24 evidence to be presented at this time?

25          MS. LESKANIC: No, sir, Your Honor.

1 THE COURT: All right, ladies and gentlemen,  
2 that's all the evidence to be presented in the case. What  
3 remains to be are the lawyers final summations, after which  
4 I will instruct you on the law and then you can begin with  
5 your deliberations in the case. So please give the lawyers  
6 your attention now as they give you their final summations.

7 THE COURT: Mr. Shealy.

8 MR. SHEALY: Thank you, Your Honor.

9 The trial is essentially over with. My job, once  
10 I get done addressing you is done. There is nothing more I  
11 will be able to do. I won't be able to talk to you again  
12 once I stop talking and head to the chair. I won't be able  
13 to address you any more.

14 After I address you, the State is going to talk to  
15 you. The State has a very -- an enviable position in this  
16 case, because she will be able -- I don't know who is going  
17 to speak for the State, but they will be able to critique  
18 what I have said. I will not be able to critique what they  
19 have said, so I want you to listen to them. I want you to  
20 listen to me, but I want you to listen to them, and think of  
21 what my reply would be before I tell you, and I'm sure that  
22 you are going to get reply as to what I say.

23 Now, I hope that you have done what I have asked  
24 you to do. I hope that you have used your collective  
25 experiences in life and judge each witness as they

1 testified. Look at them how they have held themselves, what  
2 they said, how they said it and whether or not they were  
3 being believable.

4 Now, I want to first to say, as I have always done  
5 from this, refer to Scott Jones. The case has varying  
6 accounts of what happened. She differs on how he arrived in  
7 one version. He arrived, very pleasant. They sit down and  
8 they are talking. He goes -- he asks to go to the bathroom.  
9 She gives him permission. He goes to the bathroom and comes  
10 back and attacks her.

11 The other version is he arrives, he's angry, he  
12 goes to the kitchen, comes back and attacks her.

13 Now, what I'm telling you right now are not facts.  
14 You are the ones to determine what the facts are. What I'm  
15 telling you is what I believe I heard, just as when the  
16 State talks to you, they are in the same position I am. You  
17 have got to determine what the facts are.

18 Now, the sequence of stabbing, smothering,  
19 choking, that sort of thing, it varied from telling it to  
20 telling it, but essentially her version of the facts is that  
21 she was fully dressed and attacked out of the blue by Scott  
22 with a knife. He stabbed her, breaks the blade off in her.  
23 She -- in her wound. She then reaches into the wound, pulls  
24 out the blade -- not the handle. The handle is broken off.  
25 It's gone. We don't know where it is, but now we are just

1 talking about the blade. She's holding the blade. And she  
2 told you she secreted it in her hand as Scott continued to  
3 abuse, and you will remember there is different types of  
4 abuse. Then all of the sudden with the blade in her hand  
5 she slashes out. And she testified that she got him on the  
6 arm -- on the wrist and the leg. She's going to say she  
7 didn't get him on the wrist or leg. You saw where she got  
8 him. She got him on the thumb of his right hand.

9 She tells you that she's in and out of  
10 consciousness while Scott rapes her vaginally and anally.

11 Then she tells you he's trying to clean up the  
12 area with towels that's soaked in blood. She tells you --  
13 she tells you he takes the towels to the truck. She goes  
14 and she locks the door, goes to the drawer, pulls out her  
15 gun and comes back. He calls her name, knocks on the door.  
16 She shoots through the door at him. At that point he  
17 leaves and she eventually -- we don't know quite when, but  
18 she goes to a neighbor's house and calls 911.

19 Now, Scott's version is little bit more detailed.  
20 His version is that he went there frustrated. He wanted to  
21 confront her about why it was that she hadn't taken care of  
22 or sitting with his grandfather, her father. She meets him  
23 at the door in bra and panties. He immediately forgets his  
24 frustration and doesn't talk about his grandfather. She  
25 invites him in and in his words she seduces him. Well, he

1       allowed her to seduce him. And this is not unusual with  
2       their relationship. He told you that that happened in the  
3       past two times before in the past, and so he didn't question  
4       it. She's just telling you a lie. They do that.

5               He tells you something that nobody told you, and  
6       it looks bad on him, but she -- he told you that she  
7       performed oral sex on him. He didn't have to say that, but  
8       he has testified as to what happened. And if that happened  
9       then, he's now telling you.

10              Now, they do have sex vaginally. She asked him to  
11      do it to her anally. He tried but her method of lubricating  
12      herself, licking her hand and rubbing her bottom, turned him  
13      off. He lost interest in having sex so they stopped. He  
14      tells her to get dressed and -- ultimately dressed. And he  
15      tells you that she has the -- she's put -- she put him on  
16      her futon and then he --

17              They begin to discuss Scott's grandmother, Kay's  
18      mother, and what happens at the time that she died. At that  
19      point Kay was already mad, and now she boils over. She's  
20      extremely angry. And he doesn't know what's on that table  
21      by the futon, but she reaches over there and grabs  
22      something. He doesn't know what it is. She slashes at  
23      Scott. Scott puts out his right hand to stop whatever it is  
24      that she is slashing at him and he's cut, and you saw the  
25      cut. Nobody denies the cut. In fact, when he gave the only



1 statement the State was interested in taking from him, he  
2 gave that statement after the police had taken him to the  
3 hospital to tend to the cut, and he was still bleeding.

4 She's not satisfied with cutting him once. She  
5 still has the knife and she slashes against. This time  
6 Scott is ready and he grabbed her by the wrists. All he  
7 wants to do is keep that knife away from him and he twists  
8 her wrists to get her to let go. She won't let go and  
9 she -- they are pulling back and forth and they are -- they  
10 struggle over the knife. And Scott told you "I wanted that  
11 knife as far away from me as I could," so he pushes it  
12 towards her. In the meanwhile he is trying to twist her  
13 wrists trying to get her to drop it and the knife went into  
14 Kay.

15 I submit to you that that is as much of Kay's  
16 fault as it was Scott's fault. In fact, Scott is entitled  
17 to defend himself and he's already been injured, wounded.

18 He begins to bleed very badly. When he  
19 realizes -- he doesn't realize that she's been cut. And  
20 we'll say stabbed -- when I say stabbed, I mean that the  
21 knife is more than just, you know, being cut. It actually  
22 penetrated and went into her, but I do not mean that Scott  
23 stabbed her.

24 Anyway, when he realizes she's hurt, he tries to  
25 help her. He's going to call 911. She begs him not to.

1 She knocks the phone out of his hand, so he promises her  
2 that he won't call 911. To settle her down he makes that  
3 promise. Then he goes and he looks for something, kind of a  
4 first aid to apply to both of their wounds. What does he  
5 find? A couple bottles of hydrogen peroxide. Do we know  
6 that hydrogen peroxide was there? Yes, because Kay told you  
7 her son suffers from a condition that requires hydrogen  
8 peroxide and she's kept on it hand. So Scott wouldn't known  
9 that, unless he looked for it.

10 Now, she won't let him pour it in her wound, but  
11 he pours it on his wound. Meanwhile she's down in their  
12 combined blood on the floor and she's pushing herself around  
13 with her feet. She is holding in her hand some kind of wire  
14 that wrapped up. It's not the computer wire that plugs into  
15 the wall. He could have very easily said she wrapped that  
16 around herself and was trying to hurt herself, but he  
17 didn't. He doesn't know what happened to the wire. He just  
18 knows that it was there.

19 He goes to prepare the truck. He is telling her  
20 "we need to go to the hospital," so he taking both us to the  
21 hospital, so he takes one towel from her house and wraps it  
22 around his hand. He goes out to the truck where his dad has  
23 a couple a towels there and drapes them over the seat. He  
24 comes back and the door is locked. He calls to Kay "come  
25 on, let's go. We got to go" and she shoots through the

1 door. He leaves. He heads home and it's his intention to  
2 go to the hospital and wash the wound, I mean, but before he  
3 goes to the hospital, he wants to wash the wound and to get  
4 himself clean.

5 Now, at this time he doesn't think there is any  
6 crime going to be reported or anything. He certainly  
7 doesn't that believe that anybody thinks he's raped her. So  
8 he told you in his testimony. He didn't have to say this,  
9 "but, yeah, I went and took a shower to get the blood off of  
10 me and sex and the dog hairs and himself and the dead dog,  
11 and I was planning to go to the hospital."

12 Well, let look at the two versions. She says that  
13 she was stabbed almost immediately by Scott while she was  
14 fully dressed. Scott says she was cut after they had sex  
15 and she put on her Carolina shirt. The evidence says she  
16 was stabbed after she disrobed and then put on her Carolina  
17 shirt.

18 Remember, the bra. You will have a chance to look  
19 at it, but she was fully clothed, she was wearing that bra.  
20 If she was wearing that bra, that knife -- you heard it from  
21 Detective Segina, that knife would have gone through that  
22 bra and would have resulted in a hole in the bra. There is  
23 no hole in that bra.

24 If she had disrobed and taken her bra off and just  
25 put on the Carolina shirt, that would account, and that is

1 Scott's version, not Kay's.

2 She says that she cut Scott on the wrist and it  
3 bled. Yet he was only injured when he put out his hand and  
4 that was to his thumb, not his wrist, not his leg. But the  
5 cut was deep.

6 She said the handle of the knife broke off and she  
7 reached into the wound, pulled the blade out, and holding  
8 the blade, only just the blade. Remember, the handle has  
9 been broken off. We are talking about the blade, which  
10 would have to be fairly small, because she said it was  
11 overall it was about that long. She's holding it in her  
12 bare hand. And holding -- or secretes it a little bit later  
13 after he does things that she says he's doing to her, she  
14 also says slashes out and cuts him. This is after she's  
15 been stabbed and she slashes him and cuts him.

16 And I submit a couple of things to you. One, to  
17 use a small blade as she described without a handle would  
18 not give her enough leverage, and this was stuff from your  
19 experience, enough leverage to cause the type of cut that  
20 Scott suffered. It just wouldn't have done that.

21 Two, the blade is small. In order for her to have  
22 cut Scott, we submit to you she would have been cut in her  
23 hand in some way or fashion. It just wasn't any way to hold  
24 that blade firmly enough to take an offensive action without  
25 cutting her hand. Did she cut her hand? No evidence of

1       that. We don't know, but there is no evidence of it. If  
2       she cut her hand, I'm sure that we would know that she cut  
3       her hand, but she didn't.

4               Now, as furthermore, I think that is a bit  
5       incredible, that she just been stabbed to reach into a wound  
6       and pull out a broken blade, a blade with a handle broken  
7       off of it.

8               She says Scott tried to clean up. Scott says he  
9       didn't. He says he didn't know about the antibacterial soap  
10      that was in the kitchen. In fact, he didn't even know about  
11      the soapy solution that was in the glass. That stuff wasn't  
12      around. He didn't go into the kitchen. He didn't know  
13      anything about that. He denied trying to clean up. But --  
14      and I'm sure the State is going to show you these, but look  
15      at the evidence of the floor. There is blood everywhere.  
16      It's Scott's blood, it's her blood, and it's all mixed up.  
17      They don't get to claim the exclusive rights to the blood.  
18      Does it look like it's been cleaned up? No. Is there wipe  
19      marks on it? Yes. The State would like you to believe that  
20      the wipe marks were caused by a towel. But even Kay says  
21      that she moved around on the floor in that blood. That's  
22      what caused those wipe marks, because what? Because the  
23      blood hadn't been removed. The blood is still there. If he  
24      tries to clean it up, it would be cleaned up, or at least a  
25      whole lot less blood there, but he doesn't know how the

1 blood got there -- the soapy solution and the liquid soap  
2 was used.

3 She was there after he left. We don't know what  
4 she did after he left, but if we use your common sense,  
5 she's been stabbed. She is hurt. She's hurt bad. This  
6 probably makes no sense to me, the soap, because neither  
7 person would have been interested in cleaning up. Scott is  
8 hurt and he's riding back. She's hurt and she needs medical  
9 attention. Neither one of those would carry around to make  
10 people attempt to clean up. And if they weren't cleaning  
11 up, how come -- just -- it was just a bare effort. I don't  
12 know.

13 I asked one of the police officers could you  
14 fingerprint the bottle. He said no, he said soap, and I  
15 have tried before. And I said "you know, did you try this  
16 time?"

17 "No, I didn't even try this time."

18 The burden of proof is on the State, and yet he  
19 might have tried and failed, but then he would have tried.  
20 He might have tried and succeeded and we might have found  
21 out that Scott handled that bottle. We might have found out  
22 that Kay handled that bottle. We might have even found out  
23 that maybe somebody else handled that bottle as the police  
24 were leaving. That's why they left that solution partially  
25 used. That's why not all the drops of blood are on the

1 couch or the rug there. We don't know. And we might --  
2 even if he had fingerprinted them, we still might not know  
3 because he might have failed, but he might have succeeded.  
4 I think the State should have taken that step. The burden  
5 of proof is on the State. It's not on Scott. And, of  
6 course, they weren't going to let Scott go out and  
7 fingerprint anyway. Scott wouldn't know how to fingerprint,  
8 if they did.

9 Also, according to Kay, the rape took place long  
10 after the abuse and cuttings and all that. And even in  
11 Kay's version Scott is injured and bleeding.

12 I submit to you that a person that had been badly  
13 cut and is continuing to bleed badly would have no interest  
14 in raping somebody.

15 The sequence that Scott lays out. They had sex  
16 and cutting came much later makes much more sense. Much  
17 more -- it fits in the general life experiences.

18 Now, Scott does go to the truck and he comes back  
19 and gets shot at through the door. All he wanted to do was  
20 take her and him to the hospital, and he told you that. And  
21 he's upset because he gets shot at by -- for his trouble, so  
22 he leaves.

23 The State wants you to believe that the blood on  
24 the jeans, panties, and the bra are Kay's, but they could  
25 just as easily be Scott's. It just depends on how the stuff

1 was laid out and what had got rubbed into it and who bled on  
2 it. They could have told us whose blood it was. I asked  
3 the lady that, you know, whose blood it was. She didn't  
4 know. But she's the expert. She's the one that's supposed  
5 to be able to tell us whose blood it was. Well, why didn't  
6 you test it? I didn't want to. She gave me some kind of  
7 answer about -- well, I don't even recall what her answer  
8 is, but the point is in this instance the police actually  
9 asked her to test it to find out whose blood it was. She  
10 didn't bother. Although it was processed to be tested, it  
11 was sent to her, that's her job, that's what our tax money  
12 goes to pay for, and she decides, no, she is not going to do  
13 that. Now we don't know whose blood that is. It might be a  
14 mixture of both, so we will never know, and that's not the  
15 Scott's fault.

16           There is a couple other just points that came out  
17 that are disturbing to me. I don't know if they are  
18 disturbing to you or not, but they made a big deal about the  
19 jeans that Kay wore and the zipper was zipped up. And they  
20 submitted to you that their theory that the jeans were  
21 ripped from her body. Kay testified she gained a little  
22 weight. In fact, these blue jeans belonged to her mother.  
23 Her mother was bigger than she was. The -- I want you to  
24 look at the evidence. I don't know if anybody's pants are  
25 bigger or not, but I want you to look at the zipper, and I



1 want you to look at the waistband. The waistband is  
2 elastic. I would submit to you that it's not unusual for a  
3 person that's wearing this kind of pair of pants to flip  
4 them off without unzipping them or unbuckling them.

5 We can't speak to the fecal matter or the urine.  
6 First off, we don't know there is any fecal matter.  
7 Certainly there wasn't any piles of it. We didn't see any  
8 of it. I'm sure there was an examination of the ground --  
9 in the house for it, but we didn't see any of that. What we  
10 do know is she did not have anything covering her bottom.  
11 She had a shirt, a Carolina shirt, but she was bare bottomed  
12 and she sat on the ground. And you have got a picture in  
13 evidence. I objected to it, but I didn't -- it's not a  
14 pleasant picture to look at, but it did and it came into  
15 evidence. But there is no telling what that is. But if she  
16 did defecate, where is the defecation?

17 Now, Scott told you that he did say that she was  
18 ill. Now, up to this point Scott didn't know he was charged  
19 with any crime. He has been shot at and he had been cut.  
20 He was upset. He attempted to take her to the hospital, and  
21 now she's charging him with criminal sexual conduct and  
22 that's the last straw. He said that, and he told you he was  
23 upset when he said it, but deep down in his heart he didn't  
24 mean it.

25 At one point they were showing you a picture of

1 Kay's face. A police officer tried to say that she had been  
2 hit in the face. Kay never said she got hit. Kay never  
3 said anybody hit her. Scott didn't hit her in the face.  
4 Well, Scott told you he didn't hit her in the face. All  
5 that is is a police officer trying to get a conviction. So  
6 remember, everybody here has a reason to put their own spin  
7 on it.

8 There were a lot of cross-examination of Scott  
9 about his phone calls to the jail. Scott knows those phone  
10 lines that he talked over the phone. Obviously to his  
11 sister, to his parent too, and he doesn't want to talk about  
12 having sex with his aunt. That's a normal reaction.

13 Now, one of the things Kay cannot explain in her  
14 version is Scott's immediate determination to stab. Why  
15 would he do that? That he was frustrated when he first  
16 arrived, but not that he wasn't unduly angry. So why -- you  
17 know, something must have happened to force that change.  
18 But what was it? Scott's version, Kay initially gets angry  
19 at Scott for losing interest in having sex, and that's  
20 understandable. And she gets angrier and angrier as they  
21 discuss her mother, his grandmother. We heard evidence  
22 about her anger and her rage, and then she goes into him.  
23 Scott didn't and she comes at him with a knife.

24 When Scott leaves, he goes home, he changes his  
25 clothes. Now at that point in time he doesn't -- she's

1 asked him not call the police, so he hasn't called the  
2 police. But he doesn't think that he's guilty of anything.  
3 He knows what happened and all that, and so he goes, he  
4 takes off his clothes. He changes his clothes. He takes  
5 his clothes outside and washes them. He's up front with  
6 you. He wanted to get the sex, the blood, and the dog stuff  
7 off of him. He had buried a dog that day. He wanted to get  
8 all of that off of him, and his mom wouldn't let him use the  
9 washing machine. He wasn't thinking about well, he doesn't  
10 know there was any evidence to preserve, until the police  
11 came. The police came after he's finished his shower, or  
12 while he was in shower. That is when they told him they  
13 wanted to search. What does he do? He signs a consent to  
14 allow them to search. They don't ask him where is his  
15 clothes, where is his towel. You would think that they  
16 searched outside too, because they were hanging right there  
17 on the fence. Nobody asked him about that, and he doesn't  
18 think about it, because he's just now been charged with rape  
19 and assault and battery with intent to kill. He is stunned.

20 How else did he respond to being charged? Well,  
21 he did something that Scott says he doesn't have to do. He  
22 talked to the police. He gave an abbreviated statement to  
23 the police after they took him, the police took him to the  
24 emergency room. He gave some abbreviated statement. He  
25 talks to the officer. The officer apparently must have made

1 notes because it's in his report. He doesn't prepare a  
2 written statement for Scott to sign. Why does he give an  
3 abbreviated set of details account? Because he's in the  
4 hospital. Scott is fully he -- told you he's fully  
5 expecting him to come back and take his statement. He  
6 thought that he was supposed to give one, but they didn't.

7 But what was remarkable about the statement that  
8 he gave to Detective Ramsey? You heard me. Kay testified  
9 about the time. Anything to contradict whether she said  
10 something different I tried to bring in. And when it was  
11 correct to bring it in, it came in. But I was impeaching.  
12 I was showing that her story had changed from A to point B  
13 each time it was told.

14 Scott got up here and gave you a detailed  
15 testimony, including what the solicitor asked. He gave up  
16 his right to remain silent. Not once, not even once did the  
17 solicitor try to impeach him with what he told Detective  
18 Ramsey. Not once.

19 Then whenever they came to him, they had a warrant  
20 to take a swatch out of his mouth, take a vial of blood out  
21 of him, so they could hopefully find evidence against him,  
22 he should have said uh-uh, I'm not doing that and resisted  
23 them. He could have drawn up. He could have tried to keep  
24 them from doing it. What did he do? He opened his mouth  
25 and let them take the swatch, or wherever they took the

1 blood from, let them take the blood. He cooperated with  
2 them. He had nothing to hide.

3 This trial -- the remarkable thing about this  
4 trial is that with exceptions of minor exception, and  
5 primarily with the intent to keep things along, the defense  
6 rarely objected. I had nothing to hide.

7 Now, the SANE nurse testified that in her opinion  
8 the injuries to Kay and the bloody discharge indicate  
9 forcible sex. And it was clear that that's what she wants  
10 y'all to believe. But she also said that the same symptoms  
11 could result in consensual normal sex. It just depends upon  
12 the circumstances.

13 Here we saw 'and we learn there is no furniture  
14 there, except this little futon. Whatever happened happened  
15 either on the futon or on the floor or somewhere on both of  
16 them, and that's pretty cruddy conditions.

17 When he was asked if he had been drinking, he  
18 could have said no, I haven't been drinking. He could have.  
19 He said a little he had been drinking, he would go to his  
20 own place. What did he say? Yeah, I was drinking. I had  
21 two or three beers. He didn't have to say that. He could  
22 have gotten away with, oh, no man, but that would have been  
23 a lie.

24 When asked he immediately admitted to having  
25 consensual sex with Kay. He immediately told about the

1 confrontation which Kay got hurt and he got hurt. He didn't  
2 have to. We have a Constitution that all of us in some way  
3 have been given this, and that Constitution one of the  
4 biggest parts of that Constitution is that right to remain  
5 silent. He could have just said I'm not saying a thing, but  
6 he told them I was the victim. He told them I thought I had  
7 to tell them, and so he told them. Even after the police  
8 told him he didn't have to talk to them, he talked to them.  
9 I had asked you to watch the witnesses truthfulness.

10 And as she testified, she directed -- delivered a  
11 long long line. Very rarely did the solicitor ask her a  
12 question. The whole thing was clearly something that she  
13 had planned to deliver. Of course, some magic moments in  
14 there, but her demeanor and the way she answered the  
15 question. I asked her does it appear that she's actually  
16 been through, that she was reliving what she claims she had  
17 been through. I submit to you she did not appear that way.  
18 That's for y'all to determine.

19 Scott answered the questions concisely, directly.  
20 He dealt with the questions. Whenever I asked Kay  
21 questions, she would largely repeat what she had said  
22 earlier, and usually I would have to ask the question one  
23 or -- one or more times after initially asking the question  
24 before getting the answers what I asked.

25 Scott answered deliberately and consistently both

1 with mine and the solicitor's questions. And he told us  
2 then even when at first -- even when he could have gotten  
3 away without not telling.

4 At the scene, the police made a big deal that the  
5 blood on the floored was swirled, wanting you to believe  
6 that somebody tried to clean it up with a towel. Kay told  
7 you she been rolling around -- she was moving around on the  
8 floor. Scott told you that she was pushing herself around  
9 on the floor. That explains the so-called wipe marks. It  
10 also explains why the blood is still there, because nobody  
11 was sucking it up at the time. It also explains why there  
12 was so much blood on the Carolina shirt, in addition to what  
13 she bled on.

14 Scott told you he had no idea how Kay got the  
15 marks on her neck. He tells you he didn't do it. He did  
16 tell you that he saw her with a wire. He could have said  
17 she described trying to kill herself. He didn't say that.  
18 He said he didn't know what happened to the wire, but he  
19 didn't put those marks on her.

20 Scott says he used hydrogen peroxide to try to  
21 treat the wounds. Kay admitted to the hydrogen peroxide.  
22 We've already talked to you about that.

23 Kay never admitted anything that put her in a bad  
24 light. Never. Scott did.

25 Now, the charge -- the judge will charge you on

1 reasonable doubt. What I tell is not the law. What the  
2 judge tells you is the law, but I believe that reasonable  
3 doubt is something that would cause you to hesitate to act.  
4 If you go to the grocery store and you go to buy some milk  
5 and the date on the milk is yesterday, and you hesitate and  
6 say well, that's probably -- it probably has a good date  
7 stamp on it. It says half price, maybe you buy it, maybe  
8 you don't, but you hesitate, okay? Even if you bought it,  
9 that still is reasonable doubt, because you hesitated.

10 In this case if you have a reasonable doubt you  
11 can't take the risk. You can't take the risk. You have got  
12 to find Scott not guilty. You have a reasonable doubt.

13 We submit to you that Scott and Kay were engaged  
14 in consensual sex. There was oral, there was vaginal, and  
15 there was anal. And we are the ones who told you about the  
16 oral, not the State. Only after having sex did Kay become  
17 enraged and attacked Scott with a knife. That makes sense.

18 The State will bring up other matters.

19 Oh, yes, the judge is also going to charge you on  
20 consensual criminal sex conduct and self-defense talking  
21 about. I want you to listen very carefully to that.

22 Now, the State is going to bring up matters I  
23 would like to address, but I can't because I'm done now.  
24 Please listen to what they say. And then after they finish,  
25 the judge is going to charge you what the law is.



1           We ask you to consider what the State has asked  
2           you to consider. We ask you to consider what the defense is  
3           asking you to consider. And certainly consider the law that  
4           is to be given by the judge and then apply that law to what  
5           facts you believe are true. And upon doing that we believe  
6           that you will find reasonable doubt as to the guilt of Scott  
7           Jones and bring back a verdict of not guilty. Thank you.

8           THE COURT: State?

9           MS. LESKANIC: If it please the court.

10          Kay Spencer on the 29th of last year. Terrific  
11          ordeal. She was humiliated then and having been raped;  
12          stabbed and raped by her nephew; and she's had to be  
13          humiliated in this courtroom letting you hear testimony that  
14          she urinated on herself; she defecated on herself; showing  
15          photographs of her bottom covered in dirt and feces; having  
16          to go through a sexual assault exam where she stands naked  
17          on a white towel so that any debris can fall off of her;  
18          where hairs on her head can be plucked; her pubic hair is  
19          plucked; her pubic hair is combed; a vaginal exam is done;  
20          an anal exam is done; she is swabbed in her mouth and her  
21          vagina and in her rectum. And you don't do that when you  
22          have had consensual sex.

23          But you know what he said? She went through all  
24          that. He was victimized at the scene and then had to be a  
25          victim again to get the evidence so that we could be here

1 today. And his statement on his phone call "I'll do what I  
2 have to do to get out of there."

3 He told mom and dad when it first happened "I was  
4 mad when I went down there. I was going to go bitch at her  
5 a little bit. I was going to give her hell, but sex, I  
6 don't know what they are talking about. There is no sex."  
7 Well, then momma finds out from Detective Ramsey "but, son,  
8 you told the detective it was consensual." And his response  
9 "well, what am I supposed to do if she said it's rape?" You  
10 better think fast and I better say consensual in case they  
11 do find my DNA on her, which we did in the pubic combings.

12 He wants you to believe that when he was fifteen  
13 his Aunt Kay masturbated in front of him; and that when he  
14 was seventeen she had sex with him; and then all of the  
15 sudden when he's forty-one -- she didn't call him to come  
16 down to her house. She didn't ask him to come there. She  
17 didn't know he was coming there. And he is dirty and  
18 covered in dog hair, apparently from his testimony, and he  
19 comes to the door and she just can't help herself. She's in  
20 there in her bra, now blood soaked, and her underwear that  
21 are blood soaked, and just can't keep her hands off of him  
22 and she seduces him.

23 The great thing, ladies and gentlemen, you get to  
24 bring your common sense in here and you get to judge the  
25 credibility of the witnesses that were on the stand. And

1 Kay had to be a victim again yesterday and re-live what  
2 happened. And she told you what happened. And when she was  
3 cross-examined by Mr. Shealy, she answered his questions.  
4 And he tried to trip her up saying three o'clock, she said  
5 "no, that wasn't the time." And when somebody tried to say,  
6 "well, he raped you and he stabbed you?"

7 "No, he stabbed me and then he raped me," and she  
8 continued to correct him.

9 And she has said the same thing from day one when  
10 she called 911. When she went over to her neighbor's house,  
11 a young man. You saw David Clary. Humiliated again, go  
12 over to a young man's house with only a shirt on? No  
13 panties, no pants, in the middle of the night, bleeding,  
14 urinating on herself, defecated on herself, and raped and  
15 stabbed, to have to knock on his door to get help?

16 What does the evidence show. Mr. Shealy wants you  
17 to believe that it shows he's not guilty. It's just quite  
18 the contrary.

19 There is blood on the outside of her underwear on  
20 the left side. She was stabbed near her heart on the left  
21 side of the chest. The blood would run down and this would  
22 be on the left side of her underwear. And it would be on  
23 the left side of her pants. On the outside, which is where  
24 it was located, which shows she was dressed when she was  
25 stabbed.

1           He said they not only had sex when she was just  
2 wearing her shirt. Maybe her shirt, maybe her bra, I never  
3 could figure out whether on not she had a bra on. Can't be.  
4 That's impossible. Just use your common sense.

5           Also the way that the jeans and the underwear were  
6 found, one pant leg inside out, one leg the right side out,  
7 the underwear entangled inside. Urine soaked pants and  
8 underwear, still. She didn't take those off. He took them  
9 off, without the consent, after he had stabbed her, after he  
10 had tried to suffocate her, and after he snapped the  
11 computer cord on her neck. His blood is on that cord. He  
12 can't explain that either. And he has no explanation about  
13 the marks on her neck.

14           She does, the truth. And it's easy to explain the  
15 truth. Just tell what happened.

16           He had a hard time coming up with the truth when I  
17 asked him about what his sister burned for him. I think it  
18 might be an insult to common sense and to intelligence to  
19 say that she burned weed killer and ant killer. And he had  
20 to talk to his sister about what something that he could ask  
21 mom and dad to do, to move the ant killer and the weed  
22 killer that he left in the dog pen.

23           See who is telling the truth, and Kay was  
24 consistent. She wasn't making it up. He was making it up  
25 as he goes along.

1           The cut on his hand, he wants you to believe that  
2 she came at him with a knife. Common sense. What do you do  
3 with somebody coming at you with a knife? Your hands go up  
4 this way. He's cut on that, consistent with when he had her  
5 face down on the futon'. She pulls a knife out of her chest  
6 and he's behind her, pushing her into the futon, and she  
7 swings it back. His hands are down and she hits him, cuts  
8 the back of his hand. It's not the front of his hand. It's  
9 not a self-defense wound. She's fighting for her life.

10           "I hope the bitch is dead."

11           Sue Mobley, the sexual assault nurse examiner  
12 testified. She did testify that she was defecating on  
13 herself. Mr. Shealy said there wasn't testimony of that,  
14 but Ms. Mobley stated that there was evidence of urination  
15 and defecation. And she said that the bloody drainage that  
16 she saw in the rectum and the vaginal area were consistent  
17 with un-consensual vaginal penetration and un-consensual  
18 rectal penetration. And her quote was "she was very torn up  
19 in there." That's not consensual sex.

20           The defendant admitted, once I questioned him  
21 about the jail phone call, while Kay was laying on the  
22 floor, she told him I'm dying. He never called 911. He  
23 never intended to help. He wanted her dead. He hoped she  
24 was dead.

25           He had a chance when he went home to call 911.

1 Her cell phone was taken from the scene. She had to go to  
2 the neighbor's house with no phone, nothing on her bottom,  
3 to get help. And she spent over three weeks in the  
4 hospital. He spent about thirty minutes, but he wants you  
5 feel sorry for him for his cut on the hand.

6 This is Kay in the hospital with a ligature mark  
7 around her neck, a stab wound to her chest. She's the  
8 victim, not him.

9 Another close-up view of the ligature mark around  
10 her neck. The only explanation is the power cord around her  
11 neck, which is what made her lose consciousness. And when  
12 she came to she was being raped.

13 The stab wound to her chest. In her shirt you can  
14 see what she was wearing and it went through the shirt. The  
15 lung collapsed. Tubes in her chest to drain the blood.  
16 They transferred her from Upstate to Spartanburg Regional.

17 Blood soaked underwear, left side, outside.  
18 Panties on her when she was stabbed. It's clear.

19 Jeans, urine soaked. Blood on the left side.  
20 Outside panties. They were on when she was stabbed.

21 Found like this on the floor after she had  
22 urinated and defecated. One leg the right way, the one leg  
23 inside out, pants still zipped. Blood on them. They were  
24 forced off after she was stabbed.

25 Dirt, feces, humiliation.

1 Her home where you should be safe, covered in  
2 blood; her computer used to try to kill her; her bed, the  
3 couch, used to try to kill her; and the only utensil that  
4 will show up in her house he tried to kill her.

5 Wet soapy solution. He tried to clean up the  
6 evidence. You don't try to clean up when you haven't done  
7 anything wrong.

8 His sister got rid of evidence for him. He tried  
9 to clean up the evidence. Takes all of the towels inside of  
10 the floor when she was dying on her floor in her house,  
11 where she should have been safe, and she saw the towels gone  
12 and he had walked out of the house, taking that evidence  
13 with him where he had cleaned it up so he wouldn't get  
14 caught, and that's why he hopes she was dead, because maybe  
15 he wouldn't get caught. He was coming back for the rest of  
16 it. Probably coming back to finish her off, but she had the  
17 strength to lock the door and thankfully had a gun, because  
18 he was pushing on the door and she fired the gun and that's  
19 the only reason he left.

20 He is charged with assault and battery with intent  
21 to kill. Judge Cole is going to give you a legal definition  
22 of that. Simply it is an unlawful act of a violent nature  
23 to a person of another with malice aforethought. It sound  
24 likes a lot.

25 Is there a violent injury to Kay? She was

1 stabbed. She was suffocated. She was strangled with a  
2 cord.

3 You have to have a specific intent to kill  
4 someone? No, that's not required in assault and battery  
5 with intent to kill. You don't have to have a specific  
6 intent, but in this case we have him admitting that he  
7 stabbed her, is what she said, and that goes to that intent  
8 that he wanted to kill her.

9 What we do have to have is malice, malice  
10 aforethought. And what that means is that he had an evil  
11 heart, a wicked heart, a heart bent on mischief. It doesn't  
12 have to be for a long time. It could be just seconds before  
13 it's struck. But we have more than that in this case,  
14 because we know when he got there he was mad. By his own  
15 admission when he left his grandfather's house to go to  
16 Kay's house he was mad. "I'm going to give her hell," and  
17 he did. It was a living hell.

18 He's also charged with criminal sexual conduct in  
19 the first degree. That means rape, and that he used  
20 aggravated force to accomplish that rape.

21 He had stabbed her and he had placed the cord  
22 across her neck causing her to be unconscious before he  
23 raped her. That's criminal sexual conduct. It was unwanted  
24 act of sexual battery, and he's guilty.

25 She's been humiliated and he will do what he has



1 to do to get out of it. Thank you.

2 (Whereupon, at 3:05 p.m., the Court gave the jury  
3 panel their jury instructions)

4 THE COURT: Madam Forelady, ladies and gentlemen  
5 of the jury, you, of course, have heard and seen all of the  
6 evidence. You have heard the final summations of the  
7 lawyers, and, therefore, I'm now going to instruct you on  
8 the law that is applicable in this case, and then you will  
9 be asked to go back and begin with your deliberations. And  
10 through that process you will examine the evidence and  
11 decide the facts and apply the law and arrive at a fair and  
12 just decision.

13 It is your exclusive duty to determine what the  
14 facts are. And you do that through your own common sense  
15 examination and evaluation of all of the testimony and the  
16 other evidence received during the trial of this case. And  
17 you twelve jurors alone will decide what weight, value, and  
18 effect to give any particular testimony or other evidence in  
19 the case.

20 Your sole objective is to simply reach the truth  
21 in the matter. And by doing that you will have fulfilled  
22 your obligations as jurors, and that is to simply give both  
23 the State and this defendant a fair and impartial trial.

24 Now, in this case, as you know, the State, through  
25 the solicitor, has charged the defendant, Donald Scott

1 Jones, with having committed two separate and distinct  
2 offenses, although they are alleged to have arisen out of  
3 one particular event, or course of events, which the State  
4 alleges occurred back on May the 29th of 2009. But the  
5 State alleges in two separate indictments that the defendant  
6 did commit the crimes of criminal sexual conduct in the  
7 first degree and assault and battery with intent to kill.

8 Now, as I have told you, the indictments are not  
9 evidence of anything. They are not proof of anything. They  
10 simply set forth the charge, or charges in this case, that  
11 have been brought against the defendant.

12 And as to those allegations and as to those  
13 charges, the defendant has entered a plea of not guilty.  
14 And as I have told you, that plea of not guilty is therefore  
15 placed upon the State the burden of proving the allegations  
16 that they have set forth in each of those indictments, the  
17 burden of proving each of the essential elements of the  
18 crimes they have alleged against the defendant. And,  
19 therefore, the burden is upon the State to establish the  
20 defendant's guilt to the satisfaction of you twelve jurors  
21 beyond a reasonable doubt before any verdict of guilty could  
22 be returned as it relates to any of the charges or either of  
23 the charges.

24 The burden is never upon a defendant, a person  
25 accused of a crime, to prove that they are not guilty or to

1     prove that they are innocent, because in many cases that  
2     might not be possible. It is an important, vital, and  
3     cardinal rule of law that every defendant in a criminal  
4     trial, no matter how serious the offense might be for which  
5     that person stands charged, that person shall always be  
6     presumed innocent of the charge. And that presumption of  
7     innocence remains with any defendant, as it does with this  
8     defendant, from the time he is placed under arrest and  
9     throughout the course of criminal process and even  
10    throughout the course of the actual trial. And as I believe  
11    I have told you, that presumption of innocence will be with  
12    the defendant even as you go back and begin with your  
13    deliberations in this case. And that presumption of  
14    innocence will be with him in the jury room, and it will be  
15    with him forever, unless you twelve jurors determine that  
16    he's no longer entitled to that presumption of innocence.  
17    Now, that is after you have carefully considered all the  
18    evidence in the case, and from that evidence you have  
19    determined what you believe to be the true facts in this  
20    matter. And upon deciding those facts, you apply the law  
21    that I will have provided you, if you twelve jurors  
22    unanimously determine that his guilt as to some crime has  
23    been proven beyond a reasonable doubt, then he is no longer  
24    entitled to the presumption of innocence as it relates to  
25    that offense. But it's only if, unless, and until you are

1 satisfied of his guilt beyond a reasonable doubt that the  
2 presumption of innocence would no longer be applicable.

3 Now, while the State does have the burden of  
4 proving the defendant's guilt to your satisfaction beyond a  
5 reasonable doubt, that doesn't mean the State has to prove  
6 his guilt beyond all doubt, or beyond any possible doubt,  
7 but it does require the State to prove his guilt to your  
8 satisfaction beyond a reasonable doubt.

9 Now, the term reasonable doubt should be given its  
10 plain and ordinary meaning. A reasonable doubt is the kind  
11 of doubt that would cause a reasonable person to hesitate to  
12 act upon the information provided.

13 And a defendant in a criminal trial is entitled to  
14 any reasonable doubt that arises from the evidence, or lack  
15 of evidence in the case. And if, upon any factual issue  
16 essential to a finding of a verdict of guilty, you have some  
17 reasonable doubt as to how that issue should be resolved, it  
18 would be your duty to resolve that reasonable doubt in favor  
19 of the defendant. And, therefore, if upon your  
20 consideration of the whole case you have a reasonable doubt  
21 as to his guilt as it relates to a particular charge, you  
22 must resolve that reasonable doubt in his favor and return a  
23 verdict of not guilty.

24 And at the same time, after you have considered  
25 all of the evidence and you have decided the facts and

1 applied the law, if you have no reasonable doubt as to his  
2 guilt as it relates to a particular charge, then it would be  
3 your corresponding duty to find him guilty and to convict  
4 him of any crime that has been proven to your satisfaction  
5 beyond a reasonable doubt.

6 Now, the same law that provides that you are the  
7 judges of the facts also provides that I am the judge of the  
8 law. And that simply means that nobody is going to tell you  
9 how to arrive at your determination of fact in this case.  
10 You do that, as I have stated, through the exercise of good  
11 judgment and common sense, conscientiously applied to the  
12 testimony and the evidence received during the trial. But  
13 under your oath as a juror, you must accept the law as I  
14 have provided it to you as being the law that you are to  
15 apply in this case. In other words, you are never to  
16 concern yourself with what you thought the law was before  
17 you came to serve as a juror this week, or what you think  
18 the law ought to be. You must simply under your oath accept  
19 the law as I provide it to you as being the law that you are  
20 to apply in this case. And then you simply take that law  
21 and you apply it to the facts as you twelve jurors determine  
22 those facts to be, based upon your own common sense, your  
23 examination and evaluation of all of the testimony and the  
24 other evidence received during the trial.

25 Now, because you are the sole judges of the facts

1 in this case, you are, therefore, necessarily the sole  
2 judges of the credibility. That means the believability of  
3 each witness that has testified during the course of this  
4 trial. And you twelve jurors alone will decide what weight,  
5 value and effect to give to any particular witness'  
6 testimony, or even a portion of testimony. And so there are  
7 a number of factors which you should take into consideration  
8 in arriving at your assessment as to a particular witness'  
9 credibility, and I'm going to list those factors for you.

10 You should consider the demeanor of the witness;  
11 that is, how the witness appeared to you as the witness  
12 testified from the witness stand. Was the witness  
13 straightforward in responding to questions that were asked  
14 of that witness, or was the witness hesitant or evasive.  
15 Simply put, did the witness appear to you to be telling the  
16 truth and to have knowledge of the facts to which that  
17 witness has testified.

18 You should also consider whether or not the  
19 testimony of a witness is consistent or is it inconsistent  
20 with that witness' own testimony, as well as with the  
21 statements made by that witness, whether in court or outside  
22 of court. And you should consider whether or not the  
23 testimony of a witness is consistent or has been consistent  
24 with other witness' testimony or other evidence received  
25 during the trial.

1           You should also consider how the witness came to  
2 know the facts to which a particular witness has testified.  
3 In other words, what was the opportunity of that witness to  
4 perceive the existence of those facts to which that witness  
5 has testified by having previously used his or her senses,  
6 and then what is that witness' ability to be able to come  
7 into court and to accurately recollect to you as to what  
8 that witness has previously perceived.

9           You should also consider any bias or prejudice or  
10 interest that a witness might have as it relates to the  
11 case. In other words, do you find some reason that a  
12 particular witness would come into court or would testify  
13 one way or the another to help or to hurt one side or the  
14 other. And you should consider any interests that a witness  
15 might have in the outcome of the case.

16           If you determine that a witness does have such an  
17 interest and you find that that interest would bear upon  
18 that particular witness' credibility, you may also consider  
19 whether or not the testimony of a witness is strengthened or  
20 is it weakened by other testimony or other evidence received  
21 during the trial of the case.

22           Now, during the course of the trial you have heard  
23 certain evidence relating to the defendant having a prior  
24 conviction for a criminal offense. Ordinarily evidence of a  
25 conviction of a previous criminal offense is not admissible

1

1 during the trial of a case, because it's not relevant to any  
2 issue that the jury has to decide. However, where a  
3 defendant takes the witness stand to testify and where he  
4 has been convicted of particular types of offenses, then  
5 evidence of that conviction may be introduced during his  
6 testimony, but it is allowed for a very limited and  
7 restricted purpose. The purpose for which such evidence is  
8 admitted and the purpose for which the jury may consider it  
9 is solely as it relates to the impeachment value of that  
10 particular conviction as it relates to the credibility of  
11 the defendant's testimony. In other words, you may consider  
12 such evidence, if you find it to be probative, as it relates  
13 to the issue of the defendant's credibility, but you may not  
14 consider it for any other purpose. It is solely allowed for  
15 the purpose of any impeachment value that it may have, if  
16 you determine it does have such value, but it is not  
17 evidence of guilt for the offenses for which the defendant  
18 presently stands trial and you may not consider it for any  
19 such purpose. The only purpose for which you may consider  
20 it, if at all, is any impeachment value that such evidence  
21 might have in your assessment as to the defendant's  
22 credibility.

23 Now, because you are the finders of the fact and  
24 because you are the judges of the credibility of each  
25 witness, you are permitted to believe as much or as little



1 of what a witness has testified to as you deem is  
2 appropriate. And, therefore, you may believe everything  
3 that a witness testified to; you may choose to believe none  
4 of it; you may believe one portion of a witness' testimony  
5 and reject some other portion of that same witness'  
6 testimony. You may believe one witness as opposed to several,  
7 or several as opposed to one. But whatever your good  
8 judgment and common sense tells you is the most believable  
9 and credible testimony is the testimony that you should  
10 accept; and you should reject any testimony that you find  
11 not to be credible or believable.

12 Again, your sole objective is to simply reach the  
13 truth in the matter. And by doing that you will have  
14 fulfilled your obligations as jurors, and that is to simply  
15 give both the State and the defendant a fair and impartial  
16 trial.

17 Now, in this case, as you know, the defendant has  
18 been accused of the crimes of criminal sexual conduct in the  
19 first degree and assault and battery with intent to kill, so  
20 I'm going to instruct you on the law as it relates to each  
21 of those separate offenses.

22 In your determination of fact and your application  
23 of the law, your verdicts in this case may be the same as it  
24 relates to each of the charges. It may be different. And  
25 that, of course, will depend upon your determination of fact

1 and then your application of the law to the facts as you  
2 determine those facts to be.

3 One indictment charges criminal sexual conduct in  
4 the first degree. And criminal sexual conduct in the first  
5 degree is a statutory offense. And that just means that the  
6 legislature has codified the offense in the Code of Laws  
7 and. In other words, they have set forth in the Code of  
8 Laws the definition of that particular offense. So where  
9 the legislature defines an offense, if a person is found to  
10 have committed in that prohibitive conduct in violation of  
11 the statute, then it subjects that person to some form of  
12 punishment or penalty.

13 Please understand, however, that the jury is never  
14 to be concerned with punishment or penalty. That's not  
15 something that you would ever decide. Your sole obligation  
16 and function in the case is to determine whether or not his  
17 guilt as to a particular charge has been proven beyond a  
18 reasonable doubt, and you should do that without any  
19 consideration to be given to any consequence of that  
20 decision.

21 Section 16-3-652 of the Code of laws of South  
22 Carolina defines the crime known as criminal sexual conduct  
23 in the first degree. And that statute provides that a  
24 person is guilty of criminal sex conduct in the first degree  
25 if the actor engages in sexual battery with the victim and

1 one, or more, of the following circumstances are proven:

2 The first is that the actor used aggravated force  
3 to accomplish the sexual battery;

4 Or, the victim submitted to a sexual battery by  
5 the actor under circumstances where the victim was also the  
6 victim of a forcible confinement or a kidnapping, a robbery,  
7 an extortion, a burglary, a housebreaking, or any other  
8 similar offense or act.

9 Section 16-3-651 provides for certain definitions  
10 of terms that are contained in the statute I just read.

11 Actor is defined as the person who is accused of  
12 having committed criminal sexual conduct..

13 Victim is defined as a person alleged to have been  
14 subjected to criminal sexual conduct.

15 A sexual battery is defined as sexual intercourse,  
16 cunnilingus, fellatio, anal intercourse, or any other  
17 intrusion, however slight, of any part of a person's body or  
18 of any object into the genital or anal openings of another  
19 person's body, except when such is accomplished for  
20 medically recognized treatment or diagnostic purposes.

21 And the term aggravated force is defined as the  
22 use of physical force of a high and aggravated nature to  
23 overcome the victim, and that would include the threat of  
24 the use or the use of a deadly weapon.

25 And, therefore, based upon the language of the

1 statute that I have just read, there are two essential  
2 elements which must be established before the defendant  
3 could be found guilty of criminal sexual conduct in the  
4 first degree.

5 First, it must be proven to your satisfaction  
6 beyond a reasonable doubt that the defendant, Donald Scott  
7 Jones, did engage in a sexual battery with Kay Spencer and  
8 that the sexual conduct constituting a sexual battery was  
9 without the consent of Kay Spencer.

10 Sexual conduct between consenting adults is not  
11 criminal sexual conduct in the first degree.

12 And secondly, it must be proven to your  
13 satisfaction beyond a reasonable doubt that at the time of  
14 the commission of any sexual battery the defendant used  
15 aggravated force to accomplish the sexual battery; or, the  
16 victim was also the victim of a forcible confinement,  
17 kidnapping, robbery, extortion, burglary, housebreaking, or  
18 any other similar offense or act.

19 The second indictment charges the defendant with  
20 assault and battery with intent to kill.

21 With respect to that indictment I'm going to  
22 charge you -- I'm going to define for you the term assault  
23 and the term battery, the term assault and battery with  
24 intent to kill. And I'll also be instructing you on a  
25 lesser included offense, that lesser included offense being

1 referred to as assault and battery of a high and aggravated  
2 nature.

3 And so with regard to that indictment, you will  
4 have more than one -- or more than two potential verdict  
5 forms, and I'll explain those to you before I conclude with  
6 this instruction.

7 But I will define for you first the term assault,  
8 the term battery, assault and battery with intent to kill,  
9 and then assault and battery of a high and aggravated  
10 nature.

11 An assault is defined as the unlawful attempt to  
12 do violence or injury to the person of another where there  
13 is the present ability to complete the attempt by way of a  
14 battery.

15 And a battery is defined as the unlawful and  
16 intentional touching or striking of the person of another  
17 without their consent by the person committing the assault  
18 or by any object put in motion by such person; that is, it  
19 is the completion of an act doing violence or injury to the  
20 person of another.

21 An assault and battery with intent to kill is  
22 defined as an unlawful act of a violent nature towards the  
23 person of another, the natural tendency of which is to cause  
24 death or result in serious bodily harm; and the unlawful act  
25 is accompanied with malice aforethought, either expressed or

1 implied.

2 Malice aforethought is an essential element of the  
3 crime of assault and battery with intent to kill.

4 So what is malice aforethought? Well, malice is a  
5 term denoting ill will and an intent to do harm. It is a  
6 technical term importing wickedness and excluding just cause  
7 or legal excuse. It is something that springs from  
8 depravity, from a heart devoid of social duty and fatally  
9 bent on mischief.

10 Malice may be likewise defined as a statement of  
11 mind which indicates a formed purpose and design to do a  
12 wrongful act under circumstances that exclude any legal  
13 right to do it.

14 And malice may be expressed or malice may be  
15 implied. And that does not mean that there are different  
16 kinds of malice, but merely the manner in which malice may  
17 be shown to have existed, that is to say either by direct  
18 evidence or by circumstantial evidence from which malice  
19 might be reasonably inferred.

20 Malice may be expressed as to there is an  
21 expressed threat to kill; or where there is a lying in wait;  
22 or where the circumstances show directly that an intent to  
23 kill was entertained by the defendant at the time any  
24 assault and battery took place.

25 Malice may be inferred, though no expressed intent

1 to kill is proven by direct evidence where the fact and  
2 circumstances which have been proven by the evidence in the  
3 case satisfactory you beyond a reasonable doubt that malice  
4 was present in the mind of the defendant at the time that  
5 any assault and battery was committed, the natural tendency  
6 of which was to cause death or result in serious bodily  
7 harm.

8 The existence of malice may be inferred from any  
9 act, declarations, or conduct proven to have been committed  
10 by the defendant, as well as from any other circumstances  
11 shown to have existed at the time of the event, and from  
12 which you might reasonably infer the existence of malice.

13 An inference is simply a deduction of fact, which  
14 may logically and reasonably be drawn from the proof of some  
15 other fact or set of facts. In other words, you may infer  
16 that a particular event occurred or that a particular fact  
17 exists based upon the proof of sufficient factual  
18 circumstances which would reasonably warrant your arriving  
19 at such a conclusion.

20 Malice as an essential element of the crime of the  
21 assault and battery with intent to kill does not necessarily  
22 mean that an actual or a specific intent to take human life,  
23 but rather it's a state of mind signifying a general  
24 malignant recklessness and an extreme disregard for, or an  
25 extreme indifference to human life.

1           The State is required to prove malice, just as it  
2 must prove any other essential element of the offense that  
3 has been charged, and it is for you twelve jurors to  
4 determine whether or not the evidence in this case  
5 establishes malice beyond a reasonable doubt.

6           It's also essential that there exists not only  
7 malice, but it must be malice aforethought. And a  
8 forethought simply means prior to.

9           The law does not require that malice must exists  
10 for any appreciable length of time before the commission of  
11 any assault and battery, the natural tendency of which is to  
12 cause death result in serious bodily harm. Indeed, it may  
13 be conceived at the very moment of the act constituting that  
14 assault and battery are committed. It is sufficient in the  
15 law, so long as the State does prove beyond a reasonable  
16 doubt both the existence of malice and the commission of an  
17 act or acts by the defendant constituting an assault and  
18 battery, the natural tendency of which is to cause death or  
19 result in serious bodily harm.

20           The fact that distinguishes the crime of assault  
21 and battery with intent to kill and the crime of murder is  
22 the death of the victim in the case of murder, and the  
23 survival of the victim in the case of assault and battery  
24 with intent to kill.

25           Now, as I have told you, there are sometimes



1 lesser included offenses with respect to particular criminal  
2 offenses. And in this case I'm going to instruct you on the  
3 law as it relates to the lesser included offense of assault  
4 and battery of a high and aggravated nature, which is a  
5 lesser included offense of assault and battery with intent  
6 to kill.

7 Again, an assault and battery of a high and  
8 aggravated nature is an assault and battery, as I have  
9 defined those terms for you, which is committed with a  
10 criminal intent and which is accompanied by some  
11 circumstance the aggravation.

12 A circumstance of aggravation is some fact,  
13 incident, detail, or circumstance which accompanies the  
14 assault and battery that tends to enhance or to increase the  
15 severity of the assault and battery.

16 And some examples of facts which might be  
17 considered a circumstance of aggravation would include the  
18 use of a deadly weapon in the commission of an assault and  
19 battery; the infliction of serious bodily harm or injury  
20 resulting from a battery, serious harm or injury meaning  
21 more than slight. It means substantial injury.

22 Another example would be an assault and battery  
23 committed during the intent to commit a felony, and criminal  
24 sexual conduct is classified as a felony under the law of  
25 this state.

1 Another example might be where there is a  
2 difference in the sexes of the parties or a great disparity  
3 between the ages, physical conditions, or abilities of the  
4 parties.

5 Another example might be to the taking of indecent  
6 liberties with a female, and that term is defined as  
7 nonconsensual conduct of a sexual nature with a female.

8 And, as I say, that those acts must be done with a  
9 criminal intent. And criminal intent is defined as a state  
10 of mind that operates jointly with an act in the commission  
11 of a crime. Criminal intent is a mental state of conscious  
12 wrongdoing, in contrast to an act that is done by accident,  
13 mistake or inadvertence.

14 Now, in this case, as you have heard, the  
15 defendant has raised what is known in the law as the defense  
16 of self-defense. And the law recognizes the right of every  
17 person to defend himself from death or from sustaining  
18 serious bodily harm. And to do this a person may use such  
19 force as is reasonably necessary, even to the point of  
20 taking a human life under the appropriate circumstances.

21 The right of self-defense is founded upon  
22 necessity, either actual or reasonably apparent necessity,  
23 and self-defense is a complete defense to a charge of an  
24 unlawful assault and battery. And the existence of  
25 self-defense entitles a person charged with the commission

1 of an unlawful assault and battery to a verdict of not  
2 guilty.

3 Now, although the defendant has raised the defense  
4 of self-defense, the burden of proof is not on the defendant  
5 to prove the existence of such a defense, because, as I have  
6 previously instructed you, the burden is always upon the  
7 State to prove the defendant's commission of the crime  
8 alleged against him beyond a reasonable doubt. And this  
9 burden would, therefore, necessarily require that the State  
10 prove beyond a reasonable doubt the absence of self-defense.

11 In your consideration of the existence or absence  
12 of self-defense, you are instructed that self-defense is  
13 made up of the following essential elements:

14 First, it must be shown that the defendant was  
15 without fault in bringing on the immediate difficulty which  
16 necessitated the use of force against another and that  
17 resulted in the infliction of serious bodily harm.

18 In other words, the defendant cannot provoke,  
19 initiate, or otherwise, through his own fault bring about the  
20 difficulty and then claim the right of self-defense in the  
21 use of force in repelling an attack caused by his own fault  
22 or provocation.

23 Secondly, one is entitled to defend one's self  
24 against the infliction of reasonably anticipated and  
25 unlawful bodily harm, so long as the response in that

1 defense is proportional to the anticipated harm.

2 And thirdly, if such a defense is based upon a  
3 belief of an imminent danger of serious bodily harm or  
4 death, then it must be shown that the defendant's belief was  
5 reasonable, that is, that a reasonably prudent person of  
6 ordinary firmness and courage would have entertained the  
7 same belief in acting under the same or similar  
8 circumstances as established by the evidence in this case.

9 And if the defendant actually was in imminent  
10 danger, then it must be shown that the circumstances were  
11 such as would warrant a person of ordinary reason and  
12 courage to act as the defendant acted in order to save  
13 himself from suffering bodily injury.

14 And it must be shown that the defendant had no  
15 other means of avoiding the danger of losing his life or  
16 sustaining serious bodily harm other than to act as he did  
17 in the particular circumstances, because, as I have stated,  
18 self-defense is founded upon necessity.

19 And it is, therefore, a person's legal duty to  
20 avoid the use of any type of deadly force where it is  
21 possible to avoid such action, even to the extent of  
22 retreating from one's adversary, if such can be done,  
23 without increasing the danger to one's self. In other  
24 words, to avoid the necessity of using any type of deadly  
25 force against another, the person assaulted must retreat

1 from the aggressor, unless it is shown that by retreating  
2 the defendant would increase the danger of sustaining  
3 serious bodily injury or loss of life.

4 While one does ordinarily have a duty to retreat  
5 before employing the use of deadly force to repel any  
6 assault, there is no duty to retreat where one is in one's  
7 own home, or where one is in the home of another as an  
8 invited guest. And there is no duty to retreat before the  
9 employment of nondeadly force in repelling an unlawful  
10 assault.

11 If you have a reasonable doubt as to the  
12 defendant's guilt after considering all of the evidence  
13 received during the trial of this case, including any  
14 evidence relating to the issue of self-defense, then it  
15 would be your duty to resolve that reasonable doubt in favor  
16 of the defendant and to find him not guilty.

17 If, on the other hand, you have no reasonable  
18 doubt as to the defendant's guilt after considering all of  
19 the evidence in the case, including any evidence relating to  
20 the issue of self-defense, then it would be your duty to  
21 find the defendant guilty of any unlawful assault and  
22 battery that has been proven to your satisfaction beyond a  
23 reasonable doubt, based upon the instruction that I have  
24 already provided.

25 Now, Mr. Foreman, ladies and gentlemen of the

1 jury, I am not in any way concerned with what your decisions  
2 are, but you are instructed that the verdict of the jury, or  
3 any verdict, must be unanimous. All twelve must be in  
4 agreement.

5 Mr. Foreman, as you and your fellow jurors go back  
6 and begin your deliberations, you will, as I have previously  
7 stated, preside over those deliberations, simply to ensure  
8 that they are carried out in some orderly fashion, but all  
9 jurors are expected to participate in the deliberations,  
10 because every decision reached by a jury has to be  
11 unanimous. All of you must be in agreement.

12 In addition to the evidence that will be sent  
13 back, Mr. Foreman, I'm going to send these indictments back  
14 with you. Again, these indictments are not evidence of  
15 anything. They are in the jury room for one purpose, and  
16 one purpose only, and that is they will be serving as the  
17 verdict forms, because it is on the back of each indictment  
18 in the lower left-hand corner you will see the word verdict.  
19 And it's beneath that word that you will indicate the jury's  
20 unanimous decision as it relates to that particular  
21 indictment. And then you will be asked to sign your name as  
22 the foreperson. You are the only juror that has to sign the  
23 verdict form, and you will also place the appropriate date  
24 in the space provided..

25 Now, with respect to one of the indictments, the

1 one charging criminal sexual conduct in the first degree,  
2 you have two potential verdict forms. And those two  
3 potential verdict forms are guilty and not guilty. So  
4 whatever that decision is, indicate it in the space  
5 provided, sign your name and date it.

6 And with respect to the second indictment charging  
7 assault and battery with intent to kill, you have three  
8 potential verdict forms. Those three potential verdict  
9 forms are guilty, which means guilty of the charge as set  
10 forth in the indictment, which is assault and battery with  
11 intent to kill.

12 The second potential form is guilty of assault and  
13 battery of a high and aggravated nature.

14 If the jury determines that the lesser included  
15 offense is the appropriate verdict form that you find, you  
16 will have to write that out - assault and battery of a high  
17 and aggravated nature, guilty of that.

18 And, of course, the third potential verdict form  
19 is not guilty.

20 So, again, with respect to the indictment charging  
21 criminal sexual conduct in the first degree, the two  
22 potential forms are guilty and not guilty.

23 And with respect to assault and battery with  
24 intent to kill indictment, the potential verdict forms are  
25 guilty; or guilty of assault and battery of a high and

1       aggravated nature; or not guilty.

2               So whatever those decisions are, you will indicate  
3       them in the space provided on the indictment, sign them,  
4       date them. Then you may notify the bailiff that you and  
5       your fellow jurors have reached a unanimous decision. In  
6       that event we will bring you back to receive those verdicts.

7               Now, during your deliberations there may arise a  
8       question about evidence, and you may wonder if there is  
9       something else that's not been introduced that exists that  
10      you can have to help you resolve the case. No additional  
11      evidence may be introduced. No additional evidence may be  
12      received, now that the case is closed. So even if something  
13      did exists out there somewhere, you could not have it, so  
14      don't inquire as to the existence of whether or not you can  
15      have something else, because you cannot. All the evidence  
16      that's going to be introduced has been introduced and the  
17      evidence is now closed.

18              If during your deliberations you ever have a  
19      question about testimony of a witness and that that question  
20      can be resolved by having testimony replayed, we can allow  
21      you to come back into the jury room -- excuse me, come back  
22      into the courtroom to have a witness' testimony replayed in  
23      whole, or in part, if that will assist you in resolving some  
24      question. So should you need to have a witness' testimony  
25      replayed, let the bailiff know. He will let me know and we



1 will bring you back for that purpose.

2 If you ever have a question about the law that is  
3 applicable, I am permitted to answer those questions. So if  
4 you need for me to give you an instruction again that I have  
5 already provided, or you need an additional explanation, or  
6 you need a clarification of the instructions I have already  
7 provided, let me know and I can always bring you back to  
8 answer those questions.

9 Mr. Foreman, if at any time you have a matter that  
10 you need to address to me, if you will write it on a piece  
11 of paper, give that to the bailiff, he will provide it to me  
12 and I will respond to those concerns or questions.

13 I don't know if we have any smokers on the jury.  
14 If we do, you are permitted to smoke, but you can't smoke in  
15 the jury room. You will have to go outside. So if anybody  
16 wants to smoke, let the bailiff know and he will take you  
17 outside to accomplish that purpose.

18 You are, however, instructed that if any juror is  
19 absent for any authorized purpose, the deliberations have to  
20 stop. They may only resume when all twelve jurors are  
21 present so that all may participate in those deliberations.

22 Now, I think that covers everything, but I will  
23 know in a minute, so I'm going to ask the twelve primary  
24 jurors to retire to your jury room. Do not begin any  
25 deliberations until I send you word to do so. I have got

1 some matters I'll need to address with the lawyers. And if  
2 I don't need to bring you back for any reason, I'll send  
3 word by way of the bailiff that you can begin with your  
4 deliberations. In that event, he will bring all of the  
5 exhibits to the jury room. And to you, Mr. Foreman, he will  
6 also bring the indictments which will serve as the verdict  
7 form.

8 So with the exception of Mr. Chitty, I will ask  
9 the twelve original jurors to retire to your jury room, but  
10 await my instructions as to when to begin deliberating.

11 (Whereupon, at 3:43 p.m., the jury panel went to  
12 the jury room, awaiting instructions to begin deliberating)

13 THE COURT: Mr. Chitty, as you know, you cannot  
14 participate in jury deliberations, because the original  
15 twelve are able to, so that will conclude your service in  
16 this case, but I do want to thank you for your participation  
17 and your time and your attention that you have devoted to  
18 it. But if you are curious about the decision your fellow  
19 jurors are to make, you are welcome to stay, if you wish to.  
20 You are not required to. If you would rather be excused for  
21 the balance of the afternoon, you may be. I would ask that  
22 you please call back, in any event, to the number that you  
23 have on your juror information pamphlet after six o'clock  
24 this evening in order to receive further reporting  
25 information. Okay. Thank you again for your participation.

1 (Whereupon, the alternate juror was discharged)

2 THE COURT: Are there any exceptions taken to the  
3 instruction or requests for additions to the instruction by  
4 the State?

5 MS. LESKANIC: No, Your Honor.

6 THE COURT: By the defense?

7 MR. SHEALY: No, Your Honor.

8 THE COURT: All right. Let me ask you y'all to  
9 verify the exhibits, please.

10 (Off the record)

11 (Back on the record)

12 THE COURT: All the exhibits are accounted for?

13 MS. LESKANIC: Yes, Your Honor.

14 THE COURT: 1 through 46, with the exception of  
15 45.

16 Okay, tell the jury to begin deliberations and  
17 they will notify us when with have concluded.

18 We will be at ease while the jury is deliberating.

19 (Whereupon, at 3:48 p.m., the jury panel was  
20 instructed to begin deliberating)

21 (Whereupon, at 3:49 p.m., proceedings were  
22 recessed, pending the verdict of the jury panel)

23 (Whereupon, at 6:10 p.m., proceedings were  
24 reconvened)

25 THE COURT: All right. I understand the jury has.

1 reached a decision. Are we ready to receive it?

2 MS. LESKANIC: The State is ready, Your Honor.

3 MR. SHEALY: Defense is ready, Your Honor.

4 THE COURT: Okay, bring them in.

5 (Whereupon, at 6:12 p.m., the jury panel returned  
6 to open court to report its verdict)

7 THE COURT: Mr. Foreman, have you and your fellow  
8 jurors reached a unanimous decision with respect to each of  
9 the separate indictments?

10 JURY FOREPERSON: Yes, we have, Your Honor.

11 THE COURT: And have you indicated those decisions  
12 on the back of the indictment as requested?

13 JURY FOREPERSON: Yes, sir.

14 THE COURT: Did you sign your name as the  
15 foreperson and date the indictment?

16 JURY FOREPERSON: Yes.

17 THE COURT: If you would, please hand up the  
18 verdict forms by way of the bailiff.

19 You may publish the verdicts.

20 THE CLERK: 2009-GS-11-840, the State versus  
21 Donald Scott Jones, indictment for criminal sexual conduct,  
22 first degree, the verdict is guilty.

23 Signed by foreperson Brent Wallace.

24 Indictment 2009-GS-11-841, the State versus Donald  
25 Scott Jones, indictment for assault and battery with intent

1 to kill, the verdict is guilty.

2 Signed by foreperson Brent Wallace.

3 Ladies and gentlemen of the jury, if this is the  
4 verdict of you all, please indicate by raising your right  
5 hand.

6 Thank you.

7 THE COURT: All right. All jurors have responded  
8 in the affirmative.

9 Does the defendant wish to have the jury polled?

10 MR. SHEALY: No, Your Honor.

11 THE COURT: All right. Thank you, ladies and  
12 gentlemen for your participation, not just in this case but  
13 your service this week. This will be the last case that's  
14 going to require your participation, so you are going to be  
15 excused now. You will not have to report back tomorrow, nor  
16 will you have to call back. We have sufficient matters to  
17 entertain the court without the necessity of having you come  
18 back, so this will conclude your service. So I do want to  
19 thank you for your service this week and your willingness to  
20 serve when called upon. I do hope that that experience has  
21 been an educational and a beneficial experience for you. I  
22 do sincerely hope that it has not posed too much of a  
23 hardship or inconvenience on you.

24 You will receive a pay voucher for your service.

25 They are not prepared at the present time, but if you will

1       come by the clerk's office -- when do you want them to come  
2       by?

3               THE CLERK: They will be ready at 8:30 in the  
4       morning.

5               THE COURT: They will be ready at 8:30 in the  
6       morning. So if you come by the clerk's office anytime  
7       tomorrow you can pick up your pay voucher. Thank you again  
8       for your participation. Have a good evening.

9               (Whereupon, at 6:15 p.m., the jury panel was  
10      discharged)

11              THE COURT: Are there any matters to be addressed  
12      prior to the imposition of sentence?

13              MR. SHEALY: Your Honor, we would move for a new  
14      trial based on the verdict being contrary to the evidence as  
15      presented to them. Thank you, Your Honor.

16              THE COURT: All right. That motion is denied.

17              All right. Anything further on behalf of the  
18      State?

19              MS. LESKANIC: Your Honor, the defendant was  
20      convicted of assault and battery with intent to kill on  
21      September 15th of 2009.

22              We served him -- we filed a notice of life on  
23      September 16th, 2009, and he was served with that notice of  
24      life sentence on September 17th, 2009.

25              I believe the court has the original. If not, I

1 have a copy.

2 THE COURT: I do.

3 Mr. Shealy, you and Mr. Jones were both served  
4 with a notice of the State's intent to seek a life sentence  
5 pursuant to 17-25-45 prior to the trial of this case?

6 MR. SHEALY: I was, Your Honor, and upon  
7 information and belief I believe my client was as well.

8 THE COURT: Well, does he agree that he was?

9 MR. SHEALY: Yes, Your Honor.

10 THE DEFENDANT: Yes.

11 THE COURT: Well, I have two affidavits here, if  
12 you need to see them.

13 All right, anything else on behalf of the State?

14 MS. LESKANIC: No, Your Honor. Thank you.

15 THE COURT: All right, Mr. Shealy.

16 MR. SHEALY: Your Honor, would you want me to  
17 address court from here or at that bar?

18 THE COURT: You can just do it from where you are,  
19 if you would like.

20 MR. SHEALY: Thank you, Your Honor.

21 Your Honor, my client Scott is forty-one years  
22 old. We have gotten pretty close over the past year, both  
23 at that previous trial and in this trial.

24 This has been a bad seven days for Scott and for  
25 Scott's family. Thursday the grandfather that you heard so

1 much about during this trial, the one that sparked Scott  
2 going over to Kay's house died. We didn't know that until  
3 Thursday evening. We attempted to serve subpoenas on the  
4 family right after the death and I think that caused a major  
5 disturbance in the family. We did not serve him then. We  
6 made arrangements to serve them the next day through family  
7 members. They been very gracious under the circumstances.

8 Sunday his grandfather was buried.

9 Monday afternoon Scott's mother, who had planned  
10 to be here, and I believe the State had her subpoenaed to  
11 testify, and we intended to call her, although she did not  
12 require a subpoena, she was taken to the hospital for heart  
13 problems. She remains in the hospital even today.

14 Scott's father has been here throughout this time.  
15 He obviously would want to be with his wife, but he also  
16 felt he needed to support his son.

17 Today, Wednesday, the seventh day, he gets  
18 convicted of this crime.

19 All I can tell you, Your Honor -- well, at the  
20 time of the incident, so that you know, Scott was gainfully  
21 employed at Musgrove Mills. Naturally he's lost that job.

22 Your Honor, his family, those that were able to be  
23 here were here to support him, even though they have a time  
24 share in Tennessee, and this was their week to use it, and  
25 so that shows the amount of dedication his family has.



1           Your Honor, we are extremely disappointed at the  
2 verdict. His story I can assure the court has been  
3 consistent from the time he talked to Detective Ramsey, to  
4 my initial interview, through the preparation of this case  
5 and during his testimony at trial.

6           Your Honor, we realize that there is limited, if  
7 anything, that you can do in regard to sentence, but if  
8 there is something, we would ask that you be as lenient as  
9 you possibly can. Thank you.

10           THE COURT: All right. Mr. Jones, is there  
11 anything that you would like to add to what your lawyer has  
12 told me?

13           THE DEFENDANT: No.

14           THE COURT: All right. On Indictment 2009-0840,  
15 that's an indictment for criminal sexual conduct in the  
16 first degree, wherein you have been found guilty by the jury  
17 for that offense, the sentence of the court is that you,  
18 Donald Scott Jones, be confined to the South Carolina  
19 Department of Corrections for a period of your natural life,  
20 pursuant to Section 17-25-45.

21           Indictment 2009-0841, an indictment for assault  
22 and battery with intent to kill, wherein you have been found  
23 guilty by the jury of that offense, the sentence of the  
24 court is that you, Donald Scott Jones, be confined to the  
25 South Carolina Department of Corrections for the period of

1 your natural life.

2 Mr. Jones, you have a right to appeal the verdicts  
3 of the jury and the decision of the court as to sentence.  
4 You must file any notice of your intention to appeal those  
5 decisions within ten days of today's date. Mr. Shealy will  
6 advise you in that regard.

7 THE DEFENDANT: Okay.

8 THE COURT: Okay.

9 MS. LESKANIC: Thank you, Your Honor.

10 MR. SHEALY: Thank you, Your Honor.

11 (END OF REQUESTED TRANSCRIPT OF RECORD)

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## CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 25th and 26th days of MAY, 2010.

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

JULY 31, 2010



Michael R. Watts  
Circuit Court Reporter

WITNESSES

*[Signature]*

Gaffney Police Dept.

Doc# **09-GS-11** 0840

The State of South Carolina

County of Cherokee

Trey Gowdy, *Solicitor*

COURT OF GENERAL SESSIONS

JUL 30 2009

TERM

ARREST WARRANT NUMBER

1068637

THE STATE  
vs.

ACTION OF GRAND JURY  
**TRIFURRI**

Donald Scott Jones

Foreperson of Grand Jury  
Date: *7-30-09*

*Donald Whitte*

VERDICT

*GUILTY*

Indictment for  
CRIMINAL SEXUAL CONDUCT,  
FIRST DEGREE

*Brent Wallace*

Foreperson of Petit Jury

Date: 5-26-10

37

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

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )

INDICTMENT

JUL 30 2009

At a Court of General Sessions, convened on \_\_\_\_\_, the Grand  
Jurors of Cherokee County present upon their oath:

**CRIMINAL SEXUAL CONDUCT, FIRST DEGREE**

That Donald Scott Jones, did in Cherokee County on or about May 29, 2009, engage in a sexual battery with the victim, Kay Spencer, and such sexual battery was accomplished by the use of aggravated force, and/or the victim was also the victim of forcible confinement, kidnapping, housebreaking, burglary or any other similar offense or act, all in violation of §16-3-652 (a)(b), 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.

  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF  
STATE

Cherokee

VS.

Donald Scott Jones

INDICTMENT/CASE#: 2009GS110840

A/W#: 1068637

Date of Offense: 5/29/2009

S.C. Code § : 16-03-0652

CDR Code #: 0160

AKA:

Race: W Sex: M Age: 41

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Gaffney, SC 29340

DL#: SID#:

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: Sex / Criminal sexual conduct - First degree☒ CONVICTED OF or ☐ PLEADS

## SENTENCE SHEET

in violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] KIM

116837

SC Bar#

13039

D. Scott Jones

Defendant

[Signature] E. [REDACTED]

Attorney for Defendant

5048

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed        yearsand/or to pay a fine of \$       ; provided that upon the service of        days/months/years and/or paymentof \$       ; plus costs and assessments as applicable\*; ~~the balance is suspended with probation for~~~~months/years and~~ subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$        plus 20% fee: \$       

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine: \$       § 14-1-206 (Assessments 107.5 %) \$       § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$       § 14-1-211(A)(2) (DUI Surcharge) \$100 \$       § 56-5-2995 (DUI Assessment) \$12 \$       § 56-1-286 (DUI Breath Test) \$25 \$       § 47.12 (Public Def/Prob) \$500 \$       § 14-1-212 (Law Enforce. Funding) \$25 \$       § 14-1-213 (Drug Court Surcharge) \$100 \$       § 50-21-114 (BUI Breath Test Fee) \$50 \$       § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$       § 90.7 (SCCA Surcharge) \$5 \$       3% to County (if paid in installments) \$       TOTAL \$              days/hours Public Service EmploymentObtain 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 FundOther:       ☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

Presiding Judge

Judge Code:

Sentence Date:

## ARREST WARRANT

1-068637

STATE OF SOUTH CAROLINA

☒ County/ ☒ Municipality of  
GAFFNEY

THE STATE

against

JONES, DONALD SCOTT

Address: [REDACTED]

GAFFNEY SC 29340

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 510 Weight: 170DL State: SC DL# [REDACTED]DOB: [REDACTED] Agency ORI #: SC0110200Prosecuting Agency: POLICEProsecuting Officer: RONALD A RAMSEYOffense: CRIMINAL SEXUAL CONDUCT-1STOffense Code: 16-3-652Code/Ordinance Sec. 16-3-652This warrant is **CERTIFIED FOR SERVICE** in the☒ County/ ☐ Municipality of

CHEROKEE

The Accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(L.S.)

Date: \_\_\_\_\_

## RETURN

A copy of the arrest warrant was delivered to defendant Donald Scott Jones on 5/29/2009

D. S. W.  
Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

WADE S. WEATHERFORD III

201 N. LIMESTONE ST.

GAFFNEY SC 29340

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
GAFFNEY

## AFFIDAVIT

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 618

Personally appeared before me the affiant RONALD A RAMSEYbeing duly sworn deposes and says that defendant JONES, DONALD SCOTTdid within this county and state on 05/29/2009State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of GAFFNEY)

in the following particulars:

DESCRIPTION OF OFFENSE:

CRIMINAL SEXUAL CONDUCT-1ST DEGREE - 16-3-652

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON OR ABOUT 5/29/2009, THE DEFENDANT DONALD SCOTT JONES DID ENGAGE IN SEXUAL BATTERY WITH THE VICTIM AND DID USE AGGRAVATED FORCE TO ACCOMPLISH SEXUAL BATTERY. THIS INCIDENT OCCURRED AT [REDACTED] WHICH IS LOCATED WITHIN THE CITY LIMITS OF GAFFNEY, SC COUNTY OF CHEROKEE. PROBABLE CAUSE BASED UPON THE INVESTIGATION OF THE GAFFNEY POLICE DEPARTMENT DETECTIVE DIVISION AND THE STATEMENT OF THE VICTIM.

CASE NUMBER: 09-006104

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
GAFFNEY
Affiant's Address 201 N. LIMESTONE ST.

GAFFNEY SC 29340

Affiant's Telephone 864-487-8524

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 05/29/2009 defendant JONES, DONALD SCOTT did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of GAFFNEY) as set forth below:

DESCRIPTION OF OFFENSE:

CRIMINAL SEXUAL CONDUCT-1ST DEGREE - 16-3-652

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 5/29/2009 Judge's Address 201 N. LIMESTONE ST.

GAFFNEY SC 29340

Signature of Issuing Judge

Judge's Telephone 864-487-8524Judge Code: WSWIssuing Court: ☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

BAIL set by

Judge Allen

on 6-1-09

Type and Amount: Denial

Name of Surety: \_\_\_\_\_

PRELIMINARY HEARING held by

Judge \_\_\_\_\_

on \_\_\_\_\_

Defense Attorney: \_\_\_\_\_

Decision: \_\_\_\_\_

DISPOSITION before

Judge \_\_\_\_\_

on \_\_\_\_\_

by \_\_\_\_\_

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: \_\_\_\_\_

Sentence: \_\_\_\_\_

JURORS

WITNESSES

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

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Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

CODEFENDANTS



WITNESSES

*[Signature]*  
Gaffney Police Dept.

DOC# 09-GS-11-0841

The State of South Carolina  
County of Cherokee

*Trey Gowdy, Solicitor*

COURT OF GENERAL SESSIONS

JUL 30 2009

TERM

ARREST WARRANT NUMBER

1068638

THE STATE  
vs.

ACTION OF GRAND JURY

**TRIE RII**

Donald Scott Jones

*Donald Scott Jones*  
Foreperson of Grand Jury  
Date: 7-30-09

VERDICT

*GUILTY*

ASSAULT AND BATTERY  
WITH INTENT TO KILL

*Brent Wallace*  
Foreperson of Petit Jury  
Date: 5-26-10

SC Code: 16-3-620  
CDR Code: 014  
Class FEL-C

STATE OF SOUTH CAROLINA )  
COUNTY OF CHEROKEE )

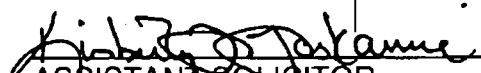
## INDICTMENT

At a Court of General Sessions, convened on JUL 30 2009, the  
Grand Jurors of Cherokee County present upon their oath:

**ASSAULT AND BATTERY WITH INTENT TO KILL**

That Donald Scott Jones, did in Cherokee County on or about May 29, 2009, commit an unlawful act of a violent nature to the person of another with malice aforethought, either express or implied, by stabbing and strangling Kay Spencer, all in violation of §16-03-620, *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.

  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee

STATE VS.

Donald Scott Jones

AKA:

Race: W Sex: M Age: 41

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Gaffney, SC 29340

DL#: [REDACTED] SID#: [REDACTED]

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault / Assault and battery with Intent to Kill (ABWIK)

INDICTMENT/CASE#: 2009GS110841

A/W#: 1068638

Date of Offense: 5/29/2009

S.C. Code § : 16-03-0620

CDR Code #: 0014

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ § 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Kimberly A. Kline 110837 D. Scott Jones Thomas E. Sheaf 5049  
LESLIE, KIM SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed     years  
and/or to pay a fine of \$    ; provided that upon the service of     days/months/years and/or payment  
of \$    ; plus costs and assessments as applicable\*; ~~the balance is suspended with probation for~~~~months/years~~ and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$     plus 20% fee: \$    Payment Terms:    ☐ Set by SCDPPPS    Recipient:    \*Fine: \$    § 14-1-206 (Assessments 107.5 %) \$    § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$    § 14-1-211(A)(2) (DUI Surcharge) \$100 \$    § 56-5-2995 (DUI Assessment) \$12 \$    § 56-1-286 (DUI Breath Test) \$25 \$    § 47.12 (Public Def/Prob) \$500 \$    § 14-1-212 (Law Enforce. Funding) \$25 \$    § 14-1-213 (Drug Court Surcharge) \$100 \$    § 50-21-114(BUI Breath Test Fee) \$50 \$    § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$    § 90.7 (SCCA Surcharge) \$5 \$    3% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/ Deputy Clerk Brandi W. McBeeCourt Reporter: Mike Watts

SCCA/217 (11/2009)

    days/hours Public Service EmploymentObtain 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 FundOther:    ☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.Presiding Judge William ColeJudge Code: 2053Sentence Date: May 26, 2010

## ARREST WARRANT

1-068638

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
GAFFNEY

THE STATE  
against

JONES, DONALD SCOTT

Address: GAFFNEY SC 29340

Phone: SSN:

Sex: M Race: W Height: 510 Weight: 170

DL State: SC DL#:

DOB: Agency ORI #: SC0110200

Prosecuting Agency: POLICE

Prosecuting Officer: RONALD A RAMSEY

Offense: ASSAULT/ASSLT & BATT W/INTENT

Offense Code:

Code/Ordinance Sec:

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

CHEROKEE

The Accused  
is to be arrested and brought before me to be  
dealt with according to law.

Signature of Judge

(L.S.)

Date:

## RETURN

A copy of this arrest warrant was delivered to  
defendant Donald Scott Jones

on 5/29/09

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

WADE S. WEATHERFORD III

201 N. LIMESTONE ST.

GAFFNEY SC 29340

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
GAFFNEY

## AFFIDAVIT

Personally appeared before me the affiant RONALD A RAMSEY

being duly sworn deposes and says that defendant JONES, DONALD SCOTT

did within this county and state on 05/29/2009

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of GAFFNEY) violate the criminal laws of the  
in the following particulars:

## DESCRIPTION OF OFFENSE:

ASSAULT/ASSLT & BATT W/INTENT TO KILL

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:

ON OR ABOUT 05/29/2009 THE DEFENDANT, DONALD SCOTT JONES, DID COMMIT BATTERY UPON THE VICTIM, KAY  
SPENCER, BY STABBING HER WITH A KNIFE CAUSING THE VICTIM TO SEEK MEDICAL ATTENTION FOR HER WOUNDS.  
THIS INCIDENT OCCURRED AT WHICH IS LOCATED WITHIN THE CITY LIMITS OF GAFFNEY, SOUTH  
CAROLINA, COUNTY OF CHEROKEE. PROBABLE CAUSE BASED UPON INVESTIGATION OF THE GAFFNEY POLICE  
DEPARTMENT DETECTIVE DIVISION AND THE STATEMENT OF THE VICTIM.

CASE NO.: 09-006104

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

GAFFNEY

Affiant's Address 201 N. LIMESTONE ST.

GAFFNEY SC 29340

Affiant's Telephone 864-487-8524

GAFFNEY

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that  
on 05/29/2009 defendant JONES, DONALD SCOTT

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of GAFFNEY) as set forth below:

## DESCRIPTION OF OFFENSE:

ASSAULT/ASSLT & BATT W/INTENT TO KILL

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said  
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to  
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 5/29/09 Judge's Address 201 N. LIMESTONE ST.

Signature of Issuing Judge GAFFNEY SC 29340

Judge's Telephone 864-487-8524

Judge Code: WSW

Issuing Court: ☐ Magistrate

☒ Municipal

☐ Circuit

ORIGINAL

BAIL set by

Judge Allen

83 6-1-09

Type and Amount: Bond

Name of Surety: \_\_\_\_\_

PRELIMINARY HEARING held by

Judge \_\_\_\_\_

on \_\_\_\_\_

Defense Attorney: \_\_\_\_\_

Decision: \_\_\_\_\_

DISPOSITION before

Judge \_\_\_\_\_

on \_\_\_\_\_

by \_\_\_\_\_

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: \_\_\_\_\_

Sentence: \_\_\_\_\_

JURORS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WITNESSES

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

CODEFENDANTS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CherokeeFILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

IN THE COURT OF COMMON PLEAS

Donald S. Jones # 336980

Full name and prison number (if any) of Applicant.

AUG 6 AM 9 23

BRANDY W. MCBEE

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

**012CP-110574****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 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 Corr. Inst.
2. Name and location of Court which imposed sentence Cherokee County General Session
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 09-GS-11-0840 Criminal Sexual Conduct 1st degree
  - (b) 09-GS-11-0841 Assault and Battery with intent
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) May 25 2010 life without parole
  - (b) SAME AS ABOVE " "

385

ATTORNEY GENERAL'S OFFICE  
AUG 10 2012

RECEIVED \_\_\_\_\_

ADMINISTRATIVE INSTRUCTIONS

FILE \_\_\_\_\_ OPEN \_\_\_\_\_ END

HAVE \_\_\_\_\_ COPIES MADE

ROUTED TO \_\_\_\_\_

OTHER \_\_\_\_\_ TRANSCRIPT

PER RECORDS \_\_\_\_\_ CLERK RECORDS

OTHER \_\_\_\_\_

has been PCR on other charges  
20121117  
DA - 20102654/19-A/-

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty Trial by jury \_\_\_\_\_
- (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. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Denied \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
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) \_\_\_\_\_

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

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

(a) failure to investigate

(b) Applicant herew reserves the right to amend at a later date

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

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

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

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. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. NA
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. NA
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

first filing of PCR

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
  - i. NA
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings in which each ground was raised:
  - i. NA
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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 filing of PCR
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? \_\_\_\_\_
- (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? no \_\_\_\_\_
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. Thomas Shealy \_\_\_\_\_
- ii. same as above \_\_\_\_\_
- iii. Wanda H Carter \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. Trial \_\_\_\_\_
- ii. Sentencing \_\_\_\_\_
- iii. Appeal \_\_\_\_\_
19. State clearly the relief you seek in filing this application:  
Vacate Sentence and conviction \_\_\_\_\_
20. Are you now under sentence from any other court that you have not challenged?  
NO \_\_\_\_\_

012CP-110574

STATE OF SOUTH CAROLINA )

County of )

VERIFICATION )

I, , 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.

Donald Gess Jones

SWORN to and subscribed before me this 1ST  
day of August, 2012

Sylvia Jones (L.S.)  
Notary Public

My Commission Expires: 1/24/2018

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2012 AUG 6 AM 9 23  
BRANDY W. MCBEE

01207-1105<sup>391</sup>74

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, , 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.

Donald Scott Jones  
Applicant

SWORN or affirmed to and subscribed before me this

1st day of August, 2012

Sylvia Jones  
Notary Public

My Commission Expires:

1/24/2018

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2012 AUG 6 AM 9 23  
BRANDY W. MCBEE

|                              |   |                              |
|------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS |
|                              | ) | SEVENTH JUDICIAL CIRCUIT     |
| COUNTY OF CHEROKEE           | ) |                              |
|                              | ) |                              |
| Donald Scott Jones, #336980, | ) | 2012-CP-11-0111              |
|                              | ) |                              |
| Applicant,                   | ) |                              |
|                              | ) |                              |
| v.                           | ) | RETURN                       |
|                              | ) |                              |
| State of South Carolina,     | ) |                              |
|                              | ) |                              |
| Respondent.                  | ) |                              |

---

The Respondent, making its Return to the application for post-conviction relief (PCR) filed February 13, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted by the Cherokee County Grand Jury in August 2009 for assault and battery with intent to kill (09-GS-11-0924). He was represented by Thomas E. Shealy, Esquire. On September 15, 2009, the Applicant was convicted of the charge by a jury. Applicant was sentenced by The Honorable J. Mark Hayes II to a sentence of twenty years, provided upon the service of twelve years, the balance would be suspended to five years of probation.

A timely Notice of Appeal was filed and an appeal was perfected. The South Carolina Court of Appeals affirmed the conviction and sentence. State v. Jones, Op. No. 2011-UP-287 (filed June 13, 2011). The Remittitur was returned on June 29, 2011.

Attached herewith and incorporated herein are the records of the Cherokee County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. The

Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations.

## II.

In his application, the Applicant alleges that he is being held in custody unlawfully based upon the following:

- I. Ineffective assistance of counsel, in that;
  - a. Counsel failed to investigate.

## III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

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

V.

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

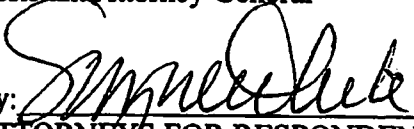
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

November 30, 2012



STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS  
) SEVENTH JUDICIAL CIRCUIT

Donald Scott Jones,

2012-CP-11-0111

Applicant,

v.

**CERTIFICATE OF SERVICE BY MAIL**

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Alexander Hray, Jr., Esquire  
389 E. Henry Street, Suite 107  
Spartanburg, South Carolina 29302

  
Anne A. Mueller  
Legal Assistant for the Respondent

DATED this 30<sup>th</sup> day of November, 2012.

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

COURT OF COMMON PLEAS  
2012-CP-11-0574

---

Donald Scott Jones,  
Applicant,  
-vs-  
The State of South Carolina,  
Respondent.

---

TRANSCRIPT OF RECORD

November 15, 2013  
Spartanburg, South Carolina

Ordered: April 24, 2014

Delivered: June 15, 2014

**B E F O R E:**

The Honorable Robin B. Stilwell, Presiding Judge.

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

Mr. Shawn M. Campbell, Esquire  
Attorney Appearing for the Applicant

Ms. Suzanne H. White, Esquire  
Assistant Attorney General Appearing for the State

Pamela Faucette  
Circuit Court Reporter

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

I N D E X**Donald Jones PCR****Page:**

|                                      |   |
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W I T N E S S E S**Mr. Donald Scott Jones:****Page:**

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**Mr. Thomas Shealy, Esquire:****Page:**

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**Ms. Lucille Whelchel:****Page:**

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**Ms. Susan Clary:****Page:**

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|-----------------------------|----|
| Direct by Mr. Campbell..... | 54 |
| Cross by Ms. White.....     | 57 |

E X H I B I T S**Applicant's Exhibits:****Marked:****Received:**

(None)

**Respondent's Exhibits:****Marked:****Received:**

(None)

**Court's Exhibits:****Marked:****Received:**

(None)

|                              |    |
|------------------------------|----|
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|                                        |    |
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**Reporter's Note:** This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

**Reporter's Note:** Some names in this transcript are spelled phonetically.

November 15, 2013

10:56 A.M.

(Off-the-Record Comments)

(Brief pause while the applicant is brought into the courtroom.)

**THE COURT:** All right, Ms. White, I'm ready when you are.

**MS. WHITE:** Thank you, Your Honor. This is the case of  
*Donald Scott Jones vs. The State.*

**THE COURT:** Okay.

**MS. WHITE:** Case number 2012-CP-11-0574. He's  
represented today by Mr. Shawn Campbell. Mr. Jones was indicted July of  
'09 for CSC first degree and an assault and battery with intent to kill charge;  
Proceed to trial represented by Mr. Tommy Shealy May 26, 2010 and  
was convicted; received a sentence of life without parole.

He has — he did have an appeal on *Anders*. And that was dismissed.  
He filed ineffective assistance of counsel in that Counsel failed to investigate.  
But from my understanding it's mostly regarding trial occurrences. So I will  
turn it over at this point to Mr. Campbell.

**THE COURT:** Okay. Mr. Campbell?

**MR. CAMPBELL:** Yes, Your Honor. We're pleased to go forward  
today. And I'm going to call my first witness, Donald Scott Jones, Your  
Honor.

**THE COURT:** Yes, sir, please.

(The witness stepped forward to be sworn.)

(Off-the-Record Comments)

(Whereupon,

**Donald Scott Campbell**

1           having been first duly sworn, testified as follows:)

2                   **THE COURT:**       All right. Thank you, sir. You may sit down. If  
3           you would, please, state your full name for record.

4                   **THE WITNESS:**   My name is Donald Scott Jones.

5                   **THE COURT:**       All right. Mr. Campbell, your witness, sir.

6                   **MR. CAMPBELL:**   Thank you, Your Honor.

7           **Direct Examination by Mr. Campbell:**

8           **Q.**       Scott -- you go by Scott, correct?

9           **A.**       Yes, sir.

10          **Q.**       Okay. Scott, you were convicted on — on or about, you know, May 25,  
11          26, May 2010 of assault and battery with intent to kill and criminal sexual conduct,  
12          correct?

13          **A.**       (Nods affirmatively.)

14          **Q.**       And essentially, that — your conviction rose out of an incident on or  
15          about, you know, May the 28, 29, of 2009 with your Aunt Kaye Spencer (phonetic);  
16          is that correct?

17          **A.**       Yes, sir.

18          **Q.**       And in that it was alleged that you, you know, raped your aunt and  
19          stabbed her; is that correct?

20          **A.**       That's what they said.

21          **Q.**       Okay. Now, after this, you know, incident, in May of 2009, you were  
22          arrested; is that correct?

23          **A.**       Yes, sir.

24          **Q.**       Okay. And how soon after that arrest did Mr. Shealy become your  
25          attorney?

1 (Brief Pause)

2 A. That following week I believe, sir.

3 Q. Probably the first week of June?

4 A. Yes, sir.

5 Q. Okay. And, after your arrest, have you been in jail that entire time  
6 since then?

7 A. Yes, sir.

8 Q. Okay. I know Mr. Shealy met with you that — probably that one time  
9 in June when he came and saw you; is that correct?

10 A. Yes, sir.

11 Q. Did you all put in for a bond?

12 A. No, sir, I don't think we did.

13 Q. Okay. Now, I know this went to trial sometime in May of 2010.

14 Leading up to the trial between, you know, that June of 2009 and May of 2010, how  
15 may times did you meet with Mr. Shealy?

16 A. Twice.

17 Q. You met with him twice?

18 A. Yes, sir.

19 Q. When were they — when was that?

20 A. I don't know the exact dates, sir.

21 Q. Okay. Can you approximate the first time you met with Mr. Shealy?

22 (Brief Pause)

23 A. I really can't, sir.

24 Q. Okay. Well, obviously, you went to trial in May of 2010. Did you meet  
25 sometime before you all went to trial?

1 A. Yes, sir, we did.

2 Q. Okay. Can you estimate or guess that for me, please, when you all  
3 may have met?

4 A. About a month into it.

5 Q. Okay. And, obviously, you went over all the facts of the case and all  
6 the evidence with Mr. Shealy?

7 A. Yes, sir, I did.

8 Q. Did he go over all your discovery with you?

9 A. Not everything at — at one time, no, sir.

10 Q. Okay. When you say not everything at one time, what did he initially  
11 go over with you?

12 (Brief Pause)

13 A. He — he went over the — the SANE nurse was going to produce far as  
14 the little diagram where she said she was hurt.

15 Q. Okay. Now, when you say "the SANE nurse," are you talking about  
16 Sue Mobley (phonetic); is that correct?

17 A. Yes, sir, that's her.

18 Q. Okay. What else did he go over with you?

19 A. He went over with me the fact about Usha Bridges was against me.  
20 And I told him that I figured that she would be for me seeing as how she knew Kaye  
21 and her mental disability.

22 Q. Okay.

23 A. And from thereon, I -- I seen a decline in his defense right there.

24 Q. I want to step back for a bit here. What did you tell Tom about your  
25 and Kaye Spencer's relationship?

1           A.       I told him that we had a sexual relationship from the time I was about  
2 15 to that night.

3           Q.       Okay. And, obviously, Kaye -- Kaye is your aunt, correct?

4           A.       Correct.

5           Q.       And I believe -- did you tell him -- what did you tell him in regards to  
6 the sex that -- or if you and Kaye had sex on the evening of the incident?

7           A.       I told him that, when I got to the door, she opened the door and she  
8 had her bra and panties off. And she got in the couch and started doing things.

9           Q.       Okay. Essentially, you told Thomas you had consensual sex with your  
10 aunt; is that ----

11          A.       Right.

12          Q.       Okay. Now, did any of your family members know about this  
13 relationship with your aunt?

14          A.       I think one of her sons sort of knew about it. I think my grandfather  
15 knew about it.

16          Q.       Did you tell Thomas or did you tell Mr. Shealy about any of -- or  
17 whether or not any of your family members knew about it and to talk to any of your  
18 family members?

19          A.       Yeah, I told him that none of them knew, but my grandfather knew  
20 about it.

21          Q.       Now, did Mr. Shealy go over with you the -- any investigative reports  
22 that were done by the police?

23          A.       Yes, sir, we went over a few of those. There were several of them that  
24 didn't line up with each other.

25          Q.       Okay. And which reports are you referring to?



1 (Brief Pause)

2 A. Well, where it says that they found her pants leg and her panties and  
3 one of them says the opposite.

4 Q. Okay.

5 A. This was wrote by — by Sams and Anderson (phonetic).

6 Q. And why was that important?

7 A. Because they're trying to pull out that I threatened her pants off of her,  
8 you know. There wasn't nothing — you know, her pants wasn't on when I went in.

9 Q. Okay. How — how old was — is Ms. Spencer?

10 A. Fifty-seven (57).

11 Q. And how old are you, Scott?

12 A. Forty-four (44).

13 Q. Okay. Now, how much — at the time of the incident, how tall was Ms.  
14 Spencer?

15 A. About 5'5".

16 Q. And how much did she weigh?

17 A. She weigh?

18 Q. Yeah.

19 A. Oh, about 180.

20 Q. Okay. And how tall are you?

21 A. About 5'10".

22 Q. How much did you weigh at the time of the incident?

23 A. One, fifty-five (155).

24 Q. Okay. She was bigger than you?

25 A. Yes, sir.

1 Q. Okay. Now, I believe there was that report. Was there any — was  
2 there a report about a bra that concerned you?

3 A. Yes, sir, there was.

4 Q. Okay. Explain to the Court what that — what that situation is.

5 A. The bra came off at a certain time, at about sex (phonetic).

6 Q. Okay.

7 A. And they're trying to say that the bra was off. Kay even stated that she  
8 was fully clothed when she got her stab wound.

9 Q. Okay.

10 (Brief Pause)

11 A. A detective — I think it was a detective — maybe an investigating  
12 officer and another detective stated that, if the bra was on, it would have had a hole  
13 in it.

14 Q. Okay. Now, in Kaye's testimony, she testified that she was fully  
15 clothed at the time you attacked her, correct?

16 A. Yes, sir.

17 Q. And you stabbed her through her shirt, correct?

18 A. That's what she said.

19 Q. And her stab wounds I think it was all — all in her breast, correct?

20 A. That's what she said.

21 Q. Okay. Well, I mean, you've seen the pictures, didn't you? You saw  
22 where the wound was?

23 A. Yes, sir.

24 Q. Okay. And there was a stab wound on her shirt she was wearing; is  
25 that correct?

1           A.       Yes, sir.

2           Q.       Did the bra have any type of hole or stab wound in it?

3           A.       I've never even seen it.

4           Q.       Okay.

5                    **(Brief Pause)**

6           Q.       Do you know if this bra was ever sent for testing down at SLED?

7           A.       They stated -- they said it was I believe.

8           Q.       Okay. Are you sure about that?

9           A.       No, I'm not sure.

10          Q.       Okay.

11          A.       I know there were some -- some of her clothes were sent.

12          Q.       Okay.

13          A.       I didn't know what it was.

14          Q.       Okay. Do you know if -- if the bra had not been tested, do you know if  
15 Mr. Shealy had that independently examined?

16          A.       I know he didn't.

17          Q.       You know he did not have that done?

18          A.       Yes, sir.

19          Q.       Do you know, if Mr. Shealy had any type of forensic testing done on  
20 the bra to determine if the stabbing happened as Ms. Spencer occurred (phonetic),  
21 whether or not there would have been a hole in the bra? Do you know if Mr. Shealy  
22 had any of those tests done?

23          A.       No, sir, he did not.

24          Q.       Okay. And you -- do you feel like that a test, a forensic test on the  
25 bra, would that have been helpful in your case?

1 A. I believe it would.

2 Q. And why is that?

3 A. Well, it would have showed there was no hole there.

4 Q. It would discredit Ms. Spencer's story, correct?

5 A. Right, yes, sir.

6 Q. Okay. Now, I believe you testified a few minutes ago Ms. Spencer has  
7 some mental health issues; is that correct?

8 A. Yes, sir, she does.

9 Q. Okay. I mean, obviously, she's your aunt. You had a sexual  
10 relationship with her, correct?

11 A. (Nods affirmatively.)

12 Q. So you had somewhat intimate knowledge of her physical and medical  
13 history, correct?

14 A. I -- I -- I know what she says.

15 Q. Okay. And you knew she was on disability, didn't you?

16 A. Yes, sir, she was.

17 Q. For mental health issues, correct?

18 A. Yes, sir.

19 Q. Okay. Now, do you -- do you know if Mr. Shealy ever required --  
20 acquired her mental health records; Ms. Spencer's mental health records?

21 A. No, sir, he didn't.

22 Q. Okay. Did -- and I know Mr. Shealy asked Ms. Spencer about why  
23 she was on disability in trial, correct?

24 A. Yes, sir, he did.

25 Q. But he never explored with her, her mental health issues, did he?

1           A.       No, he didn't.

2           Q.       Okay. Now, one of I guess your — Mr. Shealy's trial tactics was to  
3 show that Ms. Spencer had anger issues, correct?

4           A.       Yes, sir.

5           Q.       And part of that was based on your story that you provided to the  
6 Court and that you testified to, correct?

7           A.       Right.

8           Q.       And you had — or Mr. Shealy was prepared to present multiple  
9 witnesses who were going to testify to Ms. Spencer's anger issues; is that correct?

10          A.       No, sir. He didn't want to go there.

11          Q.       Okay. Now, but he proffered the testimony of Ms. Whelchel  
12 (phonetic), didn't he?

13          A.       Yes, sir, he did.

14          Q.       And he proffered the testimony of Ms. Hodge too, correct?

15          A.       Yes, sir, he did.

16          Q.       Okay. His sole focus was in regards to Ms. Spencer's displays of  
17 anger, correct?

18          A.       Correct.

19          Q.       Okay. Would Ms. Spencer's mental health history and mental health  
20 records — do you feel like that would have been important to bolster that  
21 testimony?

22          A.       Yes, sir, I do.

23          Q.       And, as a matter of fact, that testimony was not allowed in --- was  
24 objected to, and the jury never heard that testimony, did they?

25          A.       You're — you're correct, sir.

1 Q. Do you feel like, if the mental health history and records of Ms.  
2 Spencer would have been provided, that, that testimony, would, then, have become  
3 relevant and the jury would have heard it?

4 A. Yes, sir.

5 Q. Okay. Now, also, Ms. Spencer alleged that you choked her with a  
6 computer cord; is that correct?

7 A. That's what she said, sir.

8 Q. And obviously you deny that?

9 A. Yes, I do.

10 Q. Okay. Your blood was found, however, all over the place, correct?

11 A. My blood was all over the apartment, yes, sir.

12 Q. And why — and why is that?

13 A. Because she slashed my hand open.

14 Q. Okay. And, as a result, you bled profusely, correct?

15 A. Yes, sir.

16 Q. And you still have a scar today resulting from that?

17 A. Yes, sir.

18 Q. Okay. Now, do you know if any blood was found on that computer  
19 cord?

20 A. I don't know, sir.

21 Q. Okay. Do you know if any testing was done to determine whether or  
22 not epithelial skin cells were found on the computer cord?

23 A. I do not know.

24 Q. Did Mr. Shealy have any independent examination done of the  
25 computer cord to determine whether or not any epithelial cells were on the computer

1 cord?

2 A. Not that I'm aware of, sir.

3 Q. Okay. Do you feel like that testing, that forensic testing, would have  
4 been important to either, you know, prove or discredit both your and Ms. Spencer's  
5 story of what happened that evening?

6 A. Yes, it could have, yes, sir.

7 Q. She lies — she's alleging you grabbed the cord and you choked her,  
8 correct?

9 A. That's what she said.

10 Q. And you're saying that never happened?

11 A. That never happened, sir.

12 Q. And a determination of whether your skin cells were on the cord would  
13 be important, correct?

14 A. Correct.

15 Q. And no forensic testing of that was ever done, was it?

16 A. No, sir.

17 (Brief Pause)

18 Q. In your trial, do you remember the testimony of a Susan Mobley  
19 (phonetic)? I believe that's correct?

20 A. Sue Mobley?

21 Q. Yes.

22 A. Yeah, yes, sir, I do.

23 Q. Okay. Who was that?

24 A. She was a sexual assault nurse examiner, it's called a SANE  
25 (phonetic) nurse.

1 Q. Okay. And she was qualified as an expert as to sexual assault exams  
2 and — in your trial; is that correct?

3 A. Yes, sir, she was.

4 Q. All right. And did Mr. Shealy object to her being qualified as an  
5 expert?

6 A. No, sir, he didn't.

7 Q. He freely admitted her as an expert, didn't he?

8 A. Yes, sir, he did.

9 Q. Did he question her as to her qualifications as an expert?

10 A. No, he didn't.

11 Q. Did he question whether or not she had written any materials?

12 A. Yeah, he did question her on some form she filled out.

13 Q. Okay. Not — not the form she filled out, whether or not she had  
14 written any books or material ---

15 A. Oh, no, sir.

16 Q. --- on that subject?

17 A. No, sir.

18 Q. And I believe she was asked how many times she had testified at trial  
19 before, correct?

20 A. Correct.

21 Q. And she testified that she had only testified one time. And even —  
22 she even — let me step back a minute.

23 A. Okay.

24 (Brief Pause)

25 Q. Do you feel like Mr. Shealy fully examined her on her qualifications as



1 an expert?

2 A. Not as an expert witness, no, sir.

3 Q. Essentially, he just rolled over and said, "Yes, she's admitted as an  
4 expert"?

5 A. He said, "no objections."

6 Q. Okay. As part of her testimony, she gave her expert opinion that the  
7 sex between you and Ms. Spencer was non-consensual, correct?

8 A. That's what she said.

9 Q. And both vaginally and anally, correct?

10 A. Correct.

11 (Brief Pause)

12 Q. And did her testimony, as an expert --- do you feel like that influenced  
13 the jury?

14 A. I believe it did, sir.

15 Q. Okay. And, as a result of that, that was one -- her testimony helped  
16 lead to your conviction?

17 A. Yes, sir, it did.

18 Q. As an expert?

19 A. Yes, sir, it did.

20 (Brief Pause)

21 Q. Now, Mr. Jones ----

22 (Brief Pause)

23 Q. ---- do you feel like Mr. Shealy was effective during the trial of your  
24 case?

25 A. To a -- a degree. He was ineffective in a lot of ways.

1 Q. And, as a result of his ineffectiveness, you were convicted, correct?

2 A. Yes, sir, correct.

3 Q. And sentenced to life without parole?

4 A. Yeah, yes, sir.

5 Q. Do you — if Mr. Shealy had been effective as your trial counsel, do you  
6 believe you would have been convicted?

7 A. No, sir.

8 (Brief Pause)

9 MR. CAMPBELL: No further questions for this witness, Your Honor.

10 THE COURT: Yes, ma'am?

11 MS. WHITE: Thank you, just briefly.

12 Cross Examination by Ms. White:

13 Q. Mr. Jones, the testimony at trial, even by yourself, was that there was  
14 sex between you and your aunt. And that, ultimately, she was stabbed, although  
15 your defense was it was kind of in self defense; is that correct?

16 A. That is correct.

17 Q. Okay. So there's no question that she had a stab wound on her chest;  
18 is that right?

19 A. No, ma'am, there was no question about that.

20 Q. Okay. Your concern is whether or not she had a bra on when she was  
21 stabbed?

22 A. I knew. I know the answer to that.

23 Q. But your concern with what the jury saw and heard was the fact that  
24 the stab wound was only in her shirt but not in her bra; is that right?

25 A. No, that's --- I don't understand what you're talking about.

1           Q.       Okay. Wasn't the shirt that she was wearing that night presented at  
2 trial?

3           A.       Yes, ma'am.

4           Q.       And wasn't there a cut around the chest; the same marked area where  
5 she was stabbed?

6           A.       Yes, ma'am.

7           Q.       So that was presented at trial, that she was stabbed through the shirt.  
8 But, your testimony is you think, because there was no bra presented with a stab  
9 wound, that, that would indicate she was lying?

10          A.       I — I can't even answer that.

11          Q.       Okay. Did you not just testify a few moments ago that you think had  
12 they introduced the bra and shown that there was no stab wound that, that would  
13 have affected your — your verdict?

14          A.       Yes, ma'am, I did.

15          Q.       Okay. And, in regards to the investigative reports, you said that you  
16 felt like they were con — inconsistent. Your attorney asked, in cross examining the  
17 investigators, somewhat on the inconsistencies, didn't he?

18          A.       I suppose so.

19          Q.       Okay. So do you recall him talking to the investigators about some  
20 inconsistencies with who wrote the report and — and who was there at what time  
21 and who interviewed her?

22                    **(Brief Pause)**

23          A.       I don't recall.

24          Q.       Okay. In regards to Ms. Mobley and her testimony, you said he didn't  
25 ever object to her being qualified as an expert?

1 A. Yes, ma'am.

2 Q. He did ask her and get her to testify that the abrasions that she found  
3 could have been caused from consensual sex with no lubrication; is that right?

4 A. I believe he did ask that question.

5 Q. Okay. And so, when she had testified earlier on direct about the  
6 abrasions and the trauma, she ended up saying, during the cross examination, that  
7 it was possible that it could be as a result of consensual sex?

8 A. I believe she did.

9 Q. Okay.

10 (Brief Pause)

11 Q. Your attorney did ask your aunt about the fact that she was on  
12 disability for depression issues; did she not — did he not?

13 A. He asked her why she was disabled. And she is the one that said for  
14 a depression.

15 Q. Okay.

16 A. It goes much deeper than that.

17 Q. But you wanted him to try to introduce her mental health records you  
18 thought at the trial?

19 A. Yes, ma'am, I did.

20 Q. Did he ever talk to you about whether or not those mental health  
21 records would be admissible at trial?

22 A. Not to my knowledge, ma'am.

23 Q. Okay. Did you talk with him about the fact that you felt she had mental  
24 health issues?

25 A. Yes, ma'am, I did.

1 Q. All right. But you don't recall if he shared with you whether or not he  
2 thought they would be able to get those in or have somebody testify?

3 A. I can't recall, ma'am.

4 Q. Okay.

5 (Brief Pause)

6 Q. The testimony — there was DNA evidence, obviously, that was used in  
7 this, the blood and various DNA from the rape kit; is that right?

8 A. Restate, please.

9 Q. Was there DNA evidence that you had been in the house?

10 A. Oh, yes, ma'am.

11 Q. And that you and she had, had sex?

12 A. Yes, ma'am.

13 Q. And there was evidence that you testified to that there was — you tried  
14 to clean up some of the blood with hydrogen peroxide?

15 A. I tried to clean my wound and her wound.

16 Q. Right. So the testimony from her was that she thought you were trying  
17 to clean up a crime scene; yours is that you were trying to clean up the wounds?

18 A. She — she knew what I was doing.

19 Q. But my question is: Was her testimony at the trial that you were trying  
20 she felt clean up the crime scene?

21 A. (No Response)

22 Q. Or clean up the blood?

23 A. I think she did.

24 Q. That's what I'm asking.

25 A. Yes, ma'am, I believe.

1           **Q.**           Okay. So essentially, with the physical evidence and you saying  
2 obviously you were there but it was consensual, it came down to whether or not the  
3 jury believed her, that it was non-consensual, or you ----

4           **A.**           Yes, ma'am.

5           **Q.**           ---- is that right?

6           **A.**           Yes, ma'am.

7           **Q.**           Okay.

8                   **MS. WHITE:**       Your Honor, that's all I have at this time.

9                   **THE COURT:**       Redirect?

10                  **MR. CAMPBELL:**   Nothing, Your Honor.

11                  **THE COURT:**       All right. Mr. Jones, you may step down. Thank  
12 you, sir.

13                   **(The witness complied with the request.)**

14                  **THE COURT:**       Additional witnesses, Mr. Campbell?

15                  **MR. CAMPBELL:**   Yes, Your Honor. I'd call Mr. Shealy.

16                   **(The witness stepped forward to be sworn.)**

17                   **(Off-the-Record Comments)**

18                   (Whereupon,

19                                   **Thomas Shealy, Esquire**

20                   having been first duly sworn, testified as follows:)

21                  **THE COURT:**       All right, sir, you may sit down. And state your full  
22 name for the record, please.

23                  **THE WITNESS:**   Thomas Edward Shealy (phonetic).

24                  **THE COURT:**       Yes, sir.

25                  **Direct Examination by Mr. Campbell:**

1           Q.       Mr. Shealy, I know — you were Mr. Jones' attorney in this matter; is  
2 that correct?

3           A.       That's correct.

4           Q.       And, at the time, you were employed with the Cherokee County Public  
5 Defenders Office?

6           A.       I did.

7           Q.       Okay. And where are you currently employed?

8           A.       I'm with the Children's Law Center at the University of South Carolina.

9           Q.       So you are no longer with — you're no longer working as a public  
10 defender; is that correct?

11          A.       That's correct.

12          Q.       And when did you leave the public defenders office in Cherokee  
13 County?

14          A.       I believe it was January 15<sup>th</sup>, 2010.

15          Q.       And you don't — why did you leave the public defenders office?

16          A.       The — well, it's complex reasons, but part of it was that I burned out  
17 and I was tired of — of my clients, they — with the exception of — of Scott. Scott  
18 was probably the best client I ever had.

19                   Then, on this trial, I — I actually believed we had it won and we didn't.  
20 And I decided it was time for me to move on to something else.

21          Q.       Scott's conviction — conviction affected you?

22          A.       It did.

23          Q.       And played — and would you say it played a part in you leaving the  
24 Cherokee County PD's Office?

25          A.       It wasn't a — a major reason, but it was a contributing factor.

1           Q.       Thank you, Mr. Shealy. Essentially, in regards to your representation  
2 with Scott, how many times did you all — you meet with him prior to going to trial on  
3 this case?

4           A.       I couldn't tell you. I don't -- we met extensively. He was -- of course,  
5 we -- we met several times before his -- his first trial on a -- on a different matter.

6           Q.       Uh-huh (affirmative).

7           A.       And, then, he was taken -- taken off to prison. And I had him brought  
8 back about a week before the trial week. And I met with him every day during that  
9 time.

10          Q.       Okay. And I believe Mr. Jones' storey to you about what happened  
11 was that he had a consen -- a consensual sexual relationship with Ms. Spencer and  
12 that he had gone over there. And after sex they got into an argument about a dead  
13 family member, correct?

14          A.       Well, I don't think the family member -- the family member died during  
15 this -- this period of time.

16          Q.       Okay.

17          A.       The -- he was upset with the way Ms. Spencer -- she was supposed  
18 to be taking care of him and he didn't feel that -- well, he -- he didn't feel that she  
19 was doing an adequate job.

20          Q.       Essentially, Ms. Spencer was supposed to be taking care of Mr. Jones'  
21 grandfather; is that correct?

22          A.       That's correct.

23          Q.       And I believe previously to that she had also been taking care of the  
24 grandmother at one point in time, correct?

25          A.       That's my understanding.



1 Q. And that the grandmother had died. And — and Mr. Jones blamed her  
2 for that?

3 A. I — I don't know about him blaming her for that. But I know that — that  
4 he was not happy with her.

5 Q. Okay. Now, Mr. Jones' grandfather died sometime before this trial,  
6 didn't he?

7 A. The — I — I want to say like a week before, maybe — I don't know  
8 exactly when that was. But it was — it was very, very close in time.

9 Q. A short period of time before the trial of this case though, correct?

10 A. Correct.

11 Q. And would it be, I guess, safe to say that Mr. Jones' family members  
12 supported him throughout this trial, correct?

13 A. All except Ms. Spencer.

14 Q. All — let me say all except Ms. Spencer?

15 A. But, yes, I — I believe — I don't know of anyone that didn't support  
16 him.

17 Q. Okay. They said — they didn't believe Ms. Spencer?

18 (Brief Pause)

19 A. I don't think they did.

20 Q. Okay. And — but the death of Mr. Jones' grandfather and obviously  
21 other family members' grandfather and father, that affected the family prior to trial,  
22 didn't it?

23 A. It had to have.

24 Q. At any point, did you ask for a continuance to — based on the fact that  
25 the grandfather dying in this thing?

1           A.           No, I — I did not.

2           Q.           Do you feel like that, that would have been appropriate to ask for a  
3 continuance in this matter because of that?

4           A.           I don't — I don't see any reason not to. And I can't tell you why I  
5 didn't.

6           Q.           Did any of these family member, who were going to testify on Scott's  
7 behalf, did they back out during the trial?

8                       **(Brief Pause)**

9           A.           I don't — I don't recall. I know that some of their testimony was — was  
10 hearsay so we couldn't use it. There — there were — I want to say Ms. Whelchel  
11 (phonetic) and Ms. Hodge were family members.

12          Q.           All right. I understand. Did — did — were any of the family members  
13 prepared to testify about the sexual relationship between Mr. Jones and Ms.  
14 Spencer?

15          A.           It was — it was one of those things that seems to have been common  
16 family knowledge, but no one could tell me where they got the information from.  
17 And the — and no one was — was willing to testify to that fact because the — well,  
18 pretty much the same reason, that, that's what they thought, but...

19          Q.           It was one of those situations where the family knows it, but they're not  
20 going to take the stand and testify to it?

21          A.           Well, I don't think they would be allowed to testify to it.

22          Q.           Did — did you proffer their testimony to try to get it out?

23          A.           The only testimony I proffered was — was what's in the record.

24          Q.           Okay. Now, I want to start with, you know, Ms. Spencer and her  
25 testimony and your examination of her if that's okay.

1           A.       Okay.

2           Q.       Essentially, you started right off the bat, in your cross examination of  
3 Ms. Spencer, you know, going forward in regards to her disability, correct?

4           A.       I'll rely on the record if it says that.

5           Q.       Okay. And you asked her if she was on disability and she told you,  
6 yeah, she was on it for depression; is that correct?

7           A.       Yes.

8           Q.       Okay. At any point prior to trial, had you subpoenaed Ms. Spencer's  
9 medical records or medical — medical history, including mental health history?

10          A.       I did not.

11          Q.       Okay. Now, part of your and Scott's defense, was that Ms. Spencer, in  
12 a fit of rage, attacked Scott, correct?

13          A.       Correct.

14          Q.       And, in addition to that, Ms. Clary and Ms. Hodge, whose testimony  
15 both of you proffered, was she also acted in fits of rage to them as well, correct?

16          A.       Correct.

17          Q.       Do you feel like Ms. Spencer's mental health history would have  
18 helped document those fits of rage?

19          A.       Well, obviously, I — I don't know that because I — I don't — don't have  
20 those records.

21          Q.       Looking back on it now, do you feel like it would have been important  
22 to subpoena and get those medical records and mental health records?

23                   **(Brief Pause)**

24          A.       If I had — if I knew who to subpoena. I — you know, I don't think I had  
25 that knowledge.

1 Q. Okay. Did — Mr. Jones' family members were fully in support of him in  
2 this matter, correct?

3 A. Correct.

4 Q. Did you inquire as — with any of Mr. Jones' family members with  
5 whom Ms. Spencer may have treated?

6 A. Who may have treated Ms. Spencer?

7 Q. That's correct.

8 A. I don't recall asking any of them that. I don't think I did.

9 Q. Okay. Obviously, Ms. Spencer was on Social — or was on disability  
10 for depression, correct?

11 A. Correct.

12 Q. At any point, did you subpoena her Social Security Disability file to try  
13 to get her medical records or determine the reason she was on disability from there?

14 A. I did not.

15 Q. Okay. If — and her file at Social Security Disability would have had  
16 those records, correct?

17 A. It should in order for her to get payment really.

18 Q. Okay. And — and you would agree with me you didn't subpoena  
19 them?

20 A. I did not.

21 Q. Okay.

22 (Brief Pause)

23 Q. Now, obviously, you proffered the testimony of Ms. Clary and Ms. —  
24 and Ms. Hodge, correct?

25 A. Was it Clary or Whelchel?

1           Q.       Whelchel. I'm sorry, you did Ms. Whelchel and Ms. Hodge, is that  
2 correct?

3           A.       That's correct.

4           Q.       Okay.

5                   **MR. CAMPBELL:** I got Ms. Clary here today. I apologize, Your  
6 Honor.

7           Q.       (By Mr. Campbell) And both Ms. Whelchel and Ms. Hodge testified,  
8 you know, outside the presence of the jury, about Ms. Spencer going into fits of  
9 rage, correct?

10          A.       I rely on the record once again. I believe that's -- that's the sole  
11 reason to be called.

12          Q.       Okay. And you would agree with me that Judge Cole did not find that  
13 relevant and the jury never heard any of that testimony, correct?

14          A.       That's correct.

15          Q.       Do you feel like, if you would have had the mental health records to  
16 show that she had a history of fits of rage, at that point, it would become relevant to  
17 where the jury would have heard it?

18                   **(Brief Pause)**

19          A.       You -- you want my opinion?

20          Q.       Yes, sir.

21          A.       With Judge Cole, I don't think it would have been -- I think he would  
22 have ruled the same way.

23          Q.       All right. But saying that it would have also been important, though, in  
24 laying a foundation for an appeal down the road?

25          A.       That's correct.

1 Q. All right. So it would have been important, even though — whether you  
2 — you were in front of Judge Cole or not?

3 A. Right. I — I never meant to indicate that it wasn't.

4 Q. Okay. I — I want to go through — now, after that, essentially, you  
5 cross examined Ms. Spencer on the several inconsistencies in her testimony,  
6 correct?

7 A. Correct.

8 Q. Essentially, she gave five or six different stories to five or six different  
9 people ----

10 A. Correct.

11 Q. ---- in regards to the time line of when events occurred ----

12 A. Correct.

13 Q. ---- correct?

14 A. Yes.

15 Q. And — but, during cross examination, you just — would you agree with  
16 me you briefly asked her about the story she told each individual?

17 A. I believe I went into it as much as I — well, obviously, I thought I went  
18 into it as much as I needed to.

19 Q. Okay. In Ms. Spencer's testimony, she essentially — and, you know,  
20 after she was stabbed, but she — she said she lost consciousness and woke up and  
21 Scott was raping her, correct?

22 A. That's correct.

23 Q. And she said she lost consciousness again and the next thing you  
24 know he's raping her from behind, correct?

25 A. Correct.

1 Q. Now, she never — did she ever testify as to her being — what she  
2 meant from — as far as being raped from behind?

3 A. I — I don't know exactly what she said.

4 Q. Okay. Did — and I — and I believe, when she's talking about being  
5 raped from behind, she's talking about being raped anally, correct?

6 A. Correct.

7 Q. Did you press her as to her body position at any point during your  
8 cross examination?

9 A. I don't believe I did.

10 Q. Did you cross examine on whether or not she was on her stomach or  
11 on her back during the — essentially the alleged rape?

12 A. I don't believe — whatever the record says I questioned her on ---

13 Q. I understand.

14 A. --- I agree with.

15 Q. And you would agree with me that Ms. Spencer's testimony about the  
16 rape is extremely vague?

17 A. Well, I -- I thought it was pretty detailed. The — I don't know what you  
18 mean by — by "vague."

19 Q. By ----

20 A. I think inconsistent.

21 Q. Well, essentially, she says she wakes up, he's raping me, "just raping  
22 me." And, then, she says she loses consciousness, correct?

23 A. Correct.

24 Q. And, then, she says she wakes up and "he's raping me from behind,"  
25 correct?

1           A.       Correct.

2           Q.       She never gives any details as to whether or not she's on her stomach  
3 or on all fours, does she?

4           A.       That's — that's correct. To my knowledge, she — she did not.

5           Q.       Okay. Did she -- in her testimony, in — in her sworn testimony in your  
6 cross examination, did she give any testimony at all about being masturbated by Mr.  
7 Jones?

8           A.       I don't recall.

9           Q.       Do you recall whether or not you asked Ms. Spencer whether or not  
10 she had been masturbated by Mr. Jones?

11          A.       I don't believe I did.

12          Q.       Okay.

13          A.       Once, again, I — I rely on the record.

14          Q.       Okay. And -- and, if I told you, you did not ask her whatsoever if she  
15 had been masturbated by Mr. Jones, you'd have no reason to dispute that?

16          A.       Knowing you, I would accept your word.

17          Q.       Okay. As a matter of fact, in your — you eventually cross examined  
18 the sexual assault nurse examiner, correct?

19          A.       Correct.

20          Q.       And you went over her report, didn't you?

21          A.       Yes.

22          Q.       In her report, she states that Ms. Spencer was masturbated by Mr.  
23 Jones?

24                    **(Brief Pause)**

25          A.       Once, again, I -- I don't remember.



1 Q. Okay. Do you — if — you would have no reason to, you know ----

2 A. I — I don't dispute that.

3 Q. — dispute that if I tell you, you cross examined Miss — the sexual  
4 assault nurse examiner on that and, on her report, it states that Mr. Jones  
5 masturbated Ms. Spencer?

6 A. Right, I — I don't dispute that.

7 Q. But you never asked Ms. Spencer those questions, did you?

8 A. I don't think so.

9 Q. You never pushed her hard on that, did you?

10 (Brief Pause)

11 A. Well, I — I thought I pushed her pretty hard, but not — not specifically  
12 on the way that you're saying.

13 Q. Okay. And -- and you never pushed her hard to get details of body  
14 position or anything like that, did you?

15 A. The — what — what I asked her is — is the record.

16 Q. Okay.

17 (Brief Pause)

18 Q. Also, during — Ms. Spencer's testimony was I believe that, you know,  
19 after Scott came in, they had a brief conversation. Scott left the room and came  
20 back with a knife and stabbed her, correct?

21 A. Essentially.

22 Q. And stabbed her in her shirt and ----

23 A. She was fully clothed.

24 Q. Fully clothed; pants, shirt and everything?

25 A. Bra.

1 Q. Pants, bra, everything? And a point of contention that — for you, in the  
2 examination of the bra, was there ever a hole, a stab hole, in the brassiere?

3 A. Yes.

4 Q. There was a stab hole in the brassiere?

5 A. No, there was no hole.

6 Q. Okay.

7 A. It was established that there was no hole.

8 Q. There was no hole whatsoever in the brassiere?

9 A. That's correct.

10 Q. Okay. And -- and, essentially, she was stabbed on her breast,  
11 correct?

12 A. Right.

13 Q. Okay. Was the brassiere ever sent to Columbia to be -- to be tested?

14 (Brief Pause)

15 A. I want to say it was sent to SLED, you know, to -- for -- for whatever  
16 forensic testing that they would do there.

17 Q. Okay.

18 A. But I -- I don't recall specifically ----

19 Q. If I told you that you asked the investigator about sending the brassiere  
20 to SLED for testing and they said there was no reason to, would you have any  
21 reason to dispute that?

22 A. No.

23 Q. Okay. At any point, did you do any independent, you know, forensic  
24 examination to determine whether or not the brassiere would have had a hole in it if  
25 she had been stabbed as Ms. Spencer said?

1           A.       Well, I got Detective Segian (phonetic) to testify to that. That's in —  
2 not only is that, you know, independent, but that's for the other side.

3           Q.       I understand. But did you — I believe also ---

4           A.       Yeah.

5           Q.       ---- though that the detective testified that, you know, it was possible  
6 that the bra could have been hanging down or, you know, just not covering the hole,  
7 correct?

8           A.       On redirect by Ms. Leskanic?

9           Q.       I believe both — both on cross and redirect?

10          A.       I — I don't recall that on cross.

11          Q.       Okay. Would you agree with me that, you know, an independent  
12 forensic examination done by somebody you hired could determine whether or not  
13 there should have been a hole in the bra?

14                   **(Brief Pause)**

15          A.       Once, again, I — I don't know. I don't know what — that, that — that  
16 could be done.

17          Q.       Okay.

18          A.       I know what they do on television, but ----

19          Q.       I know. I guess my question is, if an independent forensic examination  
20 had of been done, it would have potentially showed — and obviously we don't  
21 know ----

22          A.       It — it wouldn't have hurt.

23          Q.       It wouldn't have hurt. Now, also, Ms. Spencer's testimony was that Mr.  
24 Jones attacked her with a computer cord; is that correct?

25          A.       Yes.

1 Q. Essentially, I think he -- he popped her with the cord across the neck?

2 A. She says he -- he was trying to strangle her with the cord.

3 Q. Okay. And do you know if there was any testing done to determine  
4 whether or not there were any skin cells of Mr. Jones on the computer cord?

5 A. There was not.

6 Q. There was not any testing done?

7 A. Not any testing done.

8 Q. Okay. And did you have any forensic testing -- independent forensic  
9 testing examination done on this computer cord?

10 A. I did not.

11 Q. Okay. I want to get to the sexual assault nurse, Ms. Mobley. The --  
12 Ms. Leskanic presented her as an expert witness in sexual assault essentially,  
13 correct?

14 A. Correct.

15 Q. And, as part of the questioning, she was asked had she ever testified  
16 in court; is that correct?

17 A. Correct.

18 Q. And she testified one time in Greenville I believe; is that correct?

19 A. That's correct, yes.

20 Q. But she never said that it was as an expert, did she?

21 A. I took -- took that to mean that she was an expert.

22 Q. But she didn't actually testify; she just said she testified, right?

23 A. Right.

24 Q. And so you don't know actually if it was as an expert or not?

25 A. Well, let me look.

1 Q. I believe ----

2 A. One, thirty-six (136).

3 Q. Yeah.

4 (Brief pause while witness examines document.)

5 Q. Approximately 138.

6 (Brief Pause)

7 Q. Okay. I'm — and she does — she was asked had she testified in  
8 court as an expert and she said one time in the Spartanburg County courthouse,  
9 correct?

10 A. Yes.

11 Q. Okay.

12 A. And — and I took that to mean that she testified as an expert.

13 Q. And as a sexual assault nurse?

14 A. Correct.

15 Q. Did you question her as her — as to her qualifications in regards to,  
16 you know, any written papers or pamphlets or anything like that?

17 A. No.

18 Q. Did you question her as to her qualifications — well, I believe it was  
19 testified to as her — what was necessary to become a sexual assault nurse  
20 examiner; is that correct?

21 A. I believe Ms. Leskanic asked those questions.

22 Q. Okay. And essentially she took a weekend course, correct; a 40-hour  
23 weekend course?

24 A. Whatever her testimony was.

25 Q. And ----

1 A. I thought it was a little bit more than that, but...

2 Q. And she takes some CLE hours every year?

3 A. Correct. Well, I don't think they're CLEs, but continuing ----

4 Q. Or continuing education?

5 A. Yeah.

6 Q. I call it them CLEs; I'm stuck on that term now. But, other than that,  
7 did you question her extensively — extensively on her — you know, how many years  
8 she had been a sexual assault nurse?

9 A. No.

10 Q. How many examinations she had done?

11 A. I — I did not object to her being qualified as a expert.

12 Q. Now — and, during her testimony, she testified, in her expert opinion,  
13 that the sex between Mr. Jones and Ms. Spencer was non-consensual, correct?

14 A. Yes, I believe so.

15 Q. And that's — and she testified a lot of to because of the trauma, of the  
16 blood trauma, and the abrasions; is that correct?

17 A. That is correct.

18 Q. Okay. Now, I know you also elicited from her that, that they could  
19 have occurred from consensual sex as well; is that correct?

20 A. Correct.

21 Q. Okay. And that's both anally and vaginally was the testimony?

22 A. Correct.

23 Q. Do you know if they found any lubricant on Ms. Spencer's body?

24 A. I — I don't — I don't know if the examiner was ever asked and  
25 answered.

1 Q. Okay. Do you know if they found any semen on Ms. Spencer's body?

2 (Brief Pause)

3 A. Once, again, I -- I don't know if that was -- if that was asked or  
4 answered.

5 Q. Okay.

6 A. Again, I would stand on the record.

7 Q. I understand, Mr. Shealy. One of the things you did go over with Ms.  
8 Mobley was the report she took from Ms. Spencer though, correct?

9 A. Correct.

10 Q. And, in that report, she indicated that one, that Mr. Jones had digitally  
11 -- or used his hand to penetrate her, correct?

12 A. Correct.

13 Q. And I believe you asked specifically was it digital penetration or the  
14 hand, correct?

15 A. Correct.

16 Q. And I believe she testified it was the hand?

17 A. Correct.

18 Q. Do you remember asking Ms. Spencer, under cross examination, any  
19 of those questions on whether that occurred?

20 (Brief Pause)

21 A. Well, I -- I know that I asked her; I don't independently recall ---

22 Q. Okay.

23 A. --- asking her. But in the record, so...

24 Q. I understand. Also, you asked Ms. Mobley several times, though, and  
25 -- about the masturbation detailed on the report, correct?

1           A.       Correct.

2           Q.       And no — and no other story or no other version of — of events did  
3 Ms. Spencer indicate masturbation occurred, did she?

4           A.       Correct.

5           Q.       And — but, yet, you didn't question Ms. Spencer on that either though,  
6 did you?

7           A.       I don't believe I did.

8                    **(Brief Pause)**

9                    **MR. CAMPBELL:** May I beg the Court's indulgence, Your Honor?

10                   **THE COURT:** Yes, sir.

11                   **(Brief Pause)**

12           Q.       (By Mr. Campbell) Mr. Shealy, do you — are you aware — and — and  
13 I'm jumping here a little bit so I apologize — are you aware of any potential plea  
14 offers that were made to my client?

15           A.       Well, prior to the first trial, I'm — I'm — I know there was an offer. And  
16 I believe the offer was 20 years — well, I — I do know this because, if he'd plead to  
17 both sets of charges, there would be a cap of 20 years — well, it would be for 20  
18 years; a negotiated plea for 20 years.

19                   And I — I talked — talked to Scott about it and urged him to take it.  
20 And I remember him saying, "I can't do 20 years; I just can't do 20 years." And we  
21 talked about it a number of times because I felt that was in his best interest. And he  
22 always responded the same way; "I can't do 20 years."

23                   I — I did tell him what — what their plan was and their — or what I  
24 believed their plan was.

25           Q.       Okay.



1       A.       And that was to — to get a conviction, on the first set of charges, which  
2       would enable them to ask for life without the possibility of parole on the second set  
3       of charges.

4       Q.       Okay.

5       A.       And our case on the first set of charges was — was very weak. This  
6       set, like I testified, I — I thought we would have won this one.

7       Q.       Okay.

8               **(Brief Pause)**

9       Q.       And, like I said, I'm sorry that I jump around a little bit. During the  
10      altercation that occurred between Ms. Spencer and Mr. Jones, Ms. Spencer actually  
11      shot at Mr. Jones; is that correct?

12      A.       Mr. Jones was — was leaving to get something from his truck. And I  
13      believe it was something to help clean up — or — or to help her. And, as he was — I  
14      believe, as he was returning to the house, she shot through the door.

15              And, at that point, he thought it was unwise to continue. So he got in  
16      his truck and left.

17      Q.       Okay. And essentially — and Mr. Jones' entire story was that Ms.  
18      Spencer initially attacked him with the knife. She got stabbed in the altercation.  
19      And, then, as he was trying to, you know, wanting to help her, take her to the  
20      hospital, she shot at him coming back through the door, correct?

21      A.       Correct.

22      Q.       Okay. Now, the — Mr. Jones gave a statement to police, correct?

23      A.       Correct.

24      Q.       And part of that statement was he said, "I hope the bitch is dead." And  
25      the — the reason he said that — or the reason he says he said that was because of

1 being shot at, correct?

2 A. Correct. He was upset about that.

3 Q. Yeah.

4 A. He — he felt that he was — this whole time, as between those two, that  
5 he was in the right and he was doing the — for want of a better word --- the caring  
6 thing and tried to take of her. And she — she resisted his — his efforts to — to stop  
7 the bleeding, clean up the mess, all of those things.

8 And — and, then, he's — he's — when he's coming back, she, then,  
9 shoots at him. And, yeah, he was — he was very upset about that.

10 Q. Because she was in a fit of rage?

11 A. That's correct.

12 Q. Okay. Mr. Shealy, do you know of the — the standard that's required  
13 for Mr. Jones to get a new trial today?

14 A. (Nods affirmatively.)

15 Q. Do you believe you were ineffective in — as his attorney in the trial in  
16 this matter?

17 A. Well, that question has several levels.

18 Q. Okay.

19 A. I was in — ineffective in the fact that he got convicted. As to what I did  
20 that day, and —and my investigation of the trial and my handling of the witnesses, I  
21 — I feel that it was as good as it got.

22 Q. Do you feel like, if you had have been effective and given the  
23 appropriate level of counsel, that Mr. Jones would still have been convicted on that  
24 day?

25 A. I do.

1 (Brief Pause)

2 MR. CAMPBELL: No further questions, Your Honor.

3 THE COURT: Cross, ma'am?

4 MS. WHITE: Thank you, Your Honor.

5 Cross Examination by Ms. White:

6 Q. Mr. Shealy, in talking with the Defendant in this case, what did you talk  
7 about in regards to presenting a defense at trial and how — how that was going to  
8 be seen by a jury? Do you recall?

9 A. I don't believe we — he told me what happened numerous times. He  
10 — he never varied from the facts. The — I believe that he — he made a very, very  
11 credible witness, the — the facts, with what they were.

12 And — and, you know, we talked about whether or not a jury would  
13 believe the — the turn of the night and, you know, that sort of drama. And we talked  
14 about the fact that he was a man and she was a woman and that he went there and  
15 he was there to talk to her about the — the grandfather.

16 We talked about all of those things. We also talked about how her —  
17 her story was totally inconsistent. The — and, as I already pointed out, she — she  
18 contradicted herself several times.

19 The — the final thing was the bra. And that — that was our — our —  
20 what I believe should have cinched it. The — the testimony was that her test — his  
21 testimony was that she met him at the door naked.

22 And later she puts on a shirt. And her — her testimony was that, no,  
23 she had a bra on and — and all of that.

24 The — Detective Segian testified "Well, there should have been a hole  
25 in the bra." And that — that was in our argument because the — you either had to

1 believe her testimony or you had to believe Scott's.

2 And I honestly believed that, by the end of the day, her testimony had  
3 so many holes in it and Scott's was pristine. He came through I thought on cross  
4 examination very well.

5 And I was -- I was -- I didn't tell Scott this because you never tell your  
6 client what's going to happen, but I was confident of -- of an acquittal after the trial  
7 as -- well, as I've ever been. And I was shocked whenever it didn't come back that  
8 way.

9 Q. And you said that he handled himself well on cross examination  
10 testimony. His testimony was still kind of tough because it involved a sexual  
11 relationship with his aunt that he claimed was consensual and, then, an allegation  
12 that she attempted to stab him, at which point, he took the knife, turned around, and  
13 stabbed her; is that right?

14 A. Well, actually -- actually, I want -- I want to say that -- that he didn't  
15 take the knife away; she -- she's holding the knife and he turned the knife and, in  
16 their scuffling back and forth or struggling, the knife went into her.

17 The -- but it was in her hand. But, you know, it's been three years; I  
18 just -- I'm not sure.

19 Q. And I guess my question is, even if he did great under cross  
20 examination, that's still a -- a difficult story for a jury to hear?

21 A. It -- it is. And -- and -- but a lot of what Kaye Spencer testified to, this  
22 stuff about passing out and coming to and, after all of this had happened to her,  
23 actually, I just -- I didn't believe any of that was true.

24 Q. Okay. Now, Ms. Spencer had gone to a neighbor's house to ask them  
25 to call 911; is that right?

1 A. I believe so, yes.

2 Q. And so the neighbor testified as to her appearance when he saw her;  
3 is that right?

4 A. Correct.

5 Q. She gave him the gun ----

6 A. That's correct.

7 Q. — to take it away and asked him to call 911; is that right?

8 A. That's right.

9 Q. Okay. Now, Mr. Jones testified that he had attempted to help her  
10 clean up or stop the bleeding, but was there ever any testimony that he tried to call  
11 911 to get an ambulance over there to help her once he left?

12 A. I want to say Ms. Leskanic asked him that and he said no.

13 Q. Okay.

14 A. I — once again, I — whatever the record says.

15 Q. And — but there was no 911 call from him asking for help for his aunt?

16 A. (Shakes head negatively.)

17 Q. Okay. In regards to a continuance based on the death of — of the  
18 grandfather in this case, was the grandfather going to be a witness?

19 A. No.

20 Q. Okay. So that would just be — you were going to be asking for a  
21 continuance based on the family being upset?

22 A. Well, I — I wasn't — I didn't.

23 Q. Right, right, you didn't.

24 A. I — I take it the theory is I should have on humanitarian grounds ----

25 Q. Okay.

1           A.        --- I would ask for that. And I -- I didn't.

2           Q.        But you had no plans to try to ask the grandfather to testify?

3           A.        No.

4           Q.        Okay. The Defendant or the Applicant testified that he didn't think --  
5 you know, he told you nobody knew about the sexual relationship in the family. But  
6 you testified that you thought everybody knew but didn't want to really testify?

7           A.        Well, I -- I talked to family members. And -- and they -- it was -- it  
8 was -- I don't know how to say it any other way, it was allegedly. They didn't know if  
9 it was true or not.

10                    They -- but there was this aroma that this was going on. But I'm not  
11 sure that anybody had actually put their finger on it.

12           Q.        Okay.

13           A.        Certainly, nobody could testify under oath that -- that, that was  
14 actually happening.

15           Q.        So nobody could testify that they had seen them involved sexually  
16 together?

17           A.        I -- I didn't find anybody that would say that.

18           Q.        Okay. In regards to mental health records, what's your understanding  
19 as to if you -- if there was something you had discovered, how much you could have  
20 gone into that with the victim of an alleged CSC?

21           A.        (No Response)

22           Q.        Do you think you would have been -- had there been some records I  
23 guess -- kind of a -- a vague question. If there had been some records, do you  
24 think you would have been able to -- to go into all of her -- her medical and mental  
25 health history?

1           A.           Well, I -- I -- I would have to show some kind of relevance to -- to the  
2 case. And, as Judge Cole ruled, even my attempts to show her outbursts of anger,  
3 which everybody in the family knew about -- or I say everybody; everybody I talked  
4 to -- apparently this was very common, that. But, at any rate, the -- I -- I don't -- I  
5 didn't ask for the records.

6                   I -- I don't think I -- I saw a need for the records. I don't think it even  
7 crossed -- crossed my mind to -- to ask for the records, the mental health records.  
8 All I can tell you is I -- I did not do it.

9           Q.           In regards to this -- the anger issue and the defense of that, the  
10 proffered testimony involved her allegedly getting angry and -- and becoming  
11 rageful, but as far as you know, did she have any convictions for any kind of  
12 assaults?

13                   (brief Pause)

14           A.           I don't -- I don't recall of her having any. The -- the reason I hesitate  
15 is there may have been something, you know, like a magistrate level conviction, but  
16 I -- I -- I don't recall.

17                   I know that, if there had of been, I normally would have tried to ask her  
18 about it and whether it got it in or not just so the jury would hear it.

19           Q.           Okay. And that was my question. If she had, had any convictions for  
20 violent offenses, would you have tried to impeach her with those?

21           A.           Sure.

22           Q.           Okay. In regards to the -- the evidence and the sexual trauma nurse,  
23 she did testify that -- that she had over 20 years of experience; that she had done  
24 40 years of -- I mean, 40 hours and, then, 60 hours of ride-along numerous pelvic  
25 exams on direct; did she not?

1           A.       Right. I was — I was satisfied. If — if I'm wrong, I'm wrong, but I was  
2 satisfied with her — her credentials. I understand she only testified once, but you've  
3 got to start somewhere.

4           Q.       Okay.

5           A.       Every expert testified once somewhere. But she still had the  
6 credentials.

7           Q.       And your strategy with that was to attack her mainly about her  
8 reporting and — and the inconsistencies in her report and the victim's story?

9           A.       Right. And I thought she gave us a lot ----

10          Q.       And, in fact ----

11          A.       --- or a fair amount, or more than I expected.

12          Q.       ---- you were able to get her to say there was a possibility that the --  
13 that the injuries could be as a result of consensual sex?

14          A.       Without lubrication.

15          Q.       And there had been urine and feces found as well that, that they --  
16 they believed -- they said as a result of trauma, but she also testified that could  
17 have happened at any time?

18          A.       Right.

19          Q.       Okay.

20                    **(Brief Pause)**

21          Q.       Now, the computer cord, no testing, but there were pictures that  
22 showed ligature marks on Ms. Spencer's neck, was there not?

23          A.       Yes.

24          Q.       Okay.

25          A.       I -- I saw no issue with the cord as far as requiring it to be -- let -- let



1 me put it this way, because I don't want to make it sound like I'm — I'm brighter than  
2 I am — something would have had to occur with me about that cord to ask for some  
3 kind of forensic testing.

4 And — and I would have to have some reason to believe, in order to  
5 get the Court to grant the — the request for the money to do that. Nothing struck me  
6 about the cord that it would — that it needed forensic testing.

7 Yeah, she said what it was used for. He denied it, but, you know, I've  
8 been doing this for 30-something years, and I don't know of anybody that would  
9 have asked for forensic tests on that cord under these circumstances.

10 That doesn't mean they wouldn't; they might be brighter than me.

11 (Brief Pause)

12 Q. Just briefly, back to the initial questions that you were asked, I just  
13 want to clarify. You said you left the PD's office on January 15, 2010. Would that  
14 be 2011?

15 A. It — it must have been 2011. I — I went two years in Afghanistan and,  
16 then, got back this past January.

17 Q. And could this trial have been May of 2010?

18 A. Right.

19 Q. So that would have been about six months after the trial that you left?

20 A. That's — that would be correct.

21 Q. Okay. And you're still licensed? You're licensed by the bar?

22 A. Yes, I am.

23 Q. How long have you been licensed by the bar?

24 A. For I think 34 — 34 years.

25 Q. Okay. And you've handled cases of this manner, level of seriousness,

1 prior to this trial?

2 A. Yes, for — for the last 20 years. Yeah, one of the complaints I have is  
3 that they don't tell you that the trial attorney on these cases that make law. And I've  
4 — I've had a couple of those.

5 Q. Okay. And you had been familiar with and knew Mr. Jones for several  
6 years based on the prior charge and the prior ----

7 A. Right. At the time he was arrested for this, I was already representing  
8 him on the prior charges.

9 Q. And, in fact, you represented him at a trial on those charges; is that  
10 right?

11 A. I did.

12 Q. Okay.

13 (Brief Pause)

14 MS. WHITE: Your Honor, I think that's all I have at this time.

15 THE COURT: Okay.

16 MS. WHITE: Thank you.

17 THE COURT: Redirect?

18 MR. CAMPBELL: Nothing further.

19 THE COURT: Okay. All right, sir, you may step down. Thank  
20 you for being here.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Yes, sir. Anything further?

23 MR. CAMPBELL: Yes, sir. I have a couple of brief witnesses left,  
24 Your Honor.

25 THE COURT: Okay. All right. Well, you may call them.

1                   **MR. CAMPBELL:** I call Lucille Whelchel.

2                   **(The witness stepped forward to be sworn.)**

3                   **(Off-the-Record Comments)**

4                   (Whereupon,

5                                       **Lucille Whelchel**

6                   having been first duly sworn, testified as follows:)

7                   **THE COURT:** Yes, ma'am. You may have a seat and state your  
8                   full name for the record, please.

9                   **THE WITNESS:** My name is Lucille L. Whelchel (phonetic).

10                  **Direct Examination by Mr. Campbell:**

11                 **Q.** Ms. Whelchel, what's your relationship to Mr. Jones?

12                 **A.** He's my nephew.

13                 **Q.** And the victim in this case, Ms. Kaye Spencer, is that your sister?

14                 **A.** Yes.

15                 **Q.** Okay. And I believe you testified in the trial in this matter; is that  
16                 correct?

17                 **A.** That is.

18                 **Q.** And one of the issues that you were going to testify to was Ms.  
19                 Spencer's I guess fits of rage and/or mental health, correct?

20                 **A.** Yes, sir.

21                 **Q.** Okay. And what was it that — that you testified to or were going to  
22                 testify to?

23                 **A.** I testified earlier about, you know, that she had changed her story with  
24                 me. At first she told me that, when she let Scottie in that — that night, that he asked  
25                 her could he go to — to the bathroom.

1 And the next story she said he asked her if he could go get a drink of  
2 water and he came back with a knife and snatched her from her couch and stabbed  
3 her.

4 Q. Okay. Now, have you ever seen Ms. Spencer in a fit of rage or acting  
5 out in rage?

6 A. Several times.

7 Q. Can you explain that to the Court, please?

8 MS. WHITE: Your Honor, I would just object to relevance at this  
9 point. Her testimony was proffered on the same thing and the judge  
10 overruled it. I don't see that we need to re-litigate the issue here.

11 THE COURT: Okay. Mr. Campbell, I will — I'm going to sustain  
12 the objection. I don't want to cut you off ----

13 MR. CAMPBELL: Okay.

14 THE COURT: — and preclude you from presenting evidence  
15 that may be relevant and helpful to your client's case, but I've read the  
16 transcript —

17 MR. CAMPBELL: She was offered ----

18 THE COURT: ---- and I've heard the testimony.

19 MR. CAMPBELL: I understand.

20 THE COURT: So, if you have a point with respect to ----

21 MR. CAMPBELL: Okay.

22 THE COURT: — deficient representation, you can make it  
23 quickly and move on.

24 MR. CAMPBELL: Thank you.

25 Q. (By Mr. Campbell) Did you have any knowledge about Ms. Spencer's

1 mental health?

2 (Brief Pause)

3 A. Just what the family suspected for the past several years.

4 Q. Okay. Did you ever talk to Mr. Shealy about Ms. Spencer's mental  
5 health?

6 A. I did.

7 Q. Okay.

8 (Brief Pause)

9 Q. Were you aware of any type of sexual relationship between Scott and  
10 Ms. Spencer?

11 A. I have been down at my dad's before, when Kaye was remodeling a  
12 home that she owned down in the country, and she would come by. And Scottie  
13 would be down there and she would pick him up to go take him to the house  
14 supposedly to help her remodel. I was aware of that.

15 Q. Okay. Were you asked — were you ever asked by Mr. Shealy about  
16 did you have any knowledge of a sexual relationship between Scott and — and Ms.  
17 Spencer?

18 A. No, sir, I don't remember him asking me that.

19 Q. And did you offer any testimony, either through your proffer or either to  
20 the jury, about a sexual relationship between Scott and Ms. Spencer?

21 A. I honestly don't remember that if I did.

22 Q. Okay. Which I hesitate — you would have remembered — you would  
23 have remembered if you had of been asked?

24 A. I think I would have.

25 MR. CAMPBELL: No further questions for this witness, Your Honor.

1                   **MS. WHITE:**       Just briefly, Your Honor.

2       **Cross Examination by Ms. White:**

3           **Q.**       You testified that the only knowledge you had of your sister's mental  
4 health was what the family had suspected over the last several years?

5           **A.**       Yes.

6           **Q.**       So you didn't have any direct knowledge as to whether or not she had  
7 been diagnosed with any disorder?

8           **A.**       Yes, I did. I knew that she was drawing mental disability.

9           **Q.**       Okay. But — but, in regards to a diagnosis of anything from any kind  
10 of psychiatrist or doctor, had you directly spoken to them or seen any documents  
11 that indicated that?

12          **A.**       No, I haven't.

13          **Q.**       Okay.

14          **A.**       She would have kept anything like that very personal.

15          **Q.**       Okay. So the only knowledge you had was that she was receiving  
16 disability payments?

17          **A.**       Yes.

18          **Q.**       Okay. And the only knowledge you had of the relationship with her  
19 nephew, the — the Applicant in this case, was that he would help her, according to  
20 what she said, remodel her house?

21          **A.**       Yes.

22          **Q.**       Okay. Thank you.

23                   **MS. WHITE:**       That 's all I have, Your Honor.

24                   **THE COURT:**       Okay. Anything else about the mental health  
25 records?



1 to?

2 A. To history that I have with Kaye Spencer, antagonizing situations and  
3 exaggerating situations to try to make other people look bad so that she appears to  
4 be the victim to get sympathy from other people and to try to keep my grandfather  
5 on her side in life.

6 Q. Okay. Are you aware of any incident where Kaye Spencer has ever  
7 staged an -- an incident ----

8 MS. WHITE: Your Honor ----

9 Q. -- or an injury of any kind?

10 THE COURT: Uh-huh (affirmative)?

11 MS. WHITE: ---- I would object again. I think she's testified that  
12 she was interviewed and talked to by Counsel. She was not called as a -- as  
13 a witness. And I think at this point, unless they can establish that the  
14 testimony would have been allowed, that -- that it's not going to be relevant  
15 in this case.

16 THE COURT: Okay. I'm going to overrule. I'll let you ask that  
17 question. You don't have to put too fine a point on it. You can, obviously, get  
18 into the record what ----

19 MR. CAMPBELL: Okay.

20 THE COURT: ---- generally she could have testified to and what,  
21 then, was not called by --

22 MR. CAMPBELL: Thank you.

23 THE COURT: ---- trial Counsel.

24 Q. (By Mr. Campbell) Other than Ms. Spencer's -- or -- or your  
25 interaction with Ms. Spencer's essentially rage or whatever, were you prepared to



1 testify to anything else?

2 A. I was prepared to testify that she had actually initiated an altercation  
3 with myself, when I was much younger, and had me arrested and charged with  
4 assault and battery of a high and aggravated nature.

5 And had pictures that she showed to family members telling that I had  
6 severely beaten her in her back while she was crawling on her knees. And none of  
7 that was true.

8 There was an altercation, but it was nowhere near the extent that she  
9 stated. She should not have had bruises anywhere on her back. I never touched  
10 her back. And she actually came to my parents' house, after I hung up the phone  
11 on her, which she knew that I was very upset with her.

12 (Brief Pause)

13 Q. Essentially, you would have testified that she made up a story about  
14 you, correct?

15 A. Exactly.

16 Q. Was your testimony ever proffered to the Court?

17 A. No, it was not.

18 Q. And I understand the jury may not have been able to hear that, but you  
19 never even got to proffer that testimony?

20 A. Correct.

21 Q. Okay.

22 (Brief Pause)

23 Q. Did you ever talk to Ms. Spencer about the night in question?

24 A. I did not.

25 MR. CAMPBELL: No further questions for this witness, Your Honor.

1                   **THE COURT:**     All right. Cross examination?

2           **Cross Examination by Ms. White:**

3           **Q.**       Ms. Clary, did Mr. Shealy ever talk with you about whether or not he  
4 was going to call you as a witness after he interviewed you?

5           **A.**       He never told me directly one way or the other.

6           **Q.**       Had he subpoenaed you for the trial?

7           **A.**       He did not.

8           **Q.**       Okay.

9                   **(Brief Pause)**

10          **Q.**       Did — you said that you were going to talk about the incident in which  
11 she initiated the — the assault and battery of a high and aggravated nature. Were  
12 you arrested for that incident?

13          **A.**       Yes, I was.

14          **Q.**       So that incident was going to be involving violence but in the — the  
15 situation you had been arrested. Was Ms. Spencer arrested for it?

16          **A.**       She was not. I never alleged — made any allegations against her.

17          **Q.**       Okay. All right. Thank you.

18                   **MS. WHITE:**     That's all I have.

19                   **THE COURT:**     Okay. Redirect?

20                   **MR. CAMPBELL:**   Nothing for this witness, Your Honor.

21                   **THE COURT:**     Thank you for being here, ma'am. You may step  
22 down.

23                   **(The witness complied with the request.)**

24                   **MR. CAMPBELL:**   Your Honor, may we briefly approach?

25                   **THE COURT:**     Sure, absolutely.

1 (Whereupon, a bench conference was had with both attorneys  
2 present.)

3 THE COURT: All right. Based on — are you ready?

4 COURT REPORTER: (Nods affirmatively.)

5 **Court's Ruling**

6 THE COURT: Based on a conference at the bench off the  
7 record, there is a note from the victim's son, which calls into question the  
8 victim's credibility. And the Applicant has asked to present that note as  
9 evidence in this case in furtherance of his application.

10 I find that, that note is clearly inadmissible. The defendant — or  
11 excuse me -- the witness is not available. And he is not -- he cannot be  
12 cross examined by the State in this application.

13 In most of these proceedings, I am generally liberal in allowing the  
14 Applicant to present evidence, particularly in a case like this where there is a  
15 sentence of life without the possibility of parole. So it's important that the  
16 Applicant have the opportunity to present any evidence which may bear light  
17 upon his application.

18 Therefore, what I've done is allowed the hearing to be held open for  
19 ten (10) days so that the witness's deposition can be taken de bene esse and  
20 can be presented for my consideration and made a part of the record in this  
21 matter.

22 All right. So it's 10 days. And that's a strict 10 days. I'm not going to  
23 continue it beyond that period of time. If you can't get him in 10 days, then,  
24 that's just too bad.

25 MR. CAMPBELL: I understand, Your Honor. And I appreciate your

1 consideration in this matter.

2 **THE COURT:** Okay. Anything further from the Applicant?

3 **MR. CAMPBELL:** Nothing further, Your Honor.

4 **THE COURT:** Okay. Anything from the State?

5 **MS. WHITE:** No, Your Honor.

6 **THE COURT:** Okay. Good enough. Well, I'll take it under  
7 advisement and hold the record open for those ten (10) days.

8 **MR. CAMPBELL:** Thank you, Your Honor.

9 **THE COURT:** Yes, sir.

10 **(Whereupon, the hearing concluded at 12:22 p.m.)**

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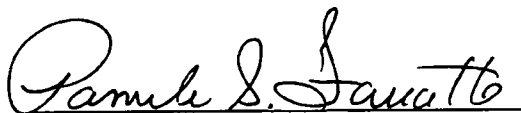
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**REPORTER'S CERTIFICATE**

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 59, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

June 13, 2014

A handwritten signature in cursive script, reading "Pamela S. Faucette", written over a horizontal line.

Pamela S. Faucette  
Official Court Reporter  
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

Donald Scott Jones, #336980,

2012-CP-11-0574

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

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CHEROKEE

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 6, 2012. The Respondent made its Return on or about August 14, 2013. An evidentiary hearing into the matter was convened on November 15, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Shawn M. Campbell, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Lucille Whelchel, Applicant's maternal aunt, and Susan Whelchel Clary, Applicant's first cousin, also testified on Applicant's behalf. Thomas E. Shealy, Esquire, also testified. This Court also had before it a copy of the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, Applicant's appellate records and the trial transcript.

Additionally, this Court held the record open for ten days to allow Applicant to conduct a deposition of the victim's son, who provided a written letter for the hearing, but was not present to testify. This Court disallowed the letter because of the inability to cross-examine the witness and inability to authenticate. A deposition was scheduled, but the witness did not appear to offer

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testimony. Therefore, the record was closed following the ten day time period.

### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted by the Cherokee County Grand Jury in July 2009 for criminal sexual conduct, first degree (2009-GS-11-0840) and assault and battery with intent to kill (2009-GS-11-0841). He was represented by Thomas Shealy, Esquire. On May 26, 2010, the Applicant was convicted of the charges by a jury. Applicant was sentenced by the Honorable J. Derham Cole to sentences of life without parole for both charges pursuant to S.C. Code Ann. §17-25-45 (1976).

A timely Notice of Appeal was filed and an appeal was perfected. The South Carolina Court of Appeals dismissed after review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Jones, Op. No. 2012-UP-158, (filed March 7, 2012). The Remittitur was issued on March 26, 2012.

### ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
  - a. Counsel failed to investigate.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he was convicted of CSC – 1<sup>st</sup> degree and ABWIK following an

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incident involving Applicant and his aunt, Kay Spencer, ("victim") in May 2009. Counsel began representing Applicant in June 2009. Applicant testified that he met with Counsel for the first time in June and only met Counsel twice between June and the trial. However, Applicant acknowledged that he was able to review all of the facts and potential issues with the case with Counsel. Applicant testified that he informed Counsel that he and the victim have been involved sexually since Applicant was fifteen years old. Applicant testified that he informed Counsel that he did not think anyone knew about the relationship.

Applicant testified that he reviewed the investigative reports and believes there were inconsistencies between the reports because one report indicated that the victim's pants leg was found in her panties and one report did not indicate that. Applicant also testified that the victim's bra came off at some point during sex earlier that night, but she told police that she was fully clothed at the time she was stabbed. However, Applicant testified that there was no hole in the bra from a stab wound. Applicant testified that he was unsure if the bra was tested by SLED, but knows that Counsel did not have the bra independently tested. Applicant testified that the victim was on disability for mental health issues, but Counsel never obtained the victim's mental health records or cross-examined her on her disability. Applicant testified that he was aware that part of the trial strategy was to attempt to show that the victim had anger issues, but Counsel did not want to bring in too many witnesses. Counsel did proffer the testimony of Ms. Welchel and a Ms. Hodge, which was not allowed in. However, Applicant testified that he believes that if Counsel had obtained the mental health records, the testimony would have been relevant.

Applicant testified that the victim claimed she had been choked by Applicant with a computer cord, but Applicant stated that he does not know if any blood or skin cells were found on the cord. Counsel did not have the cord tested. Applicant testified that Counsel never

objected to Mobley's qualification as a sexual assault nurse examiner or requested voir dire. Applicant testified that he believes Mobley's expert testimony led to the conviction. Applicant testified that Counsel was effective "to a degree," but ineffective overall.

Lucille Whelchel, Applicant's aunt and sister to the victim, testified that she was willing to testify on Applicant's behalf at trial. Whelchel testified that she was called as a witness by Counsel and her testimony regarding the victim's rage and mental health was proffered. Whelchel testified that she was aware that the victim had Applicant help her remodel homes, but had no personal knowledge of any sexual relationship between the victim and Applicant.

Susan Whelchel Clary, Applicant's first cousin and niece of the victim, testified that she was never called to testify or subpoenaed. However, Clary did testify that Counsel interviewed her as to what she would testify to at trial. Clary testified that she would have offered testimony regarding conflicts with the victim and the fact that the victim initiated a charge of assault and battery of a high and aggravated nature against Clary. Clary did acknowledge that the police arrested her for the assault and not the victim.

Counsel testified that he represented Applicant on these charges. Counsel testified that he met extensively with the Applicant because Counsel also represented Applicant on prior charges. Counsel testified that he met with Applicant before the first matter proceeded to trial and then also met with the Applicant every day the week before trial on these charges. Counsel testified that he and the Applicant discussed Applicant's defense and the risks of presenting it and whether or not the jury would believe. Counsel testified that Applicant always told him the same story. Applicant told him that he and the victim got into a fight regarding the victim's care of Applicant's grandfather and grandmother after they had consensual sex. Counsel testified that to his knowledge, all of the family members supported the Applicant, not the victim. Counsel

acknowledged that Applicant's grandfather died close to the time of trial, but he did not request a continuance based upon that reason.

Counsel testified that there were family members willing to testify, but much of the testimony would be considered hearsay. Additionally, no one could testify as to the alleged sexual relationship between the Applicant and the victim. Counsel acknowledged that he did not subpoena the victim's mental health records, but he did proffer testimony from two family members regarding the victim's anger issues. Counsel testified that he does not know if having the mental health records would have helped, but he does not believe that the testimony would have been allowed. Further, he was never told of who treated the victim or who he could subpoena. Counsel testified that he believed that he fully cross-examined the victim on the various inconsistencies in her story, but the victim's story was detailed.

In regards to Mobley's expert testimony, Counsel testified that she had over twenty years of experience and he did not think there was any benefit to objecting to her qualifications. Counsel testified that she did testify that the victim had trauma to her vaginal and rectal areas, but he did get her to admit that trauma could occur with consensual sex. Counsel testified that he did discuss the bra with Applicant and the fact that the bra had no stab hole, but he does not believe anything could have been done forensically. Additionally, Counsel testified that he saw no issue with the cord and no reason to spend the money for testing.

Counsel testified that there was a plea offer prior to the first trial for the Applicant to plead to both set of charges for a negotiated plea of twenty years, but Applicant told Counsel that he "could not do twenty years." Counsel testified that he discussed the fact that the State intended to seek a life without parole sentence with Applicant. Counsel testified that there were several concerns about the case, including the fact that after the victim shot at the Applicant

through a locked door after the altercation, the Applicant made a statement to police of "I hope the bitch is dead," and the fact that he did not call 911 following the altercation even though the victim had been stabbed. Counsel testified that he did as well as he could and does not think that the outcome of the trial would have changed had he done anything differently.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Following the testimony of Applicant and review of the transcript, it is clear that Counsel had reviewed the facts and evidence, as well as the options and potential defenses that Applicant had. Moreover, the Applicant has failed to show this Court what counsel could have discovered or what other defenses could have been pursued had counsel been more prepared. The Applicant's allegations that Counsel did not conduct an adequate pre-trial investigation are without merit and therefore dismissed.

Although the Applicant alleged that Counsel failed to have the bra or computer cord independently tested, there is no evidence to suggest that the outcome of the trial would have changed had either of those been tested. This Court finds that the Applicant may be second-guessing decisions made at trial; however, this Court finds that those decisions, although they could have been different, were reasonably calculated to support the best interests of the Applicant. Trial Counsel was competent and effective and elected not to do a host of things; however, this does not rise to the level of incompetency. Further, there was no evidence that had

Counsel made a motion for continuance based upon the Applicant's grandfather's death, it would have been granted, or that it would have affected the outcome of the trial. "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough v. Gentry, 540 U.S. 1, 6, 124 S.Ct. 1, 157 L.Ed.2d 1 (2003).

In regards to Counsel's manner in questioning the expert witness and his decision to not object to her qualification or request *voir dire*, this Court finds that Counsel was not deficient. This court finds that Counsel acted in the best interest of Applicant and that Counsel calculated his motions and tactics in an effort to effect the goal of competent and effective advocacy on his client's behalf. It is not necessary that an attorney make every objection or motion that he possibly can under the South Carolina Rules of Procedure. It is only necessary that he or she make those objections and motions which are reasonably calculated to effect the substantive end. In this case, the record would suggest that Counsel did just that.

As to the allegation that Counsel was deficient in his cross-examination of the victim, this Court concurs with the precedent in this State and other jurisdictions that the nature and scope of cross-examination is inherently a matter of trial tactics and strategy. United States v. Nersesian, 824 F.2d 1294, 1321 (2<sup>nd</sup> Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7<sup>th</sup> Cir. 1995). Although the Applicant alleged that Counsel should have cross examined the victim, officers, and expert witness about various inconsistencies in the reports, the Applicant did not present any testimony showing how the witnesses' answers at trial would have been different. Accordingly, the

Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense.

Although this Court does not question the credibility of either Whelchel or Clary's testimony, it is doubtful that their testimony would have been admissible at trial. Further, as indicated by the record and testimony, Counsel attempted to introduce similar testimony and proffered the testimony, but it was not allowed by the trial court. The Applicant produced no records that would have been helpful in his defense at trial or anyone that had first-hand knowledge of any mental health treatment the victim had obtained. Therefore, this Court finds no deficiency on Counsel's behalf in regards to his failure to attempt to introduce the victim's mental health records.

#### *Summary*

This Court finds in regards to the allegation of ineffective assistance of counsel, this Court finds Counsel's testimony to be credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier

*supra*. Therefore, this allegation is denied.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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

### IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

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2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 5 day of MARCH, 2014.



Robin B. Stilwell  
Presiding Judge

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